

Limitation Act 1974

An Act to consolidate with amendments certain enactments relating to the limitation of actions and arbitrations
[Royal Assent 24 January 1975]

Be it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:

PART I - Preliminary

1. Short title and commencement

(1) This Act may be cited as the Limitation Act 1974.

(2) This Act shall commence on 1st January 1975.

2. Interpretation

(1) In this Act, unless the contrary intention appears -

action includes any proceeding in a court of law;

commencement day means the day on which the Limitation Amendment Act 2004 commences;

date of discoverability, in the case of an action for damages for personal injuries, means the date when the plaintiff knew or ought to have known that personal injury or death -

(a) had occurred; and

(b) was attributable to the conduct of the defendant; and

(c) in the case of personal injury, was sufficiently significant to warrant bringing proceedings;

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 an incorporeal hereditament;

legal owner, in relation to settled land, means the tenant for life within the meaning of the Settled Land Act 1884 having a legal estate therein;

parent, in relation to an infant, includes a person appointed, according to law, to be his guardian by deed or will, or by order of a court of competent jurisdiction;

personal property does not include chattels real;

rent includes a rentcharge and rents-service;

rentcharge means any annuity or periodical sum of money charged upon or payable out of land, except a rents-service or interest on a mortgage of land;

settled land has the same meaning as it has for the purposes of

the Settled Land Act 1884;

tenant for life, in relation to settled land, has the same meaning as it has for the purposes of the Settled Land Act 1884 and includes any person having the powers of a tenant for life under that Act;

trust and trustee have the same meanings as they have for the purposes of the Trustee Act 1898.

(2) For the purposes of this Act a person is deemed to be under disability while -

(a) he is an infant;

(b) he is incapable, by reason of mental disorder, of managing his property or affairs; or

(c)

(3) For the purposes of subsection (2)(b) but without prejudice to the generality thereof a person shall be conclusively presumed to be incapable, by reason of mental disorder, of managing his property or affairs -

(a) while he is subject to an initial order, a continuing care order or a community treatment order under the Mental Health Act 1996; or

(b) while a guardianship order or an administration order in respect of his estate is in force under the Guardianship and Administration Act 1995.

(c)

(4) Subject to subsection (5), a person shall be deemed to claim through another person if he became entitled by, through, or under 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.

(5) A person becoming entitled to an estate or interest by virtue of a special power of appointment shall not be deemed to claim through the appointor.

(6) 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.

(7) 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.

(8) 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 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; and

_ (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 II - Periods of Limitation

Division 1 - Preliminary

3. General provisions subject to special provisions relating to disability, acknowledgement, fraud, &c.

The provisions of this Part have effect subject to the provisions of Part III.

Division 2 - Actions in contract, tort, &c.

4. General period in actions of contract, tort, &c.

_ (1) _ Except as otherwise provided in this Division, the following actions shall not be brought after the expiration of 6 years from the date on which the cause of action accrued, that is to say:

_ (a) _ actions founded on simple contract (including contract implied by law) or founded on tort, including actions for damages for a breach of statutory duty;

_ (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 an enactment, other than a penalty or forfeiture or a sum by way of penalty or forfeiture.

_ (2) _ An action for an account shall not be brought in respect of any matter that arose more than 6 years before the commencement of the action.

_ (3) _ An action upon a specialty shall not be brought after the expiration of 12 years from the date on which the cause of action accrued; but this subsection does 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 a judgment after the expiration of 12 years from the date on which the judgment became enforceable.

_ (5) _ Except as otherwise provided in this Act, an action shall not be brought to recover any arrears of interest in respect of any sum of money, whether payable in respect of a specialty, judgment, legacy, or otherwise, or any damages in respect of any such arrears, after the expiration of 6 years after they became due.

_ (6) _ An action to recover any penalty or forfeiture, or any sum by way of penalty or forfeiture, recoverable by virtue of an enactment (not being a fine imposed on a conviction for an offence) shall not be brought after the expiration of 2 years from the date on which the cause of action accrued.

_ 5. Actions in respect of personal injuries incurred before commencement day _

_ (1) _ An action for damages for negligence, nuisance, or breach of duty (whether that duty exists by virtue of a contract or a provision made by or under an enactment or independently of any contract or any such provision) where the damages claimed by the plaintiff for the negligence, nuisance, or breach of duty consist of, or include, damages in respect of personal injuries to any person shall not, subject to this section, be brought after the expiration of a period of 3 years from the date on which the cause of action accrued.

_ (1A) _ This section applies only to an action where the cause of action accrued before the commencement day.

_ (2) _ An action for damages under the Fatal Accidents Act 1934 in respect of the death of a person shall be deemed to be such an action as is referred to in subsection (1), the cause of which accrued on the death of that person.

_ (3) _ Notwithstanding anything in the foregoing provisions of this section, upon application being made by the person claiming the damages referred to therein a judge, after hearing such of the persons likely to be affected by that application as he may think fit, may, if he thinks that in all the circumstances of the case it is just and reasonable so to do, extend the period limited for the bringing of the action for such period as he thinks necessary, but so that the period within which the action may be brought does not exceed a period of 6 years from the date on which the cause of action accrued.

_ (4) _ The powers conferred on a judge by subsection (3) may be exercised notwithstanding that the period limited by subsection (1) for the bringing of the action may have expired.

_ (5) _ For the purposes of this section personal injuries include any disease and any impairment of a person's physical or mental condition.

_ 5A. Actions in respect of personal injuries incurred on or after commencement day _

_ (1) _ This section applies only to an action where the cause of action accrues on or after the commencement day.

_ (2) _ For the purpose of this section, "personal injury" includes any disease and any impairment of a person's physical or mental condition.

(3) An action for damages for negligence, nuisance or breach of duty (whether that duty exists by virtue of a contract or a provision made by or under an enactment or independently of any contract or any such provision), where the damages claimed by the plaintiff for the negligence, nuisance or breach of duty consist of, or include, damages in respect of personal injuries to any person, must not be brought after the expiration of whichever of the following periods of limitation is the earlier:

(a) 3 years commencing on the date of discoverability;

(b) 12 years commencing on the date of the act or omission which it is alleged resulted in the personal injury or death that is the subject of the action.

(4) An action for damages under the Fatal Accidents Act 1934 in respect of the death of a person is taken to be an action referred to in subsection (3).

(5) A judge may extend the period of limitation referred to in subsection (3)(b) to the expiry of 3 years commencing on the date of discoverability having regard to the justice of the case and, in particular to -

(a) whether the passage of time has prejudiced a fair trial of the action; and

(b) the nature and extent of the plaintiff's loss; and

(c) the nature of the defendant's conduct.

(6) The periods of limitation specified in subsection (3)(a) and (b) apply to the personal representative of a deceased person commencing at the earliest of the following times:

(a) the date when the deceased person knew that personal injury -

(i) had occurred; and

(ii) was attributable to the conduct of the defendant; and

(iii) was sufficiently significant to warrant bringing proceedings;

(b) the date when the personal representative was appointed, if he or she knew or ought to have known the date of discoverability at that time;

(c) the date when the personal representative first knew or ought to have known the date of discoverability, if he or she acquired that knowledge or ought to have acquired that knowledge after being appointed to that position.

6. Conversion, &c., of goods

(1) Where -

(a) any cause of action in respect of the conversion or wrongful detention of a chattel has accrued to any person; and

(b) a further conversion or wrongful detention of that chattel

takes place before he recovers possession of the chattel -

no action shall be brought in respect of that further conversion or detention after the expiration of 6 years from the accrual of the cause of action in respect of the original conversion or detention.

(2) Where -

(a) a cause of action has accrued to any person in respect of the conversion or wrongful detention of a chattel;

(b) the period limited for the bringing of that action and any action in respect of any further conversion or wrongful detention of that chattel has expired; and

(c) he has not during that period recovered possession of the chattel -

his title to the chattel is extinguished.

7. Contribution between tortfeasors

(1) Where an action is brought against a person in respect of any damage nothing in this Act shall be taken to prejudice or affect the operation of the Wrongs Act 1954 in relation to an action for contribution in respect of that damage.

(2) In this section damage has the same meaning as it has for the purposes of the Wrongs Act 1954.

8. Shipping

(1) Section 4(1) applies to an action to recover seamen's wages, but otherwise the foregoing provisions of this Division do not apply to a cause of action within the Admiralty jurisdiction of the Courts of this State that is enforceable in rem.

(2) An action to enforce a claim or lien against a vessel or her owners in respect of damage or loss to another vessel, her cargo or freight, or any property on board her, or damage for loss of life or personal injuries suffered by any person on board her, caused by the fault of the former vessel, whether that vessel be wholly or partly in fault, shall not be brought after the expiration of 2 years from the date on which the damage, loss, or injury was caused.

(3) An action to enforce a claim or lien in respect of any salvage services shall not be brought after the expiration of 2 years from the date on which the services were rendered.

(4) For the purposes of an action in a court, the court may extend the period mentioned in subsection (2) or subsection (3) to such extent and on such terms as it thinks fit, and shall, if it is satisfied that there has not, within that period, been a reasonable opportunity of arresting the defendant vessel within the jurisdiction of the court, or within the territorial waters of the country to which the plaintiff's vessel belongs or in which the plaintiff resides or has his principal place of business, extend that period to an extent sufficient to give a reasonable opportunity of so arresting the defendant vessel.

(5) A period may be extended under this section

notwithstanding that it has expired.

(6) In this section -

freight includes passage money and hire;

vessel means a vessel used in navigation, other than air navigation, and includes a barge, lighter, or like vessel,

and a reference in this section to damage or loss caused by the fault of a vessel extends to any salvage or other expenses, consequent upon that fault, recoverable at law by way of damages.

(7) Part III does not apply to a cause of action to which subsection (2) or subsection (3) applies.

9. Claims in equity

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

Division 3 - Actions in respect of land, rent, money secured by charges, trust property, &c.

10. Adverse possession of land

(1) No action shall be brought by the Crown to recover any land after the expiration of 30 years from the date on which the right of action accrued to the Crown or, if it accrued to some person through whom the Crown claims, to that person.

(2) No action, not being an action to which subsection (1) applies, shall be brought by any person to recover any land after the expiration of 12 years from the date on which that right of action accrued to him or, if it accrued to some person through whom he claims, to that person.

(3) If the right of action referred to in subsection (2) first accrued to the Crown, 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 of 12 years from the date on which the right of action accrued to some person other than the Crown, whichever period first expires.

(4) Subsections (1) and (2) do not apply to any action brought by the Crown to recover any land, or brought by any other person to recover any land held by him for a public purpose, if the land sought to be recovered -

(a) has at any time been -

(i) reserved or set out as a road under any Act or in connection with the alienation of Crown land;

(ii) reserved from sale under any Act relating to Crown lands or dedicated under any Act for any public purpose; or

(iii) reserved in any Crown grant; or

(b) forms any part of the foreshore or the bed of the sea or of any water referred to in subsection (5).

(5) For the purposes of subsection (4) foreshore means -

(a) the shore and bed of the sea or of any tidal water below the line of medium high tide between the spring tides and the neap tides; and

(b) where any Crown land has been reserved or excepted from sale as a reserve of any kind beside any lake, river, stream, or other water, any land lying between the reserve and that lake, river, stream, or other water.

(6) This section does not apply to an action for the recovery of part of a block the division of which into that part and the remainder thereof cannot lawfully be made by a conveyance because either the part or the remainder, or both, have not the qualities of a minimum lot, unless either -

(a) the block itself has not the qualities of a minimum lot; or

(b) of that part and the remainder each is either -

(i) an area of land that has the qualities of a minimum lot; or

(ii) occupied as part of land adjoining the block.

(7) In subsection (6) block has the same meaning as it has for the purposes of the Local Government (Building and Miscellaneous Provisions) Act 1993, and for the purposes of that subsection an area of land shall be deemed to have the qualities of a minimum lot if it has the qualities of a minimum lot within the meaning of Division 1 of Part 3 of that Act.

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

(1) Where the person bringing an action to recover land, or some person through whom he claims -

(a) has been in possession thereof; and

(b) has, while entitled thereto, been dispossessed or discontinued his possession -

the right of action shall be deemed to have accrued on the date of discontinuance or dispossession.

(2) Where a person brings an action to recover any land of a deceased person, whether under a will or intestacy, and -

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

(b) the deceased person 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 the death of that deceased person.

(3) Where a person brings an action to recover land, and -

(a) the land so sought to be recovered is 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 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

(b) 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.

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

(1) Subject to this section, the right of action to recover land shall, in a case where -

(a) the estate or interest claimed 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 -

be deemed to have accrued on the date on which the estate or interest became an estate or interest in possession.

(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 12 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.

(3) Where the Crown is entitled to the succeeding estate or interest referred to in subsection (2) that subsection has effect with the substitution -

(a) for the reference therein to 12 years of a reference to 30 years; and

(b) for the reference therein to 6 years of a reference to 12 years.

(4) The foregoing provisions of this section do not apply to an estate or interest that falls into possession on the determination of an entailed interest that might have been barred by the person entitled to the entailed interest.

(5) No person shall bring an action to recover an 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 the 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.

(6) Where a person is entitled to an estate or interest in land in possession, and -

(a) while so entitled, is entitled to a future estate or interest in that land; and

(b) 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.

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

(1) Subject to section 24(1), the provisions of this Act apply to equitable interests in land, including interests in the proceeds of sale of land held on 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 the legal owner of settled land his legal estate therein is not extinguished so long as the right of action to recover the land of any person entitled to a beneficial interest therein either has not accrued or has not been barred by this Act; and the legal estate accordingly remains vested in the legal owner and devolves as if his right to bring the action to recover the land had not been barred by this Act; but, when every right of action to recover the land of any person entitled to a beneficial interest therein has been barred by this Act, that legal estate is extinguished.

(3) Where any land is held upon trust (including 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 so long as the right of action to recover the land of any person entitled to a beneficial interest therein or in the proceeds of sale either has not accrued or has not been barred by this Act; but when every such right of action has been so barred the estate of the trustees is extinguished.

(4) Where any land is held upon trust (including 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 thereof whose right of action has not been barred by this Act, notwithstanding that the right of action of the trustees would, apart from this subsection, have been barred by this Act.

(5) Where any settled land or any land held on trust for sale is in possession of a person entitled to a beneficial interest therein or in the proceeds of the sale thereof, 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 that possession to the legal owner thereof or to any other person entitled to a beneficial interest in the land or in the proceeds of the sale thereof.

14. Forfeiture and breach of condition

(1) Subject to subsection (2), a right of action to recover land by virtue of a forfeiture or breach of condition accrues on the date on which the person in whom the right is vested, or any person through whom he claims, first discovers or may, with reasonable diligence, discover the facts giving the right of forfeiture or showing that the condition is broken.

(2) If such a right of action as is referred to in subsection (1) has accrued to a person entitled to an estate or interest in reversion or remainder or any other future estate or interest and the land was not recovered by virtue thereof, the right of action to recover that land shall not be deemed to have accrued to that person until his estate or interest fell into possession, as if the forfeiture or breach of condition had not occurred.

15. Certain tenancies

(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 its determination.

(2) Subject to subsection (3), 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 its determination, except that where rent is subsequently 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 a person is in possession of land by virtue of a lease in writing by which a rent amounting to the yearly sum of not less than \$100 is reserved, and -

(a) the rent is received by some person wrongly claiming to be entitled to the land in reversion immediately expectant on the determination of the lease; and

(b) no rent is subsequently received by the person rightfully so entitled -

the right of action of the person last-mentioned to recover the land shall be deemed to have accrued at the date when the rent was first received by the person wrongfully claiming to be entitled thereto and not at the date of the determination of the lease.

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

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

(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 (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 until the land is again taken into adverse possession.

(3) For the purposes of this section -

(a) the possession of land subject to a rentcharge by a person (other than the person entitled to the rentcharge) who does not pay the rent shall be deemed adverse possession of the rentcharge; and

(b) receipt of rent under a lease by a person wrongfully claiming, in accordance with section 15(3), the land in reversion shall be deemed to be adverse possession of the land.

(4) Where any one or more of several persons entitled to any land or rent as joint tenants or tenants in common have been in possession or receipt of -

(a) the entirety of the land or profits thereof, or the rent, for his or their own benefit or for the benefit of any other person not entitled thereto, or any share therein; or

(b) more than his or their undivided share or shares therein, for his or their own benefit or for the benefit of any person not entitled to a share therein -

that possession or receipt shall be deemed not to have been the possession or receipt of or by the other persons entitled as joint tenants or tenants in common, but shall be deemed to be adverse possession of the land.

16A. Protection of bona fide purchasers for value without notice

Where a right of action has accrued to any person that action cannot be brought by that person or his successors in title against any person who has bona fide purchased a legal estate in land for value without notice of the circumstances which gave rise to the accrual of the right of action.

17. Cure of defective disentailing assurance

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 person takes possession of the land by virtue of the assurance and that person or any other person (other

than a person entitled to possession by virtue of a settlement) is in possession of the land for a period of 12 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 the estates and interests taking effect on the determination of the entailed interest, then, at the expiration of that period, the assurance shall operate and shall be deemed always to have operated, to bar the issue in tail and those estates and interests.

18. Limitation on redemption actions

When a mortgagee of land has been in possession of any mortgaged land for a period of 12 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.

19. Right of action not preserved by formal entry or continual claim

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 formal entry thereon, and no continual or other claim upon or near any land preserves any right of action to recover the land.

20. Administration to date back to death

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 letters of administration.

21. Extinction of title after expiration of period

Subject to section 13, at the expiration of the period prescribed by this Act for any person to bring an action to recover land (including a redemption action or an action to compel discharge of a mortgage) the title of that person to the land shall be extinguished.

22. Action to recover rent

No action shall be brought to recover arrears of rent or damages in respect thereof after the expiration of 6 years from the date on which the arrears became due.

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

(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 12 years from the date when the right to receive the money accrued, notwithstanding that the money is by any Act or instrument expressed to be a charge until paid.

(2) Subject to subsection (3), no foreclosure action in respect of mortgaged personal property shall be brought after the expiration of 12 years from the date on which the right to foreclosure accrued.

(3) Notwithstanding anything in subsection (2), if, after the

expiration of 12 years from the date on which the right to foreclosure accrued, 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 that subsection, be deemed to have accrued until the date on which his possession discontinued.

_ (4) _ 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.

_ (5) _ Nothing in this section applies to a foreclosure action in respect of mortgaged land, but the provisions of this Act relating to actions to recover land shall apply to such an action.

_ (6) _ This section does not apply to the recovery by any statutory authority of any rates or other moneys which by any Act are and until paid remain a charge on land.

_ (7) _ Notwithstanding anything in section 4(5) -

_ (a) _ where a prior mortgagee or other encumbrancer 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 encumbrancer, the subsequent encumbrancer may recover by that action all the arrears of interest which fell due during the period of possession by the prior encumbrancer or damages in respect thereof notwithstanding that the period exceeded 6 years; and

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

_ (8) _ No mortgagee shall, after the date on which his right to bring an action against any person 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, is barred by this Act, exercise, as against that person or a person claiming through him, a power -

_ (a) _ of sale, lease, or other disposition and realization of the mortgaged property;

_ (b) _ to appoint a receiver; or

_ (c) _ otherwise affecting the mortgaged property.

23A. Limitation on actions arising from options or rights of pre-emption in respect of land

Where an option to purchase land or a right of pre-emption in respect of land has been granted by an instrument that does not provide a time within which the option or right is to be exercised, an action arising from that option or right is not to be brought after the expiration of one year from the date on which the option or right was granted.

24. Limitation of actions in respect of trust properties

(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 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 to subsection (1), an action by a beneficiary to recover trust property or in respect of any breach of trust, not being an action for which a period of limitation is prescribed by any other provision of this Act, shall not be brought after the expiration of 6 years from the date on which the right of action accrued.

(3) For the purposes of subsection (2) a 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 falls into possession.

(4) No beneficiary 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.

25. Limitation of actions claiming personal estate of a deceased person

Subject to section 24(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 an intestacy, shall be brought after the expiration of 12 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 6 years from the date on which the interest became due.

Division 4 - Action not maintainable to recover certain amounts

25A. Interpretation

In this Division -

invalidity, in relation to taxation legislation, includes invalidity of an application of the legislation;

mistake means mistake of law or fact as to the validity or invalidity of any taxation legislation;

public authority means any body corporate established under an enactment or in the exercise of a prerogative right of the Crown to administer or control any department, business, undertaking or public institution on behalf of the State;

tax includes a fee, charge or other statutory impost;

taxation legislation means -

- _ (a) _ an Act imposing or relating to a tax; or
- _ (b) _ a provision of that Act; or
- _ (c) _ a regulation made under that Act; or
- _ (d) _ a provision of a regulation made under that Act.

25B. Application

This Division applies notwithstanding any other law to the contrary, whether made or in force before or after the commencement of the Limitation Amendment Act 1993.

25C. Action for recovery of certain money

_ (1) _ An action is not maintainable against the Crown, an instrumentality of the Crown or a public authority to recover money paid by way of a tax or purported tax or under a mistake unless the person bringing the action (in this section called "the claimant") satisfies the court hearing the action -

_ (a) _ that the claimant has not charged to or recovered from, and will not charge to or recover from, any other person any amount in respect of the whole or any part of the amount so paid; or

_ (b) _ if the claimant has so charged to or recovered from any other person any such amount, that the claimant has reimbursed, or has contracted to reimburse, each other person for the amount claimed in the action.

_ (2) _ A person referred to in subsection (1) (b) may sue for and recover as a debt due and payable by the claimant any amount which the claimant has satisfied the court that the claimant has contracted to reimburse to that person.

25D. No action can be brought after certain period

_ (1) _ If, before the commencement of the Limitation Amendment Act 1993, money was paid by way of a tax or purported tax or under a mistake, an action for the recovery of the money may not be brought after whichever is the earlier of -

_ (a) _ the expiration of the limitation period that would have applied if the Limitation Amendment Act 1993 had not been enacted; or

_ (b) _ the expiration of the period of 6 months from the commencement of the Limitation Amendment Act 1993.

_ (2) _ If, after the commencement of the Limitation Amendment Act 1993, money was paid by way of a tax or purported tax or under a mistake, an action for the recovery of the money may not be brought after the expiration of the period of 12 months from the date on which the money was paid.

_ (3) _ Subsections (1) and (2) do not apply to an action for the recovery of an amount that -

_ (a) _ is recoverable as an overpayment; or

(b) would have been recoverable as an overpayment if -

(i) the tax or purported tax in respect of which the amount was paid had been valid; or

(ii) the amount had not been paid under a mistake.

(4)

(5) Where an action is not brought within the limitation period specified in subsection (1) or (2), the right to recover the money is extinguished.

25E. Limitation period not to be extended

Notwithstanding any other provision of this Act, the limitation periods prescribed by section 25D cannot be extended.

PART III - Extension of Limitation Periods

Division 1 - Disability

26. Extension of limitation period in case of disability

(1) Subject to this section, 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 6 years, or in the case of any action for which a less number of years is prescribed by this Act as the period of limitation then such less number of 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.

(1A) If a person proposing to bring an action to which section 5A applies is a person under a disability when the cause of action accrues or as a result of the cause of action accruing becomes a person under a disability, the period of limitation determined under that section applies when that person ceases to be under a disability or dies, whichever event first occurs.

(2) Subsection (1) does 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.

(3) When a right of action that 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.

(4) No action to recover land or money charged on land shall be brought by virtue of subsection (1) by any person after the expiration of 30 years from the date on which the right of action accrued to that person or some person through whom he claims.

(5) Subsection (1) does not apply to an 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.

_ (6) _ This section does not apply to an aggrieved party proposing to bring an action under section 5 or 5A unless that aggrieved party proves that he or she or, as the case requires, the person under a disability was not in the custody of a parent or was in the custody of a parent who was a person under a disability at the time when the cause of action accrued.

_ (7) _ This section does not apply to an action where a cause of action accrued on or after the commencement day if the parent of a minor under a disability in respect of which the action may be brought is the intended defendant or is in a close relationship with the intended defendant, in which case the period of limitation is 3 years commencing on the date when the plaintiff attains 25 years of age.

_ (8) _ For the purpose of subsection (7), a close relationship is a relationship where -

_ (a) _ either parent may be directly or indirectly influenced by the intended defendant not to bring an action on behalf of the minor against the intended defendant; or

_ (b) _ the minor may be unwilling to disclose to the parent the conduct or events on which the action may be based.

_ (9) _ A judge may, if he or she considers it in the interests of justice to do so, extend the period of limitation referred to in subsection (7) to 3 years commencing on the date of discoverability.

27. Notice to proceed to committee of estate of mentally disordered person

_ (1) _ Where a person under a disability has a cause of action against another person (in this section referred to as "the prospective defendant") that other person may, in accordance with this section, serve a notice to proceed, and when that notice has been served the person under the disability shall, in relation to any action brought on that cause of action against the prospective defendant or his successor, be deemed to have ceased to be a person under a disability.

_ (2) _ Where there is a person authorized under the _Guardianship and Administration Act 1995_ to conduct in the name and on behalf of the person under a disability proceedings on the cause of action referred to in subsection (1) the notice to proceed shall, in any case, be served on The Public Trustee, and, if The Public Trustee is not the person so authorized, also on that person.

_ (3) _ Except in a case where subsection (2) applies, the notice to proceed shall be served -

_ (a) _ if the person under a disability is an infant, on the Crown Solicitor and also on the father or guardian of that person, or, if he has no father or guardian, on the person with whom he resides or in whose care he is; and

_ (b) _ in any other case, on The Public Trustee and also on the person with whom the person under a disability resides or in whose care he is.

_ (4) _ A notice to proceed under this section shall be in writing addressed to the person on whom it is served and signed by the person

by whom it is served and shall -

(a) state the name of the person under a disability;

(b) state the circumstances out of which the cause of action arose, or may be claimed to arise, with such particularity as is necessary to enable the person on whom the notice is served to investigate the question whether the person under a disability has a cause of action; and

(c) give warning that a cause of action arising out of the circumstances of the notice is liable to be barred by this Act.

(5) Minor deviations from the requirements of subsection (4), not affecting the substance nor likely to mislead, do not affect the validity of a notice to proceed.

(6) A notice to proceed may be served on any person -

(a) by delivering it to him personally;

(b) by leaving it addressed to him at his usual or last known place of abode or business; or

(c) by posting it by certified mail addressed to him at his usual or last known place of abode or business.

(7) Notwithstanding anything in the foregoing provisions a judge, upon application by the prospective defendant, may give directions as to the person on whom, or the manner in which, a notice to proceed may be served, and service of that notice in accordance with those directions shall be deemed to be service in accordance with this section.

(8) A notice to proceed under this section shall not be treated as an admission or acknowledgement by the person by whom it is given.

28. Disability by reason of war circumstances

Any time during which it is not reasonably practicable for a person to commence any action by reason of any war or circumstances arising out of any war in which the Commonwealth is engaged shall be excluded in computing the period prescribed by this Act for the commencement of that action; and the said period shall not be deemed to expire before the end of 12 months from the date when it became reasonably practicable to commence the action.

Division 2 - Acknowledgement and Part Payment

29. Fresh accrual of action on acknowledgement or part payment

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

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

_ (b) _ in the case of a foreclosure or other action by a mortgagee, the person in possession as aforesaid or 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 acknowledgement or payment.

_ (2) _ Subsection (1) applies 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 17, and on the making of the acknowledgement that section ceases 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 12 years from the date of the payment or acknowledgement.

_ (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 acknowledgement or the last payment.

_ (5) _ Notwithstanding anything in subsection (4) payment of a part of any rent or interest due at any time shall not extend the period for claiming the remainder then due, but, for the purposes of that subsection, any payment of interest shall be treated as a payment in respect of the principal debt.

_ 30. Formal provisions as to acknowledgement and part payment _

_ (1) _ Such an acknowledgement as is referred to in section 29 shall be in writing and signed by the person making the acknowledgement.

_ (2) _ For the purposes of section 29, an acknowledgement or payment may be made by the agent of the person by whom it is required to be made under that section, and shall be made to the person, or to an agent of the person, whose title or claim is being acknowledged, or in respect of whose claim the payment is being made, as the case may be.

_ 31. Effect of acknowledgement or part payment on persons other than the maker or recipient _

_ (1) _ An acknowledgement 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 2 or more mortgagees are by virtue of the mortgage in possession of the mortgaged land, an acknowledgement of the mortgagor's title or of his equity of redemption or right to discharge of the mortgage 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 acknowledgement 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 or to compel discharge of the mortgage of 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 2 or more mortgagors and the title or right to redemption or to the discharge of the mortgage of one of the mortgagors is acknowledged as aforesaid the acknowledgement shall be deemed to have been made to all mortgagors.

_ (5) _ Subject to subsection (6) an acknowledgement of any debt or other liquidated pecuniary claim shall bind the acknowledgor and his successors but not any other person.

_ (6) _ An acknowledgement made after the expiration of the period of limitation prescribed for the bringing of an action to recover a 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 acknowledgement.

_ (7) _ Subject to subsection (8), a payment made in respect of any debt or other liquidated pecuniary claim shall bind all persons liable in respect thereof.

_ (8) _ 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 -

_ (a) _ any person other than the person making the payment and his successors; or

_ (b) _ any successor on whom the liability devolved on the determination of a preceding estate or interest in property under a settlement taking effect before the date of the payment.

_ (9) _ An acknowledgement 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.

_ (10) _ 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.

32. Postponement of limitation periods in case of fraud or mistake

(1) Subject to subsection (2) where, in the case of any action for which a period of limitation is prescribed by this Act -

(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;

(b) the right of action is concealed by the fraud of any person referred to in paragraph (a); 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.

(2) Nothing in subsection (1) shall enable any action to be brought to recover or enforce any charge against or set aside any transaction affecting any property which -

(a) 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

(b) 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 IIIA - Limitation Periods for Choice of Law Purposes

32A. Interpretation

In this Part, unless the contrary intention appears -

court includes arbitrator;

limitation law means a law that provides for the limitation or exclusion of any liability in respect of a cause of action or the barring of a right of action by reference to the time when a proceeding on, or the arbitration of, the cause of action is commenced.

32B. Application

This Part applies to a cause of action that accrued before the commencement of this Part but does not apply to a cause of action in respect of which proceedings were instituted before the commencement of this Part.

32C. Characterization of limitation laws

If the substantive law of another place, being another State, a Territory or New Zealand, is to govern a cause of action before a court of this State, a limitation law of that place is to be regarded as part of that substantive law and applied accordingly by the court.

32D. Exercise of discretion under limitation law

Where a court of this State exercises a discretion conferred under a limitation law of a place, being another State, a Territory or New Zealand, that discretion, as far as practicable, is to be exercised in a manner in which it is exercised in comparable cases by the courts of that place.

 PART IV - Miscellaneous and Supplemental

33. Application of Act to arbitration

(1) This Act applies to arbitrations in like manner as it applies 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 arbitration agreement to be referred to arbitration until an award is made under the arbitration agreement, the cause of action shall for the purpose of this Act (whether in its 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 arbitration agreement.

(3) For the purposes of this Act an arbitration shall be deemed to be commenced when one party to the arbitration serves on the other party a notice requiring him to appoint an arbitrator or 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 arbitration agreement, requiring him to submit the dispute to the person so named or designated.

(4) A notice referred to in subsection (3) required to be served on any person may be so served -

(a) by delivering it to him;

(b) by leaving it at his usual or last-known place of abode or business; or

(c) by sending it by certified mail addressed to him at his usual or last-known place of abode or business -

as well as in any other manner provided in the arbitration agreement.

(5) Where a 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 for the commencement of proceedings (including arbitration) with respect to the dispute referred.

(6) This section applies to an arbitration under an Act as well as to an arbitration pursuant to an arbitration agreement, and subsections (3) and (4) 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 as relate to the arbitration.

34. Act to apply to foreclosure under Land Titles Act 1980

This Act applies to applications for foreclosure under the Land Titles Act 1980 in like manner as it applies to foreclosure actions.

35. Provisions as to set-off or counterclaim

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.

36. Acquiescence

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

37. Application to the Crown

(1) Save as in this Act otherwise expressly provided this Act applies to proceedings by or against the Crown, other than the recovery of any tax or duty or interest thereon, in like manner as it applies to proceedings between subjects.

(2) For the purposes of this section proceedings by or against the Crown shall include proceedings by or against any Government department or any officer of the Crown as such or any person acting on behalf of the Crown.

38. Savings

This Act does not apply to any action or arbitration for which a period of limitation is prescribed by any other enactment.

38A. Savings and transitional provisions

(1) A person who has a cause of action which accrued before the commencement day may apply to a judge for an extension of the period of limitation specified in section 5(1) to 3 years commencing on the date of discoverability.

(2) A judge may extend the period of limitation specified in subsection (1) having regard to -

(a) the justice of the case; and

(b) the matters mentioned in section 5A(5) (a), (b) and (c).

(3) A person may apply to a judge for an extension of the period of limitation specified in section 5(1) to 3 years commencing on the commencement day if that person -

(a) suffers from an injury or disease the date of discoverability of which occurred 6 or more years after the cause of action accrued; and

(b) has a cause of action which accrued before the commencement day; and

(c) proposes to rely on a date of discoverability which occurred before the commencement day.

(4) The judge may extend the period of limitation referred to

in subsection (3) having regard to the matters set out in subsection (2).

39. Actions already barred and pending actions

(1) Nothing in this Act enables any action to be brought that was barred before the commencement of this Act, except in so far as the cause of action or right of action may be revived by an acknowledgement or part payment made in accordance with the provisions of this Act.

(2) Nothing in this Act affects any action or arbitration commenced before the commencement of this Act or the title to any property that is the subject of any such action or arbitration.

40. Repeals, &c.

(1) The Imperial Acts specified in Part I of Schedule 1 in so far as they have effect in this State are repealed to the extent specified in the third column of that Part.

(2) The Acts of this State specified in Part II of Schedule 1 are repealed to the extent specified in the third column of that Part.

SCHEDULE 1

Section 40

PART I - Imperial Acts

Part 1

Session and chapter

Title or short title

Extent of repeal

31 Eliz. c. 5

An Act concerning informers

Section 5.

4 & 5 Ann. c. 3

An Act for the amendment of the law, and the better advancement of justice

Sections 17, 18, and 19.

9 Geo. 3. c. 16

Crown Suits Act, 1769

The whole Act.

PART II - State Acts

Sessions and Number

Title or short title

 Extent of repeal

6 Wm. IV No. 16

 Limitation of Actions Act 1836

The whole Act.

39 Vict. No. 1

 Limitation of Actions Act 1875

The whole Act.

62 Vict. No. 34

 Trustee Act 1898

Section 56.

25 Geo. V No. 30

 Fatal Accidents Acts 1934

In section 6, all the words in subsection (1) following the word "complaint", and subsections (2) and (3).

26 Geo. V No. 35

 Crown Lands Act 1935

Section 114A

26 Geo. V No. 92

 Mercantile Law Act 1935

Sections 3, 4, 5, 7, 8, 9, and 10.

No. 67 of 1962

 Local Government Act 1962

Section 478.

No. 51 of 1965

 Limitation of Actions Act 1965

The whole Act.

No. 52 of 1965

 Fatal Accidents Act 1965

The whole Act.

No. 40 of 1973

Local Government Act 1973

Section 23.

Table Of Amendments

Act Number and year Date of commencement
Limitation Act 1974 No. 98 of 1974 1.1.1975
Limitation Act 1978 No. 1 of 1978 18.5.1978
Land Titles Act 1980 No. 19 of 1980 1.10.1981
Commercial Arbitration Act 1986 No. 91 of 1986 1.1.1987
Prisoners (Removal of Civil Disabilities) Act 1991 No. 3 of 1991
30.5.1991
Perpetuities and Accumulations Act 1992 No. 23 of 1992 1.12.1992
Limitation Amendment Act 1993 No. 92 of 1993 23.12.1993
Limitation Amendment Act 1994 No. 41 of 1994 1.10.1994
Government Business Enterprises (Consequential Amendments) Act 1995
No. 20 of 1995 1.7.1995
Local Government (Consequential Amendments) Act 1995 No. 30 of 1995
1.9.1995
Guardianship and Administration (Miscellaneous Amendments) Act 1996
No. 33 of 1996 1.9.1997 (remaining provisions)
Limitation Amendment Act 1998 No. 23 of 1998 26.6.1998
Mental Health (Consequential Amendments) Act 1996 No. 32 of 1996
1.11.1999
Limitation Amendment Act 2004 No. 66 of 2004 1.1.2005
Justice and Related Legislation (Further Miscellaneous Amendments) Act
2006 No. 43 of 2006 18.12.2006
