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LIMITATION ACT

Principal Act

Act. No. 1960-42	<i>Commencement</i>	29.12.1960
	<i>Assent</i>	29.12.1960

Amending enactments	Relevant current provisions
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Acts. 1965-10	ss. 5-6, 8, 10
1973-35	ss. 5(3), 7, 7A-7B, 10(4)
1983-48	s. 17(3)

English Sources:

Limitation act 1939 (2 & 3 Geo.6 c.21)

Law Reform (Limitation of Actions, etc) Act 1954
(2 & 3 Eliz.2 c.36)

Limitation Act 1963 (1963 c.47)

Law Reform (Miscellaneous Provisions) Act 1971 (1971 c.43)

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AN ACT TO CONSOLIDATE THE LAW RELATING TO THE LIMITATION OF ACTIONS AND FOR MATTERS CONNECTED THEREWITH.

Short title.

1. This Act may be cited as the Limitation Act.

Interpretation

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

“action” includes any proceeding in a court of law;

“Crown” means the Crown in right of Her Majesty's Government in the United Kingdom and in right of Her Government of Gibraltar;

“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 rentcharges, and any legal or equitable estate or interest therein, including an interest in the proceeds of the sale of land held upon trust for sale, but save as aforesaid does not include any incorporeal hereditament;

“parent” has the same meaning as in section 6(7) of the Contract and Tort Act, as extended by subsection (8) of that section;

“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;

“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 rent service or interest on a mortgage on land;

“settled land”, “tenant for life” and “trustees of the settlement” have the same meanings respectively as in the Settled Land Act, 1882;

“trust for sale”, in relation to land, means an immediate binding trust for sale, whether or not exercisable at the request or with the consent of any person, and with or without a power of discretion to postpone the sale.

(2) For the purposes of this Act, a person shall be deemed to be under a disability while he is a minor, or suffering from mental disorder within the meaning of the Mental Health Act.

(3) For the purposes of subsection (2) but without prejudice to the generality thereof, a person shall be conclusively presumed to be suffering from mental disorder while he is detained under Part II of the Mental Health Act or is receiving treatment which follows without any interval such detention.

(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, and any person whose estate or interest might have been barred by a person entitled to an entailed interest in possession shall be deemed to claim through the person so entitled :

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 shall 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 shall 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 II references to a right of action shall 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 for an account, be construed as references to the date on which the matter arose in respect of which an account is claimed;
- (b) in the case of an action upon a judgment, be construed as references to the date on which the judgment became enforceable;
- (c) 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.

PART I.

PERIODS OF LIMITATION FOR DIFFERENT CLASSES OF ACTION.

Part I to be subject to provision of Part II.

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

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

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

- (a) actions founded on simple contract or on tort;
- (b) actions to enforce a recognizance ;
- (c) actions to enforce an award, where the submission is not by an instrument under seal;
- (d) actions to recover any sum recoverable by virtue of any enactment, other than a penalty or forfeiture or sum by way of penalty or forfeiture:

Provided that, in the case of actions for damages for negligence, nuisance or breach of duty (whether the duty exists by virtue of a contract or of provision made by or under a statute 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 any person, this subsection shall have effect as if for the reference to six years there were substituted a reference to three years.

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(2) An action for an account shall not be brought in respect of any matter which arose more than six years before the commencement of the action.

(3) An action upon a specialty shall not be brought after the expiration 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.

(4) An action shall not be brought upon any judgment after the expiration 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 expiration of six years from the date on which the interest became due.

(5) An action to recover any penalty or forfeiture, or sum by way of penalty or forfeiture, recoverable by virtue of any enactment shall not be brought after the expiration of two years from the date on which the cause of action accrued:

Provided that for the purposes of this subsection the expression “penalty” shall not include a fine to which any person is liable on conviction of a criminal offence.

(6) Subsection (1) shall apply to an action to recover seamen’s wages, but save as aforesaid this section shall not apply to any cause of action within the Admiralty jurisdiction of the Supreme Court which is enforceable in rem.

(7) This section shall 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.

Extension of time-limit for certain actions.

5.(1) Section 4(1)(which, in the case of certain actions, imposes a time-limit of three years for bringing the action) shall not afford any defence to an action to which this section applies, in so far as the action relates to any cause of action in respect of which –

- (a) the court has, whether before or after the commencement of the action, granted leave for the purposes of this section ; and

(b) the requirements of subsection (3) of this section are fulfilled.

(2) 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 of provision made by or under a statute 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.

(3) The requirements of this subsection are fulfilled in relation to a cause of action if it is proved that the material facts relating to that cause of action were or included facts of a decisive character which were at all times outside the knowledge (actual or constructive) of the plaintiff until a date which was not earlier than three years before the date on which the action was brought.

(4) Nothing in this section shall be construed as excluding or otherwise affecting—

- (a) any defence which, in any action to which this section applies, may be available by virtue of any enactment other than section 4(1) (whether it is an enactment imposing a period of limitation or not) or by virtue of any rule of law or equity; or
- (b) the operation of any enactment or rule of law or equity which, apart from this section, would enable such an action to be brought after the end of the period of three years from the date on which the cause of action accrued.

Application for leave of court.

6. (1) Any application for the leave of the court for the purposes of section 5 shall be made ex parte, except in so far as rules of court may otherwise provide in relation to applications which are made after the commencement of a relevant action.

(2) Where such an application is made before the commencement of any relevant action, the court shall grant leave in respect of any cause of action to which the application relates if, but only if, on evidence adduced by or on behalf of the plaintiff, it appears to the court that, if such an action were brought forthwith and the like evidence were adduced in that action, that evidence would, in the absence of any evidence to the contrary, be sufficient—

- (a) to establish that cause of action, apart from any defence under section 4(1); and

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- (b) to fulfil the requirements of section 5(3) in relation to that cause of action.

(3) Where such an application is made after the commencement of a relevant action, the court shall grant leave in respect of any cause of action to which the application relates if, but only if, on evidence adduced by or on behalf of the plaintiff, it appears to the court that, if the like evidence were adduced in that action, that evidence would, in the absence of any evidence to the contrary, be sufficient –

- (a) to establish that cause of action, apart from any defence under section 4(1); and
- (b) to fulfil the requirements of section 5(3) in relation to that cause of action,

and it also appears to the court that, until after the commencement of that action, it was outside the knowledge (actual or constructive) of the plaintiff that the matters constituting that cause of action had occurred on such a date as (apart from section 5) to afford a defence under section 4(1).

(4) In this section “relevant action”, in relation to an application for the leave of the court, means any action in connection with which the leave sought by the application is required.

Extension of time-limits for actions brought after death of injured person.

7. (1) The provisions of this section shall have effect in relation to–

- (a) any such action as is mentioned in section 5 (2) being an action in respect of one or more causes of action surviving for the benefit of the estate of a deceased person by virtue of section 12 of the Contract and Tort Act; and
- (b) any action brought by virtue of Part IV of the Contract and Tort Act for damages in respect of a person’s death,

and, in relation to an action falling within paragraph (a) shall have effect to the exclusion of sections 5 and 6 of this Act.

(2) Section 4(1) shall not afford any defence to an action falling within subsection (1)(a) or (b) of this section, in so far as it relates to a cause of action in respect of which–

- (a) the court has, whether before or after the commencement of the action, granted leave for the purposes of this subsection; and
 - (b) the requirements of section 7B(1) are fulfilled.
- (3) So much of section 7 of the Contract and Tort Act as requires actions under that Act to be commenced within three years after the death of the deceased shall not afford any defence to an action falling within subsection (1)(b) of this section, in so far as it relates to a cause of action in respect of which—
- (a) the court has, before the commencement of the action, granted leave for the purposes of this subsection ; and
 - (b) the requirements of section 7B(2) are fulfilled.
- (4) Nothing in subsection (2) or (3) shall be construed as excluding or otherwise affecting—
- (a) any defence which, in any action falling within subsection (1)(a) or (b) of this section, may be available by virtue of any enactment other than section 4(1) or so much of section 7 of the Contract and Tort Act as aforesaid (whether it is an enactment imposing a period of limitation or not) or by virtue of any rule of law or equity; or
 - (b) the operation of any enactment or rule of law or equity which, apart from those subsections, would enable such an action to be brought after the end of the period of three years from the date on which the cause of action accrued or the death of the deceased, as the case may be.
- (5) In the application of this Part to an action brought by virtue of Part IV of the Contract and Tort Act—
- (a) any reference to a cause of action to which an action relates shall be construed as a reference to a cause of action in respect of which it is claimed that the deceased could (but for his death) have maintained an action and recovered damages; and
 - (b) any reference to establishing a cause of action shall be construed as a reference to establishing that the deceased could (but for his death) have maintained an action and recovered damages in respect thereof.
- (6) In this section and in section 7B “the deceased” means the person referred to in subsection (1)(a) or (b) of this section, as the case may be.

Application for leave of court for purposes of section 7.

7A.(1) Any application for the leave of the court for the purposes of section 7(2) or (3) shall be made *ex parte*, except in so far as rules of court may otherwise provide in relation to applications which are made for the purposes of subsection (2) of that section after the commencement of the relevant action.

(2) Where such an application is made for the purposes of section 7(2) before the commencement of any relevant action, or for the purposes of subsection (3) of that section, the court shall grant leave in respect of any cause of action to which the application relates if, but only if, on evidence adduced by or on behalf of the plaintiff it appears to the court that, if such an action were brought forthwith and the like evidence were adduced in that action, that evidence would, in the absence of any evidence to the contrary, be sufficient—

- (a) to establish that cause of action, apart from any defence under section 4(1) or so much of section 7 of the Contract and Tort Act as is mentioned in the said subsection (3); and
- (b) to fulfil the requirements of section 7B(1) or (2) in relation to that cause of action.

(3) Where such an application is made for the purposes of section 7(2) after the commencement of a relevant action, the court shall grant leave in respect of any cause of action to which the application relates if, but only if, on evidence adduced by or on behalf of the plaintiff it appears to the court that, if the like evidence were adduced in that action, that evidence would, in the absence of any evidence to the contrary, be sufficient—

- (a) to establish that cause of action, apart from any defence under section 4(1); and
- (b) to fulfil the requirements of section 7B(1) in relation to that cause of action,

and it also appears to the court that, until after the commencement of that action, it was outside the knowledge (actual or constructive) of the plaintiff that the matters constituting that cause of action had occurred on such a date as (apart from section 7) to afford a defence under section 4(1).

(4) No appeal shall lie from any decision of the Court of Appeal on an appeal against a decision on an application under this section.

(5) In this section “relevant action”, in relation to an application for the leave of the court, means any action in connection with which the leave sought by the application is required.

Requirements referred to in sections 7 and 7A.

7B.(1) The requirements of this subsection are fulfilled in relation to a cause of action if—

- (a) it is proved that the material facts relating to that cause of action were or included facts of a decisive character which were outside the knowledge (actual or constructive) of the deceased at all times until his death or until a date less than three years before his death; and
- (b) either—
 - (i) the action was brought not later than three years after the death of the deceased; or
 - (ii) if it is proved that the said facts of a decisive character were at all times outside the knowledge (actual or constructive) of each relevant person until a date which was not earlier than three years before the date on which the action was brought.

(2) The requirements of this subsection are fulfilled in relation to a cause of action if it is proved that the material facts relating to that cause of action were or included facts of a decisive character which were at all times outside the knowledge (actual or constructive) of each relevant person until a date which was not earlier than three years before the date on which the action was brought.

(3) In subsection (1), in its application to an action falling within section 7(1)(a), “relevant person” means any person who is or has been a personal representative of the deceased, including an executor who has not proved the will (whether or not he has renounced probate) but not anyone appointed only as a special personal representative in relation to settled land; and for the purposes of that subsection regard shall be had to any knowledge acquired by any such person while a personal representative or previously.

(4) In subsection (1) in its application to an action falling within section 7(1)(b) and in subsection (2) “relevant person” means, subject to subsection (5) any person for whose benefit the action is brought.

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(5) Where, in determining whether the requirements of subsection (1) or (2) are fulfilled in the case of an action falling within section 7(1)(b) (whether on an application under section 7A or when that question subsequently falls to be determined), it appears to the court that those requirements would be fulfilled if any person had not been included among those for whose benefit the action is brought, the court shall—

- (a) determine that question as if he had not been so included; but
- (b) direct that, in so far as the action is brought for the benefit of that person, section 7(2) or (3) shall not operate to displace any defence there mentioned,

and those subsections shall have effect accordingly.

Time-limit for claiming contribution between tortfeasors.

8.(1) Where under section 5 of the Contract and Tort Act a tortfeasor (in this section referred to as “the first tortfeasor”) becomes entitled to a right to recover contribution in respect of any damage from another tortfeasor, no action to recover contribution by virtue of that right shall (subject to subsection (3) of this section) 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 subsection referred to as “the relevant date”) shall be ascertained as follows, that is to say—

- (a) if the tortfeasor is held liable in respect of that damage by a judgment given in any civil proceedings, or an award made on any arbitration, the relevant date shall be the date on which the judgment is given, or the date of the award, as the case maybe;
- (b) if, in any case not falling within paragraph (a) the tortfeasor admits liability in favour of one or more persons in respect of that damage, the relevant date shall be 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.

(3) Section 28(1) shall not apply to any action brought under subsection (1) of this section unless the plaintiff proves that the person under the disability was not, at the time when the right to recover contribution accrued to him, in the custody of a parent, and, where it so applies, shall have effect as if for the words “six years” there were substituted the words “two years”.

(4) In this section references to an action and to section 28(1) or section 32 shall be construed as including references respectively to an arbitration and to section 28(1) or, as the case may be, section 32 as applied to arbitrations by section 33(1); and subsections (3) to (7) of section 33 (which relate to the application of this Act to arbitrations) shall apply for the purpose of this section.

9. *Omitted.*

Interpretation of sections 5 to 9.

10.(1) In sections 5 to 9 “the court”, in relation to an action, means the court in which the action has been, or is intended to be, brought.

(2) *Repealed.*

(3) In sections 5 to 9 reference to the material facts relating to a cause of action is a reference to any one or more of the following that is to say—

- (a) the fact that personal injuries resulted from the negligence, nuisance or breach of duty constituting that cause of action ;
- (b) the nature or extent of the personal injuries resulting from that negligence, nuisance or breach of duty;
- (c) the fact that the personal injuries so resulting were attributable to that negligence, nuisance or breach of duty, or the extent to which any of those personal injuries were so attributable.

(4) For the purposes of sections 5 to 9 any of the material facts relating to a cause of action shall be taken, at any particular time, to have been facts of a decisive character if they were facts which a reasonable person, knowing those facts and having obtained appropriate advice with respect to them, would have regarded at that time as determining, in relation to that cause of action, that (apart from any defence under section 4(1) or so much of section 7 of the Contract and Tort Act as requires actions under Part IV thereof to be commenced within three years after the death of the deceased) an action would have a reasonable prospect of succeeding and of resulting in the award of damages sufficient to justify the bringing of the action.

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(5) Subject to subsection (6) of this section, for the purposes of sections 5 to 9 a fact shall, at any time, be taken to have been outside the knowledge (actual or constructive) of a person if, but only if –

- (a) he did not then know that fact ;
- (b) in so far as that fact was capable of being ascertained by him, he had taken all such action, if any, as it was reasonable for him to have taken before that time for the purpose of ascertaining it ; and
- (c) in so far as there existed, and were known to him, circumstances from which, with appropriate advice, that fact might have been ascertained or inferred, he had taken all such action, if any, as it was reasonable for him to have taken before that time for the purpose of obtaining appropriate advice with respect to those circumstances.

(6) In the application of subsection (5) of this section to a person at a time when he was under a disability and was in the custody of a parent, any reference to that person in paragraph (a), paragraph (b) or paragraph (c) of that subsection shall be construed as a reference to that parent.

(7) Subject to the preceding provisions of this section, expressions used in sections 5 to 10 shall have the same meanings as elsewhere in this Act.

(8) In this section “appropriate advice”, in relation to any fact or circumstances, means the advice of competent persons qualified, in their respective spheres, to advise on the medical, legal and other aspects of that fact or those circumstances, as the case may be.

Limitation in case of successive conversions.

11.(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 detention after the expiration of six 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.

Limitation of actions to recover land.

12. (1) No action shall be brought by the Crown to recover any land after the expiration of thirty years from the date on which the right of action accrued to the Crown or, if it first accrued to some person through whom the Crown claims, to that person:

Provided that an action to recover foreshore may be brought by the Crown at any time before the expiration of sixty years from that date, and where any right of action to recover land, which has ceased to be foreshore but remains in the ownership of the Crown, accrued when the land was foreshore, the action may be brought at any time before the expiration 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.

(2) No action shall be brought by any spiritual or eleemosynary corporation sole to recover any land after the expiration of thirty years from the date on which the right of action accrued to the corporation sole or, if it first accrued to some person through whom the corporation sole claims, to that person.

(3) No action shall be brought by any other person to recover any land after the expiration 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 Crown or a spiritual or eleemosynary corporation sole through whom the person bringing the action claims, the action may be brought at any time before the expiration of the period during which the action could have been brought by the Crown or the corporation sole, or of twelve years from the date on which the right of action accrued to some person other than the Crown or the corporation sole, whichever period first expires.

Accrual of rights of action in case of present interests in land.

13.(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 an intestacy, and the deceased person was on the date of his death in possession of the land or, in the case of a rentcharge

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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.

Accrual of right of action in case of future interests.

14.(1) Subject as hereinafter 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.

(2) If the person entitled to the preceding estate or interest, not being a term of years absolute, 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 expiration 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 Crown or a spiritual or eleemosynary corporation sole 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) The foregoing provisions of this section shall not apply to any estate or interest which falls into possession on the determination of an entailed interest and which might have been barred by the person entitled to the entailed interest.

(4) 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.

(5) 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 under 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.

Provisions in case of settled land and land held on trust.

15.(1) Subject to the provisions of section 26(1), the provisions of this Act shall apply to equitable interests in land, including interests in the proceeds of the sale of land held upon trust for sale, in 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.

(2) Where the period prescribed by this Act has expired for the bringing of an action to recover land by a tenant for life or trustees of the settlement of settled land, his legal estate shall not be extinguished, if and so long as the right of action to recover the land of any person entitled to a beneficial interest in the land either has not accrued or has not been barred by this Act, and the legal estate shall accordingly remain vested in the tenant for life or trustees of the settlement and shall devolve in accordance with the Settled Land Act, 1882 ; but if and when every such right of action as aforesaid has been barred by this Act, the said legal estate shall be extinguished.

(3) Where any land is held upon trust including a trust for sale, and the period prescribed by this Act has expired for the bringing of an action to recover the land by the trustees, the estate of the trustees shall not be extinguished land 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 be extinguished.

(4) Where any settled land is vested in trustees of the settlement or any land is held upon trust, including a trust for sale, an action to recover the

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land may be brought by the trustees of the settlement or 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 of the settlement or trustees would apart from this provision have been barred by this Act.

(5) Where any settled land or any land held on 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 tenant for life, trustees of the settlement or trustee, or to any other person entitled to a beneficial interest in the land or the proceeds of sale.

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

16. 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:

Provided that, if such a right has accrued to a person entitled to an estate or interest in reversion or remainder and the land was not recovered by virtue thereof, the right of action to recover the land shall not be deemed to have accrued to that person until his estate or interest fell into possession, as if no such forfeiture or breach of condition had occurred.

Accrual of right of action in case of certain tenancies.

17.(1) A tenancy at will shall, for the purposes of this Act, be deemed to be determined at the expiration of a period of one year from the commencement thereof, unless it has previously been determined, and accordingly the right of action of the person entitled to the land subject to the tenancy shall be deemed to have accrued on the date of such determination.

(2) 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 expiration 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 :

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.

(3) Where any person is in possession of land by virtue of a lease in writing by which a rent of not less than £10 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.

(4) Subsections (1) and (3) shall not apply to any tenancy at will or lease granted by the Crown.

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

18.(1) No right of action to recover land shall 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”) and where under the foregoing provisions of this Act any such right of action is deemed to accrue on a certain date and no person is in adverse possession on that date, the right of action shall not be deemed to accrue unless and until adverse possession is taken of the land.

(2) Where a right of action to recover land has accrued and thereafter, before the right is barred, the land ceases to be in adverse possession, the right of action shall no longer be deemed to have accrued and no fresh right of action shall be deemed to accrue unless and until the land is again taken into adverse possession.

(3) For the purposes of this section—

- (a) possession of any 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) receipt of rent under a lease by a person wrongfully claiming, in accordance with section 17(3), the land in reversion shall be deemed to be adverse possession of the land.

Cure of defective disentailing assurance.

19. Where a person entitled in remainder to an entailed interest in any land has made an assurance thereof which fails to bar the issue in tail or the estates and interests taking effect on the determination of the entailed interest, or fails to bar the last-mentioned estates and interests only, and any

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person takes possession of the land by virtue of the assurance, and that person or any other person whatsoever (other than a person entitled to possession by virtue of the settlement) is in possession of the land for a period of twelve years from the commencement of the time at which the assurance, if it had then been executed by the person entitled to the entailed interest, would have operated, without the consent of any other person, to bar the issue in tail and such estates and interests as aforesaid, then, at the expiration of that period, the assurance shall operate, and be deemed always to have operated, to bar the issue in tail and those estates and interests.

Limitation of redemption actions.

20. When a mortgagee of land has been in possession of any of the mortgaged land for a period of twelve years, no action to redeem the land of which the mortgagee has been so in possession shall thereafter be brought by the mortgagor or any person claiming through him.

No right of action to be preserved by formal entry or continual claim.

21. For the purposes of this Act, no person shall be deemed to have been in possession of any land by reason only of having made a formal entry thereon, and no continual or other claim upon or near any and shall preserve any right of action to recover the land.

Administration to date back to death.

22. For the purposes of the provisions of this Act relating to actions for the recovery of land, an administrator of the estate 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 the letters of administration.

Extinction of title after expiration of period.

23. Subject to the provisions of section 15, at the expiration of the period prescribed by this Act for any person to bring an action to recover land (including a redemption action) the title of that person to the land shall be extinguished.

Limitation of action to recover rent.

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

Limitation of action to recover money secured by mortgage.

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 expiration of twelve years from the date when the right to receive the money accrued.

(2) No foreclosure action in respect of mortgaged personal property shall be brought after the expiration of twelve years from the date on which the right of 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 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 shall apply 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 expiration 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

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right to receive the principal sum of money has accrued or is deemed to have accrued.

- (6) This section shall not apply to any mortgage or charge on a ship.

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) Subject as aforesaid, 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 expiration of six years from the date on which the right of action accrued:

Provided that the right of action shall not be deemed to have accrued to any beneficiary entitled to a future interest in the trust property, until the interest fell into possession.

(3) 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.

Limitation of actions claiming personal estate of deceased.

27. Subject to the provisions of section 26(1) 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 expiration of twelve years from the date when the right to receive the share or interest 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 expiration of six years from the date on which the interest became due.

PART II.

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

Extension of limitation period in case of disability.

28.(1) If on the date when any right of action accrued for which a period of limitation is prescribed by this Act, the person to whom it accrued was under a disability, the action may be brought at any time before the expiration of 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:

Provided that—

- (a) 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;
- (b) 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 by reason of the disability of the second person;
- (c) no action to recover land or money charged on land shall be brought by virtue of this section by any person after the expiration of thirty years from the date on which the right of action accrued to that person or some person through whom he claims; and
- (d) this section shall not apply to any action to recover a penalty or forfeiture, or sum by way thereof, by virtue of any enactment, except where the action is brought by an aggrieved party.

(2) In the case of actions for damages for negligence, nuisance or breach of duty (whether the duty exists by virtue of a contract or of provision made by or under a statute 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 any person,-

- (a) the preceding provisions of this section shall have effect as if for the words “six years” there were substituted the words “three years”; and
- (b) this section shall not apply unless the plaintiff proves that the person under the disability was nit, at the time when the right of action accrued to him, in the custody of a parent.

Fresh accrual of action on acknowledgment or part payment.

29.(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 or 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.

(2) The foregoing subsection shall apply to a right of action to recover land accrued to a person entitled to an estate or interest taking effect on the determination of an entailed interest against whom time is running under section 19, and on the making of the acknowledgment that section shall cease to apply to the land.

(3) Where a mortgagee is by virtue of the mortgage in possession of any mortgaged land and either receives any sum in respect of the principal or interest of the mortgage debt or acknowledges the title of the mortgagor, or his equity of redemption, an action to redeem the land in his possession may be brought at any time before the expiration of twelve years from the date of the payment or acknowledgment.

(4) 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 the last payment:

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

Formal provisions as to acknowledgment and part payments.

30.(1) Every such acknowledgment as aforesaid shall be in writing and signed by the person making the acknowledgment.

(2) Any such acknowledgment or payment as aforesaid may be made by the agent of the person by whom it is required to be made under section 29, 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.

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

31.(1) An acknowledgment of the title to any land or mortgaged 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 the mortgagor 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) Where two or more mortgagees are by virtue of the mortgage in possession of the mortgaged land, an acknowledgment of the mortgagor's title or of his equity of redemption by one of the mortgagees shall only bind him and his successors and shall not bind any other mortgagee or his successors, and where the mortgagee by whom the acknowledgment is given is entitled to a part of the mortgaged land and not to any ascertained part of the mortgage debt, the mortgagor shall be entitled to redeem that part of the land on payment, with interest, of the part of the mortgage debt which bears the same proportion to the whole of the debt as the value of the part of the land bears to the whole of the mortgaged land.

(4) Where there are two or more mortgagors, and the title or right to redemption of one of the mortgagors is acknowledged as aforesaid, the acknowledgment shall be deemed to have been made to all the mortgagors.

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

Provided that an acknowledgment made after the expiration of the period of limitation prescribed for the bringing of an action to recover the debt or other claim shall not bind any successor on whom the liability devolves on the determination of a preceding estate or interest in property under a settlement taking effect before the date of the acknowledgment.

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

Provided that a payment made after the expiration of the period of limitation prescribed for the bringing of an action to recover the debt or other claim shall not bind any person other than the person making the payment and his successors, and shall not bind any successor on whom the liability devolves on the determination of a preceding estate or interest in property under a settlement taking effect before the date of the payment.

(7) 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.

(8) In this section the expression “successor”, in relation to any mortgagee or person liable in respect of any debt or claim, means his personal representatives and any other person on whom the rights under the mortgage or, as the case may be, the liability in respect of the debt or claim devolve, whether on death or bankruptcy or the disposition of property or the determination of a limited estate or interest in settled property or otherwise.

Postponement of limitation period in case of fraud or mistake.

32. 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 his agent or of any person through whom he claims or his agent; or
- (b) the right of action is concealed by the fraud of any such person; 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 or the mistake, as the case may be, or could with reasonable diligence have discovered it :

Provided that nothing in this section shall enable any action to be brought to recover, or enforce any charge against, or set aside any transaction affecting, any property which—

- (i) in the case of fraud, has been purchased for valuable consideration by a person who was not a party to the

fraud and did not at the time of the purchase know or have reason to believe that any fraud had been committed; or

- (ii) in the case of mistake, has been purchased for valuable consideration, subsequently to the transaction in which the mistake was made, by a person who did not know or have reason to believe that the mistake had been made.

PART III.
GENERAL.

Application to arbitrations.

33. (1) This Act and any other enactment relating to the limitation of actions shall apply to arbitrations as they apply to actions in the Supreme 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 of any other 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, 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 in Gibraltar of that person ; 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 Gibraltar,

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

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effected at the time at which the letter would have been delivered in the ordinary course of post.

(5) Where the Supreme Court orders that an award be set aside or orders, after the commencement of an arbitration, that the arbitration 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 shall apply to an arbitration under an Act as well as to an arbitration pursuant to an arbitration agreement, 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 rules made thereunder as relate to the arbitration.

(7) In this section the expressions “arbitration”, “arbitration agreement” and “award” have the same meanings as in the Arbitration Act.

Provisions as to set-off or counterclaim.

34. 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.

Acquiescence.

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

Application to the Crown.

36. Save as in this Act otherwise expressly provided and without prejudice to the provisions of section 37, this Act shall apply to proceedings by or against the Crown in like manner as it applies to proceedings between subjects:

Provided that this Act shall not apply to any proceedings by the Crown for the recovery of any tax or duty or interest thereon or to any forfeiture proceedings under the Imports and Exports Act, the Licensing and Fees Act or any Act relating to duties of excise or to any proceedings in respect of the forfeiture of a ship.

Saving.

37. This Act shall not apply to any action or arbitration for which a period of limitation is prescribed by any other enactment, or to any action or arbitration to which the Crown is a party and for which, if it were between subjects, a period of limitation would be prescribed by any other enactment.

Transitional provisions.

38.(1) Nothing in this Act shall—

- (a) enable any action to be brought which was barred before the commencement of this Act by an enactment repealed by this Act, except in so far as the cause of action or right of action may be revived by an acknowledgment or part payment made in accordance with the provisions of this Act; or
- (b) affect any action or arbitration commenced before the commencement of this Act or the title to any property which is the subject of any such action or arbitration.

(2) A limited partnership shall not consist of more than twenty persons, and must consist of one or more persons called general partners, who shall be liable for all debts and obligations of the firm, and one or more persons to be called limited partners, who shall at the time of entering into such partnership contribute thereto a sum or sums as capital or property valued at a stated amount, and who shall not be liable for the debts or obligations of the firm beyond the amount so contributed.