



BERMUDA

LIMITATION ACT 1984

1984 : 54

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FIRST SCHEDULE

SECOND SCHEDULE

*[preamble and words of enactment omitted]*

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### PART I PRELIMINARY

#### Short title and commencement

1 This Act may be cited as the Limitation Act 1984. [*provision for commencement omitted*].

#### Interpretation

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

“action” includes any proceeding in a court of law; “estate representative” means the executor, original or by representation, or administrator for the time being of a deceased person;

“land” includes corporeal hereditaments, rentcharges, and any legal or equitable estate or interest therein, including an interest in the proceeds of the sale of land held upon trust for sale, but save as aforesaid does not include 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 rentservise;

“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;

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

“trust” does not include the duties incident to an estate or interest conveyed by way of mortgage but with this exception the expressions “trust” and “trustee” extend to implied and constructive trusts and to cases where the trustee has a beneficial interest in the trust property and to the duties incident to the office of an estate representative and “trustee” includes an estate representative, and “new trustee” includes an additional trustee.

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

(3) For the purposes of subsection (2) but without prejudice to the generality thereof, a person shall be conclusively presumed to be of unsound mind—

(a) while he is liable to be detained or subject to guardianship under the Mental Health Act 1968 [*title 11 item 36*], or under any other Act relating to the detention of persons suffering from mental disorder; and

(b) while he is receiving treatment as an in-patient in any hospital or mental nursing home within the meaning of the Mental Health Act 1968 [*title 11*]

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*item 36*], without being liable to be detained thereunder, being treatment which follows without any interval a period during which he was liable to be detained or subject to guardianship under that Act or by virtue of any enactment repealed or excluded by that Act.

(4) A person shall be treated as claiming through other person if he became entitled by, through, under, or by the act of that other person to the right claimed, and any person whose estate or interest might have been barred by a person entitled to an entailed [*sic*] or interest in possession shall be treated as claiming through the person so entitled:

Provided that a person becoming entitled to any estate or interest by virtue of a special power of appointment shall not be deemed to claim through the appointor.

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

(6) 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.

(7) In Part II references to a right of action shall include references to a cause of action and to a right to receive money secured by a mortgage or charge on any property or to recover proceeds of the sale of land, and to a right to receive a share or interest in the personal estate of the deceased person; and references to the date of the accrual of a right of action shall—

- (a) in the case of an action for an account, be construed as references to the date on which the matter arose in respect of which an account is claimed:

Provided that where there is more than one account the date of the accrual of the right of action shall be the date on which the last account arises;

- (b) in the case of an action upon a judgment, be construed as references to the date on which the judgment became enforceable;
- (c) in the case of an action to recover arrears of rent or interest, or damages in respect thereof, be construed as references to the date on which the rent, or interest became due.

### Ordinary time limits for different classes of action

3 (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 Part II.

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### Time limit; actions founded on tort

4 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.

### Time limit; further conversion of chattel

5 (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.

### Time limit; stolen chattel

6 (1) The right of any person from whom a chattel is stolen to bring an action in respect of the theft shall not be subject to the time limits under sections 4 and 5(1), but if his title to the chattel is extinguished under section 5(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 5(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 section 5(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.

### Time limit; actions founded on simple contract

7 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.

### Time limit; certain loans

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

(2) This section applies to any contract of loan which—

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- (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 7 shall thereupon apply as if the cause of action to recover the debt had accrued on the date on which the demand was made.

(4) In this section “promissory note” has the same meaning as in the Bills of Exchange Act 1934 [*title 17 item 21*].

### Time limit; certain arbitration awards

9 (1) An action to enforce an award, where the submission is not by an instrument under seal, shall not be brought after the expiration of 20 years from the date on which the cause of action accrued.

(2) For the purposes of this section “award” means an award by an arbitration.

### Time limit; action upon a specialty

10 (1) An action upon a specialty shall not be brought after the expiration of 20 years from the date on which the cause of action accrued.

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

### Time limit; sum recoverable by statute

11 An action to recover any sum recoverable by virtue of any enactment shall not be brought after the expiration of 20 years from the date on which the cause of action accrued.

### Time limit; personal injuries or death

12 (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 statute 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 subsection (4) or (5).

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- (4) Except where subsection (5) applies, the period applicable is 6 years from—
- (a) the date on which the cause of action accrued; or
  - (b) the date of knowledge (if later) of the person injured,

whichever is the later.

(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 the Survival of Actions Act 1949 [*title 8 item 68*] shall be 3 years from—

- (a) the date of death; or
- (b) the date of the estate representative's knowledge,

whichever is the later.

(6) For the purposes of this section "estate representative" includes any person who is or has been an estate 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 an estate representative or previously.

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

Time limit; actions under Fatal Accidents legislation

13 (1) An action under the Fatal Injuries (Actions for Damages) Act 1949 [*title 8 item 66*] 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 Act, or for any other reason).

Where any such action by the injured person would have been barred by the time limit in section 12, no account shall be taken of the possibility of that time limit being overridden under section 34.

(2) None of the time limits given in the preceding provisions of this Act shall apply to an action under the Fatal Injuries (Actions for Damages) Act 1949, [*title 8 item 66*] 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 the Fatal Injuries (Actions for Damages) Act 1949 [*title 8 item 66*] shall be one to which section 29 (persons under disability) applies; but otherwise Parts II and III shall not apply to any such action.

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Separate application of section 13 in relation to different dependants

14 (1) Where there is more than one person for whose benefit an action under the Fatal Injuries (Actions for Damages) Act 1949 [*title 8 item 66*] is brought, section 13(2)(b) 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 13(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 29 or an agreement between the parties not to raise the defence, or otherwise).

Definition of date of knowledge under sections 12 and 13

15 (1) In sections 12 and 13 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.

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### Time limit; recovery of land

16 (1) No action shall be brought by any person to recover any land after the expiration of 20 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 20 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) Subsection (2) shall not apply to any estate or interest which falls into possession on the determination of an entailed interest and which might have been barred by the person entitled to the entailed interest.

(4) 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.

(5) 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.

(6) Part I of the First Schedule contains provisions for determining the date of accrual of rights of action to recover land in the cases there mentioned.

(7) Part II of the First Schedule contains provisions modifying the provisions of this section in their application to actions brought by, or by a person claiming through, the Crown.

### Time limit; redemption action

17 When a mortgagee of land has been in possession of any of the mortgaged land for a period of 20 years, no action to redeem the land of which the mortgagee has been so in

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possession shall be brought after the end of that period by the mortgagor or any person claiming through him.

### Extinction of title to land

18 Subject to 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.

### Coparceners; joint tenants; tenants in common

19 Where one or more of several persons absolutely entitled in possession to any land or rent as coparceners, joint tenants, or tenants in common, is in possession of receipt of the entirety or more than his or their undivided share or shares of such land or the profits thereof, or such rent for his or their own benefit, or for the benefit of any persons other than the persons absolutely entitled in possession to the other share or shares of the same land or rent, such possession or receipt shall not be deemed to be the possession of or receipt by such last mentioned persons or any of them.

### Equitable estates and interests

20 (1) Subject to section 23(1), 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 (and any relevant provision of Part I of the First Schedule shall apply in any such case accordingly).

(2) Where any land or rent is vested in a trustee upon trust the right of a beneficiary entitled to bring an action to recover the land or rent against the trustee or any person claiming through him, shall be deemed to accrue at and not before, the time when such land or rent is conveyed to a purchaser for valuable consideration and shall then be deemed to accrue only as against such purchaser and any person claiming through him.

### Time limit; recovery of rent

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

### Time limit; recovery of mortgage debt or proceeds of sale of land; foreclosure

- 22 (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,

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after the expiration of 20 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 20 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 the 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.

Time limit; trust property

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

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- (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 subsections (1) and (2), 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 than he could have obtained if he had brought the action and this Act had been pleaded in defence.

Time limit; personal estate of deceased person

24 Subject to section 23(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 20 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.

Time limit; action for account

25 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.

Time limit; enforcement of judgment

26 (1) An action shall not be brought upon any judgment after the expiration of 20 years from the date on which the judgment became enforceable.

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(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 date of death

27 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.

### Cure of defective disentailing assurance

28 (1) This section applies where—

- (a) a person entitled in remainder to an entailed interest in any land makes an assurance of his interest which fails to bar the issue in tail or the estates and interests taking effect on the determination of the entailed interest, or fails to bar those estates and interests only; and
- (b) any person takes possession of the land by virtue of the assurance.

(2) If the person taking possession of the land by virtue of the assurance, or any other person whatsoever (other than a person entitled to possession by virtue of the settlement) is in possession of the land for a period of 20 years from the commencement of the time when the assurance could have operated as an effective bar, the assurance shall thereupon operate, and be treated as having always operated, to bar the issue in tail and the estates and interests taking effect on the determination of the entailed interest.

(3) The reference in subsection (2) to the time when the assurance could have operated as an effective bar is a reference to the time at which the assurance, if it had then been executed by the person entitled to the entailed interest, would have operated, without the consent of any other person, to bar the issue in tail and the estates and interests taking effect on the determination of the entailed interest.

### Actions for recovery of property obtained through unlawful conduct etc

28A (1) None of the time limits given in the preceding provisions of this Act applies to any proceedings under Part IIIA of the Proceeds of Crime Act 1997.

(2) Proceedings under Part IIIA of the Proceeds of Crime Act 1997 for a recovery order in respect of any recoverable property shall not be brought after the expiration of the period of twenty years from the date on which the enforcement authority's cause of action accrued.

(3) Proceedings under Part IIIA of the Proceeds of Crime Act 1997 are brought when—

- (a) an originating summons is issued;
- (b) an application is made for a property freezing order; or
- (c) an application is made for an interim receiving order,

whichever is the earlier.

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(4) The enforcement authority's cause of action accrues in respect of any recoverable property—

- (a) in the case of proceedings for a recovery order in respect of property obtained through unlawful conduct, when the property is so obtained;
- (b) in the case of proceedings for a recovery order in respect of any other recoverable property, when the property obtained through unlawful conduct which it represents is so obtained.

(5) If—

- (a) a person would (but for the preceding provisions of this Act) have a cause of action in respect of the conversion of a chattel; and
- (b) proceedings are started under Part IIIA of the Proceeds of Crime Act 1997 for a recovery order in respect of the chattel,

section 5(2) of this Act does not prevent his asserting on an application under section 36.1H of that Act that the property belongs to him, or the Court making a declaration in his favour under that section.

(6) If the court makes such a declaration, his title to the chattel is to be treated as not having been extinguished by section 5(2) of this Act.

*[Section 28A inserted by 2013 : 40 s. 24 effective 1 November 2013]*

## PART II

### EXTENSION OR EXCLUSION OF ORDINARY TIME LIMITS

#### Disability

29 (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 12 or 13(2) applies, subsection (1) shall have effect as if for the words "6 years" there were substituted the words "3 years".

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### Acknowledgement and part payment

30 (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—

- (a) the right shall be treated as having accrued on and not before the date of the acknowledgment; and
- (b) in the case of a right of action to recover land which has accrued to a person entitled to an estate or interest taking effect on the determination of an entailed interest against whom time is running under section 28, section 28 shall thereupon cease to apply to the land.

(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 of redemption,

an action to redeem the land in his possession may be brought at any time before the expiration of 20 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 debts [*sic*] 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) An acknowledgment or part payment made after the expiration of the relevant limitation period shall be capable of reviving a time-barred remedy.

### Formal requirements for section 30

31 (1) To be effective for the purposes of section 30, an acknowledgment must be in writing and signed by the person making it.

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(2) For the purposes of section 30 any acknowledgment or payment shall be made to 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 on other persons

32 (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 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 estate 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 estate 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 estate representatives and any other person on whom the rights under the mortgage or, as the case may be, the liability in respect of the debt or claim devolve (whether on death or bankruptcy or the disposition of property or the determination of a limited estate or interest in settled property or otherwise).

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Fraud; concealment; mistake

33 (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; or
- (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.

Reference in this subsection to the defendant include references to the defendant's agent and to any person through whom the defendant claims and his agent.

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

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

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

to be brought against the purchaser of 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.

Discretion of court to exclude time limit in case of personal injury or death

34 (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) section 12 or 13 prejudice the plaintiff or any person whom he represents; and

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- (b) any decision of the court under this subsection would prejudice the defendant or any person whom he represents,

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

(2) The court shall not under this section disapply section 13(1) except where the reason why the person injured could no longer maintain an action was because of the time limit in section 12.

(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 12 or (as the case may be) by section 13;
- (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 12 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 section 13(1) shall operate to disapply the provisions to the same effect in section 2(1) of the Fatal Injuries (Actions for Damages) Act 1949 [*title 8 item 66*].

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

(8) References in this section to section 12 include references to that section as extended by any of the preceding provisions of this Part or by any provision of Part III.

### PART IIA

#### FOREIGN LIMITATION PERIODS

##### Application of foreign limitation law

34A (1) Subject to the following provisions of this Part, where in any action or proceedings in a court in Bermuda 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 that matter falls within subsection (2), the law of Bermuda 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 Bermuda and the law of some other country fall to be taken into account.

(3) The law of Bermuda 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 36 applies 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 Bermuda, in exercising under 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 Bermuda, this Part.

##### Exceptions to 34A

34B (1) In any case in which the application of section 34A 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 34A 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.

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(3) Where, under a law applicable by virtue of section 34A(1)(a) 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

34C Where a court in any country outside Bermuda has determined any matter wholly or partly by reference to the law of that or any other country (including Bermuda) relating to limitation, then, for the purposes of the law relating to the effect to be given in Bermuda to that determination, that court shall, to the extent that it has so determined the matter, be deemed to have determined it on its merits.

### Meaning of law relating to limitation

34D (1) Subject to subsection (3), references in this Part to the law of any country (including Bermuda) 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 Bermuda 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 Bermuda is applicable by virtue of section 34A(1)(a) (not being a law that provides for a limitation period that has expired), a court in Bermuda shall have regard, in particular, to the provisions of the law that is so applicable.

### Application of this Part to arbitrations

34E The references to any other limitation enactment in section 35 include references to sections 34A, 34B and 34D; and accordingly, in section 35(5), the reference to the time prescribed by a limitation enactment has effect for the purposes of any case to which section 34A applies as a reference to the limitation period, if any, applicable by virtue of section 34A.

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### Part applies to Crown

34F (1) This Part applies in relation to any action or proceedings by or against the Crown as it applies in relation to actions and proceedings to which the Crown is not a party.

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

### Transitional provision

34G Nothing in this Part—

- (a) affects any action, proceedings or arbitration commenced in Bermuda before the date of the coming into operation of this Part; or
- (b) applies in relation to any matter if the limitation period which, apart from this Part, would have been applied in respect of that matter in Bermuda expired before the date of the coming into operation of this Part.

*[Part IIA inserted by 1993:29 effective 29 June 1993]*

## PART III

### MISCELLANEOUS AND GENERAL

#### Arbitration

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

(2) Notwithstanding any term in an arbitration agreement to the effect that no cause of action shall accrue in respect of any matter required by the 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 enactment (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 enactment 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

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- (b) by leaving it at the usual or last-known place of abode in Bermuda 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 in Bermuda,

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

(5) Where the Supreme 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 enactment 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 bye-laws made under the Act as relate to the arbitration.

### Set-off; counterclaim

36 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.

### Equitable jurisdiction and remedies

37 (1) The following time limits under this Act, that is to say—

- (a) the time limit under section 4 for actions founded on tort;
- (b) the time limit under section 7 for actions founded on simple contract;
- (c) the time limit under section 9 for actions to enforce awards where the submission is not by an instrument under seal;
- (d) the time limit under section 10 for actions on a specialty;
- (e) the time limit under section 11 for actions to recover a sum recoverable by virtue of any enactment; and
- (f) the time limit under section 26 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, except in so far as any such time limit may be applied by the court

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by analogy in like manner as the corresponding time limit under any enactment repealed by this Act has heretofore been applied.

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

### Application to Crown

38 Save as in this Act expressly provided and without prejudice to section 39, this Act shall apply to proceedings by or against the Crown in like manner as it applies to proceedings between subjects:

Provided that this Act shall not apply to any proceedings by the Crown for the recovery of any tax or duty or interest thereon or to any forfeiture proceedings under any Act relating to customs or the Acts relating to duties of excise or to any proceedings in respect of the forfeiture of a ship.

### Saving for other limitation enactments

39 This Act shall not apply to any action or arbitration for which a period of limitation is prescribed by or under any other enactment (whether passed before or after the passing of this Act), or to any action or arbitration to which the Crown is a party and for which, if it were between subjects, a period of limitation would be prescribed by or under any other enactment.

### Actions barred before 1 December 1987; saving for actions pending on 1 December 1987

40 (1) Nothing in this Act shall—

- (a) enable any action to be brought which was barred before 1 December 1987 by an enactment repealed by this Act, except in so far as the cause of action or right of action may be revived by an acknowledgment or part payment made in accordance with this Act; or
- (b) affect any action or arbitration commenced before 1 December 1987 or the title to any property which is the subject of any such action or arbitration.

(2) The time for bringing an action to which section 12 applies in respect of a cause of action which has accrued before 1 December 1987, shall, if it has not then already expired, expire at the time when it would have expired if section 12 and section 34 had at all material times been in force.

(3) Sections 13, 14 and 34 shall not apply to an action under the Fatal Injuries (Actions for Damages) Act 1949 [*title 8 item 66*] where the death occurred before 1 December 1987, and in such a case the time for bringing an action shall expire at the time when it would have expired apart from those sections.

(4) An action which has been commenced and is pending at 30 November 1987 shall be continued to final determination in accordance with the law in force immediately preceding 1 December 1987.

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Repeal; amendment  
41 *[omitted]*

FIRST SCHEDULE

(Section 16(6), (7))

PROVISIONS WITH RESPECT TO ACTIONS TO RECOVER LAND

PART I

ACCRUAL OF RIGHTS OF ACTION TO RECOVER LAND

*Accrual of right of action in case of present interests in land*

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

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

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

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

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

3 Where any person brings an action to recover land, being an estate or interest in possession assured otherwise than by will to him, or to some person through whom he claims, and—

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

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

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

*Accrual of right of action in case of future interests*

4 The right of action to recover any land shall, in a case where—

(a) the estate or interest claimed was an estate or interest in reversion or remainder or any other future estate or interest; and

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- (b) no person has taken possession of the land by virtue of the estate or interest claimed,

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

5 (1) Subject to sub-paragraph (2), a tenancy from year to year or other period, without a lease in writing, shall for the purposes of this Act be treated as being determined at the expiration of the first year or other period; and accordingly the right of action of the person entitled to the land subject to the tenancy shall be treated as having accrued at the date on which in accordance with this sub-paragraph the tenancy is determined.

(2) Where any rent has subsequently been received in respect of the tenancy, the right of action shall be treated as having accrued on the date of the last receipt of rent.

6 (1) Where—

- (a) any person is in possession of land by virtue of a lease in writing by which a rent of not less than \$250 a year is reserved; and
- (b) the rent is received by some person wrongfully claiming to be entitled to the land in reversion immediately expectant on the determination of the lease; and
- (c) no rent is subsequently received by the person rightfully so entitled,

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

(2) Sub-paragraph (1) shall not apply to any lease granted by the Crown.

### *Accrual of right of action in case of forfeiture or breach of condition*

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

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

### *Right of action not to accrue or continue unless there is adverse possession*

8 (1) No right of action to recover land shall be treated as accruing unless the land is in the possession of some person in whose favour the period of limitation can run (referred to in this paragraph as “adverse possession”); and where under the preceding provisions of this Schedule any such right of action is treated as accruing on a certain date and no person

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is in adverse possession on that date, the right of action shall not be treated as accruing unless and until adverse possession is taken of the land.

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

(3) For the purposes of this paragraph—

- (a) possession of any land subject to a rentcharge by a person (other than the person entitled to the rentcharge) who does not pay the rent shall be treated as adverse possession of the rentcharge; and
- (b) receipt of rent under a lease by a person wrongfully claiming to be entitled to the land in reversion immediately expectant on the determination of the lease shall be treated as adverse possession of the land.

(4) In determining whether a person occupying any land is in adverse possession of the land the court shall take in account whether or not the owner of the land had actual knowledge that the person occupying the land was in possession thereof adverse to his interest.

### PART II

#### MODIFICATIONS OF SECTION 16 WHERE CROWN IS INVOLVED

9 Section 16(1) shall apply to the bringing of an action to recover any land by the Crown with the substitution for the reference to 20 years of a reference to 60 years.

10 Notwithstanding section 16(1), where in the case of any action brought by a person other than the Crown the right of action first accrued to the Crown through whom the person in question claims, the action may be brought at any time before the expiration of—

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

whichever period first expires.

11 Section 16(2) shall apply in any case where the Crown is entitled to the succeeding estate or interest with the substitution—

- (a) for the reference to 20 years of a reference to 60 years; and
- (b) for the reference to 6 years of a reference to 20 years.

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SECOND SCHEDULE

(Section 41)

*[omitted]*

[Assent Date: 17 December 1984]

[this Act was brought into operation on 1 December 1987 by BR 49/1987]

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*[Amended by:*

1993 : 29

2013 : 40]