

LIMITATION ACT, 1981

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SCHEDULES

Fifth Session First Parliament Republic of Trinidad
and Tobago



REPUBLIC OF TRINIDAD AND TOBAGO

Act No. 22 of 1981

[L.S.]

AN ACT to make provision for the limitation of actions.

[Assented to 30th July, 1981]

PART I

**SHORT TITLE, COMMENCEMENT, INTERPRETATION
AMENDMENTS AND REPEALS**

**1. (1) This Act may be cited as the Limitation Act, Short title and commencement
1981.**

(2) This Act shall come into operation on a date to be appointed by the President by proclamation published in the *Gazette*.

Interpretation

2. (1) In this Act, unless the context otherwise requires—

“action” means any civil proceeding in a court of law;

Ch. 7. No. 1

“arbitration agreement” has the same meaning as in the Arbitration Ordinance;

“equitable interest” means, in relation to land, any estate, interest or charge in or over land (including a rentcharge but not any other incorporeal hereditament) taking effect in equity;

“foreshore” means the shore and bed of the sea and of any tidal water, below the line of the medium high tide between the spring tides and the neap tides;

“land” includes corporeal hereditaments and any legal estate or equitable interest therein;

1981 No. 20

“leasehold term” has the same meaning as in the Land Law and Conveyancing Act, 1981;

“legal estate” means, in relation to land, any estate, interest or charge in or over land (including a rentcharge but not any other incorporeal hereditament) subsisting at law;

“personal estate” and “personal property” do not include chattels real;

“personal injuries” includes any disease and any impairment of a person’s physical or mental condition and “injury” and cognate expressions shall be construed accordingly;

“rent” includes a rentcharge and a rent-service;

“rentcharge” means any annuity or periodical sum of money charged upon or payable out of land, except a rentservice or interest on a mortgage or on any other charge on land;

“trust”, “trustee” and “the statutory trusts”
have the same meanings as in the Land
Law and Conveyancing Act, 1981; 1981 No. 20

(2)(a) For the purposes of this Act a person is under a disability while he is a minor or while he is by reason of mental disorder incapable of managing and administering his property and affairs.

(b) In this subsection the expression “mental disorder” has the same meaning as in the Mental Health Act, 1975. 1975 No. 30.

(3)(a) For the purposes of subsection (2), but without prejudice to its generality, a person shall be conclusively presumed to be by reason of mental disorder incapable of managing and administering his property and affairs during any period when he is detained in a hospital of any category, a psychiatric ward, or an approved home or a private hospital in exercise, or purported exercise, of powers conferred by, or under, the Mental Health Act, 1975. 1975 No. 30.

(b) In this subsection “approved home” and “psychiatric ward” have the same meanings, respectively, as in the Mental Health Act, 1975. 1975 No. 30.

(4) A person shall be deemed to claim through another person if he became entitled by, through, under, or by the act of that other person to the right claimed:

Provided that a person becoming entitled to any estate or interest by virtue of a special power of appointment shall not be deemed to claim through the appointor.

(5) References in this Act to a right of action to recover land include references to a right to enter into possession of the land or, in the case of rentcharges, to distrain for arrears of rent and references to the bringing of such an action include references to the making of such an entry or distress.

(6) References in this Act to the possession of land shall, in the case of rentcharges, be construed as references to the receipt of the rent, and references to the date of dispossession or discontinuance of possession of land shall, in the case of rentcharges, be construed as references to the date of the last receipt of rent.

(7) In Part III of this Act and in section 39 references to a right of action include references to a cause of action and to a right to receive money secured by a mortgage or charge on any property or to recover proceeds of the sale of land, and to a right to receive a share or interest in the personal estate of a deceased person; and references to the date of the accrual of a right of action shall—

- (a) in the case of an action upon a judgment, be construed as references to the date on which the judgment became enforceable;
- (b) in the case of an action to recover arrears of rent or interest or damages in respect thereof, be construed as references to the date on which the rent or interest became due.

Amendments
and repeals
Schedule 1

3. (1) The enactments mentioned in Schedule I to this Act are amended in the manner specified in the third column of that Schedule.

Schedule 2

(2) The enactments mentioned in Schedule II to this Act are repealed to the extent specified in the third column of that Schedule.

Ch. 9. No. 4

(3) To the extent that it makes provision for the limitation of civil proceedings the Public Authorities Protection Ordinance shall cease to have effect.

PART II

PERIODS OF LIMITATION FOR DIFFERENT CLASSES OF ACTION

Part II to be subject to provisions of Part III

4. The provisions of this Part shall have effect subject to the provisions of Part III which provide for the extension or postponement of periods of limitation in the case of disability, acknowledgment, part payment, fraud, concealment and mistake.

*Actions of Contract and Tort and certain
other Actions*

5. (1) The following actions shall not be brought after the expiry of four years from the date on which the cause of action accrued, that is to say:—

Limitation of actions of contract and tort, and certain other actions

- (a) actions founded on contract (other than a contract made by deed) on quasi-contract or on tort;
- (b) actions to enforce the award of an arbitrator given under an arbitration agreement other than an agreement made by deed;
- (c) actions to recover any sum recoverable by virtue of any enactment.

(2) An action upon a deed shall not be brought after the expiry of twelve years from the date on which the cause of action accrued: Provided that this subsection shall not affect any action for which a shorter period of limitation is prescribed by any other provision of this Act.

(3) An action shall not be brought upon any judgment after the expiry of twelve years from the date on which the judgment became enforceable, and no arrears of interest in respect of any judgment debt shall be recovered after the expiry of twelve years from the date on which the interest became due.

(4) This section does not apply to any claim for specific performance of a contract or for an injunction or for other equitable relief, except in so far as any provision thereof may be applied by the Court by analogy in like manner as the corresponding enactment repealed by this Act has heretofore been applied.

(5) This section does not apply to any action to which section 8 (personal injuries) applies or to an action under the Compensation for Injuries Ordinance.

Ch. 5. No. 5

6. (1) Where any cause of action in respect of the conversion or wrongful detention of a chattel has accrued to any person and, before he recovers possession of the chattel, a further conversion or wrongful detention takes place, no action shall be

Limitation in case of successive conversions and extinction of title of owner of chattels

brought in respect of the further conversion or detention after the expiry of four years from the accrual of the cause of action in respect of the original conversion or detention.

(2) Where any such cause of action has accrued to any person and the period prescribed for bringing that action and for bringing any action in respect of such a further conversion or wrongful detention as aforesaid has expired and he has not during that period recovered possession of the chattel, the title of that person to the chattel shall be extinguished.

Contribution
between tortfeasors.
1962 No. 12

7. (1) Where under section 27 of the Supreme Court of Judicature Act, 1962, a tortfeasor (in this section referred to as "the first tortfeasor") becomes entitled to recover contribution in respect of any damage from another tortfeasor, no action to recover contribution by virtue of that right shall be brought after the end of the period of two years from the date on which that right accrued to the first tortfeasor.

(2) For the purposes of this section the date on which a right to recover contribution in respect of any damage accrues to a tortfeasor (in this section referred to as "the relevant date") is as follows—

- (a) if the tortfeasor is held liable in respect of the damage by a judgment given in civil proceedings or an award made on an arbitration, the relevant date is the date on which the judgment is given or the date of the award, as the case may be;
- (b) if, in any case not falling within paragraph (a), the tortfeasor admits liability in favour of one or more persons in respect of the damage, the relevant date is the earliest date on which the amount to be paid by him in discharge of that liability is agreed by or on behalf of the tortfeasor and that person or each of those persons, as the case may be;

and for the purposes of this subsection no account shall be taken of any judgment or award given or made on appeal in so far as it varies the amount of damages awarded against the tortfeasor.

*Actions for Damages in respect of Personal Injuries
and Actions under the Compensation for Injuries
Ordinance*

8. (1) Subject to subsection (6), this section applies ^{Time limit for personal injuries} to any action for damages for negligence, nuisance or breach of duty (whether the duty exists by virtue of a contract or of provision made by an enactment or independently of any contract or any such provision) where the damages claimed by the plaintiff for the negligence, nuisance or breach of duty consist of or include damages in respect of personal injuries to the plaintiff or any other person.

(2) Subject to subsection (3), an action to which this section applies shall not be brought after the expiry of four years from—

- (a) the date on which the cause of action accrued; or
- (b) the date of knowledge (if later) of the person injured.

(3) If the person injured dies before the expiry of the period prescribed by subsection (2), the period as respects the cause of action surviving for the benefit of the estate of the deceased by virtue of section 28 of the Supreme Court of Judicature Act, ^{1962 No. 12} 1962 shall be four years from—

- (a) the date of death, or
- (b) the date of the personal representative's knowledge, whichever is the later.

(4) For the purposes of this section "personal representative" includes any person who is or has been a personal representative of the deceased and regard shall be had to any knowledge acquired by any such person while a personal representative or previously.

(5) If there is more than one personal representative and their dates of knowledge are different, subsection (3) shall be read as referring to the earliest of those dates.

(6) This section does not apply to an action under the Compensation for Injuries Ordinance.

Ch. 5. No. 5

(7) This section has effect subject to section 12.

Time limit for
actions under
Compensation for
Injuries Ordinance.
Ch. 5. No. 5

9. (1)(a) An action under the Compensation for Injuries Ordinance shall not be brought if the death occurred when the person injured could no longer maintain an action and recover damages in respect of the injury, because of a time limit in this Act or in any other enactment or for any other reason.

(b) Where any such action by the injured person would have been barred by the time limit in section 8, no account shall, for the purposes of this subsection, be taken of the possibility of that time limit being overridden under section 12.

Ch. 5. No. 5

(2) An action under the Compensation for Injuries Ordinance shall not be brought after the expiry of four years from—

(a) the date of death or

(b) the date of knowledge of the person for whose benefit the action is brought, whichever is the later.

(3) This section has effect subject to section 12.

Date of knowledge,
etc. in sections
8 and 9

10. (1) In sections 8 and 9 references to a person's date of knowledge are references to the date on which he first had knowledge of the following facts—

(a) that the injury in question was significant, and

(b) that that injury was attributable in whole or in part to the act or omission which is alleged to constitute negligence, nuisance or breach of duty, and

(c) the identity of the defendant, and

(d) if it is alleged that the act or omission was that of a person other than the defendant, the identity of that person and the additional facts supporting the bringing of an action against the defendant;

and knowledge that any acts or omissions did or did not, as a matter of law, involve negligence, nuisance or breach of duty is irrelevant.

(2) For the purposes of this section an injury is significant if the person whose date of knowledge is in question would reasonably have considered it sufficiently serious to justify his instituting proceedings against a defendant who did not dispute liability and was able to satisfy a judgment.

(3) For the purposes of this section a person's knowledge includes knowledge which he might reasonably be expected to acquire

(a) from facts observable or ascertainable by him, or

(b) from facts ascertainable by him with the help of such medical or other expert advice as it is reasonable for him to seek;

but there shall not be attributed to a person by virtue of this subsection knowledge of a fact ascertainable only with the help of expert advice so long as he has taken all reasonable steps to obtain (and where appropriate to act on) that advice.

11. (1) This section applies where there is more than one person for whose benefit an action under the Compensation for Injuries Ordinance is brought.

Dependants
subject to different
time limits.
Ch. 5. No. 5

(2) Section 9(2)(b) shall be applied separately to each of them and if that would debar one or more of them, but not all, the court shall direct that any person who would be so debarred shall be excluded from those for whom the action is brought unless it is shown that if the action was brought exclusively for the benefit of that person it would not be defeated by a defence of limitation whether because of section 29 (persons under disability) or an agreement between the parties not to raise the defence or otherwise.

12. (1) If it appears to the court that it would be equitable to allow an action to proceed having regard to the degree to which—

Court's power
to override
time limits

(a) the provisions of section 8 or 9 prejudice the plaintiff or any person whom he represents and

- (b) any decision of the court under this subsection would prejudice the defendant or any person whom he represents,

the court may direct that those provisions shall not apply to the action or to any specified cause of action to which the action relates.

(2) The court shall not give a direction under this section disapplying the provisions of section 9(1) except where the reason why the person injured could no longer maintain an action was because of the time limit in section 8.

(3) In acting under this section the court shall have regard to all the circumstances of the case and in particular to—

- (a) the length of, and the reasons for, the delay on the part of the plaintiff;
 - (b) the extent to which, having regard to the delay, the evidence adduced or likely to be adduced by the plaintiff or the defendant is or is likely to be less cogent than if the action had been brought within the time allowed by section 8 or, as the case may be, section 9;
 - (c) the conduct of the defendant after the cause of action arose, including the extent if any to which he responded to requests reasonably made by the plaintiff for information or inspection for the purpose of ascertaining facts which were or might be relevant to the plaintiff's cause of action against the defendant;
 - (d) the duration of any disability of the plaintiff arising after the date of the accrual of the cause of action;
 - (e) The extent to which the plaintiff acted promptly and reasonably once he knew whether or not the act or omission of the defendant, to which the injury was attributable, might be capable at that time of giving rise to an action for damages;
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(f) the steps, if any, taken by the plaintiff to obtain medical, legal or other expert advice and the nature of any such advice he may have received.

(4) In a case where the person injured died when, because of section 8, he could no longer maintain an action and recover damages in respect of the injury, the court shall have regard in particular to the length of, and the reasons for, the delay on the part of the deceased.

(5) In a case under subsection (4) or any other case where the time limit, or one of the time limits, depends on the date of knowledge of a person other than the plaintiff subsection (3) shall have effect with appropriate modifications, and shall have effect in particular as if the references to the plaintiff included references to any person whose date of knowledge is or was relevant in determining a time limit.

(6) A direction of the court disapplying the provisions of section 9(1) shall also operate to disapply the provisions to the same effect in section 3 of the Compensation for Injuries Ordinance.

Ch. 5. No. 5

(7) In this section "the court" means the court in which the action has been brought.

(8) References in this section to sections 8 and 9 include references to those sections as extended by or under any provisions of Parts III and IV of this Act.

Actions to recover Land and Rent

13. (1) Subject to subsection (2) no action shall be brought by the State to recover any land after the expiry of thirty years from the date on which the right of action accrued to the State or, if it first accrued to some person through whom the State claims, to that person.

Limitation of
actions to
recover land

(2) An action to recover foreshore may be brought by the State at any time before the expiry of sixty years from the aforesaid date, and where any right of action to recover land which has ceased to be foreshore but remains in the ownership of the State accrued when the land was foreshore, the action may be brought at any time before the expiry of sixty years from the date of the accrual of the right of action, or of thirty years from the date when the land ceased to be foreshore, whichever period first expires.

(3) No action shall be brought by any other person to recover any land after the expiry of twelve years from the date on which the right of action accrued to him or, if it first accrued to some person through whom he claims, to that person:

Provided that, if the right of action first accrued to the State and the person bringing the action claims through the State, the action may be brought at any time before the expiry of the period during which the action could have been brought by the State or of twelve years from the date on which the right of action accrued to some person other than the State, whichever period first expires.

Accrual of right
of action in case
of present
interests in land

14. (1) Where the person bringing an action to recover land, or some person through whom he claims, has been in possession thereof and has while entitled thereto been dispossessed or discontinued his possession, the right of action shall be deemed to have accrued on the date of the dispossession or discontinuance.

(2) Where any person brings an action to recover any land of a deceased person, whether under a will or on any intestacy, and the deceased person was on the date of his death in possession of the land or, in the case of a rentcharge created by will or taking effect upon his death, in possession of the land charged, and was the last person entitled to the land to be in possession thereof, the right of action shall be deemed to have accrued on the date of his death.

(3) Where any person brings an action to recover land, being an estate or interest in possession assured otherwise than by will to him, or to some person through whom he claims, by a person who, at the date when the assurance took effect, was in possession of the land or, in the case of a rentcharge created by the assurance, in possession of the land charged, and no person has been in possession of the land by virtue of the assurance, the right of action shall be deemed to have accrued on the date when the assurance took effect.

15. (1) Subject as hereafter in this section provided, the right of action to recover any land shall, in a case where the estate or interest claimed was an estate or interest in reversion or remainder or any other future estate or interest and no person has taken possession of the land by virtue of the estate or interest claimed, be deemed to have accrued on the date on which the estate or interest fell into possession by the determination of the preceding estate or interest.

Accrual of right
of action in
case of future
interests in land.

(2) If the person entitled to the preceding estate or interest, not being a leasehold term, was not in possession of the land on the date of the determination thereof, no action shall be brought by the person entitled to the succeeding estate or interest after the expiry of twelve years from the date on which the right of action accrued to the person entitled to the preceding estate or interest, or six years from the date on which the right of action accrued to the person entitled to the succeeding estate or interest whichever period last expires:

Provided that, where the State is entitled to the succeeding estate or interest, the foregoing provisions of this subsection shall have effect with the substitution for the reference to twelve years of a reference to thirty years, and for the reference to six years of a reference to twelve years.

(3) No person shall bring an action to recover any estate or interest in land under an assurance taking effect after the right of action to recover the land had accrued to the person by whom the assurance was made or some person through whom he claimed or some person entitled to a preceding estate or interest, unless the action is brought within the period during which the person by whom the assurance was made could have brought such an action.

(4) Where any person is entitled to any estate or interest in land in possession and, while so entitled, is also entitled to any future estate or interest in that land, and his right to recover the estate or interest in possession is barred by this Act, no action shall be brought by that person, or by any person claiming through him, in respect of the future estate or interest,

unless in the meantime possession of the land has been recovered by a person entitled to an intermediate estate or interest.

Equitable
interests in land

16. Subject to section 26(1) and (2), the provisions of this Act apply to equitable interests in land, including interests in the proceeds of the sale of land held upon trust for sale, in the like manner as they apply to legal estates, and accordingly a right of action to recover the land shall, for the purposes of this Act but not otherwise, be deemed to accrue to a person entitled in possession to such an equitable interest in the like manner and circumstances and on the same date as it would accrue if his interest were a legal estate in the land.

Land held on trust

1981 No. 24

17. (1) Where any land is held upon trust, including the statutory trusts and a trust for sale, and the period prescribed by this Act for the bringing by the trustees of an action to recover the land has expired, the estate of the trustees shall remain vested in them if and so long as the right of action to recover the land of any person entitled to a beneficial interest in the land or in the proceeds of sale either has not accrued or has not been barred by this Act; but if and when every such right of action has been so barred the estate of the trustees shall, subject to section 86 of the Land Registration Act, 1981, vest in the person who was in adverse possession of the land at the expiry of the period aforesaid or in anyone claiming through him.

(2) Subsections (2) and (3) of section 22 and section 23 shall apply in relation to a leasehold estate vesting under subsection (1) of this section as they apply in relation to a leasehold estate vesting under subsection (1) of section 22 and for that purpose the references in the said subsection (2) of section 22 and in section 23 to subsection (1) of section 22 shall be construed as references to subsection (1) of this section.

(3) Where any land is held upon trust, including the statutory trusts and a trust for sale, an action to recover the land may be brought by the trustees on behalf of any person entitled to a beneficial interest in possession in the land or in the proceeds of sale

whose right of action has not been barred by this Act, notwithstanding that the right of action of the trustees would apart from this provision have been so barred.

(4) Where any land held upon the statutory trusts or upon a trust for sale is in the possession of a person entitled to a beneficial interest in the land or in the proceeds of sale, not being a person solely and absolutely entitled thereto, no right of action to recover the land shall be deemed for the purposes of this Act to accrue during such possession to any person in whom the land is vested as trustee or to any other person entitled to a beneficial interest in the land or in the proceeds of sale.

18. (1) Subject to subsection (2), a right of action to recover land by virtue of a forfeiture or breach of condition shall be deemed to have accrued on the date on which the forfeiture was incurred or the condition broken.

Accrual of right
of action in case
of forfeiture or
breach of condition

(2) If a right of action to recover land by virtue of a forfeiture or breach of condition has accrued to a person entitled to an estate or interest in reversion or remainder and the land has not been recovered by virtue of the forfeiture or breach of condition, the right of action to recover the land shall be deemed to have accrued on the date when the estate or interest fell into possession as if the forfeiture or breach of condition had never occurred.

19. (1) A tenancy from year to year or other period, without a lease in writing, shall, for the purposes of this Act, be deemed to be determined at the expiry of the first year or other period, and accordingly the right of action of the person entitled to the land subject to the tenancy shall be deemed to have accrued at the date of such determination;

Accrual of right
of action in case
of certain
tenancies

Provided that, where any rent has subsequently been received in respect of the tenancy, the right of action shall be deemed to have accrued on the date of the last receipt of rent.

(2) Where any person is in possession of land by virtue of a lease in writing by which a rent of not less than fifty dollars a year is reserved, and the rent is received by some person wrongfully claiming to be entitled to the land in reversion immediately expectant on the determination of the lease, and no rent is subsequently received by the person rightfully so entitled, the right of action of the last-named person to recover the land shall be deemed to have accrued at the date when the rent was first received by the person wrongfully claiming as aforesaid and not at the date of the determination of the lease.

(3) Subsection (2) does not apply to any lease granted by the State.

Right of action
not to accrue or
continue unless
there is adverse
possession

20. (1) For the purposes of this Act, a right of action to recover land does not accrue and shall not be deemed to accrue unless the land is in the possession of some person in whose favour the period of limitation can run (hereafter in this section referred to as "adverse possession").

(2) Where under the foregoing provisions of this Act any right of action to recover land is deemed to accrue on a certain date and no person is in adverse possession of the land on that date, the right of action shall not accrue unless the land is thereafter taken into adverse possession, in which case the right of action shall be deemed to accrue at the commencement of the adverse possession.

(3) Where a right of action to recover land has accrued and thereafter, but before the right is barred by this Act, the land ceases to be in adverse possession—

- (a) the former adverse possession shall for the purposes of this Act have no effect; and
- (b) if the land is again taken into adverse possession a fresh right of action shall be deemed to accrue at the commencement of that adverse possession.

(4) For the purposes of this section—

- (a) possession of land subject to a rentcharge by a person (other than the person entitled to the rentcharge) who does not pay the rent shall be deemed to be adverse possession of the rentcharge; and
- (b) in such a case as is referred to in section 19(2) receipt of rent under a lease by a person wrongfully claiming the land in reversion shall be deemed to be adverse possession of the land.

(5) For the purpose of determining whether a person occupying any land is in adverse possession of the land it shall not be assumed by implication of law that his occupation is by permission of the person entitled to the land merely by virtue of the fact that his occupation is not inconsistent with the latter's present or future enjoyment of the land.

This provision shall not be taken as prejudicing a finding to the effect that that person's occupation of any land is by implied permission of the person entitled to the land in any case where such a finding is justified on the actual facts of the case.

(6) Where two or more persons (in this subsection referred to as "the co-owners") are entitled to any land or rent as joint tenants or tenants in common and any one or more of the co-owners is or are, for his or their own benefit or for the benefit of any third party—

- (i) in possession or receipt of all the land or all the profits thereof or in receipt of all the rent; or
- (ii) in possession or receipt of more than his or their undivided share or shares of the land or the profits thereof or of the rent,

such possession or receipt shall not, for the purposes of this Act, be regarded as possession or receipt by the other co-owners or any of them.

In this subsection "third party" means any person who is not one of the co-owners.

Administration
to date back
to death

21. For the purposes of the provisions of this Act relating to actions for the recovery of land, the personal representatives of a deceased person shall be deemed to claim as if there had been no interval of time between the death of the deceased person and the grant of probate or letters of administration, as the case may be.

Vesting of estate
or interest in
adverse possessor
1981 No. 24

22. (1) Subject to section 86 of the Land Registration Act 1981 at the expiration of the period prescribed by this Act for any person to bring an action to recover land, the estate or interest of that person in the land shall vest in the person who is then in adverse possession of the land within the meaning of section 20.

(2) Where land is held under a lease and the leasehold estate in part only of the land vests in a person under subsection (1), that person (or anyone claiming through him) and the lessee of the remainder of the land shall share the cost of paying the rent reserved by the lease and the cost of discharging any other obligation under the lease in such proportions respectively as may be agreed by them and the lessor with respect to the rent or, as the case may be, with respect to the other obligation.

1981 No. 24

(3) If a dispute arises regarding the apportionment of costs under subsection (2), any of the parties may refer the dispute to the Land Commission established by the Land Registration Act, 1981, for decision, and the decision shall be final and binding on all the parties.

(4) This section has effect subject to section 17(1) and (2).

Vesting of lease-
hold to have effect
of assignment in
certain
circumstances

23. (1) The vesting of a leasehold estate or interest under section 22(1) shall have the effect of an assignment of the lease for the purposes of any provision of the lease which confers on the lessor a right to cause the lease to be forfeited by reason of any assignment thereof by the lessee.

(2) Subsection (1) does not apply in a case where, under the lease, the lessor had before the expiry of the period referred to in section 22(1), a right to cause the lease to be forfeited by reason of the fact that the lessee was dispossessed of the land or discontinued his possession thereof.

24. No action shall be brought, or distress made, to recover arrears of rent or damages in respect thereof after the expiry of four years from the date on which the arrears became due.

Limitation of actions to recover rent

Actions to recover money secured by a mortgage or charge or to recover proceeds of the sale of land

25. (1) No action shall be brought to recover any principal sum of money secured by a mortgage or other charge on property, whether real or personal, or to recover proceeds of the sale of land, after the expiry of twelve years from the date when the right to receive the money accrued.

Limitation of actions to recover money secured by a mortgage or to recover proceeds of the sale of land

(2) No foreclosure action in respect of mortgaged personal property shall be brought after the expiry of twelve years from the date on which the right to foreclose accrued:

Provided that if after that date the mortgagee was in possession of the mortgaged property, the right to foreclose on the property which was in his possession shall not, for the purposes of this subsection, be deemed to have accrued until the date on which his possession was discontinued.

(3) The right to receive any principal sum of money secured by a mortgage or other charge and the right to foreclose on the property subject to the mortgage or charge shall not be deemed to accrue so long as that property comprises any future interest or any life insurance policy which has not matured or been determined.

(4) Nothing in this section applies to a foreclosure action in respect of mortgaged land, but the provisions of this Act relating to actions to recover land shall apply to such an action.

(5) No action to recover arrears of interest payable in respect of any sum of money secured by a mortgage or other charge or payable in respect of proceeds of the sale of land, or to recover damages in respect of such arrears shall be brought after the expiry of six years from the date on which the interest became due:

Provided that—

(a) where a prior mortgagee or other incumbrancer has been in possession

of the property charged, and an action is brought within one year of the discontinuance of such possession by the subsequent incumbrancer, he may recover by that action all the arrears of interest which fell due during the period of possession by the prior incumbrancer or damages in respect thereof, notwithstanding that the period exceeded six years;

- (b) where the property subject to the mortgage or charge comprises any future interest or life insurance policy and it is a term of the mortgage or charge that arrears of interest shall be treated as part of the principal sum of money secured by the mortgage or charge, interest shall not be deemed to become due before the right to receive the principal sum of money has accrued or is deemed to have accrued.

Actions in respect of trust property or the personal estate of deceased persons and actions for an account

Limitation of
actions in respect
of trust property

26. (1) No period of limitation prescribed by this Act shall apply to an action by a beneficiary under a trust, being an action—

- (a) in respect of any fraud or fraudulent breach of trust to which the trustee was a party or privy; or
- (b) to recover from the trustee trust property or the proceeds thereof in the possession of the trustee, or previously received by the trustee and converted to his use.
- (2) (a) Where a trustee who is also a beneficiary under the trust receives or retains trust property or its proceeds as his share on a distribution of trust property under the trust, his liability in any action brought by virtue of subsection (1)(b) to recover that property or its proceeds after the

expiry of the period of limitation prescribed by this Act for bringing an action to recover trust property shall be limited to the excess over his proper share.

(b) This subsection applies only if the trustee acted honestly and reasonably in making the distribution.

(3) Subject to subsection (1), an action by a beneficiary to recover trust property or in respect of any breach of trust, not being an action for which a period of limitation is prescribed by any other provision of this Act, shall not be brought after the expiry of four years from the date on which the right of action accrued; and for this purpose the right of action of a beneficiary entitled to a future interest in trust property shall not be deemed to accrue until the interest falls into possession.

(4) No beneficiary as against whom there would be a good defence under this Act shall derive any greater or other benefit from a judgment or order obtained by any other beneficiary than he could have obtained if he had brought the action and this Act had been pleaded in defence.

27. Subject to section 26(1) and (2), no action in respect of any claim to the personal estate of a deceased person or to any share or interest in such estate, whether under a will or on intestacy, shall be brought after the expiry of twelve years from the date when the right to receive the same accrued, and no action to recover arrears of interest in respect of any legacy, or damages in respect of such arrears, shall be brought after the expiry of six years from the date on which the interest became due.

Limitation of actions claiming personal estate of a deceased person

28. An action for an account shall not be brought after the expiry of any time limit under this Act which is applicable to the claim which is the basis of the duty to account.

Action for an account

PART III

EXTENSION OF LIMITATION PERIODS IN CASE OF
DISABILITY, ACKNOWLEDGMENT, PART PAYMENT
FRAUD AND MISTAKE*Disability*

Extension of
limitation period
in case of
disabilities

29. (1) If, on the date when any right of action for which a period of limitation is prescribed by this Act accrues, the person to whom it accrues is under a disability, the action may be brought at any time before the expiry of four years or in the case of an action to recover land six years from the date when the person ceased to be under a disability or died, whichever event first occurred, notwithstanding that the period of limitation has expired.

(2) Subsection (1) shall have effect in the case of actions to which section 7(1) applies, with the substitution of words "two years" for the words "four years".

(3) This section shall not affect any case where the right of action first accrued to some person not under a disability through whom the person under a disability claims.

(4) When a right of action which has accrued to a person under a disability accrues, on the death of that person while still under a disability, to another person under a disability, no further extension of time shall be allowed under this section by reason of the disability of the second person.

(5) No action to recover land or money charged on land shall by virtue of this section be brought by any person after the expiry of thirty years from the date on which the right of action accrued to that person or some person through whom he claims.

Acknowledgment and Part Payment

Fresh accrual of
action on
acknowledgment
or part payment

30. (1) Where there has accrued any right of action (including a foreclosure action) to recover land or any right of a mortgagee of personal property to bring a foreclosure action in respect of the property, and—

- (a) the person in possession of the land or personal property acknowledges the title of the person to whom the right of action has accrued; or

- (b) in the case of a foreclosure or other action by a mortgagee, the person in possession as aforesaid or any person liable for the mortgage debt makes any payment in respect thereof, whether of principal or interest;

the right shall be deemed to have accrued on and not before the date of the acknowledgment or payment.

(2) Where any right of action has accrued to recover any debt or other liquidated pecuniary claim, or any claim to the personal estate of a deceased person or to any share or interest therein, and the person liable or accountable therefor acknowledges the claim or makes any payment in respect thereof, the right shall be deemed to have accrued on and not before the date of the acknowledgment or payment:

Provided that a payment of a part of any rent or interest that is due at any time shall not extend the period for claiming the remainder then due, and any payment of interest shall be treated as a payment in respect of the principal debt.

(3) Subject to the proviso to subsection (2), a current period of limitation may be repeatedly extended under this section by further acknowledgments or payments, but a right of action, once barred by this Act, shall not be revived by any subsequent acknowledgment or payment.

31. For the purposes of section 32—

(a) an acknowledgment shall be in writing and signed by the person making the acknowledgment; and

(b) an acknowledgment or payment may be made by the agent of the person by whom it is required to be made by section 30 and shall be made to the person, or to an agent of the person, whose title or claim is being acknowledged or, as the case may be, in respect of whose claim the payment is being made.

Formal provisions
as to
acknowledgments
and part payments

Effect of
acknowledgment
or part payment
on persons other
than the maker
or recipient

32. (1) An acknowledgment of the title to any land or mortgage personalty by any person in possession thereof shall bind all other persons in possession during the ensuing period of limitation.

(2) A payment in respect of a mortgage debt by any person liable for the debt or any person in possession of the mortgaged property shall, so far as any right of the mortgagee to foreclose or otherwise to recover the property is concerned, bind all other persons in possession of the mortgaged property during the ensuing period of limitation.

(3) An acknowledgment of any debt or other liquidated pecuniary claim shall bind the acknowledgor and his successors but not any other person.

(4) A payment made in respect of any debt or other liquidated pecuniary claim shall bind all persons liable in respect thereof.

(5) An acknowledgment by one of several personal representatives of any claim to the personal estate of a deceased person, or to any share or interest therein, or a payment by one of several personal representatives in respect of any such claim shall bind the estate of the deceased person.

(6) In this section the expression "successor", in relation to any person liable in respect of any debt or claim, means his personal representatives and any other person on whom the liability in respect of the debt or claim devolves, whether on death or bankruptcy or otherwise.

Fraud, mistake and deliberate concealment

Postponement of
limitation period
in case of fraud,
mistake or
concealment

33. (1) Subject to subsection (3) where in the case of any action for which a period of limitation is prescribed by this Act, either—

(a) the action is based upon the fraud of the defendant; or

(b) any fact relevant to the plaintiff's right of action has been deliberately concealed from him by the defendant; or

(c) the action is for relief from the consequences of a mistake;

the period of limitation shall not begin to run until the plaintiff has discovered the fraud, concealment or mistake (as the case may be) or could with reasonable diligence have discovered it.

(2) For the purposes of subsection (1), deliberate commission of a breach of duty in circumstances in which it is unlikely to be discovered for some time amounts to deliberate concealment of the facts involved in that breach of duty.

(3) Nothing in this section shall enable any action—

(a) to recover, or recover the value of, any property; or

(b) to enforce any charge against, or set aside any transaction affecting, any property,

to be brought against the purchaser of the property or any person claiming through him in any case where the property has been purchased for valuable consideration by an innocent third party since the fraud or concealment or (as the case may be) the transaction in which the mistake was made took place.

(4) A purchaser is an innocent third party for the purposes of this section—

(a) in the case of fraud or concealment of any fact relevant to the plaintiff's right of action, if he was not a party to the fraud or (as the case may be) to the concealment of that fact and did not at the time of the purchase know or have reason to believe that the fraud or concealment had taken place; and

(b) in the case of mistake, if he did not at the time of the purchase know or have reason to believe that the mistake had been made.

(6) References in this section to the defendant include references to the defendant's agent and to any person through whom the defendant claims and his agent.

PART IV

GENERAL

Application of Act
and other limita-
tion enactments
to arbitrations

34. (1) This Act and any other enactment relating to the limitation of actions shall apply to arbitrations as it applies to actions in the High Court.

(2) Notwithstanding any term in an arbitration agreement to the effect that no cause of action shall accrue in respect of any matter required by the agreement to be referred until an award is made under the agreement, the cause of action shall for the purpose of this Act and any such enactment as aforesaid (whether in their application to arbitrations or to other proceedings) be deemed to have accrued in respect of any such matter at the time when it would have accrued but for that term in the agreement.

(3) For the purpose of this Act and of any such enactment as aforesaid an arbitration shall be deemed to be commenced when one party to the arbitration serves on the other party or parties a notice requiring him or them to appoint an arbitrator or to agree to the appointment of an arbitrator, or, where the arbitration agreement provides that the reference shall be to a person named or designated in the agreement, requiring him or them to submit the dispute to the person so named or designated.

(4) Any such notice may be served either—

(a) by delivering it to the person on whom it is to be served, or

(b) by leaving it at the usual or last known place of abode of that person in the State, or

(c) by sending it by post in a registered letter addressed to that person at his usual or last known place of abode in the State,

as well as in any other manner provided in the arbitration agreement; and where a notice is sent by post in the manner prescribed by paragraph (c), service thereof shall, unless the contrary is proved, be deemed to have been effected at the time at which the letter would have been delivered in the ordinary course of post.

(5) Where the High Court orders that an award be set aside or orders, after the commencement of an arbitration, that the arbitration agreement shall cease to have effect with respect to the dispute referred, the court may further order that the period between the commencement of the arbitration and the date of the order of the court shall be excluded in computing the time prescribed by this Act or any such enactment as aforesaid for the commencement of proceedings (including arbitration) with respect to the dispute referred.

(6) This section applies to an arbitration under an Act as well as to an arbitration pursuant to an arbitration agreement, and subsections (3) and (4) shall have effect in relation to an arbitration under an Act as if for the references to the arbitration agreement there were substituted references to such of the provisions of the Act or of any instrument made thereunder as relate to the arbitration.

35. For the purposes of this Act, any claim by way of set-off or counterclaim shall be deemed to be a separate action and to have been commenced on the same date as the action in which the set-off or counterclaim is pleaded. Provisions as to set-off or counterclaim

36. Nothing in this Act shall affect any equitable jurisdiction to refuse relief on the ground of acquiescence or otherwise. Acquiescence

37. (1) Except as is otherwise provided by this Act and without prejudice to section 38, this Act applies to proceedings by or against the State in like manner as it applies to proceedings between citizens. Application to the State

(2) This Act does not apply to any proceedings by the State for the recovery of any tax or duty or interest thereon or to any forfeiture proceedings under the enactments relating to customs or excise.

(3) For the purposes of this section proceedings by or against the State include proceedings instituted by or against an officer or other agent of the State in his official capacity.

Saving for
other
limitation
enactments

38. This Act, except section 9(1), does not apply to any action or arbitration for which a period of limitation is prescribed by or under any other enactment, or to any action or arbitration to which the State is a party and for which, if it were between citizens, a period of limitation would be prescribed by or under any other enactment.

Transitional

39. (1) This Act does not apply to any action brought upon a right of action which accrued before the commencement of this Act or to any arbitration in which a party to the arbitration relies upon such a right of action.

Schedule II

(2) The enactments mentioned in Schedule II to this Act shall apply, as appropriate, to any such action or arbitration (whether commenced before or after the commencement of this Act) as if those enactments had not been repealed and as if the amendments in Schedule I to this Act had not been made.

Schedule I

(3) Where the period for bringing an action to recover land is barred under the Real Property Limitation Ordinance as applied by subsection (2) the title to the land shall be extinguished in accordance with section 22 of that Ordinance.

Ch. 5. No. 7

(4) If a right of action becomes barred after the commencement of this Act by an enactment which applies to it by virtue of subsection (2), no subsequent acknowledgment or payment shall be effective to revive it.

(5) For the purposes of section 6, which makes provision for limitation in the case of successive conversions or wrongful detentions, no account shall be taken of any cause of action which accrued before the commencement of this Act.

(6) In the case of leases granted before the commencement of this Act, section 19(2) shall have effect as if for the words "fifty dollars" there were substituted the words "four dollars and eighty cents".

Barred Actions.

40. Nothing in this Act shall enable any action to be brought which was barred before the commencement of this Act by any enactment repealed by this Act or which is barred after the commencement of this Act by any such enactment which applies under section 39(2).

SCHEDULE I

(Section 3(1))

(Section 39(2))

AMENDMENTS

<i>Chapter and Number</i>	<i>Short Title</i>	<i>Amendment</i>
Ch. 5 No. 5	The Compensation for Injuries Ordinance	In section 2 insert the following subsection immediately after subsection (3)— “(4) Any reference in this Ordinance to injury includes any disease and any impairment of a person’s physical or mental condition”.
Ch. 7 No. 1	The Arbitration Ordinance	In section 2 omit the definition of “reference”; and in subsection (5) of section 24 for the words “but without prejudice to the foregoing provisions of this section” substitute the words “but without prejudice to the provisions of any enactment limiting the time for the commencement of arbitration proceedings”.

SCHEDULE II

(Section 3(2))

(Section 39(2))

REPEALS

<i>Chapter and Number</i>	<i>Short Title</i>	<i>Extent of Appeal</i>
Ch. 5 No. 2	The Crown Suits Limitation Ordinance	The whole Ordinance
Ch. 5 No. 5	The Compensation for Injuries Ordinance	Subsection (1) of section 5
Ch. 5 No. 6	The Limitation of Personal Actions Ordinance	The whole Ordinance
1960 No. 35	The Medical Board Ordinance	Section 27
Ch. 5 No. 7	The Real Property Limitation Ordinance	The whole Ordinance
Ch. 7 No. 1	The Arbitration Ordinance	Section 24 except subsection (5) thereof

Passed in the House of Representatives this 6th day of May, 1981.

R. L. GRIFFITH
Acting Clerk of the House

Passed in the Senate this 16th day of June, 1981.

M. CARRINGTON
Acting Clerk of the Senate