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CHAPTER 231**LIMITATION OF ACTIONS**

An Act to reform the law relating to the barring of civil actions through the effluxion of time. 1997-11.

[1st October, 1997] Commence-
ment.
1997-11.

Citation

1. This Act may cited as the *Limitation of Actions Act*.

Short title.

Interpretation

2. (1) In this Act

Definitions.

"action" includes any proceeding in a court of law;

"assurance" has the same meaning as in the *Property Act*;

Cap. 236.

"foreshore" means the shore and the bed of the sea 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 except as provided in this definition does not include any incorporeal hereditament or the foreshore;

"minor" has the meaning assigned to it by section 2 of the *Minors Act*;

Cap. 215.

"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 rent service or interest on a mortgage on land;

Cap. 236. "statutory trusts" has the same meaning as in the *Property Act*;

Cap. 250. "trust" and "trustee" have the same meanings as in the *Trustee Act*.

(2) References in this Act

(a) 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

(b) to the bringing of an action to recover land include references to the making of an entry or distress.

(3) References in this Act

(a) to the possession of land shall, in the case of rentcharges, be construed as references to the receipt of the rent; and

(b) 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.

(4) References in Part II of this Act

(a) to a right of action include references to

(i) a cause of action,

(ii) a right to receive any money secured by a mortgage or charge on any property,

- (iii) a right to recover proceeds of the sale of land, and
- (iv) a right to receive a share or interest in the personal estate of a deceased person.

(5) References in Part II of this Act 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; and
- (b) in the case of an action to recover arrears of rent or interest, or damages in respect of arrears of rent or interest, be construed as references to the date on which the rent or interest became due.

(6) Subject to subsection (7), a person is to be treated as claiming through another person if he becomes entitled by, through, under or by the act of that other person to the right claimed.

(7) A person becoming entitled to any estate or interest by virtue of a special power of appointment is not to be treated as claiming through the appointor.

3. (1) For the purposes of this Act the following are persons under a disability Person under disability.

- (a) a minor; and
- (b) a person who is suffering from a mental disorder within the meaning of the *Mental Health Act*. Cap. 45.

(2) For the purposes of subsection (1) a person is of unsound mind if he is, by reason of mental disorder within the meaning of the *Mental Health Act*, incapable of managing and administering his property and affairs. Cap. 45.

(3) Without affecting the generality of subsection (2), it is conclusive that a person is suffering from a mental disorder

- Cap. 45. (a) while he is liable to be detained or is subject to guardianship under the *Mental Health Act*; and
- Cap. 45. (b) while he is receiving treatment as an in-patient in a mental hospital within the meaning of the *Mental Health Act* without being liable to be detained under that Act, being treatment which follows, without any interval, a period during which he was liable to be detained or subject to guardianship under that Act.

Rules of Equity

- Equity rules saved. 4. Nothing in this Act affects any equitable jurisdiction to refuse relief on the ground of laches or acquiescence.

Effect of Parts I and II

- Effect of Parts. 5. The ordinary time limits for bringing actions of the various classes mentioned in Part I are given in that Part; Part II extends or excludes those time limits to the extent or for the purposes set out in that Part.

PART I

ORDINARY TIME LIMITS

Tort Actions

- Limitation: tort. 6. No action founded on tort may be brought after the expiration of 6 years from the date on which the cause of action accrued.

- Successive conversions. 7. Where any cause of action in respect of a 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 may be brought in respect of the further conversion or wrongful detention after the expiration of 6 years from the accrual of the cause of action in respect of the original conversion or wrongful detention.

8. When any cause of action described in section 7 has accrued to a person and the period prescribed for bringing the action has expired and he has not during that period recovered possession of the chattel, his title to the chattel is extinguished.

Extinguish-
ment of
title.

9. For the purposes of sections 10 to 13 "theft" includes

"Theft".

(a) any conduct outside Barbados that would be theft if committed in Barbados; and

(b) obtaining any chattel in Barbados or elsewhere by blackmail or by deception as those words are understood on the 1st October, 1997 by sections 9 and 10 respectively, of the *Theft Act*,

Cap. 155.

and references in sections 10 to 13 of this Act to "stolen" are to be construed accordingly.

10. The right of a person from whom a chattel is stolen to bring an action in respect of the theft is not subject to the time limits prescribed under sections 6 and 7 but if the title of that person to the stolen chattel is extinguished under section 8, he may not bring an action in respect of the theft preceding the loss of his title unless the theft of the chattel preceded the conversion or wrongful detention from which time began to run for the purposes of section 7.

Limitation
period: theft.

11. (1) Section 10 applies to any conversion or wrongful detention related to the theft of a chattel as it applies to the theft of the chattel.

Related
conversion.

(2) Except as provided by subsection (3), every conversion or wrongful detention following the theft of a chattel before the person from whom the chattel was stolen recovers possession of the chattel is, for the purpose of this section, regarded as related to the theft of that chattel.

(3) Where a person in good faith purchases a chattel that has been stolen neither the purchase nor any conversion or wrongful detention following the purchase may be regarded as related to the theft of the chattel.

Applying
section
6 or 7.

12. In respect of the theft of a chattel or in respect of any conversion or wrongful detention related to the theft of a chattel, any cause of action accruing therefrom to any person from whom the chattel was stolen must be disregarded for the purpose of applying section 6 or 7 to his case.

Relationship
presumed.

13. Where in any action brought in respect of the conversion of a chattel, it is proved that the chattel was stolen from the plaintiff, or anyone through whom the plaintiff claims, then, in the absence of evidence to the contrary, it is presumed that any conversion or wrongful detention following the theft is related to the theft.

Simple Contract Actions

Limitation:
simple
contracts.

14. Subject to section 15, no action founded on simple contract may be brought after the expiration of 6 years from the date on which the cause of action accrued.

Contract
of loan.

15. (1) Subject to subsection (2), section 14 does not bar the right of action on a contract of loan that

- (a) does not provide for repayment of the debt on or before a fixed or determined date; or
- (b) does not, effectively, whether or not it purports to do so, make the obligation to repay the debt conditional on a demand for repayment made by or on behalf of the creditor or on any other matter,

Cap. 304.

except when, in connection with taking the loan, the debtor enters into a collateral obligation to pay the amount of the debt or any part of it by delivering a promissory note, within the meaning of the *Bills of Exchange Act*, as security for the debt or otherwise, on terms that would exclude the application of this section to the contract of loan if the terms applied directly to repayment of the debt.

(2) Where a demand in writing for repayment of a debt under a contract of loan described in subsection (1) is made to the debtor

- (a) by or on behalf of a creditor; or
- (b) if there are joint creditors, by or on behalf of any one of them,

section 14 applies as if the cause of action to recover the debt had accrued on the day on which the demand was made.

16. No action to enforce an award may be brought after the expiration of 6 years from the date on which the cause of action accrued except when the submission is by an instrument under seal. Limitation: awards.

Actions on a Specialty

17. (1) No action on a specialty may be brought after the expiration of the 12 years from the date on which the cause of action accrued. Limitation: specialty.

(2) Subsection (1) does not affect any action for which a shorter period of limitation is prescribed by any other provisions of this Act.

Sums Recoverable under Statute

18. (1) No action to recover any amount of money that is recoverable under any enactment may be brought after the expiration of 6 years from the date on which the cause of action accrued. Limitation: statutory recoveries.

(2) Subsection (1) does not affect any action to which section 19 applies.

19. (1) Where under section 3 of the *Civil Liability (Contribution) Act* any person is entitled to a right to recover contribution in respect of any damage from any other person, no action to recover contribution by virtue of that right may be brought after the expiration of 2 years from the date on which that right accrued. Limitation: contribution. Cap. 194B.

(2) For the purposes of this section the date on which a right to recover contribution in respect of any damage accrues to any person in this section referred to as the "relevant date", is to be ascertained in the manner provided in subsections (3) to (5).

- (3) If a person is held liable in respect of any damage
- (a) by a judgment given in civil proceedings; or
 - (b) by an award made on any arbitration,

the relevant date is the date on which judgment is given or the date of award, as the case may be.

(4) For the purposes of subsection (3) 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 any person.

(5) If, in any case not within subsection (3), a person makes or agrees to make a payment to one or more persons in compensation for that damage, whether the first-mentioned person admits any liability in respect of the damage or not, the relevant date is the earliest date on which the amount to be paid by him is agreed between him or his representative and the person or each of the persons, as the case may be, to whom the payment is to be made.

(6) An action to recover contribution is an action to which sections 46, 51 and 57 apply, but otherwise Part II and Part III, except sections 55, 56 and 58 do not apply for the purposes of this section.

Personal Injuries and Death

Limitation:
personal
injuries.

- 20.** (1) This section applies to an action for damages for
- (a) negligence;
 - (b) nuisance; or
 - (c) breach of duty, whether the duty exists by virtue of a contract or of a provision made by or under a statute or independently of any contract or of any such provision,

when 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) Except where subsection (3) applies, no action to which this section applies may be brought after the expiration of the period of 3 years from the later of the following dates

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

(3) When the person injured dies before the expiration of the period of limitation in subsection (2), the period of limitation applicable in respect of the cause of action surviving for the benefit of his estate under section 2 of the *Law Reform (Miscellaneous Provisions) Act* is 3 years from the later of the following dates Cap. 205.

- (a) the date on which the personal representative of the deceased acquired knowledge of the cause of action; or
- (b) the date on which the deceased's death occurred.

(4) The time limits prescribed in sections 6 to 19 shall not apply to an action to which this section applies.

21. For the purposes of section 20

- (a) "personal representative" includes any person who is or has been a personal representative of the deceased, including an executor who has not proved the will of the deceased, whether or not the executor has renounced probate; and
- (b) regard must be had to any knowledge acquired while a person mentioned in paragraph (a) was a personal representative or previously by any personal representative or any executor mentioned in that paragraph; and
- (c) if there is more than one personal representative and the dates they acquired knowledge of the cause of action differ, paragraph (a) of subsection (3) of section 20 refers to the earliest of those dates.

Personal
representa-
tive.

Limitation:
fatal
accidents.
Cap. 193A.

22. (1) Where a person who suffers injury dies and at the time of his death could not have maintained an action for damages in respect of that injury, no action may be brought under the *Accident Compensation (Reform) Act* for the benefit of the dependants of the deceased.

(2) Sections 52 and 53 shall not apply where an action by an injured person would have been barred by the time limit prescribed in section 20.

Cap. 193A. (3) The time limits prescribed in sections 6 to 20 shall not apply to an action under the *Accident Compensation (Reform) Act* in the case of fatal accidents.

(4) No action referred to in subsection (3) may be brought after the expiration of 3 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.

Cap. 193A. (5) An action under the *Accident Compensation (Reform) Act* is one to which sections 46, 52, 53 and 57 apply, and the application to any such action of the time limit under subsection (4) is subject to section 61.

Different
dependants.
Cap. 193A.

23. (1) Where there is more than one person for whose benefit an action under the *Accident Compensation (Reform) Act* is brought, section 22(4)(b) shall be applied separately to each of them.

(2) Subject to subsection (3), if by virtue of subsection (1) the action is outside the time limit given by section 22(4) in respect of one or more, but not all, of the persons for whose benefit it is brought, the court shall direct that any person in respect of whom the action is outside that time limit be excluded from those for whom the action is brought.

(3) The court shall not give the direction referred to in subsection (2) if it is shown that if the action were brought exclusively for the benefit of the person in question it would not be defeated by a defence of limitation, whether in consequence of section 48 or an agreement between the parties not to raise the defence, or otherwise.

24. (1) References in sections 20 and 22 to the date that any person acquired knowledge of a cause of action are references to the day on which that person first had knowledge of the following facts

- (a) that the injury concerned in the cause of action was significant;
- (b) that the injury was attributed in whole or in part to the act or omission that is alleged to constitute negligence, nuisance or breach of duty;
- (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 other 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

- (a) an injury is significant if the person whose date of knowledge of the injury is in question would reasonably have considered the injury sufficiently serious to justify his instituting proceedings for damages against a defendant who did not dispute liability and was able to satisfy a judgment; and
- (b) a person's knowledge includes knowledge that he might reasonably have been expected to acquire
 - (i) from facts observable or ascertainable by him, or
 - (ii) from facts ascertained by him with the help of medical or other appropriate expert advice that it would be reasonable for him to seek

but a person may not be fixed under this paragraph with knowledge of a fact ascertained only with the help of expert advice so long as he has taken all reasonable steps to obtain and, if appropriate, to act on it.

Action to Recover Land and Rent

Limitation:
land
recovery.

25. (1) Subject to subsection (2) no action shall be brought by any person to recover land after the expiration of 10 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.

(2) The Crown may bring an action to recover any land at any time within 30 years from the date on which the right of action accrued to the Crown or, if first accrued through some person through whom the Crown claims, to that person.

(3) Notwithstanding section 25(1), when an action brought by a person, other than the Crown, first accrued to the Crown through whom the person claims, the action may be brought by him at any time before the expiration of the earlier of the following periods

- (a) the period during which the action could have been brought by the Crown; or
- (b) 20 years from the date on which the right of action accrued to some person other than the Crown.

Reversion,
remainder
estate.

26. (1) Subject to the provisions of this Act, where

- (a) the estate or interest claimed in land was an estate or interest in reversion or remainder or any other future estate or interest; and
- (b) the right of action to recover the land accrued on the date on which the estate or interest fell into possession by the determination of the preceding estate or interest; and
- (c) the person entitled to the preceding estate or interest, not being a term of years absolute, was not in possession of the land on that date,

no action may be brought by the person entitled to the succeeding estate or interest after the expiration of 10 years from the date on which the right of action accrued to the person entitled to the preceding estate or interest or 6 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.

(2) Notwithstanding subsection (1) where, the Crown is entitled to the succeeding estate or interest, an action may be brought by the Crown at any time before the expiration of the earlier of the following periods

- (a) 30 years from the date on which the right of action accrued to the Crown, if the Crown was entitled to the preceding estate or interest; or
- (b) 10 years from the date on which the right of action to recover the preceding estate or interest first accrued to the Crown.

27. No person may bring an action to recover any estate or interest in land under an assurance that takes 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. Assurance of land.

28. When a person

- (a) is entitled to any estate or interest in land in possession and, while so entitled, he is also entitled to any future estate or interest in that land; and
- (b) his right to recover the estate or interest in possession is barred under this Act,

Several interests.

no action may be brought by him, 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 any intermediate estate or interest.

Accrued
dating rules.

29. (1) The date of accrual of rights of action to recover land must be determined in accordance with the rules provided in this section for the described circumstances.

(2) When the person who is bringing an action to recover land, or some person through whom he claims

(a) has been in possession of the land; and

(b) has, while entitled to the land, been dispossessed of the land or had discontinued his possession of the land,

his right of action shall be treated as having accrued on the date of the dispossession or discontinuance.

(3) When a person brings an action to recover any land of a deceased person, whether under a will or on an intestacy, if the deceased person

(a) was on the date of his death in possession of the land or, in the case of a rentcharge created by a will or taking effect upon his death, in possession of the land charged; and

(b) was the last person entitled to the land to be in possession of it,

the right of action of the person bringing the action shall be treated as having accrued on the date of the death of the deceased person.

(4) When a person brings an action to recover land that is an estate or interest in possession assured otherwise than by will to him, or to some person through whom he claims, if

(a) the person making the assurance was, on the date when the assurance took effect, in possession of the land, or in the case of a rentcharge created by the assurance, in possession of the land charged; and

(b) no person had been in possession of the land by virtue of the assurance,

the right of action of the person bringing the action shall be treated as having accrued on the date on which the assurance took effect.

(5) Where

- (a) the estate or interest claimed in any action to recover land is an estate or interest in reversion or remainder or any other future estate or interest; and
- (b) no person has taken possession of the land by virtue of the estate or interest claimed in the action,

the right of action shall be treated as having accrued on the date on which the estate or interest fell into possession by the determination of the preceding estate or interest.

(6) A tenancy from year to year or other period without a lease in writing shall, for the purposes of this Act, be treated as being determined at the expiration of the first year or other period; and the right of action of the person entitled to the land that is subject to the tenancy, shall be treated as having accrued accordingly at the date on which the tenancy is to be taken as determined.

(7) If any rent has subsequently been received in respect of a tenancy referred to in subsection (6), the right of action therein mentioned shall be treated as having accrued on the date of the last receipt of rent.

(8) Where

- (a) any person is in possession of land by virtue of a lease in writing by which a rent of not less than \$50 a year is reserved;
- (b) 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
- (c) no rent is subsequently received by the person rightfully entitled to the land in reversion immediately expectant on the determination of the lease,

the right of action to recover the land by the person rightfully entitled to it shall be treated as having accrued on the date on which the rent was first received by the person wrongfully claiming to be entitled and not on the date of the determination of the lease.

(9) Subsection (8) does not apply to any lease granted by the Crown.

For breach
of condition,
etc.

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

(2) If the right of action described in subsection (1) had accrued to a person entitled to an estate or interest in reversion or remainder and the land was not recovered by the exercise of that right, the right of action to recover the land shall not be treated as having accrued to the person interested in the estate or interest in reversion or remainder until his estate or interest fell into possession as if no forfeiture or breach of condition had occurred.

Adverse
possession.

31. (1) No right of action to recover land shall be treated as accruing unless the land is in the possession of some person in whose favour the period of limitation can run, that is to say, the land is in "adverse possession", and when under this Act any right of action to recover land is treated as accruing on a certain date and no person is in adverse possession on that date, the right of action shall not be treated as accruing until adverse possession is taken of the land.

(2) When a right of action to recover land has accrued and after its accrual but before the right is barred the land ceases to be in adverse possession, the right of action shall no longer be treated as having accrued, and no fresh right of action may be treated as accruing until the land is again taken into adverse possession.

(3) For the purposes of this section

(a) possession of any land that is subject to a rentcharge by a person who, not being the person entitled to the rentcharge, does not pay the rent is to be treated as adverse possession of the rentcharge; and

- (b) receipt of rent under a lease by a person wrongfully claiming to be entitled to the land in reversion immediately expectant on the determination of the lease is to be treated as adverse possession of the land.

(4) In determining whether a person occupying any land is in adverse possession of the land, it may not be assumed by implication of law that his occupation is by permission of the person entitled to the land merely because the occupation of the land is not inconsistent with the present or future enjoyment of the land by the person entitled to the land.

(5) Subsection (1) does not affect a finding that a person's occupation of any land is by implied permission of the person entitled to the land when such a finding is justified on all the actual facts.

32. (1) For the purposes of this section

Co-owner's
possession.

- (a) "co-owners" mean joint tenants or tenants in common;
- (b) "third party" means any person who is not a co-owner.

(2) Where 2 or more persons are entitled to any land or rent as co-owners 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

- (a) in possession or receipt of all the land or all the profits thereof or in receipt of all the rent; or
- (b) 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.

33. 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 treated as claiming as if there had been no interval of time between the death of the deceased person and the grant of the letters of administration.

Administra-
tion to date
back to
death.

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

34. 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 land shall preserve any right of action to recover the land.

Beneficiary's possession.

35. Where any land held upon statutory trusts or upon trust for sale is in the possession of a person who, not being a person solely and absolutely entitled to the land or the proceeds, entitled to a beneficial interest in the land or in the proceeds of sale, no right of action to recover the land may be taken for the purposes of this Act as accruing during that possession to any person in whom the land is vested as trustee, or to any other person who is entitled to a beneficial interest in the land or the proceeds of sale.

Limitation: redemption of land.

36. After a mortgagee of land has been in possession of any of the mortgaged land for 10 years, no action to redeem the land of which the mortgagee has been so in possession may be brought after the end of the 10 years by the mortgagor or any person claiming through him.

Extinction of title. Cap. 229.

37. Subject to section 40 and sections 137 and 138 of the *Land Registration Act*, the title of a person to land is extinguished at the expiration of the period prescribed by this Act for the bringing of any action, including a redemption action, to recover that land.

Land on trust.

38. (1) Subject to section 42(3) and (4), this Act applies to the equitable interests in land, including interests in the proceeds of the sale of land held upon trusts for sale, as they apply to legal estates.

(2) A right of action to recover land referred to in subsection (1) shall, for the purposes of this Act, be treated as accruing to a person entitled in possession to an equitable interest in the same manner and circumstances, and on the same date, as it would accrue if his interest were a legal estate in the land; and accordingly, sections 29 to 35 apply in any such case.

(3) 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 of an action to recover the land by the trustees has expired, the estate of the trustees is not extinguished if 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 has not accrued or has not been barred by this Act; but if the right of action has been so barred the estate of the trustees is extinguished.

(4) Where any land is held upon trust, including the statutory trusts or 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 barred by this Act.

39. No action may be brought or distress made to recover arrears of rent, or damages in respect of arrears of rent, after the expiration of 6 years from the date on which the arrears became due. Limitation: rents.

Obligations Secured on Property

- 40.** (1) No action may be brought to recover Limitation: obligations secured on property.
- (a) any principal sum of money secured by a mortgage or other charge on property, whether real or personal; or
- (b) any proceeds of the sale of land,

after the expiration of 10 years from the date on which the right to receive the money accrued.

(2) No foreclosure action in respect of mortgaged personal property may be brought after the expiration of 10 years from the date on which the right to foreclose accrued; but if the mortgagee was in possession of the mortgaged property after that date, the right to foreclose on the property that was in his possession shall not be treated as having accrued for the purposes of this subsection 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 that is subject to the mortgage or charge shall not be treated as

accruing so long as that property comprises any future interest or any life insurance policy that has not matured or been determined.

(4) Nothing in this section (or section 41) applies to a foreclosure action in respect of mortgaged land; but the provisions of this Act relating to action to recover land apply to such a foreclosure action.

Interest
arrears on
mortgage,
etc.

41. (1) Subject to subsections (2) and (3), 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 may be brought after the expiration of 6 years from the date on which the interest became due.

(2) Where

- (a) a prior mortgagee or subsequent incumbrancer has been in possession of the property charged; and
- (b) an action is brought within one year of the discontinuance of that possession by the subsequent incumbrancer,

the subsequent incumbrancer may recover by that action all the arrears of interest which fell due during the period of possession by the prior incumbrancer of damages in respect of those arrears, notwithstanding that the period exceeded 6 years.

(3) Where

- (a) the property subject to the mortgage or charge comprises any future interest or life insurance policy; and
- (b) in respect of that property it is a term of the mortgage or charge that arrears of interest are to be treated as part of the principal sum of money secured by the mortgage or charge,

interest shall not be treated as becoming due before the right to recover the principal sum of money has accrued or is treated as having accrued.

*Trust Property or Personal Estate of
Deceased Persons*

42. (1) Subject to subsections (3) and (4), 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, may not be brought after the expiration of 6 years from the date on which the right of action accrued.

Limitation:
trust
property.

(2) For the purposes of subsection (1), the right of action accrues when the interest fell into possession.

(3) No period of limitation prescribed by this Act applies 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 trustee was a party or privy; or
- (b) to recover from the trustee trust property or the proceeds of trust property in the possession of the trustee, or previously received by the trustee and converted to his use.

(4) When 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 (3)(b) to recover that property or its proceeds after the expiration of the period of limitation prescribed by this Act for bringing an action to recover trust property is limited to the excess over his proper share.

(5) Subsection (4) only applies if the trustee acted honestly and reasonably in making the distribution.

(6) No beneficiary as against whom there would be a good defence under this Act derives 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 has been pleaded in defence.

Limitation:
personal
estate of
deceased
person.

- 43.** Subject to section 42,
- (a) no action in respect of any claim to the personal estate of a deceased person or to any share or interest in any such estate, whether under a will or on intestacy, may be brought after the expiration of 10 years from the date on which the right to receive the share or interest accrued; and
 - (b) no action to recover arrears of interest in respect of any legacy, or damages in respect of such arrears, may be brought after the expiration of 6 years from the date on which the interest became due.

Account

Limitation:
account.

- 44.** An action for an account may not be brought after the expiration of any time limit under this Act which is applicable to the claim that is the basis of the duty to account.

Judgment

Limitation:
enforcement
of
judgments.

- 45.** (1) No action may be brought upon any judgment after the expiration of 6 years from the date on which the judgment became enforceable.

(2) No arrears of interest in respect of any judgment debt may be recovered after the expiration of 6 years from the date on which the interest became due.

PART II

EXTENSION OR EXCLUSION OF ORDINARY
TIME LIMITS

Disability

Extension of
limitation:
disability.

- 46.** (1) Subject to this section, if on the date when any right of action for which a period of limitation is prescribed by this Act accrued, the person to whom it accrued was under a disability, the

action may be brought at any time before the expiration of 6 years from the date when he ceased to be under a disability or died, whichever first occurred, notwithstanding that the period of limitation has expired.

(2) This section does not affect any case where the right of action referred to in subsection (1) first accrued to a person, not under a disability through whom the person under a disability claims.

(3) 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 may be allowed by reason of the disability of the second person.

(4) No action to recover land or money charged on land may be brought by virtue of this section by any person after the expiration of 30 years from the date on which the right of action accrued to that person or some other person through whom he claims.

(5) If the action is one to which section 19 applies, subsection (1) has effect as if for the words "6 years" there were substituted the words "2 years".

(6) If the action is one to which sections 20, 21 and 22(3) apply, subsection (1) has effect as if for the words "6 years" there were substituted the words "3 years".

47. (1) Where

Notice to
proceed.

- (a) a person has a cause of action in relation to which he is under a disability arising from a mental disorder; and
- (b) a guardian has been appointed in respect of that person or the property of that person,

a person against whom the cause of action lies may give to the guardian a notice to proceed in accordance with this section.

(2) A notice to proceed under subsection (1) shall

- (a) be in writing;

- (b) be addressed to the guardian concerned;
- (c) show the name of the person under a disability;
- (d) state the circumstances out of which the cause of action may arise or may be claimed to arise with such particularity as is necessary to enable the guardian to investigate the question whether the person under a disability has the cause of action;
- (e) give warning that a cause of action arising out of the circumstances stated in the notice is liable to be barred by this Act; and
- (f) be signed by the person giving notice.

(3) Minor deviations from the requirements of subsection (2), not affecting the substance nor likely to mislead, do not invalidate a notice to proceed.

(4) Where a notice to proceed is served pursuant to section (1), the person under the disability referred to in that subsection shall be taken, for the purposes of this Act, to cease to be under a disability on the day on which the notice is so served.

(5) A notice to proceed under this section is not a confirmation and is not an admission for any purpose by the person giving the notice.

- (6) A notice to proceed to be given to a guardian may be given by
- (a) delivering the notice to proceed to the guardian may be given by;
 - (b) leaving the notice to proceed at the usual or last-known place of business or residence of the guardian; or
 - (c) posting the notice to proceed by registered mail to the guardian at the usual or last-known place of business or residence of the guardian.

(7) In this section "guardian", in relation to person means a person who is acting as guardian *ad litem* in relation to a person suffering from a mental disorder within the meaning of the *Mental Health Act*.

Acknowledgment and Part Payment

48. (1) Subsections (2) to (4) apply where 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 has accrued.

Fresh accrual of right on acknowledgment or part payment.

(2) If the person in possession of the land or personal property referred to in subsection (1) acknowledges the title of the person to whom the right of action has accrued the right shall be treated as having accrued on and not before the date of acknowledgment.

(3) In the case of a foreclosure or other action by a mortgagee, if

- (a) the person in possession of the land or personal property referred to in subsection (1), or
- (b) the person liable for the mortgage debts,

makes any payment in respect of the debt, whether of principal or interest, the right accrued on and not before the date of payment.

(4) Where a mortgagee who is by virtue of the mortgage in possession of any mortgaged land,

- (a) receives any sum in respect of the principal or interest of the mortgage debt; or
- (b) 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 12 years from the date of the payment or acknowledgment.

(5) Subject to subsection (6), where any right of action has accrued to recover

- (a) any debt or other liquidated pecuniary claim; or
- (b) any claim to the personal estate of a deceased person or to any share or interest in any such estate,

and the person liable or accountable for the claim makes any payment in respect of it, the right shall be treated as having accrued on and not before the date of the acknowledgment or part payment.

(6) A payment of a part of the rent or interest due at any time does not extend the period for claiming the remainder then due, but any payment of interest is a payment in respect of the principal debt.

(7) Without prejudice to subsection (6), 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, is not received by any subsequent acknowledgment or payment.

Form of
acknowledg-
ment and
part
payment.

49. (1) To be effective for the purposes of section 48, an acknowledgment must be in writing and signed by the person making it.

(2) For the purposes of section 48, an acknowledgment or payment

- (a) may be made by the agent of the person by whom it is required to be made under that section; and
- (b) must 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
acknowledg-
ment or part
payment on
third parties.

50. (1) An acknowledgment of the title to any land or mortgaged personalty by any person in possession of it binds all other persons in possession during the ensuing period of limitation.

(2) A payment in respect of a mortgaged debt

- (a) by the mortgagor or any other person liable for the debt; or
- (b) by any person in possession of the mortgaged property,

so far as any right of the mortgagee to foreclose or otherwise to recover the property is concerned, binds all other persons in possession of the mortgaged property during the ensuing period of limitation.

(3) Where 2 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 only binds him and his successors and does not bind any other mortgagee or his successors.

(4) Where in a case to which subsection (3) is applicable 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 is 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.

(5) Where there are 2 or more mortgagors, and the title or equity of redemption of one of the mortgagors is acknowledged as mentioned in this section the acknowledgment is to be treated as having been made to all the mortgagors.

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

(7) A payment made in respect of any debt or other liquidated pecuniary claim binds all persons liable in respect of the debt or claim.

(8) 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 in any such estate, or a payment by one of several personal representatives in respect of any such claim, binds the estate of the deceased person.

(9) In this section, "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, bankruptcy, the disposition of property the determination of a limited estate or interest in settled land or otherwise.

Fraud, Concealment and Mistake

Limitation:
postponed
by fraud,
concealment
or mistake.

51. (1) Subject to subsection (4), where in an action for which a period of limitation is prescribed by this Act

- (a) the action is based upon the fraud of the defendant;
- (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 does 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) References in subsection (1) to the defendant include references to the defendant's agent and to any person through whom the defendant claims and that person's agent.

(3) For the purposes of subsections (1) and (2), 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.

(4) Nothing in this section enables 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.

(5) 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, 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 had reasons to believe that the mistake had been made.

*Exclusion of Time Limit in Respect of
Personal Injuries or Death*

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

Discretion of
court to
exclude time
limit.

- (a) the provisions of section 20 or 22 prejudice the plaintiff or any person whom he represents; or
- (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 do not apply to any specified cause of action to which the action relates.

(2) The court may not under this section refuse to apply section 22(1) and (2) except where the reason why the person injured could no longer maintain an action was because of the time limit in section 20.

(3) A direction by the court not to apply the provisions of section 22(1) and (2) operates to exclude the application of the provisions to the same effect in section 3 of the *Accident Compensation (Reform) Act*, in the case of fatal accidents. Cap. 193A.

Considerations for exercise of court's discretion.

53. (1) In acting under section 52 the court must 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 20 or, as the case may be, by section 22;
- (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; and
- (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 might have received.

(2) Where the person injured died when, because of section 20, he could no longer maintain an action and recover damages in respect of the injury, the court must have regard in particular to the length of, and the reasons for, the delay on the part of the deceased.

(3) In a case under subsection (2) 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 (1) has effect with appropriate modifications, and has effect in particular as if references to the plaintiff included references to any person whose date of knowledge is or was relevant in determining a time limit.

(4) References in this section and section 52 to section 20 include references to that section as extended by any provision of this Part or Part III.

*Latent Damage to Property and
Economic Loss*

54. (1) Subject to subsection (2), where a person has a cause of action for latent damage to property or for economic loss in respect of such damage to property, the court may, Latent damage to Property.

- (a) if the court considers it just and reasonable to do so;
- (b) whether or not the limitation period applicable to that cause of action has expired; and
- (c) whether or not an action for such damage or loss has been commenced,

extend the limitation period in respect of which an action on that cause of action may be brought for such further period not exceeding 15 years commencing on the day on which the act or omission that gave rise to the cause of action occurred as the court thinks fit.

(2) In exercising the powers conferred on it by subsection (1), the court shall have regard to all the circumstances of the case including, the following

- (a) the length of time between the occurrence of the damage or loss and the time at which the damage or loss might reasonably have been discovered by the plaintiff;
- (b) the extent to which the plaintiff, after he became aware of the damage or loss, acted promptly and reasonably;
- (c) the extent to which an extension of the limitation period would, or would be likely to result in prejudice to the defendant;

- (d) the conduct of the defendant after the relevant cause of action accrued to the plaintiff, including the extent to which the defendant took steps to make available to the plaintiff means of ascertaining facts in relation to the cause of action;
- (e) the steps, if any, taken by the plaintiff to obtain, for the purposes of the cause of action, legal or other expert advice and the nature of any such advice.

PART III

Miscellaneous

Application
of Act.

55. This Act applies to arbitrations as it applies to actions in the High Court.

Arbitration.

56. (1) This section applies to an arbitration under an Act as well as to an arbitration pursuant to an arbitration agreement.

(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 purposes of this Act, whether in its application to arbitrations or 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 purposes of this Act, an arbitration shall be treated as having 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 the arbitration agreement provides that the reference must be to a person named or designated in the agreement, when one party to the arbitration serves on the other party a notice requiring him to submit to the person so named or designated.

- (4) A notice referred to in subsection (3) may be served
- (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 in Barbados of that person;
 - (c) by sending it by post in a registered letter addressed to that person at his usual or last known place of abode in Barbados; or
 - (d) in any other manner provided in the arbitration agreement.
- (5) Where the High Court
- (a) orders that an award be set aside; or
 - (b) 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 shall be excluded in computing the time prescribed by this Act for the commencement of proceedings, including arbitration, with respect to the dispute referred.

(6) Subsections (3) and (4) 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 order, scheme, rule, regulation or by-laws made under the Act as relate to the arbitration.

(7) In this section and section 55 "arbitration", "arbitration agreement" and "award" have the same meaning as in the *Arbitration Act*. Cap. 110.

57. (1) In this section

- (a) a "new claim" means
 - (i) any claim by way of set-off or counterclaim, and
 - (ii) any claim involving

New claims:
rules of
court.

(A) the addition or substitution of a new cause of action,

(B) the addition or substitution of a new party;

(b) "third party proceedings" means any proceedings brought in the course of any action by any party to the action against a person not previously a party to the action, other than proceedings brought by joining any such person as defendant to any claim already made in the original action by the party bringing the proceedings;

(c) "rules of court" means rules made under

Cap. 117A.

(i) section 82 of the *Supreme Court of Judicature Act*, or

Cap. 116A.

(ii) section 268 of the *Magistrates' Courts Act*.

(2) For the purposes of this Act, a new claim made in the course of any action shall be deemed to be a separate action and to have been commenced

(a) in the case of a new claim made in or by way of third party proceedings, on the date on which those proceedings, were commenced; and

(b) in the case of any other new claim, on the same date as the original action.

(3) Except as provided by sections 52 and 53 and by rules of court, no court may allow a claim within subsection (2)(b), other than an original set-off or counterclaim, to be made in the course of any action after the expiry of any time limit under this Act which would affect a new action to enforce that claim.

(4) For the purposes of subsection (3), a claim is an original set-off or an original counterclaim if it is a claim made by way of set-off or, as the case may be, by way of counterclaim by a party who has not previously made any claim in the action.

(5) Rules of court may provide for allowing a new claim to which subsections (3) and (4) apply to be made as therein mentioned, but if only if the conditions specified in subsection (6) are satisfied and subject to any further restrictions imposed by the rules.

(6) The conditions referred to in subsection (5) are the following

- (a) in the case of a claim involving a new cause of action, if the new cause of action arises out of the same facts or substantially the same facts as are already in issue or any claim previously made in the original action; and
- (b) in the case of a claim involving a new party, if the addition or substitution of the new party is necessary for the determination of the original action.

(7) The addition or substitution of a new party is not, for the purposes of subsection (6)(b), necessary for the determination of the original action unless

- (a) the new party is substituted for a party whose name was given in any claim made in the original action in mistake for the new party's name; or
- (b) any claim already made in the original action cannot be maintained by or against an existing party unless the new party is joined or substituted as plaintiff or defendant in that action.

(8) Subject to subsection (5), rules of court may provide for allowing a party to any action to claim relief in a new capacity in respect of a new cause of action notwithstanding that he had no title to make that claim at the date of the commencement of the action.

(9) Subsection (8) does not affect any provision in rules of court for allowing a party to claim relief in a new capacity without adding or substituting a new cause of action.

(10) Subsections (3) to (9) apply to a new claim made in the course of third party proceedings as if those proceedings were the original action, and subject to such other modifications as may be prescribed by rules of court in any case or class of case.

Specific
performance
and injunc-
tion.

58. The following time limits do not apply to any claim for specific performance of a contract, for an injunction or for other equitable relief

- (a) the time limit under section 6 for actions founded on tort;
- (b) the time limit under section 14 for actions founded on simple contract;
- (c) the time limit under section 16 for actions to enforce awards where the submission is not by an instrument under seal;
- (d) the time limit under section 17 for actions on a specialty;
- (e) the time limit under section 18 for actions to recover a sum recoverable by virtue of any enactment; and
- (f) the time limit under section 45 for actions to enforce a judgment.

Crown.

59. (1) Subject to this Act and without prejudice to section 61, this Act applies to proceedings by or against the Crown in like manner as it applies to proceedings between subjects.

- (2) Notwithstanding subsection (1), this Act does not apply to
 - (a) any proceedings by the Crown for the recovery of any tax or duty or interest on any tax or duty;

Cap. 66.

- (b) any forfeiture proceedings under the *Customs Act* or any other enactment; or
 - (c) any proceedings in respect of the forfeiture of a ship.

Transitional.

60. (1) Nothing in this Act

- (a) enables any action barred by this Act or any other enactment to be brought after the 1st October, 1997; or

- (b) applies to any action brought upon a right of action which accrued before the 1st October, 1997 or to any arbitration in which a party to the arbitration relies upon such a right of action.

(2) The time for bringing an action to which section 20 applies in respect of a cause of action that has accrued before the 1st October, 1997 shall, if it has not already expired, expire at the time when it would have expired if that section and sections 52 and 53 had at all material times been in force.

(3) Sections 22, 23, 52 and 53 do not apply to an action under the *Accident Compensation (Reform) Act* where the death occurred before the 1st October, 1997 and in any such case the time limit for bringing an action expires at the time when it would have expired apart from those sections. Cap. 193A.

(4) Where an action has been commenced and is pending at the 1st October, 1997, that action shall be continued to its final determination in accordance with the law in force immediately before that date.

61. This Act does not apply

Saving.

- (a) to any action or arbitration for which a period of limitation is prescribed by or under any other enactment; or
- (b) 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 or under any such other enactment.

62. The *Limitation Act, 1623* of the United Kingdom Parliament ceases to have effect in Barbados. Repeal.
21 James
1 C.16.