

N.R.C.D. 54
LIMITATION ACT, 1972
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N.R.C.D. 54

LIMITATION ACT, 1970¹

AN ACT to provide for limitation of periods for actions and for related matters.

PART ONE

*Periods of Limitation***1. Application of Part One**

This Part has effect subject to Part Two which provides for the extension of the periods of limitation in certain prescribed circumstances.

2. Actions barred after two years

A person shall not bring an action after the expiration of two years from the date on which the cause of action accrued, in the case of

- (a) an action claiming damages for slander or seduction,
- (b) an action to recover a contribution against one or more concurrent wrongdoers, or
- (c) an action to recover a penalty or forfeiture, or a sum of money by way of penalty or forfeiture, recoverable under an enactment.

1. This Act was issued as the Limitation Decree, 1972 (N.R.C.D. 54), made on the 21st day of March, 1972 and notified in the *Gazette* on 7th April, 1972.

3. Actions barred after three years

(1) A person shall not bring an action claiming damages for negligence, nuisance or breach of duty irrespective of how the duty exists, 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 a person, after the expiration of three years from the date on which the cause of action accrued.

(2) A person shall not bring an action for damages for the benefit of the dependants of a deceased person under section 16 of the Civil Liability Act, 1963 (Act 176) after the expiration of three years from the death of the deceased.

(3) A person shall not bring an action under section 16 of the Civil Liability Act, 1963 (Act 176) if by the date of the death the deceased's right of action in relation to the fault by which the death was caused had become statute-barred.

(4) Where the right of action of the deceased referred to in subsection (3) had not become statute-barred by the date of the death, the action under section 16 of the Civil Liability Act, 1963 (Act 176) may be brought within the period prescribed by subsection (2) although by the time the action is brought the right of action would have been statute-barred as far as the deceased was concerned.

4. Actions barred after six years

(1) A person shall not bring an action after the expiration of six years from the date on which the cause of action accrued, in the case of

- (a) an action founded on tort other than an action to which sections 2 and 3 apply;
- (b) an action founded on simple contract;
- (c) an action founded on quasi-contract;
- (d) an action to enforce a recognisance;
- (e) an action to enforce an award, where the arbitration is under an enactment other than the Arbitration Act, 1961 (Act 38); or
- (f) an action to recover a sum of money recoverable by virtue of an enactment, other than an action to which sections 2 and 5 apply.

(2) Subsection (1) applies to an action to recover seamen's wages but shall not otherwise apply to a cause of action within the jurisdiction of the High Court in maritime matters which is enforceable *in rem*.

(3) A person shall not bring an action for an account in respect of a matter which arose more than six years before the commencement of the action.

(4) An arrears of interest in respect of a debt is not recoverable after the expiration of six years from the date on which the interest became due.

5. Actions barred after twelve years

(1) A person shall not bring an action after the expiration of twelve years from the date on which the cause of action accrued, in the case of

- (a) an action on an instrument under seal, other than for the recovery of arrears of an annuity charged on movable property, or a principal sum of money or arrears of interest in respect of a sum of money secured by a mortgage or any other charge;
- (b) an action to enforce an award, where the arbitration agreement is under seal;
- (c) an action to recover a sum of money due to a registered company by a member of the company under the company's regulations;
- (d) an action to recover tax due and payable to the Commissioner of the Internal Revenue Service, or duty due and payable to the Controller of Customs and Excise.

(2) A person shall not bring an action on a judgment after the expiration of twelve years from the date on which the judgment became enforceable.

(3) A person shall not bring an action to recover the proceeds of the sale of land after the expiration of twelve years from the date when the right to receive the money accrued.

6. Exemption for equitable reliefs

(1) Sections 2 to 5 do not apply to a claim for specific performance of a contract or for an injunction or any other equitable relief.

(2) Subsection (1) does not prevent a Court from applying by analogy a provision of sections 2 to 5 in proceedings where in the opinion of the Court the interests of justice so require.

7. Successive conversions

(1) Where a cause of action in respect of the conversion or wrongful detention of a movable property has accrued to a person and before that person recovers possession of it, a further conversion or wrongful detention takes place, that person shall not bring an action in respect of the further conversion or detention after the expiration of six years from the accrual of the cause of action in respect of the original conversion or detention.

(2) Where a cause of action under subsection (1) has accrued to a person and the period prescribed for bringing the action and for bringing an action in respect of a further conversion or wrongful detention has expired and that person has not during that period recovered possession of the movable property, the title of that person to the movable property is extinguished.

8. Recovery of movable estate of deceased persons

(1) Subject to subsection (3), a person shall not bring an action in respect of a claim to the movable estate of a deceased person or to a share or an interest in the estate, whether under a will or on intestacy, after the expiration of twelve years from the date when the right to receive the share or interest accrued.

(2) Subject to subsection (3), a person shall not bring an action to recover arrears of interest in respect of any legacy or damages in respect of the arrears, after the expiration of six years from the date on which the interest became due.

(3) A period of limitation fixed by this Act does not apply to an action against a personal representative or a person claiming through the personal representative where the claim is founded on a fraud to which the personal representative was privy or a party.

9. Recovery of arrears of rent

(1) A person shall not bring an action or make a distress to recover arrears of rent or damages in respect of the arrears after the expiration of six years from the date on which the arrears became due.

(2) A person shall not bring an action to recover arrears of an annuity charged on movable property or damages in respect of the arrears after the expiration of six years from the date on which the arrears became due.

10. Recovery of land

(1) A person shall not bring an action to recover a land after the expiration of twelve years from the date on which the right of action accrued to the person bringing it or, if it first accrued to a person through whom the first mentioned claims to that person.

(2) A right of action to recover land does not accrue unless the land is in the possession of a person in whose favour the period of limitation can run.

(3) Where a right of action to recover land has accrued, and before the right of action is barred, the land ceases to be in adverse possession, the right of action does not accrue until the land is again taken into adverse possession.

(4) For the purposes of this Act, a person is in possession of a land by reason only of having made a formal entry in the land.

(5) For the purposes of this Act, a continual or any other claim on or near a land does not preserve a right of action to recover the land.

(6) On the expiration of the period fixed by this Act for a person to bring an action to recover land, the title of that person to the land is extinguished.

(7) For the purpose of this section "**adverse possession**" means possession of a person in whose favour the period of limitation can run.

11. Accrual of right of action in case of reversion

(1) For the purposes of this Act, a right of action to recover land, where the interest claimed was a reversion or any other future interest and a person has not taken possession of the land by virtue of the interest claimed, accrued on the date on which the interest fell into possession by the determination of the preceding interest.

(2) Where a person entitled to the preceding interest, which is not a lease for a fixed period, was not in possession of the land on the date of the determination of the preceding interest, the person entitled to the succeeding interest shall not bring an action 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) A person shall not bring an action to recover an 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 a person through whom that person claimed or a person entitled to a preceding interest, unless the action is brought within the period during which the person by whom the assurance was made could have brought that action.

(4) Where a person is entitled to an estate or interest in land in possession and, while so entitled, is also entitled to a future interest in that land, and the right of that person to recover the interest in possession is barred under this Act, that person, or a person claiming through that person, shall not bring an action 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.

12. Actions concerning mortgaged land

(1) A person shall not bring an action claiming the right to exercise the power of sale of land of that person which is subject to a mortgage or charge after the expiration of twelve years from the date on which the right of action accrued to the person bringing it or, if it first accrued to a person through whom that person claims, to that person.

(2) At the expiration of the period fixed by this Act for a mortgagee to bring an action claiming sale of the mortgaged land, the title of the mortgagee to the land is extinguished.

(3) Where a mortgagee of land has been in possession of any of the mortgaged land for a period of twelve years, the mortgagor or a person claiming through the mortgagor shall not bring an action to redeem the land of which the mortgagee has been in possession.

(4) At the expiration of the period fixed by this Act for a mortgagor to bring an action to redeem land subject to a mortgage, the title of the mortgagor to the land is extinguished.

(5) At the expiration of the period fixed by this Act for a mortgagee of land to bring an action to recover the land or for a person claiming as mortgagee or chargee to bring an action claiming sale of the land, the right of the mortgagee or of that person to the principal sum of money and interest secured by the mortgage or charge is extinguished.

13. Actions concerning mortgagee money

(1) A person shall not bring an action to recover a principal sum of money secured by a mortgage or charge on property, whether movable or immovable, other than a ship, after the expiration of twelve years from the date when the right to receive the money accrued.

(2) The right to receive a principal sum of money secured by a mortgage or charge does not, for the purposes of this Act, accrue so long as the property subject to the mortgage or charge comprises a future interest or a life insurance policy which has not matured or been determined.

(3) A person shall not bring an action to recover arrears of interest payable in respect of a sum of money secured by a mortgage or charge on movable or immovable property, other than a ship, or to recover damages in respect of the arrears, after the expiration of six years from the date on which the interest became due.

(4) Where a prior mortgagee or any other encumbrancer has been in possession of the property charged, and an action is brought within one year of the discontinuance of the possession by a subsequent encumbrancer, the subsequent encumbrancer may recover by that action the arrears of interest which became due during the period of possession of the prior encumbrancer or damages in respect of possession, although the period exceeded six years.

(5) Where the property subject to a mortgage or charge comprises a 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, the interest does not become due before the right to receive the principal sum of money has accrued or is deemed to have accrued.

(6) At the expiration of the period fixed by this Act for a mortgagee or charge to bring an action to recover a principal sum of money and interest secured by a mortgagee or charge on movable property, other than a ship, the right of the mortgagee or charge to the principal sum of money and interest is extinguished.

14. Recovery of property held on trust

(1) Where property is held on trust, including a trust for sale, and the period fixed by this Act has expired for bringing an action to recover the property by the trustees, the title of the trustees is not extinguished if and so long as the right of action of a person beneficially entitled to the property has not accrued or has not been barred by this Act, but if and when the right of action has been so barred, the title of the trustees is extinguished.

(2) Where property is held on trust, including a trust for sale, an action to recover the property may be brought by the trustees on behalf of a person beneficially entitled in possession to the property or in the proceeds of sale whose right of action has not been barred by this Act, although the right of action of the trustees would, apart from this provision, have been barred by this Act.

(3) Where property held on trust, including a trust for sale, is in the possession of a person entitled to a beneficial interest in the property or in the proceeds of sale, who is not a person solely and absolutely entitled to the property, a right of action to recover the property does not accrue, for the purposes of this Act, during the possession to a person in whom the property is vested as trustee or to any other person entitled to a beneficial interest in the property or the proceeds of sale.

15. Actions against trustees

(1) Subject to subsection (4), a person shall not bring an action to recover money or other property or in respect of a breach of trust, which is not an action for which a period of limitation is fixed by any other provision of this Act, against a trustee or a person claiming through that trustee after the expiration of six years from the date on which the right of action accrued.

(2) For the purposes of subsection (1), a right of action does not accrue to a beneficiary entitled to a future interest in trust property until the interest falls into possession.

(3) A beneficiary, as against whom there would be a good defence by virtue of this section, shall not derive a greater or any other benefit from a judgment or an order obtained by another beneficiary than that beneficiary could have obtained if that beneficiary brought the action and this Act had been pleaded in defence.

(4) A period of limitation fixed by this Act shall not apply to an action against a trustee or a person claiming through that trustee

- (a) where the claim is founded on a fraud or fraudulent breach of trust to which the trustee was privy or a party, or
- (b) where the claim is to recover trust property or the proceeds of trust property still retained by the trustee and converted to the use of the trustee.

PART TWO

Extension of Limitation Periods

16. Extension in case of disability

(1) Where, on the date when a right of action accrued for which a period of limitation is fixed by this Act, the person to whom it accrued was under a disability, the period of the disability shall not, subject to this section, be taken into account in computing the relevant period of limitation.

(2) For the purposes of subsection (1), the period of limitation shall be computed from the date when the person ceased to be under a disability or died, whichever event first occurred, although the period of limitation might otherwise have expired.

(3) Subsection (1) shall not affect a case where the right of action first accrued to a person not under a disability through whom the person under a disability claims.

(4) Where a right of action which has accrued to a person under a disability accrues, on the death of that person while still under a disability, to another person under a disability, a further extension of time shall not be allowed by reason of the disability of the second person.

(5) This section does not apply to an action to recover a penalty or forfeiture, or a sum of money by way of penalty or forfeiture, recoverable by virtue of an enactment, except where the action is brought by an aggrieved party.

(6) For the purposes of this Act, a person is under a disability while that person is an infant or of unsound mind.

(7) Without prejudice to subsection (5), a person is, for the purposes of this section, conclusively presumed to be of unsound mind while that person is detained in pursuance of an enactment authorising the detention of persons of unsound mind.

17. Fresh accrual on acknowledgement

(1) For the purposes of this Act, the right of action accrued on, and not before, the date of the acknowledgement,

- (a) where a right of action has accrued to recover a debt and the person liable for the debt has acknowledged the debt; or
- (b) where the right of action of a mortgagee of land to recover the mortgage debt has accrued, and the person in possession of the land acknowledges the mortgagee's title to the land; or
- (c) where a right of action has accrued to recover a claim to the movable estate of a deceased person or to a share or an interest in the estate, and the person accountable for that estate acknowledges the claim; or
- (d) where the right of a mortgagee of land to bring an action to recover land has accrued, and the person in possession of the land or the person liable for the mortgage debt acknowledges the debt; or
- (e) where there has accrued to a person, other than a mortgagee, a right of action to recover land, and the person in possession of the land acknowledges the title of the person to whom the right of action has accrued; or
- (f) where the right of a mortgagee of land to bring an action to recover the land has accrued, and the person in possession of the land acknowledges the mortgagee's title to the land; or
- (g) where the right of an encumbrancer of land to bring an action claiming a sale of the land has accrued, and the person in possession of the land or the person liable for the debt secured by the encumbrance acknowledges the debt; or
- (h) where a mortgagee is by virtue of the mortgage in possession of a mortgaged land, and the mortgagee acknowledges the title of the mortgagor or the equity of redemption; or
- (i) where a right of action has accrued in respect of a lien for money's worth in or over land for a limited period not exceeding life, or in respect of a right in the nature of that lien, namely a right of support or a right of residence, which is not an exclusive right of residence in or on a specified part of the land, and the person in possession of the land acknowledges the lien or other right.

(2) An acknowledgment shall be in writing and signed by its maker.

(3) An acknowledgement under this section may be made by the agent of the person by whom it is required to be made, and shall be made to the person or the agent of the person whose right or claim is being acknowledged.

(4) An acknowledgement is not an agreement within the meaning of the Stamp Duty Act, 2005 (Act 689).

18. Effect of acknowledgment

(1) An acknowledgement of a debt binds the person making it and the successors of that person but not any other person.

(2) An acknowledgment of a statute-barred debt does not bind a successor of the person giving it on whom the liability devolves on the determination of a previous interest in property under a settlement taking effect before the date of the acknowledgement.

(3) An acknowledgement of title to land by a person in possession of the land binds any other persons in possession during the ensuing period of limitation.

(4) An acknowledgement by one of several personal representatives of a claim to the movable estate of a deceased person or to a share or an interest in that estate binds the estate of the deceased person.

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

(6) Where the mortgagee by whom the acknowledgement is given is entitled to a part of the mortgaged land and not to an ascertained part of the mortgage debt, the mortgagor is entitled to redeem that part of the land on payment, with interest, of the part of the mortgage debt which bears the same proportion to the whole of the debt as the value of the part of the land bears to the whole of the mortgaged land.

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

19. Fresh accrual on part payment

(1) For the purposes of this Act, the right of action accrued on, and not before, the date of the payment,

- (a) where a right of action has accrued to recover a debt, and the person liable for the debt makes a payment in respect of the debt; but for the debt for the purposes of this provision payment of interest in whole or in part shall be treated as a payment in respect of the principal debt; or
- (b) where a right of action has accrued to recover a claim to the movable estate of a deceased person or to a share or an interest in that estate, and the person accountable for the estate makes a payment in respect of the estate; or
- (c) where the right of a mortgagee of land to bring an action to recover the land has accrued, and the person in possession of the land or the person liable for the mortgage debt makes a payment in respect of the land, whether of principal or interest; or
- (d) where the right of an encumbrancer of land to bring an action claiming a sale of the land has accrued, and the person in possession of the land or the person liable for the debt secured by the encumbrance makes a payment in respect of the land, whether of principal or interest; or
- (e) where a mortgagee is by virtue of the mortgage in possession of a mortgaged land, and receives a payment from the mortgagor in respect of the principal of the mortgage debt or the interest on the mortgage debt.

(2) A payment under this section may be made by the agent of the person by whom it is required to be made, and shall be made to the person or the agent of the person in respect of whose claim the payment is being made.

(3) An endorsement or a memorandum of a payment written on a bill of exchange or promissory note by or on behalf of the party to whom the payment is made is evidence of the payment for the purposes of this Part of this Act.

20. Effect of payment

(1) A payment made in respect of a debt binds, subject to subsection (2), the persons liable in respect of the debt.

(2) A payment made in respect of a statute-barred debt does not bind

(a) a person, other than the person making the payment and the successors of that person, or

(b) a 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 payment.

(3) A payment by one of several personal representatives in respect of a claim to the movable estate of a deceased person binds the estate of the deceased person.

(4) A payment in respect of a mortgage debt by the mortgagor or a person in possession of the mortgaged property binds, so far as a right of the mortgagee to recover the property is concerned, the persons in possession of the mortgaged property during the ensuing period of limitation.

(5) Where two or more mortgages of land are by virtue of the mortgage in possession of the land, and only one of the mortgagees receives a payment in respect of the principal of the mortgage debt or the interest on the mortgaged debt, the payment binds only the recipient and the successors of the recipient.

(6) Where a mortgagee receiving a payment under subsection (5) is entitled to a part of the mortgaged land and not to an ascertained part of the mortgage debt, the mortgagor is entitled to redeem that part of the land on payment, with interest, of the part of the mortgage debt which bears the same proportion to the whole of the debt as the value of the part of the land bears to the whole of the mortgaged land.

(7) Where there are two or more mortgagors of land, and the mortgagee, who is in possession of the land, is paid a sum of money in respect of the principal of the mortgage debt or the interest on the mortgage debt by one of the mortgagors, the payment is made, for the purposes of this section, by all the mortgagors.

21. Appropriation of payment in respect of debts

(1) Subsections (2) and (3) shall apply where

(a) there exists a number of debts, and

(b) the person liable for the debts, namely, the debtor, makes a payment, whether on account or generally, to the person to whom the debtor is liable, namely the creditor, and

(c) neither the debtor nor the creditor appropriates the sum of money paid to a particular debt or debts.

(2) Where some of or all of the debts are not statute-barred, the payment shall, for the purposes of this Part, unless the circumstances in which it was made indicate otherwise, be appropriated equally and at the same time in respect of each of the debts which are not statute-barred.

(3) Where the debts are statute-barred, the payment shall, for the purposes of this Part, unless the circumstances in which it was made indicate otherwise, be appropriated equally and at the same time in respect of those debts; but an appropriation shall not operate to make the payment a payment for the purposes of section 19 and 20 unless the circumstances in which the debtor made the payment indicate otherwise.

(4) Subsections (1), (2) and (3) shall not, where the debtor does not appropriate, operate to prevent the creditor from appropriating a payment on account or generally to a particular debt or to particular debts or to all the debts whether statute-barred debts or not, but the appropriation shall not by reason only of its being made by the creditor operate to make the payment a payment for the purposes of sections 19 and 20 in respect of any of those debts which are statute-barred, unless the circumstances in which the payment was made by the debtor so indicate.

22. Fraud and mistake

(1) Where, in an action for which a period of limitation is fixed by this Act

- (a) the action is based on the fraud of the defendant or the agent of the defendant or of a person through whom the defendant or the agent claims, or
- (b) 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 mistake, or could with reasonable diligence have discovered it.

(2) For the purposes of this Act, concealed fraud by one of concurrent wrongdoers shall not suspend time for another or others.

(3) This section shall not enable an action to be brought to recover, or enforce a charge against, or set aside a transaction affecting 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 a 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 did not have reason to believe that the mistake was made.

23. Extension of time where material facts not known

(1) Despite subsection (1) of section 3, where it is proved that the material facts relating to a cause of action to which that subsection refers were or included facts of a decisive character which were at all times outside the knowledge, actual or constructive, of the plaintiff until two years or more after the commencement of the three-year period relating to that cause of action, the plaintiff may, subject to subsections (2) and (3) of this section, bring the action within twelve months after obtaining knowledge of those facts.

(2) Subsection (1) of this section shall not apply unless the Court has, whether before or after the commencement of the action, granted leave to the plaintiff for the purposes of this section.

(3) This section shall not be construed as excluding or otherwise affecting

- (a) a defence which is available by virtue of an enactment other than subsection (1) of section 3 of this Act, whether it is an enactment imposing a period of limitation or not, or by virtue of a rule of law or of equity, or
- (b) the operation of an enactment or a rule of law or of equity which, apart from this section, would enable that action to be brought after the end of the period of three years from the date on which the cause of action accrued.

(4) In this section, a reference to a three-year period relating to a cause of action includes a reference to an extension permitted under sections 16 or 22 of this Act in case of disability, fraud or mistake.

24. Application for leave of Court

(1) An application for the leave of the Court under section 23 shall be made *ex parte*, except in so far as the Rules of Court otherwise provide in relation to applications which are made after the commencement of a relevant action.

(2) Where an application under subsection (1) is made before the commencement of a relevant action, the Court shall grant leave in respect of a cause of action to which the application relates if, but only if, on evidence adduced by or on behalf of the plaintiff, it appears to the Court that, if the action were brought forthwith and the like evidence were adduced in that action, that evidence would, in the absence of evidence to the contrary, be sufficient

- (a) to establish that cause of action, apart from a defence under subsection (1) of section 3, and
- (b) to fulfil the requirements of subsection (1) of section 23 in relation to that cause of action.

(3) Where an application under subsection (1) is made after the commencement of a relevant action, the Court shall grant leave in respect of a cause of action to which the application relates if, but only if, on evidence adduced by or on behalf of the plaintiff, it appears to the Court that if the like evidence were adduced in that action, that evidence would, in the absence of evidence to the contrary, be sufficient

- (a) to establish that cause of action, apart from a defence under subsection (1) of section 3, and
- (b) to fulfil the requirements of subsection (1) of section 23 in relation to that cause of action,

and it also appears to the Court that, until after the commencement of that action, it was outside the knowledge, actual or constructive, of the plaintiff that the matters constituting that cause of action had occurred on that date as, apart from this section, to afford a defence under subsection (1) of section 3.

(4) For the purposes of this section, a fact is outside the knowledge, actual or constructive, of a person if, but only if,

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

(5) In the application of subsection (4) to a person at a time when that person was under a disability and was in the custody of a parent, a reference to that person shall be construed as a reference to the parent.

25. Application of sections 23 and 24 to action after death

(1) In relation to an action to which section 23 refers which is an action in respect of one or more causes surviving for the benefit of the estate of a deceased person by virtue of section 22 of the Civil Liability Act, 1963 (Act 176), sections 23 and 24 of this Act shall have effect subject to subsections (4) and (5) of this section.

(2) Sections 23 and 24 of this Act shall, subject to subsections (4) to (6) of this section, apply to an action brought by virtue of section 16 of the Civil Liability Act, 1963 as they apply to an action to which section 23 of this Act refers.

(3) In this section and in sections 23 and 24 of this Act as modified by this section, the expression "**deceased**" means the person referred to in subsection (1) or (2) of this section.

(4) Subsection (1) of section 23 of this Act shall not apply to an action falling within subsection (1) or (2) of this section unless the action is brought before the expiration of twelve months from the date on which the deceased died.

(5) For the purposes of the application of subsection (1) of section 23 of this Act to an action falling within subsection (1) or (2) of this section,

- (a) a reference in subsection (1) of section 23 to the material facts being outside the knowledge of the plaintiff shall be construed as a reference to those facts being outside the knowledge of the deceased;
- (b) the requirements of that subsection are fulfilled in relation to a cause of action if
 - (i) the matters specified in that subsection, as modified by paragraph (a), are proved, or
 - (ii) it is proved that the material facts relating to that cause of action were or included facts relating to that cause of action which until the death of the deceased were outside the knowledge, actual or constructive, of the deceased,

and a reference in this Part to the requirements of subsection (1) of section 23 of this Act shall, in relation to an action falling within subsection (1) or (2) of this section, be construed as a reference to the requirements of that subsection as modified by this subsection.

(6) In the application of sections 23 and 24 of this Act to an action brought by virtue of section 16 of the Civil Liability Act, 1963,

- (a) a reference to a cause of action to which an action relates shall be construed as a reference to a cause of action in respect of which it is claimed that the deceased could, but for the death, have maintained an action and recovered damages, and
- (b) a reference to establishing a cause of action shall be construed as a reference to establishing that the deceased could, but for the death, have maintained an action and recovered damages in respect the case of action.

PART THREE

Arbitrations

26. Application to arbitrations

(1) This Act and any other limitation enactment shall apply to arbitrations as they apply to actions in the High Court.

(2) This Part of this Act shall apply to an arbitration under an enactment as well as to an arbitration pursuant to an arbitration agreement; and section 27 of this Act shall have effect, in relation to an arbitration under an enactment, as if, for the references to an arbitration agreement, there were substituted references to any of the provisions of the enactment that relate to the arbitration.

(3) This Act shall not apply to an arbitration for which a period of limitation is fixed by any other enactment.

(4) This Act shall not affect an arbitration commenced before the commencement of this Act or the title to a property which is the subject of that arbitration.

27. Commencement of arbitration

(1) For the purposes of this Act and any other limitation enactment, an arbitration is commenced

- (a) where one party to the arbitration serves on the other party a written notice requiring the other party to appoint or concur in appointing an arbitrator, or
- (b) where the arbitration agreement provides that the reference shall be to a person named or designated, when one party serves on the other party a written notice requiring the other party to submit the dispute to the person so named or designated.

(2) A notice under this section may be served

- (a) by delivering it to the person on whom it is to be served, or
- (b) by leaving it at the place in the Republic at which that person ordinarily resides or carries on business, or

- (c) by sending it by registered post in an envelope addressed to that person at the place in the Republic at which that person ordinarily resides or carries on business, or
- (d) in any other manner provided for in the arbitration agreement.

(3) Where a notice is sent in the manner prescribed by paragraph (c) of subsection (1), service of the notice is effected, unless the contrary is proved, at the time at which the letter would have been delivered in the ordinary course of post.

(4) For the purposes of this section, a company registered under the Companies Act, 1963 (Act 179) carries on business at its registered office in the Republic every other body corporate and every unincorporated body carries on business at its principal office or place of business in the Republic.

28. Accrual despite term in agreement

Despite a term in an arbitration agreement to the effect that a cause of action shall not accrue in respect of a matter required by the agreement to be referred until an award is made under the agreement, the cause of action accrued, for the purposes of this Act and of any other limitation enactment, whether in their application to arbitrations or to other proceedings, in respect of that matter at the time when it would have accrued but for that term in the agreement.

29. Extension of time

Where the High Court orders the setting aside of an award or orders, after the commencement of an arbitration, the cessation of the arbitration with respect to the dispute referred, the High Court may further order that the period between the commencement of the arbitration and the date of the order of the High Court shall be excluded in computing the time fixed by this Act or any other limitation enactment for the commencement of proceedings, including arbitration, with respect to the dispute referred.

PART FOUR

General

30. Application of Act

(1) This Act applies to proceedings by or against the Republic as if the Republic were a private individual.

(2) This Act shall not apply to proceedings in respect of the forfeiture of a ship or of an interest in a ship under an enactment relating to merchant shipping.

(3) This Act applies to actions in respect of matters regulated by customary law.

31. Acquiescence

This Act does not affect an equitable jurisdiction to refuse relief on the ground of acquiescence or otherwise.

32. Set-off and counterclaim

For the purposes of this Act, a claim by way of set-off or counterclaim is a separate action commenced on the same date as the action in which the set-off or counterclaim is pleaded.

33. Actions barred and pending

This Act does not

- (a) enable an action to be brought which was barred by the law in force in the Republic immediately before the commencement of this Act except in so far as the cause of action may be revived by an acknowledgement or part payment given or made in accordance with Part Two, or
- (b) affect an action commenced before the commencement of this Act or the title to a property which is the subject of that action.

34. Interpretation

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

“acknowledgement” means an acknowledgement made under and in accordance with section 17;

“action” includes a proceeding, other than a criminal proceeding in a Court;

“action to recover land” includes an action claiming a declaration of title to land, and proceedings by a mortgagee for the delivery of possession of land by a mortgagor;

“appropriate advice” in relation to a fact or a set of circumstances, means the advice of competent persons qualified, in their respective spheres, to advise on the medical, legal and any other aspects of that fact or those circumstances;

“arbitration”, **“arbitration agreement”** and **“award”** have the same meanings as in the Arbitration Act, 1961 (Act 38);

“Court” means a court of competent jurisdiction;

“debt” includes a liquidated pecuniary claim;

“material facts” means

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

“mortgage” includes an equitable mortgage;

“other limitation enactment” means any other enactment relating to the limitation of actions;

“payment” means a payment made under and in accordance with section 19;

“penalty” does not include a fine which may be imposed on conviction for a criminal offence;

“personal injuries” include a disease and an impairment of a person’s physical or mental condition;

“**personal representative**” means the executor original or by representation, or the administrator of a deceased person;

“**relevant action**”, in relation to an application for the leave of the Court, means an action in connection with which the leave sought by the applicant is required;

“**rent**” includes a rent payable under a lease or other contract of tenancy, whether in writing or not and whether express or implied, and a rent payable under an enactment;

“**Rules of Court**” mean the Rules made by the Rules of Court Committee under article 159 of the Constitution;

“**ship**” includes every description of vessel used in navigation not propelled by oars;

“**statute-barred debt**” means a debt in respect of which the period fixed by this Act for the bringing of an action to recover it has expired;

“**successor**” means,

- (a) in relation to a mortgage, the personal representatives of the mortgagee and any other person on whom the rights under the mortgage devolve;
- (b) in relation to a person liable in respect of a debt, the personal representatives of that person and any other person on whom the liability in respect of the debt devolves.

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

- (a) references to a right of action include references to
 - (i) a cause of action,
 - (ii) a right to receive money secured by a mortgage or charge on a property or to recover proceeds of the sale of land, and
 - (iii) a right to receive a share or an interest in the movable estate of a deceased person;
- (b) references to the date of the accrual of a right of action,
 - (i) in the case of an action for an account, shall be construed as references to the date on which the matter arose in respect of which an account is claimed,
 - (ii) in the case of an action on a judgment, shall be construed as references to the date on which the judgment became enforceable,
 - (iii) in the case of an action to recover arrears of rent, shall be construed as reference to the date on which the arrears became due;
- (c) references to a person in possession of land, in the case of land held under a lease in writing reserving a yearly rent of not less than two cedis, shall be construed as including references to a person who, wrongly claiming to be entitled to the land in reversion immediately expectant on the termination of the lease, is in receipt of the rent;
- (d) references to a debt shall, in the case of interest, be construed as references to an instalment of the interest;

- (e) references to a mortgagee who is by virtue of the mortgage in possession of a mortgaged land, include references to a mortgagee who has obtained possession of the mortgaged land by virtue of an order of the Court.

(3) For the purposes of an action by a concurrent wrongdoer to recover a contribution in respect of a damage, the date on which the right to the contribution accrues, that is to say, the relevant date, shall be ascertained as follows:

- (a) where the wrongdoer is held liable in respect of the damage by a judgment given in an action or an award made on an arbitration, the relevant date is the date on which the judgment is given or the date of the award;
- (b) where, in a case not falling within paragraph (a), the wrongdoer admits liability in favour of one or more persons in respect of the damage, the relevant date is the earliest date on which the amount to be paid by the wrongdoer in discharge of that liability is agreed by or on behalf of the wrongdoer and that person or each of those persons,

and for the purposes of this subsection, an account shall not be taken of a judgment or an award given or made on appeal in so far as it varies the amount of damages awarded to the wrongdoer.

(4) For the purposes of this Act, a material fact relating to a cause of action shall be taken, at a particular time, to have been a fact of a decisive character if it is a fact which a reasonable person, knowing that fact and having obtained appropriate advice with respect to that fact, would have regarded at that time as determining, in relation to that cause of action, that, apart from a defence under subsection (1) of section 3, an action would have a reasonable prospect of succeeding and of resulting in the award of damages sufficient to justify the bringing of the action.

35. Repeals

(1) The enactments specified in the First Schedule are hereby repealed to the extent indicated in that Schedule.

(2) The English Statutes specified in the Second Schedule shall cease to apply in the Republic to the extent indicated in that Schedule, and accordingly the references to those Statutes in the First Schedule to the Courts Act, (Act 372) are hereby repealed to the extent that those Statutes are not applied by this subsection.

36. Commencement

*Spent.*²

2. The section provided the 1st day of January, 1973 as the day of the coming into operation of the Act.

SCHEDULES

FIRST SCHEDULE

[Section 35 (1)]

Repeals

<i>Short title</i>	<i>Extent of Repeal</i>
Railways Ordinance (Cap. 233)	Section 90
Minerals Duty Ordinance, 1952 (No. 20)	Section 30 (2)
Mineral Oil Taxation Ordinance, 1956	Section 33 (2) (No. 17)
Local Government Act, 1961 (Act 54)	Sections 132 to 134
Public Officers Act, 1962 (Act 114)	Paragraphs (a) and (b) of section 2 (1)
Ports Act, 1962 (Act 115)	Section 94 In section 95, for "The notice referred to in section 94 and any" substitute "Any".
Civil Liability Act, 1963 (Act 176)	Sections 12, 13, 16 (6) and 30A
Civil Liability Act, 1963 (Amendment)	
Decree, 1968 (N.L.C.D. 322)	The whole Decree
Railway and Ports Act, 1971 (Act 358)	Section 19 (1)
Local Administration Act, 1971 (Act 359)	Section 99

SECOND SCHEDULE

[Section 35 (2)]

English Statutes Ceasing to Apply

<i>Date of Statute</i>	<i>Short Title</i>	<i>Extent of Cesser</i>
1623 (21 Jac. I. c. 16)	Limitation Act	The whole Statute
1705 (4 & 5 Anne. c. 3)	Administration of Justice Act	The whole Statute
1828 (9 Geo. IV, c. 14)	Statute of Frauds Amendment Act	The whole Statute except sections 5 and 6
1833 (3 & 4 Will. IV, c. 42)	Civil Procedure Act	The whole Statute
1856 (19 & 20 Vict., c. 97)	Mercantile Law Amendment Act	The whole Statute

LIMITATION ACT, 1972³

MEMORANDUM

The limitation of actions is a rule of public policy which provides for the automatic termination of litigation after a fixed period of time. After this statutory period a person's right of action is barred, and sometimes his title is extinguished.

The law relating to limitation of actions in Ghana is in a state of some confusion, being based on the provisions of five English Statutes of general application which have been applied to Ghana. These Statutes date from 1623 to 1856 and it is therefore essential to enact the law afresh.

The Act constitutes a comprehensive code of rules for the limitation of actions over the whole field of the civil law. It follows the modern tendency to gather virtually all the limitation rules into one Statute and to standardise the limitation periods for particular grounds of action. It also follows the prevailing practice of making the rules relating to fraud, mistake, disability, and acknowledgement and part payment apply equally to all types of proceedings.

Part One contains provisions fixing the periods of limitation in different classes of actions. Actions for slander of seduction, or to recover contribution from concurrent wrongdoers and to recover civil penalties and forfeitures are barred after two years. Actions in tort claiming damages for personal injuries are barred after three years. Other actions in tort and actions in contract, to enforce a recognisance or an award, or to recover money, are barred after six years. Actions on an instrument under seal, with certain exceptions, and to recover money due from a member of a registered company and to recover arrears of income tax and customs duty, are barred after twelve years. Actions on a judgment are also barred after twelve years from the date on which the judgment became enforceable.

Provision is made in section 6 that claims for specific performance of a contract or for an injunction or other equitable relief are not affected by the above periods of limitation except where in the opinion of the Court the interests of justice so require.

Section 7 makes provisions concerning successive conversions and by section 8 actions in respect of claims to the movable estate of a deceased person must be brought within twelve years. Section 9 limits to six years the time for recovery of arrears of rent or an annuity or damages.

Section 10 provides that actions to recover land are barred after twelve years from the date on which the right of action accrued to the person bringing it, or if it first accrued to some person through whom he claims, to that person. Right of action to recover land does not accrue unless there is adverse possession. Where adverse possession ceases before the right of action is barred, the right is no longer regarded as having accrued, and a new right of action does not accrue unless the land is again taken into adverse possession. A person is not regarded as being in possession of land by reason only of having made a formal entry on the land, and a continual or any other claim on or near a land does not preserve a right of action to recover it. On the expiration of the time fixed for a person to bring an action to recover land, the title of that person to the land is extinguished.

Section 11 deals with the accrual of a cause of action in respect of future interests in land. Actions claiming the sale of land subject to a mortgage or charge are, by section 12, barred after the same period as actions to recover land under section 10. At the expiration of the period fixed by the Act for a mortgagee to bring an action to redeem mortgaged land, the title of that mortgagee or mortgagor is extinguished. An action shall not be brought to redeem land of which the mortgagee has been in possession for twelve years.

3. Issued as the Limitation Decree, 1972 (N.R.C.D. 54).

By section 13 actions to recover principal money secured by a mortgage or charge on land or on movable property, other than a ship, are barred after twelve years from the date when the right to receive the money accrued. Actions to recover arrears of interest on a mortgage or charge on land, or on movable property, other than a ship, or to recover damages in respect of the arrears, are barred after six years from the date when the interest became due.

By section 12 (5) on the expiration of the period fixed by the Act for a mortgagee to bring an action to recover land or for a person claiming as mortgagee to bring an action claiming sale of land, the right of these persons to the principal sum and interest secured by the mortgage or charge is extinguished. Similarly, by section 13 (6) on the expiration of the period fixed for a mortgagee or charge to bring an action to recover a principal sum of money so secured on movable property, other than a ship, the right of that person to the principal sum and interest is extinguished.

Section 14 which deals with property held on trust preserves the right of trustees to sue to recover property held on trust in respect of beneficiaries whose rights of action have not been barred. By section 15 an action to recover money or any other property or in respect of a breach of trust shall not be brought against a trustee or a person claiming through him after six years from the date on which the right of action accrued. This rule does not apply to an action for which a period of limitation is fixed by any other provision of the Act. A period of limitation fixed by the Act will not apply to an action against a trustee or any person claiming through him where the claim is founded on a fraud or fraudulent breach of trust to which the trustee was a party or privy, or is to recover trust property or the proceeds thereof still retained by the trustee and converted to his own use.

The periods of limitation laid down in Part One are not, however, absolute, but subject to extension under Part Two in case of disability, acknowledgement, part payment, fraud and mistake. Generally speaking, a period of disability is disregarded in computing the limitation period. Where there is a written and signed acknowledgement relating to the matter in issue, for example, an acknowledgement of the debt, or of title to land, or of an equity of redemption, the limitation period generally runs afresh from the date of that acknowledgement. So too a part payment of a debt has the effect of making the limitation period run afresh. These principles are worked out in detail in sections 17 to 21.

A payment may be made by the agent of the person by whom required it to be made. Generally, a payment made in respect of a debt binds the persons liable in respect of the debt. A payment, however, made in respect of a statute-barred debt shall not bind

- (a) a person other than the person making the payment and his successors, or
- (b) a successor on whom the liability devolves on the determination of a preceding estate or interest in property under a settlement taking place before the date of payment.

A payment by one of several personal representatives in respect of the movable estate of a deceased person shall bind the estate of the deceased person.

The Act contains provisions for the appropriation of payments where there exist a number of debts in respect of which the debtor makes a payment to the creditor and neither the debtor nor the creditor appropriates the payment to a particular debt or debts.

Where the action is based on the fraud of the defendant or his agent or of a person through whom he claims or his agent and the right of action is concealed by the fraud, the period of limitation will not begin to run until the plaintiff has discovered the fraud or could with reasonable diligence have done so: section 22. Where the action is for relief from the consequences of mistake, the period of limitation will not begin to run until the plaintiff has discovered the mistake or could with reasonable diligence have done so. There are exceptions to these rules in favour of purchasers for valuable consideration.

Sections 23 to 25 of the Act permit within strictly defined limits, extensions of up to twelve months with the leave of the Court in the case of actions to which section 3 (1) refers including actions brought under sections 16 (survival of causes of action) and 22 (action for the benefit of dependants of deceased persons) of the Civil Liability Act, 1963 (Act 176). These provisions operate where it is shown that material facts relating to the cause of action were or included facts of a decisive character which were outside the knowledge, actual or constructive, of the plaintiff or the deceased.

Part Three applies the provisions of the Act to arbitrations. Where an arbitration agreement contains a term to the effect that a cause of action shall not accrue in respect of a matter required by the agreement to be referred until an award is made, the cause of action shall be deemed to have accrued but for that term in the agreement. If the High Court orders an award to be set aside, or orders an arbitration, after its commencement, to cease to have effect, the Court may direct 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 fixed for the commencement of proceedings, including arbitration, with respect to the matter referred.

Part Four deals with general matters. By section 30 the Act does not apply to proceedings in respect of the forfeiture of a ship or of an interest in a ship. It does, however, apply to actions in respect of matters regulated by customary law. In other respects the Act applies generally, following the recommendations of the Law Reform Commission that local government authorities and statutory corporations should be subject to the ordinary limitation periods. It thus removes the present indefensible anomaly whereby, for example, the railway and ports authorities have in the past by special provision of law been given the benefit of unduly short periods of limitation, while actions against other corporations of a similar nature, for example, the Omnibus Services Authority and State Transport Corporation, are subject to the ordinary limitation periods.

Sections 31 and 32 relate to acquiescence, set-off and counterclaim. Sections 33 and 34 provide for actions barred and pending at the commencement of the Act, and for interpretation. Section 35 repeals the English limitation Statutes of general application in Ghana and also certain limitation provisions in the Statutes of Ghana. Section 36 gives the Act a commencement date of 1st January, 1973. The postponed commencement date is intended partly to ensure that the public are familiar with the provisions of the Act before it comes into force and also partly to enable objections and criticisms of its provisions of the Act before it comes into force and also partly to enable objections and criticisms of its provisions to be considered before its commencement.

The enactment of a comprehensive set of limitation rules is essential in every modern State, and this Act will remove the doubt and confusion which have for so long surrounded this branch of the law in Ghana.

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