

CAYMAN ISLANDS



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**THE LIMITATION LAW, 1991
(LAW 12 OF 1991)**

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CAYMAN ISLANDS

Law 12 of 1991

I Assent

A. J. SCOTT
Governor

9th August, 1991

**A LAW TO REPEAL AND REPLACE
THE LEGAL PROVISIONS RELATING TO
THE LIMITATION OF ACTIONS**

ENACTED by the Legislature of the Cayman Islands.

PART I - PRELIMINARY

Short title.

1. This Law may be cited as the Limitation Law, 1991.

Interpretation.

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

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

"land" includes any legal or equitable estate or interest therein, including an interest in the proceeds of the sale of land held upon trust for sale;

"mortgage" includes a charge;

"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;

"personal property" means every description of property except land;

"trust" has the same meaning as in the Trusts Law (Revised);

"trustee" has the same meaning as in the Trusts Law (Revised).

Law 22 of 1979.

(2) For the purposes of this Law but subject to subsection (3), a person shall be treated as under a disability while he is under the age of eighteen years, or is mentally defective within the meaning of section 2 of the Mental Health Law, 1979.

(3) Without prejudice to the generality of the definition of "mentally defective" in the Mental Health Law, 1979, a person shall be conclusively presumed for the purposes of subsection (2) of this section to be mentally defective while he -

(a) is liable to be detained under the Mental Health Law, 1979 (otherwise than by virtue of sections 4 or 5 of that Law);

(b) is receiving treatment as an in-patient in any hospital within the meaning of the Mental Health Law, 1979, without being liable to be detained under that Law (otherwise than by virtue of section 4 or 5 of that Law), being treatment which follows without any interval a period during which he was liable to be detained under that Law (otherwise than by virtue of section 4 or 5 of that Law); or

Law 8 of 1975.

(c) has a guardian appointed of himself under section 16 of the Grand Court Law.

(4) Subject to subsection (5), a person shall be treated as claiming through another person if he became entitled by, through, under, or by the act of that other person to the right claimed.

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

(6) A reference in this Law to a right of action to recover land includes a reference to a right to enter into possession of the land, and a reference to the bringing of such an action shall include a reference to the making of such an entry.

(7) A reference in Part III to a right of action shall include a reference to -

(a) a cause of action;

(b) a right to receive money secured by a mortgage on any property;

(c) a right to recover proceeds of the sale of land; and

- (d) a right to receive a share or interest in personal property in the estate of a deceased person.
- (8) A reference in Part III to the date of the accrual of a right of action shall be construed -
 - (a) in the case of an action upon a judgment, as a reference 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, as a reference to the date on which the rent or interest became due.

PART II - ORDINARY TIME LIMITS FOR DIFFERENT CLASSES OF ACTION

Ordinary time limits
subject to extension, etc.

3. (1) This Part gives the ordinary time limits for bringing actions of the various classes mentioned herein.

(2) The ordinary time limits given in this Part are subject to extension or exclusion in accordance with Part III.

Tort.

4. (1) An action founded on tort (other than on libel or slander) shall not be brought after the expiration of six years from the date on which the cause of action accrued.

(2) An action founded on libel or slander shall not be brought after the expiration of three years from the date on which the cause of action accrued.

Successive conversions.

5. (1) Where a cause of action in respect of the conversion of a chattel has accrued to any person and, before he recovers possession of the chattel a further conversion takes place, an action shall not be brought in respect of the further conversion after the expiration of six years from the accrual of the cause of action in respect of the original conversion.

(2) Where any such cause of action has accrued to any person and the period prescribed for bringing that action has expired and he has not during that period recovered possession of the chattel, the title of that person to the chattel shall be extinguished.

Theft.

6. (1) The right of any person from whom a chattel is stolen to bring an action in respect of the theft shall not be subject to the time limits under subsection (1) of section 4 and under subsection (1) of section 5, but if his title to the chattel is extinguished under subsection (2) of section 5 he may not bring an action in respect of a theft preceding the loss of this title, unless the theft in question preceded the conversion from which time began to run for the purposes of subsection (2) of section 5.

(2) Subsection (1) shall apply to any conversion related to the theft of a chattel as it applies to the theft of a chattel and except as

hereinafter provided in this section, every conversion following the theft of a chattel before the person from whom it is stolen recovers possession of it shall be regarded for the purposes of this section as related to the theft. If anyone purchases the chattel in good faith, neither the purchase nor any conversion following it shall be regarded as related to the theft.

(3) Any cause of action accruing in respect of the theft or any conversion related to the theft of a chattel to any person from whom the chattel is stolen shall be disregarded for the purpose of applying subsections (1) and (2) of section 5 to his case.

(4) 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 he claims, it shall be presumed that any conversion following the theft is related to the theft unless the contrary is shown.

(5) In this section, "theft" includes -

- (a) any conduct outside the Islands which would be theft if committed in the Islands; and
- (b) obtaining any chattel, whether in the Islands or elsewhere, in the circumstances described in section 223 of the Penal Code or by blackmail within the meaning of section 229 of that Code, and references in this section to a chattel being "stolen" shall be construed accordingly.

Law 12 of 1975.

Simple contract.

7. An action founded on simple contract shall not be brought after the expiration of six years from the date on which the cause of action accrued.

Certain loans.

8. (1) Subject to subsection (3), section 7 shall not bar the right of action on a contract of loan to which this section applies.

(2) This section applies to any contract of loan which does not -

- (a) provide for repayment of the debt on or before a fixed or determinable date; and
- (b) 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,

except where in connection with taking the loan the debtor enters into any collateral obligation to pay the amount of the debt or any part of it (as, for example, by delivering a promissory note, which expression in this subsection, has the same meaning as in section 83 of the Bills of Exchange Law (Revised) as security for the debt) on terms which would exclude the application of this section to the contract of loan if they applied directly to repayment of the debt.

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(3) Where a demand in writing for repayment of the debt under a

contract of loan to which this section applies is made by or on behalf of the creditor (or, where there are joint creditors, by or on behalf of any one or more of them) section 7 shall thereupon apply as if the cause of action to recover the debt had accrued on the date on which the demand was made.

Certain awards.

9. An action to enforce an award, where the submission is not by an instrument under seal, shall not be brought after the expiration of six years from the date on which the cause of action accrued.

Specialty.

10. An action upon a specialty shall not be brought after the expiration of twelve years from the date on which the cause of action accrued:

Provided that this section shall not affect any action for which a shorter period of limitation is prescribed by any other provision of this Law.

Sums recoverable by Law, etc.

11. An action to recover a sum recoverable by virtue of any instrument of a legislative character shall not be brought after the expiration of six years from the date on which the cause of action accrued:

Provided that this section shall not affect any action to which section 12 applies.

Contribution.

12. (1) Where under section 6 of the Law of Torts Reform Law a 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 shall be brought after the expiration of two years from the date on which that right accrued.

(2) For the purposes of this section, the date (referred to hereinafter in this section as "the relevant date") on which a right to recover contribution in respect of any damage accrues to any person shall be ascertained as provided in subsections (3) and (4).

(3) If the person in question is held liable in respect of that damage by -

(a) a judgment given in civil proceedings; or

(b) an award made on an arbitration, the relevant date shall be the date on which the judgment is given or the date of the award. For the purposes of this subsection, no account shall be taken of any judgment or award given or made on appeal in so far as it varies the amount of damages awarded against the person in question.

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

(5) An action to recover contribution shall be one to which sections 32, 37 and 41 apply, but otherwise Parts III and IV (except sections 40 and 43) shall not apply for the purposes of this section.

Personal injuries.

13. (1) This section applies to any action for negligence, nuisance or breach of duty (whether such duty exists by virtue of a contract, a provision made by or under an instrument of a legislative character, 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 himself or any other person.

(2) None of the time limits given in the preceding provisions of this Law apply to an action to which this section applies.

(3) An action to which this section applies shall not be brought after the expiration of the period applicable in accordance with subsections (4) or (5).

(4) Except where subsection (5) applies, the period applicable is three years from –

(a) the date on which the cause of action accrued; or

(b) the date of knowledge (if later) of the person injured.

(5) If the person injured dies before the expiration of the period mentioned in subsection (4), the period applicable as respects the cause of action surviving for the benefit of his estate by virtue of section 2 of the Estates Proceedings Law, 1974, shall be three years from –

Law 3 of 1974.

(a) the date of death; or

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

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

(7) For the purposes of this section, "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 (whether or not he has renounced probate); and regard shall be had to any knowledge acquired by any such person while a personal representative or previously.

Special time limit for certain negligence actions.

14. (1) Subject to subsection (2), this section applies to any action for damages for negligence, other than one to which section 13 applies, where the starting date for reckoning the period of limitation under paragraph (b) of subsection (3) of this section falls after the date on which the cause of action accrued.

(2) Section 4 shall not apply to an action to which this section

applies.

(3) An action to which this section applies shall not be brought after the expiration of –

- (a) six years from the date on which the cause of action accrued; or
- (b) three years from the starting date as defined by subsection (4), if that period expires later than the period mentioned in paragraph (a).

(4) For the purposes of this section, the starting date for reckoning the period of limitation under paragraph (b) of subsection (3) is the earliest date on which the plaintiff or any person in whom the cause of action was vested before him first had both the knowledge required for bringing an action for damages in respect of the relevant damage and a right to bring such an action. Knowledge that any act or omission did or did not, as a matter of law, involve negligence is irrelevant for the purposes of this subsection.

(5) In subsection (4), "the knowledge required for bringing an action for damages in respect of the relevant damage" means knowledge of both –

- (a) the material facts about the damage in respect of which damages are claimed; and
- (b) the other facts relevant to the current action mentioned in subsection (7).

(6) For the purposes of paragraph (a) of subsection (5), the material facts about the damage are such facts about the damage as would lead a reasonable person who had suffered such damage to consider it sufficiently serious to justify his instituting proceedings for damages against a defendant who did not dispute liability and was able to satisfy a judgment.

(7) The other facts relevant to the current action and referred to in paragraph (b) of subsection (5) are –

- (a) that the damage was attributable in whole or in part to the act or omission which is alleged to constitute the negligence;
- (b) the identity of the defendant; and
- (c) if it is alleged that the act or omission was that of any person other than the defendant, the identity of that person and the additional facts supporting the bringing of an action against the defendant.

(8) For the purposes of this section, a person's knowledge includes knowledge which he might reasonably have been expected to

acquire from facts –

- (a) observable or ascertainable by him; or
- (b) ascertainable by him with the help of appropriate expert advice which it was reasonable for him to seek, but a person shall not be taken by virtue of this subsection to have knowledge of any fact ascertainable only with the help of expert advice so long as he has taken all reasonable steps to obtain (and, where appropriate, to act on) that advice.

Overriding time limit for certain negligence actions.

15. (1) An action for damages for negligence, other than one to which section 13 applies, shall not be brought after the expiration of fifteen years from the date (or, if more than one, from the last of the dates) on which there occurred an act or omission –

- (a) which is alleged to constitute the negligence; and
- (b) to which the damage in respect of which damages are claimed is alleged to be attributable, whether in whole or in part.

(2) This section bars the right of action in a case to which subsection (1) applies, notwithstanding that –

- (a) the cause of action has not yet accrued; or
- (b) where section 14 applies to the action, the date which is for the purposes of that section the starting date for reckoning the period mentioned in paragraph (b) of subsection (3) of that section has not yet occurred,

before the end of the period of limitation prescribed by this section.

Fatal accidents.

16. (1) An action under Part II of the Law of Torts Reform Law shall not be brought if the death occurred when the person injured could no longer maintain an action and recover damages in respect of the injury, whether because of a time limit in this Law or in any other Law, or for any other reason. Where any such action by the injured person would have been barred by the time limit in section 13, no account shall be taken of the possibility of that time limit being overridden under section 39.

(2) None of the time limits given in the preceding provisions of this Law apply to an action under Part II of the Law of Torts Reform Law, but no such action shall be brought after the expiration of three years from –

- (a) the date of death; or
- (b) the date of knowledge of the person for whose benefit the action is brought,

whichever is the later.

(3) An action under Part II of the Law of Torts Reform Law shall be one to which sections 32, 39 and 41 apply, and the application to any such action of the time limit in subsection (2) of this section shall be subject to subsection (1) of section 44; but otherwise Parts III and IV of this Law shall not apply to any such action.

Operation of time limit under s. 16 in relation to different dependants.

17. (1) Where there is more than one dependant for whose benefit an action is brought under Part II of the Law of Torts Reform Law, paragraph (b) of subsection (2) of section 16 shall be applied separately to each of them.

(2) Subject to subsection (3), if by virtue of subsection (1) the action would be outside the time limit given by subsection (2) of section 16 as regards one or more, but not all, of the persons for whose benefit it is brought, the court shall direct that any person as regards whom the action would be outside that limit shall be excluded from those for whom the action is brought.

(3) The court shall not give such a direction 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 32, an agreement between the parties not to raise the defence, or otherwise.

Definition of date of knowledge for purposes of ss. 13 and 16.

18. (1) In sections 13 and 16, a reference to a person's date of knowledge is a reference to the date on which he first had knowledge –

- (a) that the injury in question was significant;
- (b) that the injury was attributable in whole or in part to the act or omission which is alleged to constitute the negligence, nuisance or breach of duty;
- (c) of 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, of the identity of that person and of the additional facts supporting the bringing of an action against the defendant,

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

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

(3) For the purposes of this section, a person's knowledge includes knowledge which he might reasonably have been expected to acquire from facts –

- (a) observable or ascertainable by him; or
- (b) ascertainable by him with the help of medical or other appropriate expert advice which it was reasonable for him to seek,

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

Time limit for actions to recover land.

19. (1) An action shall not be brought by any person to recover any land after the expiration of twelve years from the date on which the right of action accrued to him or, if it first accrued to some person through whom he claims, to that person.

(2) Subject to the following provisions of this section, where –

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

no action shall be brought by the person entitled to the succeeding interest after the expiration of twelve years from the date on which the right of action accrued to the person entitled to the preceding interest or six years from the date on which the right of action accrued to the person entitled to the succeeding interest, whichever period last expires.

(3) No person shall bring an action to recover any 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, some person through whom he claimed or some person entitled to a preceding interest, unless the action is brought within the period in which the person by whom the assurance was made could have brought such an action.

(4) Where any person is entitled to any interest in land in possession and, while so entitled, is also entitled to any future interest in that land, and his right to recover the interest in possession is barred under this Law, no action shall be brought by that person or by any person claiming through him, in respect of the future interest, unless in the meantime possession of the land has been recovered by a person entitled to an intermediate interest.

(5) Section 20 contains provisions for determining the date of accrual of a right of action to recover land in the cases therein mentioned.

(6) Section 21 contains provisions modifying this section in its application to an action brought by, or by a person claiming through, the Crown.

Provisions with respect
to actions to recover
land.

20. (1) Where the person bringing an action to recover land or some person through whom he claims has been in possession of the land, and has while entitled to the land been dispossessed or discontinued his possession, the right of action shall be treated as having accrued on the date of such dispossession or discontinuance.

(2) Where any person brings an action to recover any land of a deceased person and that deceased person was –

- (a) on the date of his death in possession of the land; and
- (b) the last person entitled to the land to be in possession of it,

the right of action shall be treated as having accrued on the date of his death.

(3) Where any person brings an action to recover land, being an interest in possession assured otherwise than by will to himself or to some person through whom he claims and –

- (a) the person making the assurance was on the date when the assurance took effect in possession of the land; and
- (b) no person has been in possession of the land by virtue of the assurance,

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

(4) The right of action to recover any land shall, in any case where –

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

be treated as having accrued on the date on which the interest fell into possession by the determination of the preceding interest.

(5) A tenancy from year to year or other period, without a lease in writing, shall for the purposes of this Law be treated as being 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 treated as having accrued at the date on which in accordance with this subsection the tenancy is determined:

Provided that where any rent has subsequently been received in respect of the tenancy, the right of action shall be treated as having

accrued on the date of the last receipt of rent.

(6) Where –

- (a) any person is in possession of land by virtue of a lease in writing (other than a lease granted by the Crown) by which a rent of not less than twenty dollars 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 so entitled,

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

(7) Subject to subsection (8), 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.

(8) If any right referred to in subsection (7) has accrued to a person entitled to an interest in reversion or remainder and the land was not recovered by virtue of that right, the right of action to recover the land shall not be treated as having accrued to that person until his interest fell into possession, as if no such forfeiture or breach of condition had occurred.

(9) 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 (referred to in this subsection and in subsections (10), (11) and (12) as "adverse possession"); and where under the preceding provisions of this section any such right of action 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 unless and until adverse possession is taken of the land.

(10) Where a right of action to recover land has accrued and after its accrual, 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 shall be treated as accruing unless and until the land is again taken into adverse possession.

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

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

(12) For the purposes of subsections (9) and (10), 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 shall be treated as adverse possession.

(13) Where any land to which the Settled Land Law applies or any land held on trust for sale is in the possession of a person entitled to a beneficial interest in the land or in the proceeds of sale (not being a person solely or absolutely entitled to the land or the proceeds), no right of action to recover the land shall be treated for the purposes of this Law as accruing during that possession to any person in whom the land is vested as tenant for life or trustee, or to any other person entitled to a beneficial interest in the land or the proceeds of sale.

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Modifications of s.19 re
Crown.

21. (1) Subject to subsections (2) and (3) of this section, subsection (1) of section 19 applies to the bringing of an action to recover any land by the Crown as if "thirty years" were substituted for "twelve years".

(2) An action to recover foreshore may be brought by the Crown at any time before the expiration of sixty years from the date mentioned in subsection (1) of section 19.

(3) Where any right of action to recover land which has ceased to be foreshore but remains in the ownership of the Crown accrued when the land was foreshore, the action may be brought at any time before the expiration of –

- (a) sixty years from the date of accrual of the right of action; or
- (b) thirty years from the date when the land ceased to be foreshore,

whichever period first expires.

(4) Notwithstanding subsection (1) of section 19, when in the case of any action brought by a person other than the Crown the right of action first accrued to the Crown through whom such person claims, the action may be brought at any time before the expiration of –

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

whichever period first expires.

(5) Subsection (2) of section 19 shall apply in any case where the

Crown is entitled to the succeeding interest as if "thirty years" and "twelve years" were respectively substituted for "twelve years" and "six years".

Redemption actions.

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

Extinction of title to land.

23. Subject to –

(a) section 24 of this Law; and

Law 21 of 1971.

(b) section 135 of the Registered Land Law (Revised),

at the expiration of the period prescribed by this Law for any person to bring an action to recover land, including a redemption action, the title of that person to the land shall be extinguished.

Land held on trust.

24. (1) Subject to subsections (1) and (2) of section 27, the provisions of this Law apply to equitable interests in land, including interests in the proceeds of the sale of land held upon trust for sale, as they apply to legal interests. Accordingly a right of action to recover the land shall, for the purposes of this Law but not otherwise, be treated as accruing 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 interest in the land, and any relevant provision of section 20 shall apply in any such case accordingly.

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(2) Where the period prescribed by this Law has expired for the bringing of an action to recover land by a tenant for life of land to which the Settled Land Law applies –

(a) his interest shall not be extinguished if and so long as the right of action to recover the land of any person entitled to a beneficial interest in the land either has not accrued or has not been barred by this Law; and

(b) the interest shall accordingly remain vested in the tenant for life and shall devolve in accordance with the Settled Land Law,

but if and when every such right of action has been barred by this Law, his interest shall be extinguished.

(3) Where any land is held upon trust (including a trust for sale) and the period prescribed by this Law has expired for the bringing of an action to recover the land by the trustees, the estate of the trustees shall not be extinguished if and so long as the right of action to recover the land of any person entitled to a beneficial interest in the land or in the proceeds of sale either has not accrued or has not been barred by this Law; but if and when every such right of action has been so barred the interest of the trustees shall be 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 whose right of action has not been barred by this Law, notwithstanding that the right of action of the trustees would, apart from this provision, have been barred by this Law.

Recovery of rent.

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

Recovery under mortgage.

26. (1) No action shall be brought to recover –

(a) any principal sum secured by a mortgage on land or on personal property; or

(b) proceeds of the sale of land,

after the expiration of twelve years from the date on which the right to receive such principal sum or proceeds accrued.

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

Provided that if the mortgagee was in possession of the mortgaged property after that date, the right to foreclose on the property which 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 secured by a mortgage and the right to foreclose on the property subject to the mortgage shall not be treated as accruing so long as that property comprises any future interest or any life insurance policy which has not matured or been determined.

(4) Subject to subsections (5) and (6), no action to recover arrears of interest payable in respect of any sum secured by a mortgage or payable in respect of proceeds of the sale of land, or to recover damages in respect of such arrears, shall be brought after the expiration of six years from the date on which the interest became due.

(5) Where –

(a) a prior mortgagee or other incumbrancer has been in possession of the mortgaged property; 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 or damages in respect of those arrears, notwithstanding that the period exceeded six years.

(6) Where –

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

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

Trust property.

27. (1) No period of limitation prescribed by this Law 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 the 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 him and converted to his use.

(2) Where a trustee who is also a beneficiary under the trust receives or retains trust property or its proceeds as his share on a distribution of trust property under the trust, his liability in any action brought by virtue of paragraph (b) of subsection (1) to recover that property or its proceeds after the expiration of the period of limitation prescribed by this Law for bringing an action to recover trust property shall be limited to the excess over his proper share. This subsection only applies if the trustee acted honestly and reasonably in making the distribution.

(3) Subject to the preceding provisions of this section, an action by a beneficiary to recover trust property or in respect of any breach of trust, not being an action for which another period of limitation is prescribed by any other provision of this Law, shall not be brought after the expiration of six years from the date on which the right of action accrued. For the purposes of this subsection, the right of action shall not be treated as having accrued to any beneficiary entitled to a future interest in the trust property until the interest fell into possession.

(4) No beneficiary, as against whom there would be a good defence under this Law, 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 Law had been pleaded in defence.

Claim of personal estate.

28. Subject to subsections (1) and (2) of section 27, no action –

- (a) in respect of any claim to personal property in the estate

of a deceased person or to any share or interest in any such estate shall be brought after the expiration of twelve years from the date on which the right to receive the share or interest accrued; and

- (b) to recover arrears of interest in respect of any legacy, or damages in respect of such arrears, shall be brought after the expiration of six years from the date on which the interest became due.

Account.

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

Enforcement of
judgements.

30. (1) An action shall not be brought upon any judgment after the expiration of six years from the date on which the judgment became enforceable.

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

Administration to date
back to death.

31. For the purposes of the provisions of this Law relating to an action 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.

PART III - EXTENSION OR EXCLUSION OF ORDINARY TIME LIMITS

Disability.

32. (1) Subject to the following provisions of this section if, on the date when any right of action accrued for which a period of limitation is prescribed by this Law, the person to whom it accrued was under a disability, the action may be brought at any time before the expiration of six years from the date when he ceased to be under a disability or died (whichever first occurred), notwithstanding that the period of limitation has expired.

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

(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 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 this section by any person after the expiration of thirty years from the date on which the right of action accrued to that person or some person through whom he claims.

(5) If the action is one to which subsection (2) of section 4 applies, subsection (1) of this section shall apply to that action as if "by him at any time before the expiration of three years from the date when he ceased to be under a disability" were substituted for "at any time before the expiration of six years from the date when he ceased to be under a disability or died (whichever first occurred)".

(6) If the action is one to which section 12 applies, subsection (1) of this section shall apply as if "two years" were substituted for "six years".

(7) If the action is one to which section 13 or subsection (2) of section 16 applies, subsection (1) of this section shall apply as if "three years" were substituted for "six years".

Extension for cases
where limitation period
is period under
s.14(3)(b).

33. (1) Subject to subsection (2), if in the case of any action for which a period of limitation is prescribed by section 14 –

- (a) the period applicable in accordance with subsection (3) of that section is the period mentioned in paragraph (b) of that subsection;
- (b) on the date which is for the purposes of that section the starting date for reckoning that period the person by reference to whose knowledge that date fell to be determined under subsection (4) of that section was under a disability; and
- (c) section 32 does not apply to the action,

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

(2) An action may not be brought by virtue of subsection (1) after the end of the period of limitation prescribed by section 15.

Acknowledgement and
part-payment.

34. (1) Subsections (2) and (3) apply where any right of action (including a foreclosure action) to recover land or any right of a mortgagee of a personal property to bring a foreclosure action in respect of the property has accrued.

(2) If the person in possession of the land or personal property 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 such acknowledgment.

(3) In the case of a foreclosure or other action by a mortgagee, if the person in possession of the land or personal property, or the person liable for the mortgage debt, makes any payment in respect of the debt (whether of principal sum or interest) the right shall be treated as having accrued on and not before the date of such payment.

(4) Where a mortgagee is by virtue of the mortgage in possession of any mortgaged land and either –

(a) receives any sum in respect of the principal sum or interest of the mortgage debt; or

(b) acknowledges the title of the mortgagor,

an action to redeem the land in his possession may be brought at any time before the expiration of twelve years from the date of such receipt 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 property in the estate of a deceased person or to any share or interest in any such property,

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

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

(7) Subject 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 Law, shall not be revived by any subsequent acknowledgment or payment.

Formal provisions re
acknowledgements and
part-payments.

35. (1) To be effective for the purposes of section 34, an acknowledgment must be in writing and signed by the person making it.

(2) For the purposes of section 34, any 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) shall be made to the person, or to an agent of the person, whose title or claim is being acknowledged or, as the case may be, in respect of whose claim the payment is being made.

Effect of
acknowledgement or
part-payment on other
persons.

36. (1) An acknowledgment of the title to any land or mortgaged personal property by any person in possession of it 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 other person liable for the debt, or by any person in possession of the mortgaged property, shall, so far as any right of the mortgagee to foreclose or otherwise to recover the property is concerned, bind all other persons in possession of the mortgaged property during the ensuing period of limitation.

(3) Where two or more mortgagees are by virtue of the mortgage in possession of the mortgaged land, an acknowledgment of the mortgagor's title by one of the mortgagees shall only bind him and his successors and shall not bind any other mortgagee or his successors.

(4) Where in a case within subsection (3) the mortgagee by whom the acknowledgment is given is entitled to a part of the mortgaged land and not to any ascertained part of the mortgage debt, the mortgagor shall be entitled to redeem that part of the land on payment, with interest, of the part of the mortgage debt which bears the same proportion to the whole of the debt as the value of the part of the land bears to the whole of the mortgaged land.

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

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

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

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

the estate of the deceased person.

(9) In this section, "successors", in relation to any mortgagee or person liable in respect of any debt or claim, means his personal representatives and any other persons 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, or the determination of a limited estate or interest in settled property or otherwise).

Fraud, concealment and mistake.

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

- (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, or could with reasonable diligence have discovered, the fraud, concealment or mistake. References in this subsection to the defendant include references to the defendant's agent, and to any person through whom the defendant claims, and his agent.

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

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

- (a) to recover, or recover the value of, any property; or
- (b) to enforce any charge against, or set aside any transaction affecting, any property,

to be brought against the purchaser of that 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, concealment or transaction in which the mistake was made, took place.

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

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

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

- (5) Sections 14 and 15 do not apply to any action to which paragraph (b) of subsection (1) applies; and accordingly the period of limitation referred to in that subsection, in any case to which either of those sections would otherwise apply, is the period applicable under section 4.

Discretionary extension
of time limit for actions
for libel or slander.

38. Where a person to whom a cause of action for libel or slander has accrued has not brought such an action within the period of three years mentioned in subsection (2) of section 4 (or, where applicable, the period allowed by subsection (1) of section 32 as modified by subsection (5) of that section) because all or any of the facts relevant to that cause of action did not become known to him until after the expiration of that period, such an action may be brought by him at any time before the expiration of one year from the earliest date on which he knew all the facts relevant to that cause of action; but shall in no case be so brought without the leave of the Grand Court.

Discretionary exclusion.

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

- (a) the provisions of sections 13 or 16 prejudice the plaintiff or any person whom he represents; and
- (b) any decision of the court under this subsection would prejudice the defendant or any person whom he represents,

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

(2) The court shall not under this section disapply subsection (1) of section 16 except where the reason why the person injured could no longer maintain an action was because of the time limit in section 13.

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

- (a) the length of, and the reasons for, the delay on the part of the plaintiff;
- (b) the extent to which, having regard to the delay, the evidence adduced or likely to be adduced by the plaintiff or the defendant is or is likely to be less cogent than if the action had been brought within the time allowed by section 13 or 16 (as the case may be);
- (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 may have received.

(4) In a case where the person injured died when, because of section 13, he could no longer maintain an action and recover damages in respect of the injury, the court shall have regard in particular to the length of, and the reasons for, the delay on his part.

(5) In a case under subsection (4) or any other case where the time limit or one of the time limits depends on the date of knowledge of a person other than the plaintiff, subsection (3) has effect *mutatis mutandis* and in particular as if a reference to the plaintiff included a reference to any person whose date of knowledge is or was relevant in determining the time limit.

(6) A direction by the court disapplying the provisions of subsection (1) of section 16 shall operate to disapply to the same effect the provisions in section 3 of the Law of Torts Reform Law.

(7) A reference in this section to section 13 includes a reference to that section as extended by any provision of this Part or of Part IV.

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

PART IV - MISCELLANEOUS AND GENERAL

40. (1) This Law and any other limitation law, which latter expression in this section means any other law relating to the limitation of actions (whether passed before or after the date of commencement of this Law) apply to arbitrations as they apply to actions in the Grand Court.

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

(3) For the purposes of this Law and of any other limitation law, an arbitration is treated as being commenced –

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

(4) Any such notice may be served by –

- (a) handing it to the person on whom it is to be served;
- (b) leaving it at his usual or last-known place of abode in the Islands; or
- (c) sending it by registered post to him at his usual or last-known postal address in the Islands,

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

(5) Where the Grand Court orders –

- (a) that an award be set aside; or
- (b) after the commencement of an arbitration, that the arbitration agreement shall cease to have effect with respect to the dispute referred,

it 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 Law or by any other limitation law for the commencement of proceedings (including arbitration) with respect to the dispute referred.

(6) In this section, "arbitration", "arbitration agreement" and "award" have the same meanings as in the Arbitration Law, 1974.

41. (1) For the purposes of this Law, any new claim made in the course of an action shall be deemed to be a separate action and to have been commenced in the case of –

- (a) a new claim made in or by way of third party proceedings, on the date on which those proceedings were commenced; and
- (b) any other new claim, on the same date as the original action.

Law 2 of 1974.

New claims in pending actions.

(2) In this section, a "new claim" means a claim by way of set-off or counterclaim, and a claim involving the addition or substitution of either a new cause of action or of a new party; and "third party proceedings" means proceedings brought in the course of an action by any party to the action against a person not previously a party, 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.

(3) Except as provided by section 39 or by rules of court, a court shall not allow a new claim within paragraph (b) of subsection (1), other than an original set-off or original counterclaim, to be made in the course of an action after the expiry of any time limit under this Law which would affect a new action to enforce that claim. For the purposes of this subsection, a claim is an original set-off or an original counterclaim if it is a claim made by way of set-off or counterclaim by a party who had not previously made any claim in the action.

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

(5) The conditions referred to in subsection (4) are in the case of a claim involving –

- (a) 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 on any claim previously made in the original action; and
- (b) a new party, if the addition or substitution of the new party is necessary for the determination of the original action.

(6) The addition or substitution of a new party shall not be regarded for the purposes of paragraph (b) of subsection (5) as necessary for the determination of the original action unless either –

- (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.

(7) Subject to subsection (4), 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. This subsection shall not be taken as prejudicing the power of rules of court to provide for allowing a party to claim relief in a new capacity without

adding or substituting a new cause of action.

(8) Subsections (3), (4), (5), (6) and (7) apply in relation 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.

(9) In this section, "rules of court" means rules made under subsection (1) of section 21 of the Grand Court Law or subsection (1) of section 53 of the Summary Jurisdiction Law.

Law 8 of 1975.
Law 10 of 1975.

Equitable jurisdiction
and remedies.

42. (1) The following time limits under this Law -

- (a) the time limit under subsection (1) of section 4 for actions founded on tort (other than for libel and slander);
- (b) the time limit under subsection (2) of section 4 for actions founded on libel or slander;
- (c) the time limit under section 7 for actions founded on simple contract;
- (d) the time limit under section 9 for actions to enforce awards where the submission is not by an instrument under seal;
- (e) the time limit under section 10 for actions upon a specialty;
- (f) the time limit under section 11 for actions to recover a sum recoverable by virtue of any instrument of a legislative character; and
- (g) the time limit under section 30 to enforce a judgment,

shall not apply to any claim for specific performance of a contract, an injunction or for other equitable relief, except in so far as any such time limit may be applied by the court by analogy in like manner as any corresponding time limit under the Act or Law repealed by section 46 was applied before the date of commencement of this Law.

(2) Nothing in this Law shall affect any equitable jurisdiction to refuse relief on the ground of acquiescence or otherwise.

Application to Crown.

43. (1) Except as otherwise expressly provided in this Law and without prejudice to subsection (1) of section 44, this Law applies to proceedings by or against the Crown, which for the purposes of this section includes any department, branch, agency or organ of Government and any officer of the Crown as such or any person acting on behalf of the Crown, in like manner as it applies to proceedings between subjects.

(2) Notwithstanding subsection (1), this Law shall not apply to -

- (a) any proceedings by the Crown for the recovery of any tax, duty or interest on any tax or duty;

Law 17 of 1990.

- (b) any forfeiture provisions under the Customs Law, 1990.

Savings, etc.

44. (1) This Law does not apply to any action or arbitration for which a period of limitation is prescribed by or under any other Law, whether passed before or after the date of commencement of this Law (other than the Act or Law repealed by section 46), or to any action or arbitration to which the Crown is a party and for which, if it were between subjects, a period of limitation would be prescribed by or under any such other Law.

(2) Nothing in this Law shall —

- (a) enable any action to be brought which was barred before the date of commencement of this Law by the Act or Law repealed by section 46; or
- (b) affect any action or arbitration commenced before the date of commencement of this Law or the title to any property which is the subject of any such action or arbitration.

Amendments.

45. The Registered Land Law (Revised) is amended by —

- (a) substituting "Law, 1989" for "of Actions Law" in the first line of section 135;
- (b) deleting "(Cap. 86)" from the marginal note of section 135;
- (c) substituting "Law, 1989" for "of Actions Law" in the second line of section 136;
- (d) deleting "Cap. 86." from the margin of section 136;
- (e) substituting "Law, 1989" for "of Actions Law" in the last line of subsection (3) of section 137;
- (f) deleting "Cap. 86." from the margin of subsection (3) of section 137.

Repeals.

46. The following are repealed —

- (a) insofar as it is still in force and affects the Islands, the Limitation Act, 1623, of the United Kingdom;
- (b) the Limitation of Actions Law.

21 James I. c16.

Cap. 86.

The Limitation Law, 1991 – 32

Passed by the Legislative Assembly the 3rd day of July, 1991.

SYBIL McLAUGHLIN
Speaker.

GEORGETTE MYRIE
Clerk of the Legislative Assembly.

(Price \$ 6.40)