

LAWS OF BRUNEI

CHAPTER 14 LIMITATION

S 25/91

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**CHAPTER 14
LIMITATION**

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LIMITATION ACT

An Act to amend and consolidate the Law relating to the limitation of actions and for purposes connected therewith

Commencement : 1st September, 1991
[S 26/91]

PART I

PRELIMINARY

Citation.

1. This Act may be cited as the Limitation Act

Application.

2. (1) This Act shall apply to any action commenced after the date of coming into force of this Act, whether the cause of action accrued before or after that date.

(2) Any action commenced before the date of coming into force of this Act, shall continue in accordance with, and be bound by, the provisions of Limitation Act (repealed by this Act).

Application to the Government.

3. (1) Except as otherwise expressly provided in this Act, and without prejudice to section 49 of this Act, this Act shall not apply to proceedings by or against the Government.

(2) For the removal of doubt, it is declared that this Act shall not apply to —

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

(b) any forfeiture proceedings under any written law relating to customs or excise; or

(c) any proceedings in respect of the forfeiture of a ship.

Interpretation.

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

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

“land” includes corporeal hereditaments and rent charges and any legal or equitable estate or interest therein, including an interest in the proceeds of the sale of land held upon trust for sale, but except as provided above in this definition does not include any incorporeal hereditament;

“personal estate” and “personal property” do not include chattels real;

“personal injuries” includes any disease and any impairment of a person’s physical or mental condition, and “injury” and cognate expressions shall be construed accordingly;

“rent” includes a rentcharge and a rent service;

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

“trust” and “trustee” have the same meanings respectively as in the Trustee Act, 1925 of the United Kingdom;

“trust for sale” has the same meaning as in the Law of Property Act, 1925 of the United Kingdom.

(2) For the purposes of this Act a person shall be treated as under a disability while he is an infant, or of unsound mind.

(3) For the purposes of subsection (2), a person is of unsound mind if he is a person who, by reason of mental disorder, is incapable of managing and administering his property and affairs.

(4) Without prejudice to the generality of subsection (3), a person shall be conclusively presumed for the purposes of subsection (2) to be of unsound mind while he is liable to be detained or subject to guardianship under any law in force relating to mental health.

(5) Subject to subsection (6), 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.

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

(7) References in this Act to a right action to recover land shall include references to a right to enter into possession of the land or, in the case of rentcharges, to distrain for arrears of rent, and references to the bringing of such an action shall include references to the making of such an entry or distress.

(8) References in this Act to the possession of land shall, in the case of rentcharges, be construed as references to the receipt of the rent, and references to the date of dispossession or discontinuance of possession of land shall, in the case of rentcharges, be construed as references to the date of the last receipt of rent.

(9) References in Part III to a right of action shall include references to —

(a) a cause of action;

(b) a right to receive money secured by a mortgage or charge 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 the personal estate of a deceased person.

(10) References 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 references to the date on which the judgment became enforceable; and

(b) in the case of an action to recover arrears of rent or interest, or damages in respect of arrears of rent or interest, as references to the date on which the rent or interest became due.

PART II**ORDINARY TIME LIMITS****Time limits subject to extension or exclusion.**

5. (1) This Part gives the ordinary time limits for bringing actions of the various classes mentioned in the following provisions of this Part.

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

Actions founded on tort.

6. (1) An action founded on tort shall not be brought after the expiration of 6 years from the date on which the cause of action accrued.

(2) The time limit under subsection (1) shall not apply to an action for libel or slander, but no such action shall be brought after the expiration of 3 years from the date on which the cause of action accrued.

Successive conversions, etc.

7. (1) Where any 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, no action shall be brought in respect of the further conversion after the expiration of 6 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.

8. (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 sections 6(1) and 7(1), but if his title to the chattel is extinguished under section 7(2) he may not bring an action in respect of a theft preceding the loss of his title, unless the theft in question preceded the conversion from which time began to run for the purposes of section 7(2).

(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 provided below, 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 stolen 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 sections 7(1) or (2) 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 Brunei Darussalam which would be theft if committed in Brunei Darussalam; and

(b) obtaining any property (in Brunei Darussalam or elsewhere) in the circumstances described in section 415 of the Penal Code (Chapter 22) or by extortion within the meaning of section 383 of that Code;

and references in this section to a chattel being “stolen” shall be construed accordingly.

Actions founded on simple contract.

9. An action founded on simple contract shall not be brought after the expiration of 6 years from the date on which the cause of action accrued.

Actions on certain loans.

10. (1) Subject to subsection (3), section 9 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 —

(a) does not provide for repayment of the debt on or before a fixed or determinable date; and

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

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 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.

(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 of them) section 9 shall thereupon apply as if the cause of action to recover the debt had accrued on the date on which the demand was made.

(4) In this section, “promissory note” has the same meaning as in subsection (1) of section 88 the Bills of Exchange Act (Chapter 172).

Enforcement of certain awards.

11. An action to enforce an award, where the submission is not by an instrument under seal, shall not be brought after the expiration of 6 years from the date on which the cause of action accrued.

Actions on a specialty.

12. (1) An action upon a specialty shall not be brought after the expiration of 12 years from the date on which the cause of action accrued.

(2) Subsection (1) shall not effect any action for which a shorter period of limitation is prescribed by any other provision of this Act.

Sums recoverable by statute.

13. (1) An action to recover any sum recoverable by virtue of any written law shall not be brought after the expiration of 6 years from the date on which the cause of action accrued.

(2) Subsection (1) shall not affect any action to which section 14 of this Act applies.

Claiming contribution.

14. (1) Where under section 14 of the Fatal Accidents and Personal Injuries Act (Chapter 160), any person becomes 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 on which a right to recover contribution in respect of any damage accrues to any person (referred to below in this section as “the relevant date”) shall be ascertained as provided in subsections (3) and (4).

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

- (a) by a judgment given in any civil proceedings; or
- (b) by an award made on any arbitration;

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

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 any 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 he admits any liability in respect of the damage or not), the relevant date shall be the earliest date on which the amount to be paid by him is agreed between him (or his representative) and the person (or each of the persons, as the case may be) to whom the payment is to be made.

(5) An action to recover contribution shall be one to which sections 32, 38 and 47 apply, but otherwise Parts III and V (except section 46) shall not apply for the purposes of this section.

Personal injuries.

15. (1) This section applies to any action for damages for negligence, nuisance or breach of duty (whether the duty exists by virtue of a contract or of provision made by or under a written law or independently of any contract or any such provision) where the damages claimed by the plaintiff for the negligence, nuisance or breach of duty consist of or include damages in respect of personal injuries to the plaintiff or any other person.

(2) None of the time limits given in the preceding provisions of this Act shall 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 3 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 11 of the Fatal Accidents and Personal Injuries Act (Chapter 160) shall be 3 years from —

(a) the date of death; or

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

(6) 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.

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

Fatal Accidents legislation.

16. (1) An action under Part II of the Fatal Accidents and Personal Injuries Act (Chapter 160), 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 Act or in any other written law, or for any other reason).

Where any such action by the injured person would have been barred by the time limit in section 15, no account shall be taken of the possibility of that time limit being overridden under section 40.

(2) None of this time limits given in the preceding provisions of this Act shall apply to an action under Part II of the Fatal Accidents and Personal Injuries Act (Chapter 160), but no such action shall be brought after the expiration of 3 years from —

(a) the date of death; or

(b) the date of knowledge of the person for whose benefit the action is brought;

whichever is the later.

(3) An action under Part II of the Fatal Accidents and Personal Injuries Act (Chapter 160) shall be one to which sections 32, 40 and 47 of this Act apply, and the application to any such action of the time limit under subsection (2) shall be subject to section 49; but otherwise Parts III and IV of this Act shall not apply to any such action.

Operation of section 16.

17. (1) Where there is more than one person for whose benefit an action under Part II of the Fatal Accidents and Personal Injuries Act (Chapter 160) is brought, section 16(2)(b) of this Act 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 section 16(2) 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 or an agreement between the parties not to raise the defence, or otherwise).

Date of knowledge under sections 15 and 16.

18. (1) In sections 15 and 16 references to a person's date of knowledge are references to the date on which he first had knowledge of the following facts —

(a) that the injury in question was significant; and

(b) that the injury, was attributable in whole or in part to the act or omission which is alleged to constitute negligence, nuisance or breach of duty; and

(c) the identity of the defendant; and

(d) if it is alleged that the act or omission was that of a person other than the defendant, the identity of that person and the additional facts supporting the bringing of an action against the defendant;

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

(2) For the purposes of this section 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 —

(a) from facts observable or ascertainable by him; or

(b) from facts ascertainable by him with the help of medical or other appropriate expert advice which it is reasonable for him to seek,

but a person shall not be fixed under this subsection with knowledge of a 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.

Special time limit for negligence.

19. (1) This section applies to any action for damages for negligence, other than one to which section 15 applies, where the starting date for reckoning the period of limitation under subsection (4)(b) falls after the date on which the cause of action accrued.

(2) Section 6(1) 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 the period applicable in accordance with subsection (4).

(4) That period is either —

(a) 6 years from the date on which the cause of action accrued;
or

(b) 3 years from the starting date as defined by subsection (5), if that period expires later than the period mentioned in paragraph (a).

(5) For the purposes of this section, the starting date for reckoning the period of limitation under subsection (4)(b) 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.

(6) In subsection (5) “the knowledge required for bringing an action for damages in respect of the relevant damage” means knowledge both —

(a) of the material facts about the damage in respect of which damages are claimed; and

(b) of the other facts relevant to the current action mentioned in subsection (8).

(7) For the purposes of subsection (6)(a), 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.

(8) The other facts referred to in subsection (6)(b) are —

(a) that the damage was attributable in whole or in part to that act or omission which is alleged to constitute negligence; and

(b) the identity of the defendant; and

(c) if it is alleged that the act or omission was that of a person other than the defendant, the identity of that person and the additional facts supporting the bringing of an action against the defendant.

(9) Knowledge that any acts or omissions did or did not, as a matter of law, involve negligence is irrelevant for the purpose of subsection (5).

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

(a) from facts observable or ascertainable by him; or

(b) from facts ascertainable by him with the help of appropriate expert advice which it is reasonable for him to seek;

but a person shall not be taken by virtue of this subsection to have knowledge of a 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 negligence.

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

(a) which is alleged to constitute negligence; and

(b) to which the damage in respect of which damages are claimed is alleged to be attributable (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 19 applies to the action, the date which is for the purposes of that section the starting date for reckoning the period mentioned in subsection (4)(b) of that section has not yet occurred;

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

Recovery of land.

21. (1) No action shall be brought by any person to recover any land after the expiration of 12 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 estate or interest claimed was an estate or interest in reversion or remainder or any other future estate or interest and the right of action to recover the land accrued on the date on which the estate or interest fell into possession by the determination of the preceding estate or interest; and

(b) the person entitled to the preceding estate or interest (not being a term of years absolute) was not in possession of the land on that date;

no action shall be brought by the person entitled to the succeeding estate or interest after the expiration of 12 years from the date on which the right of action accrued to the person entitled to the preceding estate or interest or 6 years from the date on which the right of action accrued to the person entitled to the succeeding estate or interest, whichever period last expires.

(3) No person shall bring an action to recover any estate or interest in land under an assurance taking effect after the right of action to recover the land had accrued to the person by whom the assurance was made or some person through whom he claimed or some person entitled to a preceding estate or interest, unless the action is brought within the period during which the person by whom the assurance was made could have brought such an action.

(4) Where any person is entitled to any estate or interest in land in possession and, while so entitled, is also entitled to any future estate or

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

Redemption actions.

22. When a mortgagee of land has been in possession of any of the mortgaged land for a period of 12 years, no action to redeem the land of which the mortgagee has been so in possession shall be brought after the end of that period by the mortgagor or any person claiming through him.

Extinction of title of land.

23. Subject to section 22 of this Act, at the expiration of the period prescribed by this Act for any person to bring an action to recover land (including a redemption action) the title of that person to the land shall be extinguished.

Land held on trust.

24. (1) Subject to sections 27(1) and (2), the provisions of this Act shall apply to equitable interests in land, including interests in the proceeds of the sale of land held upon trust for sale, as they apply to legal estates.

Accordingly a right of action to recover the land shall, for the purposes of this Act 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 estate in the land.

(2) Where any land is held upon trust (including a trust for sale) and the period prescribed by this Act has expired for the bringing of an action to recover the land by the trustees, the estate of the trustees shall not be extinguished 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 Act; but if and when every such right of action has been so barred the estate of the trustees shall be extinguished.

(3) 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 Act, notwithstanding that the right of action of the trustees would apart from this provisions have been barred by this Act.

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 6 years from the date on which the arrears became due.

Recovery of money secured or of proceeds of the sale of land.

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

(a) any principal sum of money secured by a mortgage or other charge on property (whether real or personal); or

(b) proceeds of the sale of land;

after the expiration of 12 years from the date on which the right to receive the money accrued.

(2) No foreclosure action in respect of mortgaged personal property shall be brought after the expiration of 12 years from the date on which the right to foreclose accrued.

But 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 of money secured by a mortgage or other charge and the right to foreclose on the property subject to the mortgage or charge shall not be 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) Nothing in this section shall apply to a foreclosure action in respect of mortgaged land, but the provisions of this Act relating to actions to recover land shall apply to such an action.

(5) Subject to subsections (6) and (7), no action to recover arrears of interest payable in respect of any sum of money secured by a mortgage or other charge or payable in respect of proceeds of the sale of land, or to recover damages in respect of such arrears shall be brought after the expiration of 6 years from the date on which the interest became due.

(6) Where —

(a) a prior mortgagee or other incumbrancer has been in possession of the property charged; and

(b) an action is brought within one year of the discontinuance of that possession by the subsequent incumbrancer,

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

(7) Where —

(a) the property subject to the mortgage or charge comprises any future interest or life insurance policy; and

(b) it is a term of the mortgage or charge that arrears of interest shall be treated as part of the principal sum of money secured by the mortgage or charge,

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

Trust property.

27. (1) No period of limitation prescribed by this Act shall apply to an action by a beneficiary under a trust, being an action —

(a) in respect of any fraud or fraudulent breach of trust to which the trustee was a party or privy; or

(b) to recover from the trustee trust property or the proceeds of trust property in the possession of the trustee, or previously received by the trustee 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 subsection (1)(b) to recover that property or its proceeds after the expiration of the period of limitation prescribed by this Act for bringing an action to recover trust property 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 a period of limitation is prescribed by any other provision of this Act, shall not be brought after the expiration of 6 years from the date on which the right of action accrued.

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 Act shall derive any greater or other benefit from a judgment or order obtained by any other beneficiary that he could have obtained if he had brought the action and this Act had been pleaded in defence.

Personal estate of a deceased person.

28. Subject to sections 27(1) and (2) —

(a) no action in respect of any claim to the personal estate of a deceased person or to any share or interest in any such estate (whether under a will or on intestacy shall be brought after the expiration of 12 years from the date on which the right to receive the share or interest accrued; and

(b) no action to recover arrears of interest in respect of any legacy, or damages in respect of such arrears, shall be brought after the expiration of 6 years from the date on which the interest became due.

Actions for an account.

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

Enforcement of judgments.

30. (1) An action shall not be brought upon any judgment after the expiration of 6 years from the date on which the judgment became enforceable.

(2) No arrears of interest in respect of any judgment debt shall be recovered after the expiration of 6 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 Act relating to actions for the recovery of land an administrator of the estate of a deceased person shall be treated as claiming as if there had been no interval of time between the death of the deceased person and the grant of the letters of administration.

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 Act, the person to whom it accrued was under a disability, the action may be brought at any time before the expiration of 6 years 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 30 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 section 6(2) applies, subsection (1) shall have effect as if for the words from “at any time” to “occurred” there were substituted the word “by him at any time before the expiration of 3 years from the date when he ceased to be under a disability”.

(6) If the action is one to which section 14 applies, subsection (1) shall have effect as if for the words “6 years” there were substituted the words “2 years”.

(7) If the action is one to which sections 15 or 16(2) apply, subsection (1) shall have effect as if for the words “6 years” there were substituted the words “3 years”.

Extension for cases where section 19(4)(b) applies.

33. (1) Subject to subsection (2), if in the case of any action for which a period of limitation is prescribed by section 19 —

(a) the period applicable in accordance with subsection (4) 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 (5) 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 20.

Accrual to successive owners in case of latent damage.

34. (1) Subject to the following provisions of this section, where —

(a) a cause of action (“the original cause of action”) has accrued to any person in respect of any negligence to which damage to any property in which he has an interest is attributable (in whole or in part); and

(b) another person acquires an interest in that property after the date on which the original cause of action accrued but before the material facts about the damage have become known to any person who, at the time when he first has knowledge of those facts, has any interest in the property,

a fresh cause of action in respect of that negligence shall accrue to that other person on the date on which he acquires his interest in the property.

(2) A cause of action accruing to any person by virtue of subsection (1) —

(a) shall be treated as if based on breach of a duty of care at common law owed to the person to whom it accrues; and

(b) shall be treated for the purposes of section 19 as having accrued on the date on which the original cause of action accrued.

(3) Section 32 shall not apply in relation to any such cause of action.

(4) Subsection (1) shall not apply in any case where the person acquiring an interest in the damaged property is either —

(a) a person in whom the original cause of action vests by operation of law; or

(b) a person in whom the interest in that property vests by virtue of any order made by a court under the Companies Act (Chapter 39), vesting company property in the liquidator.

(5) For the purpose of subsection (1)(b), the material facts about the damage are such facts about the damage as would lead a reasonable

person who has an interest in the damaged property at the time when those facts become known to him 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.

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

(a) from facts observable or ascertainable by him; or

(b) from facts ascertainable by him with the help of appropriate expert advice which it is reasonable for him to seek;

but a person shall not be taken by virtue of this subsection to have knowledge of a fact ascertainable by him 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.

Acknowledgment or part payment.

35. (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 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 in question 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 the 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 in question or the person liable for the mortgage debt makes any payment in respect of the debt (whether of principal or interest) the right shall be treated as having accrued on and not before the date of the 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 or interest of the mortgage debt; or

(b) acknowledges the title of the mortgagor, or his equity or redemption;

an action to redeem the land in his possession may be brought at any time before the expiration of 12 years from the date of the payment or acknowledgment.

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

(a) any debt or other liquidated pecuniary claim; or

(b) any claim to the personal estate of a deceased person or to any share or interest in any such estate;

and the person liable or accountable for the claim 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 the 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 Act, shall not be revived by any subsequent acknowledgment or payment.

Formal provisions as to acknowledgments and part payment.

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

(2) For the purposes of section 35, 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 acknowledgment or part payment.

37. (1) An acknowledgment of the title to any land or mortgaged personalty 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 or of his equity of redemption by one of the mortgagees shall only bind him and his successors and shall not bind any other mortgagee or his successors.

(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 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 or equity of redemption of one of the mortgagors is acknowledged as mentioned above in this section, the acknowledgment shall be treated as having been made to all the mortgagors.

(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 any claim to the personal estate of a deceased person or to any share or interest in any such estate, or a payment by one of several personal

representatives in respect of any such claim, shall bind the estate of the deceased person.

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

Postponement of limitation period.

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

(a) the action is based upon the fraud of the defendant;

(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 shall not begin to run until the plaintiff has discovered the fraud, concealment or mistake (as the case may be) or could with reasonable diligence have discovered it.

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 to 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 the property or any person claiming through him in any case where the property has been purchased for valuable

consideration by an innocent third party since the fraud or concealment or (as the case may be) the transaction in which the mistake was made took place.

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

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

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

(5) Sections 19 and 20 shall not apply to any action to which subsection (1)(b) 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 6(1)).

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

39. 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 3 years mentioned in section 6(2) (or, where applicable the period allowed by section 32(1) as modified by section 32(5)) 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 —

(a) 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

(b) shall not be so brought without the leave of the High Court.

Discretionary exclusion of time limit for actions in respect of personal injuries or death.

40. (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 15 or 16 prejudice the plaintiff of 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 display section 16(1) except where the reason why the person injured could no longer maintain an action was because of the time limit in section 15.

If, for example, the person injured could at his death no longer maintain an action under Part II of the Fatal Accidents and Personal Injuries Act (Chapter 160) because of the time limit in Article 29 in the First Schedule to the Carriage by Air Act, 1961 of the United Kingdom, the court has no power to direct that section 16(1) shall not apply.

(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 15 or (as the case may be) by section 16;

(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;

(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 15, 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 the part of the deceased.

(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) shall have effect with appropriate modifications, and shall have effect in particular as if references to the plaintiff included references to any person whose date of knowledge is or was relevant in determining a time limit.

(6) A direction by the court disapplying the provisions of section 16(1) shall operate to disapply the provisions to the same effect in section 3(1) of the Fatal Accidents and Personal Injuries Act (Chapter 160).

(7) In this section “the court” means the court in which the action has been brought.

(8) References in this section to section 15 include references to that section as extended by any of the preceding provisions of this Part or by any provision of Part V.

PART IV

FOREIGN LIMITATION PERIODS

Application of foreign limitation law.

41. (1) Subject to the following provisions of this Act, where in any action or proceedings in a court in Brunei Darussalam the law of any other country falls (in accordance with rules of private international law applicable by any such court) to be taken into account in the determination of any matter —

(a) the law of that other country relating to limitation shall apply in respect of that matter for the purposes of the action or proceedings; and

(b) except where the matter falls within subsection (2), the law of Brunei Darussalam relating to limitation shall not so apply.

(2) A matter falls within this subsection if it is a matter in the determination of which both the law of Brunei Darussalam and the law of some other country fall to be taken into account.

(3) The law of Brunei Darussalam shall determine for the purposes of any law applicable by virtue of subsection (1)(a) whether, and the time at which, proceedings have been commenced in respect of any matter; and, accordingly, section 47 shall apply in relation to time limits applicable by virtue of subsection (1)(a) as it applies in relation to time limits under this Act.

(4) A court in Brunei Darussalam, in exercising in pursuance of subsection (1)(a) any discretion conferred by the law of any other country, shall so far as practicable exercise that discretion in the manner in which it is exercised in comparable cases by the courts of that other country.

(5) In this section, “law”, in relation to any country, shall not include rules of private international law applicable by the courts of that country or, in the case of Brunei Darussalam, this Act.

Exceptions to section 41.

42. (1) In any case in which the application of section 41 would to any extent conflict (whether under subsection (2) or otherwise) with public policy, that section shall not apply to the extent that its application would so conflict.

(2) The application of section 41 in relation to any action or proceedings shall conflict with public policy to the extent that its application would cause undue hardship to a person who is, or might be made, a party to the action or proceedings.

(3) Where, under a law applicable by virtue of section 41(1)(a) or for the purposes of any action or proceedings, a limitation period is or may be extended or interrupted in respect of the absence of a party to the action or proceedings from any specified jurisdiction or country, so much of that law as provides for the extension or interruption shall be disregarded for those purposes.

Foreign judgments on limitation points.

43. Where a court in any country outside Brunei Darussalam has determined any matter wholly or partly by reference to the law of that or any other country (including Brunei Darussalam) relating to limitation, then, for the purposes of the law relating to the effect to be given in Brunei Darussalam to that determination, that court shall, to the extent that it has so determined that matter, be deemed to have determined it on its merits.

Law relating to limitation.

44. (1) Subject to subsection (3), references in this Part to the law of any country (including Brunei Darussalam) relating to limitation shall, in relation to any matter, be construed as references to so much of the relevant law of that country as (in any manner) makes provision with respect to a limitation period applicable to the bringing of proceedings in respect of that matter in the courts of that country and shall include —

(a) references to so much of that law as relates to, and to the effect of, the application, extension, reduction or interruption of that period; and

(b) a reference, where under that law there is no limitation period which is so applicable, to the rule that such proceedings may be brought within an indefinite period.

(2) In subsection (1), “relevant law”, in relation to any country, means the procedural and substantive law applicable, apart from any rules of private international law, by the courts of that country.

(3) References in this Part to the law of Brunei Darussalam relating to limitation shall not include the rules by virtue of which a court may, in the exercise of any discretion, refuse equitable relief on the grounds of acquiescence or otherwise; but, in applying those rules to a case in relation to which the law of any country outside Brunei Darussalam is applicable by virtue of section 41(1)(a) (not being a law that provides for a limitation period that has expired) a court in Brunei Darussalam shall have regard, in particular, to the provisions of the law that is so applicable.

Application of Part to arbitrations.

45. The references to any other written law relating to limitation in section 46 include references to sections 41, 42 and 44; and, accordingly, in subsection (5) of section 46, the reference to the time prescribed by this Act or by any other written law relating to limitation has effect for the purposes of any case to which section 41 applies as a reference to the limitation period (if any) applicable by virtue of section 41.

PART V**MISCELLANEOUS AND GENERAL****Application of Act to arbitrations.**

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

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

(3) For the purposes of this Act and of any other written law relating to limitation, an arbitration shall be 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 either —

(a) by delivering it to the person on whom it is to be served; or

(b) by leaving it at the usual or last-known place of abode of that person; or

(c) by sending it by post in a registered letter addressed to that person at his usual or last-known place of abode;

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

(5) Where the High Court —

(a) orders that an award be set aside; or

(b) orders, after the commencement of an arbitration, that the arbitration agreement shall cease to have effect with respect to the dispute referred;

the court may further order that the period between the commencement of the arbitration and the date of the order of the court shall be excluded in computing the time prescribed by this Act or by any other written law relating to limitation for the commencement of proceedings (including arbitration) with respect to the dispute referred.

(6) This section shall apply to an arbitration under an Act as well as to an arbitration pursuant to an arbitration agreement.

Subsections (3) and (4) shall have effect, in relation to an arbitration under an Act, as if for the references to the arbitration agreement there were substituted references to such of the provisions of the Act or of any order, scheme, rules, regulations or byelaws made under the Act as relate to the arbitration.

(7) In this section —

(a) “arbitration”, “arbitration agreement” and “award” have the same meanings as in Parts I, II and III of the Arbitration Act (Chapter 173); and

(b) references to any other written law relating to limitation are references to any other written law relating to the limitation of actions, whether passed before or after the date of coming into force of this Act.

New claims in pending actions : rules of court.

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

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

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

(2) In this section a new claim means any claim by way of set-off or counterclaim, and any claim involving either —

(a) the addition or substitution of a new cause of action; or

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

and “third party proceedings” means any proceedings brought in the course of any action by any party to the action against a person not previously a party to the action, other than proceedings brought by joining any such person as defendant to any claim already made in the original action by the party bringing the proceedings.

(3) Except as provided by section 40 or by rules of court, neither the High Court nor any Intermediate or Subordinate Court shall allow a new claim within subsection (1)(b), other than an original set-off or counterclaim, to be made in the course of any action after the expiry of any time limit under this Act which would affect a new action to enforce that claim.

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 (as the case may be) by way of counterclaim by a party who has 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 there 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 the following —

(a) in the case of a claim involving a new cause of action, if the new cause of action arises out of the same facts or substantially the same facts as are already in issue on any claim previously made in the original action; and

(b) in the case of a claim involving a new party, if the addition or substitution of the new party is necessary for the determination of the original action.

(6) The addition or substitution of a new party shall not be regarded for the purposes of subsection (5)(b) 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) to (7) shall 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.

Equitable jurisdiction and remedies.

48. (1) The following time limits under this Act —

(a) the time limit under section 6(1) for actions founded on tort;

(b) the time limit under section 6(2) for actions for libel or slander;

(c) the time limit under section 9 for actions founded on simple contract;

(d) the time limit under section 11 for actions to enforce awards where the submission is not by an instrument under seal;

(e) the time limit under section 12 for actions on a specialty;

(f) the time limit under section 13 for actions to recover a sum recoverable by virtue of any written law; and

(g) the time limit under section 30 for actions to enforce a judgment,

shall not apply to any claim for specific performance of a contract or for an injunction or for other equitable relief.

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

Saving for other limitation enactments.

49. This Act shall not apply to any action or arbitration for which a period of limitation is prescribed by or under any other written law (whether passed before or after the date of coming into force of this Act) or to any action or arbitration to which the Government is a party and for which, if it were between subjects, a period of limitation would be prescribed by or under any such other written law.

Limitation to be pleaded.

50. Nothing in this Act shall operate as a bar to an action unless this Act has been expressly pleaded as a defence thereto.

Set-off and counterclaim.

51. For the purposes of this Act, any claim by way of set-off or counterclaim shall be deemed to be a separate action and to have been commenced on the same date as the action in which the set-off or counterclaim is pleaded.