

LIMITATION OF CERTAIN ACTIONS ACT

CHAPTER 7:09

Act
36 of 1997
Amended by
2 of 2000

Current Authorised Pages

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Note on Subsidiary Legislation

This Chapter contains no subsidiary legislation.

Note on section 20A

See section 3 of the Limitation of Certain Actions (Amendment) Act, 2000 (Act No. 2 of 2000) for the operation of section 20A.

The reference to the year “1999” in section 20A should read “2000” since Act No. 2 of 2000 was in the year 1999 and was assented to on 13th January 2000 (which is the date of the commencement of Act No. 2 of 2000).

CHAPTER 7:09

LIMITATION OF CERTAIN ACTIONS ACT

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CHAPTER 7:09

LIMITATION OF CERTAIN ACTIONS ACT

36 of 1997. **An Act to make provisions for the limitation of time for bringing certain actions.**

Commencement. [17TH NOVEMBER 1997]

Short title. **1.** This Act may be cited as the Limitation of Certain Actions Act.

Interpretation. **2.** (1) In this Act—
“action” means any civil proceedings in a Court of law other than those relating to real property;

Ch. 5:01. “arbitration agreement” has the same meaning that it has in the Arbitration Act;

“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.

(2) Periods of limitation prescribed by this Act, shall be subject to the provisions for extension or postponement of such periods in the case of disability, acknowledgement, part payment, fraud, concealment or mistake.

(3) For the purposes of this Act, a person shall be treated as under a disability while he is—

(a) an infant;

(b) suffering from a mental disorder;

Ch. 28:02. (c) receiving treatment as an inpatient in any mental hospital within the meaning of the Mental Health Act, without being liable to be detained in the said hospital; or

(d) mentally ill within the meaning of the said Mental Health Act.

(4) In furtherance of subsection (3), the “treatment” shall be such that follows without any interval, a period during which the person was liable to be detained in the mental hospital in accordance with that Act.

3. (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 on contract and in tort, etc.

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

(2) An action shall not be brought upon any judgment after the expiry of twelve years from the final judgment and no arrears of interest in respect of any judgment debt, shall be recovered after the expiry of twelve years from the date of the final judgment.

(3) This section shall not apply to any—

- (a) claim for specific performance of a contract or for an injunction or for other equitable relief;
- (b) action to which section 8 applies; or
- (c) action under the Compensation for Injuries Act. Ch. 8:05.

4. (1) Where an action for damages is brought as result of a tort and a tortfeasor (in this section referred to as “the first tortfeasor”) is entitled to recover a contribution in respect of the damages from another tortfeasor who is not a party to the action, no action to recover such contribution shall be brought by the first tortfeasor after a period of two years from the date on which the first tortfeasor is held liable for the damages by a judgment given in civil proceedings or an award made by an arbitrator. Contribution between tortfeasors.

(2) Where the first tortfeasor admits liability in favour of one or more persons in respect of damages, the date on which his

right to recover a contribution accrues, is the earliest date on which the amount to be paid by him in discharge of that liability is agreed upon by or on behalf of the first tortfeasor and that person or each or those persons, as the case may be.

(3) For the purposes of subsection (2), 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 first tortfeasor.

Limitation for personal injuries.

5. (1) Subject to subsection (6), this section applies to any action for damages for negligence, nuisance or breach of duty whether the duty exists by virtue of a contract or any enactment or independently of any contract or any such enactment 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 on which the person injured first acquired knowledge of the accrual of the cause of action.

Ch. 4:01.

(3) Where the person injured dies before the expiry of the period prescribed by subsection (2), the period with respect to the survival of the cause of action for the benefit of the estate of the deceased by virtue of section 28 of the Supreme Court of Judicature Act, shall be four years from—

- (a) the date of death; or
- (b) the date on which the personal representative first acquired knowledge of the accrual of the cause of action whichever is the later.

(4) Where there is more than one personal representative and their dates of knowledge are different, subsection (3) shall be construed as referring to the earlier or earliest of those dates.

(5) 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 being a personal representative.

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

6. (1) An action under the Compensation for Injuries Act shall not be brought if the death occurred when the injured person 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.

Time limit for actions under Compensation for Injuries Act. Ch. 8:05.

(2) 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 11.

(3) An action under the Compensation for Injuries Act 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 later.

(4) This section has effect subject to section 11.

7. (1) In this Act, a person first acquired knowledge when he first became aware of any of the following facts:

Date of knowledge, etc., in sections 5 and 6.

- (a) that the injury in question was significant;
- (b) 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;
- (c) the identity of the defendant;
- (d) where 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 act or omission 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 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 that advice and where appropriate to act on that advice.

Dependents
subject to
different periods
of limitation.
Ch. 8:05.

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

(2) Section 9(3) shall be applied separately to each of them and if its application 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 11 or an agreement between the parties not to raise the defence or otherwise.

Court's power to
override
limitation
periods.

9. (1) Where it appears to the Court that it would be inequitable to allow an action to proceed having regard to the degree to which—

- (a) the provisions of section 5 or 6 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, in which the provisions of section 6 are not applied except where the reason why the person injured could no longer maintain an action was because of the time limit established by section 5.

(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 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; or
- (e) the extent to which the plaintiff acted promptly and reasonably once he knew whether or not the defendant's act or omission to which the injury was attributable, might be capable at that time of giving rise to an action for damages;
- (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 5, 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.

Ch. 8:05.

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

(7) In this section “the Court” means the Court in which the action has been brought.

(8) References in this section to sections 5 and 6 include references to those sections as extended by or under the provisions of this Act.

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

10. (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 brought in respect of the further conversion or wrongful 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.

(3) For the purposes of this section no account shall be taken of any cause of action which accrued before the commencement of this Act.

11. (1) Where on the date when any right of action of 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 from the date when the person ceased to be under a disability or died, whichever first occurred, notwithstanding that the period of limitation has expired.

Extension of
limitation period
in case of
disabilities.

(2) Subsection (1) shall have effect in the case of actions to which section 4(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) Where 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.

12. (1) Where there has accrued any right of action of a mortgagee of personal property to bring a foreclosure action in respect of such property, and the 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.

Fresh accrual
action on
acknowledgment
of part 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.

(3) Notwithstanding subsection (2), a payment of a part of any 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.

(4) Subject to subsection (3), 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.

Formal provisions as to acknowledgment and part payment.

13. For the purposes of this Act—

- (a) an acknowledgment shall be in writing and signed by the person making the acknowledgment; and
- (b) an acknowledgment or payment shall be evidenced by writing and may be made by the agent of the person by whom it is required to be made 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 debt the payment is being made.

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

14. (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;
- (b) any fact relevant to the plaintiff's right of action was 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 personal property; or

- (b) to enforce any charge against, or set aside any transaction affecting, any personal 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.

(5) 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.

15. (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.

Application of Act and other limitation enactments to arbitrations.

(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 (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 have commenced—

- (a) when one party to the arbitration serves on the other party a notice requiring him to appoint an arbitrator or to agree to the appointment of an arbitrator; or
- (b) where an arbitration agreement provides that the reference shall be to a person named or designated when notice is served in the agreement, requiring him 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;
- (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.

(5) Where a notice is sent by post in the manner prescribed by subsection (4)(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.

(6) Where the High Court orders that an award be set aside, after the commencement of an arbitration, or orders 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.

(7) 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.

16. 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.

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

18. (1) Except as is otherwise provided by this Act and without prejudice to section 19 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 includes “proceedings instituted by or against an officer or other agent of the State” in his official capacity.

19. With the exception of section 6(1), this Act does not apply to any action or arbitration for which a period of limitation is prescribed by or under any 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. Saving for other limitation enactments.

20. (1) This Act does not apply to any action brought upon a right of action which accrued before the commencement of this Act. Transitional.

(2) The enactments listed in Schedule II shall apply as appropriate to any 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 had not been made.

(3) Where 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.

(4) For the purposes of section 10, no account shall be taken of any cause of action which accrued before the commencement of this Act.

Transitional for workmen's compensation cases. Ch. 88.05.

***20A.** Section 4 of the Limitation of Certain Actions (Amendment) Act, 1999 shall not apply to any action under section 4(3) and any claim under section 11(1) of the Workmen's Compensation Act, brought upon a right of action which accrued before the commencement of the Act first named in this section.

Barred actions.

21. 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 18(3).

Schedules.

22. (1) The Acts listed in the second column of Schedule I are amended to the extent described in the third column of that Schedule.

(2) The Acts listed in the second column of Schedule II are repealed in whole or in part as described in the third column of that Schedule.

*See Note on page 2.

SCHEDULE I

[Section 22 (1)].

AMENDMENTS

<i>Chapter and Number</i>	<i>Short Title</i>	<i>Amendments</i>
Ch. 8:05	The Compensation for Injuries Act	In section 2 insert the following subsection immediately after subsection (3): “ (4) Any reference in this Act to injury includes any disease and any impairment of a person’s physical or mental condition”.
Ch. 5:01	The Arbitration Act	(i) 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”. (ii) renumber section 24(5) as section 24.
Ch. 88:05	The Workmen’s Compensation Act	(i) in subsection (3) of section 4, delete the words “one year” and substitute the words “four years”; and (ii) in subsection (1) of section 11, delete the words “six months” and substitute the words “one year”.

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[Section 22(2)].

SCHEDULE II

REPEALS

<i>Chapter and Number</i>	<i>Short Title</i>	<i>Extent of Repeal</i>
Ch. 8:05	The Compensation for Injuries Act	Subsection (1) of section 5
Ch. 5 No. 6.	The Limitation of Personal Actions Ordinance	The whole Ordinance
Ch. 29:50	The Medical Board Act	Section 27
Ch. 5:01	The Arbitration Act	Section 24 except subsection (5) thereof
Ch. 8:03	The Public Authorities Protection Act	The whole Act