

THE LIMITATION ACT 1995

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No. 9 of 1995

**An Act to consolidate with amendments certain written laws relating to
The Limitation of Actions and for connected purposes.**

[Date of Assent – 28th March, 1995]

Enacted by the Parliament of The Bahamas.

**PART I
Preliminary**

*Short title and
commencement.*

1. (1) This Act may be cited as the Limitation Act, 1995.

(2) This Act shall come into operation on such day as the Minister may, by notice published in the Gazette, appoint.

Interpretation.

2. (1) In this Act —

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

“equitable interest” means, in relation to land, any estate, interest or charge in or over land (including a rentcharge but not any other incorporeal hereditament) taking effect in equity;

“foreshore” means the shore and bed of the sea of any tidal water, below the line of the medium high tide between the spring tides and the neap tides;

“land” includes incorporeal 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;

“legal estate” means, in relation to land, any estate, interest or charge in or over land (including a rentcharge but not any other incorporeal hereditament) subsisting at law;

“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 rents-service;

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

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“submission” has the same meaning as in section 27 of the Arbitration Act;

“trust” and “trustee” extend to implied and constructive trusts including cases where the trustee has a beneficial interest in the trust property and where the context so admits, the words include a personal representative and the duties incident to that office but “trust” does not include the duties incident to an estate conveyed by way of mortgage.

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

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

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(a) while that person is liable to be detained or subject to guardianship under the Mental Health Act or under the provisions of any other Act relating to the detention of persons suffering from mental disorder; and

(b) while that person is receiving treatment as an inpatient in any hospital within the meaning of the Mental Health Act without being liable to be detained thereunder, being treatment which follows without any interval a period during which the person was liable to be detained or subject to guardianship under that Act or by virtue of any written law repealed or excluded by that Act.

(4) A person shall be deemed to claim through another person if the person become 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 estate of interest in possession shall be deemed to claim 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.

References.

3. (1) 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.

(2) 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.

(3) In Part III of this Act and in section 47 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 the proceeds of the sale of land, and to a right to receive a share or interest in the personal estate of a deceased person; and reference to the date of the accrual of a right of action shall —

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

PART II

Periods Of Limitation For Different Classes Of Action

Part II to be subject to provisions of Part III.

4. The provisions of this Part shall have effect subject to the provisions of Part III which provide for the extension or postponement of the periods of limitation in the case of disability, acknowledgment, part payment, fraud, concealment and mistake.

Actions of Contract and tort and certain other actions

Limitation of actions of contract and tort, and certain other actions.

5. (1) The following actions shall not be brought after the expiry of six years from the date on which the cause of action accrued, that is to say —

- (a) actions founded on simple contract (including quasi contract) or on tort;
- (b) actions to enforce the award of an arbitrator where the submission is not by an instrument under seal;
- (c) actions to recover any sum recoverable by virtue of any written law;
- (d) actions to enforce a recognisance.

(2) An action upon an instrument under seal shall not be brought after the expiry of twelve years from the date on which the cause of action accrued:

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

(3) An action shall not be brought upon any judgment after the expiry of six years from the date on which the judgment became enforceable, and no arrears of interest in respect of any judgment debt shall be recovered after the expiry of six years from the date on which the interest became due.

(4) This section 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 provision thereof may be applied by the court by analogy in like manner as the corresponding written law repealed by this Act has heretofore been applied.

(5) This section shall not apply to any action to which section 9 or 12 applies or to an action under the Fatal Accidents Act.

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Limitation in case of successive conversions and extinction of title of owner of chattels.

6. (1) Where any cause of action in respect of the conversion or wrongful detention of a chattel has accrued to any person and, before that person recovers possession of the chattel, a further conversion or wrongful detention takes place, no action shall be brought in respect of the further conversion or detention after the expiry of six years from the accrual of the cause of action in respect of the original conversion or detention.

(2) Where in any such case an action has accrued to any person and the period prescribed for bringing that action and for bringing any action in respect of such a further conversion or wrongful detention as aforesaid has expired and that person has not during that period recovered possession of the chattel, the title of that person to the chattel shall be extinguished.

Special time limit in case of stealing.

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

(2) Subsection (1) shall apply to any conversion related to the stealing of a chattel as it applies to the stealing of a chattel and, except as provided below, every conversion following the stealing 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 stealing, but if anyone purchases the stolen chattel in good faith neither the purchase nor any conversion following it shall be regarded as related to the stealing.

(3) Any cause of action accruing in respect of the stealing or any conversion related to the stealing of a chattel to any person from whom the chattel is stolen shall be disregarded for the purpose of applying subsection (1) or (2) of section 6 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 the plaintiff claims, it shall be presumed that any conversion following the stealing is related to the stealing unless the contrary is shown.

(5) In this section “stealing” includes —

- (a) any conduct outside The Bahamas which would be stealing if committed in The Bahamas; and
- (b) obtaining any chattel (in The Bahamas or elsewhere) by false pretences within the meaning of section 57 of The Penal Code;

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

*Contribution
between
tortfeasors.*

8. (1) Where under any law a tortfeasor (in this section referred to as “the first tortfeasor”) becomes entitled to recover contribution in respect of any damage from another tortfeasor, no action to recover contribution by virtue of that right shall be brought after the end of the period of two years from the date on which that right accrued to the first tortfeasor.

(2) For the purposes of this section, the date on which a right to recover contribution in respect of any damage accrues to a tortfeasor (in this section referred to as “the relevant date”) is as follows —

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

and 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 tortfeasor.

Actions for damages in respect of personal injuries and actions under the Fatal Accidents Act

*Time limit for
personal injuries.*

9. (1) Subject to subsection (6), this section shall apply 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 any 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) Subject to subsection (3), an action to which this section applies shall not be brought after the expiry of three years from —

- (a) the date on which the cause of action accrued; or
- (b) the date (if later) of the plaintiff's knowledge.

(3) If the person injured dies before the expiry of the period prescribed by subsection (2), the period as regards the cause of action surviving for the benefit of the estate of the deceased shall be three years from —

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

whichever is the later.

(4) For the purposes of this section, "personal representative" includes any person who is or has been a personal representative of the deceased and regard shall be had to any knowledge acquired by any such person while a personal representative or previously.

(5) If there is more than one personal representative and their dates of knowledge are different, subsection (3) shall be read as referring to the earliest of those dates.

(6) This section shall not apply to an action to which section 12 applies or to an action under the Fatal Accidents Act.

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*Date of knowledge
etc. in section 9.*

10. (1) In section 9, references to a person's date of knowledge are references to the date on which that person first had knowledge of the following facts —

- (a) that the injury in question was significant;
- (b) that the injury was attributable in whole or in part to the act or omission which is alleged to constitute negligence, nuisance or breach of duty;
- (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 plaintiff would reasonably have considered it sufficiently serious to justify the institution of proceedings 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 such person might reasonably be expected to acquire —

(a) from facts observable or ascertainable by such person; or

(b) from facts ascertainable by such person with the help of such medical or other expert advice as it is reasonable, in the circumstances, to seek,

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

Time limit for actions under the Fatal Accidents Act.

11. (1) An action under the Fatal Accidents Act 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).

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(2) An action under the Fatal Accidents Act shall not be brought after the expiry of three years from the date of death of the deceased.

(3) Subsection (2) shall not apply to an action for which a period of limitation is prescribed by or under any written law other than this Act.

(4) Section 36 shall apply to an action under the Fatal Accidents Act but otherwise Part III and Part IV shall not apply to such an action.

Persons acting in execution of statutory and other public duties.

12. (1) Where any action, prosecution or other proceeding is commenced against any person for any act done in pursuance or execution or intended execution of any written law or of any public duty or authority or in respect of any alleged neglect or default in the execution of any such written law, duty or authority the provisions of subsection (2) shall have effect.

(2) The action, prosecution or proceeding shall not lie or be instituted unless it is commenced within twelve months next after the act, neglect or default complained of or in the case of a continuance of injury or damage within twelve months next after the ceasing thereof.

Actions in respect of latent damage not involving personal injuries

Special time limit for negligence action where facts relevant to cause of action are not known at date of

13. (1) This section shall apply to any action for damages for negligence, other than one to which section 11 or 12 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.

accrual.

(2) Section 5 shall not apply to an action founded on tort to which this section applies.

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

(4) Such period as aforesaid is either —

- (a) six years from the date on which the cause action accrued; or
- (b) three years from the starting date as defined subsection (5), if that period expires later than period mentioned in paragraph (a).

(5) For the purposes of this section, the starting date 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 had earlier vested 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 the institution of 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 the act or omission which is alleged to constitute negligence;
- (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 purposes of subsection (5).

(10) For the purposes of this section and section 15, a person’s knowledge includes knowledge which such person might reasonably have been expected to acquire —

- (a) from facts observable or ascertainable by such person; or
- (b) from facts ascertainable by such person with the help of appropriate expert advice which it is reasonable, in the circumstances, 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 that person has taken all reasonable steps to obtain (and, where appropriate, to act on) that advice.

Overriding time limit for negligence actions not involving personal injuries.

14. (1) An action for damages for negligence, other than one to which section 11 or 12 applies, shall not be brought after the expiration of fifteen years from the date (or, if more than one, from the last of the dates) on which there occurred 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 13 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.

Accrual of cause of action to successive owners in respect of latent damage to property.

15. (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 that person has an interest is attributable (in whole or on 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 that person 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 that other person 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 13 as having accrued on the date on which the original cause of action accrued.

(3) Section 36 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 section 214 of the Companies Act.

18 of 1992.

(5) For the purposes 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 became known to that person to consider it sufficiently serious to justify the institution of proceedings for damages against a defendant who did not dispute liability and was able to satisfy a judgment.

(6) This section shall bind the Crown, but as regards the Crown's liability in tort shall not bind the Crown further than the Crown is made liable in tort by the Crown Proceedings Act.

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Actions to Recover Land and Rent

Limitation of actions to recover land.

16. (1) Subject to subsection (2), no action shall be brought by the Crown to recover any land after the expiry of thirty years from the date on which the right of action accrued to the Crown or, if it first accrued to some person through whom the Crown claims, to that person:

Provided that the time for bringing an action to which the provisions of this section apply in respect of a cause of action which has accrued before the commencement of this Act, shall, if it has not then already expired, expire at the time when it would have expired apart from those provisions:

Provided further that the time when the cause of action would have expired as aforesaid shall not exceed thirty years from the date of commencement of this Act.

(2) An action to recover foreshore may be brought by the Crown at any time before the expiry of sixty years from the date of the accrual of the right of action, or of thirty years from the date when the land ceased to be foreshore, whichever period first expires.

(3) No action shall be brought by any person to recover any land after the expiry of twelve years from the date on which the right of action accrued to such person or, if

it first accrued to some other person through whom such person claims, to that person:

Provided that, if the right of action first accrued to the Crown and the person bringing the action claims through the Crown, the action may be brought at any time before the expiry of the period during which the action could have been brought by the Crown

or of twelve years from the date on which the right of action accrued to some person other than the Crown, whichever period first expires.

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

17. (1) Where the person bringing an action to recover land, or some person through whom such person claims, has been in possession thereof and has while entitled thereto been dispossessed or discontinued possession, the right of action shall be deemed to have 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 an intestacy, and the deceased person was on the date of the death in possession of the land or, in the case of a rentcharge created by will or taking effect upon the death, in possession of the land charged, and was the last person entitled to the land to be in possession thereof, the right of action shall be deemed to have accrued on the date of the death.

(3) Where any person brings an action to recover land, being an estate or interest in possession assured otherwise than by will to such person, or to some person through whom such person claims, and 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 no person has been in possession of the land by virtue of the assurance, the right of action shall be deemed to have accrued on the date when the assurance took effect.

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

18. (1) Subject as hereafter in this section provided, the right of action to recover any land shall, in a case where the estate or interest claimed was an estate or interest in reversion or remainder or any other future estate or interest and no person has taken possession of the land by virtue of the estate or interest claimed, be deemed to have accrued on the date on which the estate or interest fell into possession by determination of the preceding estate or interest.

(2) If the person entitled to the preceding estate or interest, riot being a leasehold term, was not in possession of the land on the date of the determination thereof, no action shall be brought by the person entitled to the succeeding estate or interest after the expiry of twelve years from the date on which the right of action accrued to the person entitled to the preceding estate or interest, or six 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:

Provided that, where the Crown is entitled to the succeeding estate or interest, the foregoing provisions of this subsection shall have effect with the substitution for the reference to twelve years of a reference to thirty years, and for the reference to six years of a reference of twelve years.

(3) Subsections (1) and (2) shall not apply to any estate or interest which falls into possession on the determination of an entailed estate or interest and which might have been barred by the person entitled to the entailed estate or 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 that person 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 that person's 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 that person, 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.

Possession of one or more coparceners etc. not to be possession of others.

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 or receipt of the entirety or more than such person's or their undivided share or shares of such land or the profits thereof, or such rent for such person's 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 interests in land.

20. Subject to subsections (1) and (2) of section 33, 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, in the like manner as they apply to legal estates, and accordingly a right of action to recover land shall, for the purposes of this Act but not otherwise, be deemed to accrue to a person entitled in possession to such an equitable estate or interest in the like manner and circumstances and on the same date as it would accrue if such person's interest were a legal estate in the, land.

Land held upon trust.

21. (1) Where any land is held upon trust, including a trust for sale, and the period prescribed by this Act for the bringing by the trustees of an action to recover the land has expired, the estate of the trustees shall remain vested in them 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 had 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 vest in the person who was in adverse possession of the land at the expiry of the period aforesaid or in anyone claiming through such person.

(2) Subsections (2) and (3) of section 25 and section 26 shall apply in relation to a leasehold estate vesting under subsection (1) as they apply in relation to a leasehold estate vesting under subsection (1) of section 25 and for that purpose the references in the said subsection (2) of section 25 and in section 26 to subsection (1) of section 25 shall be construed as references to subsection (1) of this section.

(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 the 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 provision have been so barred.

(4) Where any land held upon a trust for sale is in the possession of a person entitled to a beneficial interest in the land or in the proceeds of sale, not being a person solely and absolutely entitled thereto, no right of action to recover the land shall be deemed for the purposes of this Act to accrue during such possession to any person in whom the land is vested as trustee or to any other person entitled to a beneficial interest in the land or in the proceeds of sale.

Accrual of right of action in case of forfeiture or breach of condition.

22. (1) Subject to subsection (2), a right of action to recover land by virtue of a forfeiture or breach of condition shall be deemed to have accrued on the date on which the forfeiture was incurred or the condition broken.

(2) If a right of action to recover land by virtue of a forfeiture or breach of condition has accrued to a person entitled to an estate or interest in reversion or remainder and the land has not been recovered by virtue of the forfeiture or breach of condition, the right of action to recover land shall be deemed to have accrued on the date when the estate or interest fell into possession as if the forfeiture or breach of condition had never occurred.

Accrual of right of action in case of certain tenancies.

23. (1) A tenancy from year to year or other period, without a lease in writing, shall, for the purposes of this Act, be deemed to be determined at the expiry of the first year or other period, and accordingly the right of action of the person entitled to the land subject to the tenancy shall be deemed to have accrued at the date of such determination:

Provided that, where any rent has subsequently been received in respect of the tenancy, the right of action shall be deemed to have accrued on the date of the last receipt of rent.

(2) Where any person is in possession of land by virtue of a lease in writing by which a rent of not less than fifty dollars a year is reserved, and 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 no rent is subsequently received by the person rightfully so entitled, the right of action of the last-named person to recover the land shall be deemed to have accrued at the date when the rent was first received by the person wrongfully claiming as aforesaid and not at the date of the determination of the lease:

Provided that in the case of a lease granted before the commencement of this Act, this section shall have effect as if for the words "fifty dollars" there were substituted the words "five dollars".

(3) A tenant at will shall, for the purposes of this Act, be deemed to be determined at the expiry of a period of one year from the commencement thereof; unless it has previously been determined, and accordingly the right of action of the person entitled to the land subject to the tenancy shall be deemed to have accrued on the date of such determination:

Provided that a mortgagor or beneficiary under a trust in possession of land, the subject of the mortgage or trust, shall not be deemed to be a tenant at will of the mortgagee or trustee for the purposes of this section.

(4) Subsections (2) and (3) shall not apply to any lease granted by the Crown.

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

24. (1) For the purposes of this Act, a right of action to recover land shall not accrue and shall not be deemed to accrue unless the land is in the possession of some person in whose favour the period of limitation can run (hereafter in this section referred to as “adverse possession”).

(2) Where under the foregoing provisions any right of action to recover land is deemed to accrue on a certain date and no person is in adverse possession of the land on that date, the right of action shall not accrue unless the land is thereafter taken into adverse possession, in which case the right of action shall be deemed to accrue at the commencement of the adverse possession.

(3) Where a right of action to recover land has accrued and thereafter, but before the right is barred by this Act, the land ceases to be in adverse possession —

- (a) the former adverse possession shall for the purposes of this Act have no effect; and
- (b) if the land is again taken into adverse possession a fresh right of action shall be deemed to accrue at the commencement of that adverse possession.

(4) For the purposes of this section —

- (a) possession of land subject to a rentcharge by a person (other than the person entitled to a rentcharge) who does not pay the rent shall be deemed to be adverse possession of the rentcharge; and
- (b) in such a case as is referred to in subsection (2) of section 23 receipt of rent under a lease by a person wrongfully claiming the land in reversion shall be deemed to be adverse possession of land.

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

(6) Subsection (5) shall not be taken as prejudicing a finding to the effect that a person’s occupation of any land is by implied permission of the person entitled to the land in any case where such a finding is justified on the actual facts of the case.

Vesting of estate or interest in

25. (1) At the expiration of the period prescribed by this Act for any person to bring an action to recover land, the estate or interest of that person in the land shall vest in the

*adverse
possession.*

person who is then in adverse possession of the land within the meaning of section 24.

(2) Where land is held under a lease and the leasehold estate in part only of the land vests in the person under subsection (1), that person (or anyone claiming through that person) and the lessee of the remainder oil the land shall share the cost of paying the rent reserved by the lease and the cost of discharging any other obligation under the lease in such proportions respectively as may be agreed by them and the lessor with respect to the rent or, as the case may be, with respect to the other obligation.

(3) If a dispute arises regarding the apportionment of costs under subsection (2), any of the parties mentioned in that subsection may refer the dispute to the court for decision and the decision of the court shall be final and binding upon all the parties.

(4) This section shall have effect subject to subsections (1) and (2) of section 21.

*Vesting of
leasehold to have
effect of
assignment in
certain
circumstances.*

26. (1) The vesting of a leasehold estate or interest under subsection (1) of section 25 shall have the effect of an assignment of the lease for the purposes of any provision of the lease which confers on the lessor a right to cause the lease to be forfeited by reason of any assignment thereof by the lessee.

(2) Subsection (1) shall not apply in a case where, under the lease, the lessor had before the expiry of the period referred to in subsection (1) of section 25, a right to cause the lease to be forfeited by reason of the fact that the lessee was dispossessed of the land or discontinued his possession thereof.

*Cure of defective
disentailing
assurance.*

27. Where a person entitled in remainder to an entailed estate or interest in any land has made an assurance thereof which fails to bar the issue in tail or the estates and interests taking effect on the determination of the entailed estate or interest, or fails to bar the last mentioned estates and interests only, and any person takes possession, that person 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 twelve years from the commencement of the time at which the assurance, if it had then been executed by the person entitled to the entailed estate or interest, would have operated, without the consent of any other person, to bar the issue in tail and such estates and interests as aforesaid, then, at the expiration of that period, the assurance shall operate, and be deemed always to have operated, to bar the issue in tail and those estates and interests.

*Limitation of
redemption
actions.*

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

*No right of an
action to be
preserved by
formal entry or
continual claim.*

29. For the purposes of this Act, no person shall be deemed to have been in possession of any land by reason only of having made a formal entry thereon, and no continual or other claim upon or near any land shall preserve any right to recover the land.

*Administration to
date back to death.*

30. For the purposes of the provisions of this Act relating to actions for the recovery of land, an administrator of the estate of a deceased person shall be deemed to claim as if there had been no interval of time between the death of the deceased person and the grant of the

letters of administration.

Limitation of actions to recover rent.

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

Action to recover money secured by a mortgage or charge or to recover proceeds of the sale of land

Limitation of actions to recover money secured by a mortgage or charge or to recover proceeds of the sale of land.

32. (1) No action shall be brought to recover any principal sum of money secured by a mortgage or other charge on property, whether real or personal, or to recover the proceeds of the sale of land, after the expiry of twelve years from the date when the right to receive the money accrued.

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

Provided that if after that date the mortgagee was in possession of the mortgaged property, the right to foreclose on the property which was in the mortgagee's possession shall not, for the purposes of this subsection, be deemed to have accrued until the date on which that possession was 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 deemed to accrue 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) 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 the proceeds of the sale of land, or to recover damages in respect of such arrears shall be brought after the expiry of six years from the date on which the interest became due:

Provided that —

- (a) where a prior mortgagee or other encumbrancer has been in possession of the property charged, and an action is brought within one year of the discontinuance of such possession by the subsequent encumbrancer, that encumbrancer may recover by that action all the arrears of interest which fell due during the period of possession by the prior encumbrancer or damages in respect thereof, notwithstanding that the period exceeded six years;
- (b) where the property subject to the mortgage or charge comprises any future interest or life insurance policy and it is a term of the mortgage or charge that arrears of interest shall be treated as part of

the principal sum of money secured by the mortgage or charge, interest shall not be deemed to become due before the right to receive the principal sum of money has accrued or is deemed to have accrued.

Actions in respect of trust property or the personal estate of deceased persons and actions for an account

Limitation of action in respect of trust property.

33. (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 thereof in the possession of the trustee, or previously received by the trustee and converted to the trustee's use.

(2) Where a trustee who is also a beneficiary under the trust receives or retains trust property or its proceeds as that trustee's share on a distribution of trust property under the trust, that trustee's liability in any action brought by virtue of subsection (1) (b) to recover that property or its proceeds after the expiry of the period of limitation prescribed by this Act for bringing an action to recover trust property shall be limited to the excess over that trustee's proper share.

(3) Subject to subsection (1), an action by a beneficiary to recover trust property or in respect of any breach of trust, not being an action for which a period of limitation is prescribed by any other provision of this Act, shall not be brought after the expiry of six years from the date on which the right of action accrued; and for this purpose the right of action of a beneficiary entitled to a future interest in trust property shall not be deemed to accrue until the interest falls 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 such beneficiary could have obtained in an action brought by such beneficiary in which this Act had been pleaded in defence.

Limitation of actions claiming personal estate of a deceased.

34. Subject to subsections (1) and (2) of section 33, no action in respect of any claim to the personal estate of a deceased person or to any share or interest in such estate, whether under a will or on intestacy, shall be brought after the expiry of twelve years from the date when the right to receive the same accrued, and no action to recover arrears of interest in respect of any legacy, or damages in respect of such arrears, shall be brought after the expiry of six years from the date on which the interest became due.

Action of an account.

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

PART III
**Extension of limitation periods in case of disability, acknowledgment,
part payment, fraud and mistake**

Disability

*Extension of
limitation period
in case of
disability.*

36. (1) If, on the date when any right of action for which a period of limitation is prescribed by this Act accrues, the person to whom it accrues is under a disability, the action may be brought at any time before the expiry of six years from the date when the person ceased to be under a disability or died, whichever event first occurred, notwithstanding that the period of limitation has expired.

(2) Subsection (1) shall have effect —

(a) in the case of actions to which subsection (1) of section 8 applies, with the substitution of the words “two years” for the words “six years”;

(b) in the case of actions to which section 9 or subsection (2) of section 11 applies, with the substitution of the words “three years” for the words “six years”;

(c) in the case of actions to which section 12 applies, with the substitution of the words “twelve months” for the words “six years”.

(3) 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.

(4) 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 under this section by reason of the disability of the second person.

(5) No action to recover land or money charged on land shall by virtue of this section be brought by any person after the expiry of thirty years from the date on which the right of action accrued to that person or some person through whom that person claims.

(6) This section shall not apply to any action to recover a penalty or forfeiture, or sum by way thereof, by virtue of any written law, except where the action is brought by an aggrieved party.

*Extension for
cases where the
limitation period
is the period under
section 13(4)(b).*

37. (1) Subject to subsection (2), if in the case of any action for which a period of limitation is prescribed by section 13 —

(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 36 does not apply to the action,

the action may be brought at any time before the expiration of three years from the date when that person 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 14.

Acknowledgment and Part Payment

Fresh accrual of action on acknowledgement or part payment.

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

- (a) the person in possession of the land or personal property, acknowledges the title of the person to whom the right of action has accrued; or
- (b) in the case of a foreclosure or other action by a mortgagee, the person in possession as aforesaid or any person liable for the mortgage debt makes any payment in respect thereof, whether of principal or interest,

the right shall be deemed to have accrued on and not before the date of the acknowledgment or payment.

(2) Subsection (1) shall apply to a right of action to recover land accrued to a person entitled to an estate or interest taking effect on the determination of an entailed interest against whom time is running under section 24, and on the making of the acknowledgment that section shall cease to apply to the land.

(3) Where a mortgagee is by virtue of the mortgage in possession of any mortgaged land and either receives any sum in respect of the principal or interest of the mortgage debt or acknowledges the title of the mortgagor, or his equity of redemption, an action to redeem the land in such mortgagee's possession may be brought at any time before the expiration of twelve years from the date of the payment or acknowledgment.

(4) Where any right of action has accrued to recover any debt or other liquidated pecuniary claim, or any claim to the personal estate of a deceased person or to any share or interest therein, and the person liable or accountable therefor acknowledges the claim or

makes any payment in respect thereof, the right shall be deemed to have accrued on and not before the date of the acknowledgment or the last payment:

Provided that a payment of a part of any rent or interest that is due at any time shall not extend the period for claiming the remainder then due, and any payment of interest shall be treated as a payment in respect of the principal debt.

(5) Subject to the proviso to subsection (4), 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 acknowledgements and part payments.

39. For the purposes of section 40 —

- (a) an acknowledgment shall be in writing and signed by the person making the acknowledgment; and
- (b) an acknowledgment or payment may be made by the agent of the person by whom it is required to be made by section 38 and shall be made to the person, or to an agent of the person, whose title or claim is being acknowledged or, as the case may be, in respect of whose claim the payment is being made.

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

40. (1) An acknowledgment of the title to any land, or mortgaged personally, by any person in possession thereof shall bind all other persons in possession during the ensuing period of limitation.

(2) A payment in respect of a mortgage debt by the mortgagor or any person in possession of the mortgaged property shall, so far as any right of the mortgagee to foreclose or otherwise to recover the property is concerned, bind all other persons in possession of the mortgaged property during the ensuing period of limitation.

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

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

(5) An acknowledgment of any debt or other liquidated pecuniary claim shall bind the acknowledgor and that acknowledgor's successors but not any other person:

Provided that an acknowledgment made after the expiry of the period of limitation prescribed for the bringing of an action to recover the debt or other claim shall not bind any successor on whom the liability devolves on the determination of a preceding estate or interest in property under a settlement taking effect before the date of the acknowledgment.

(6) A payment made in respect of any debt or other liquidated pecuniary claim shall bind all persons liable in respect thereof:

Provided that a payment made after the expiry of the period of limitation prescribed for the bringing of an action to recover the debt or other claim shall not bind any person other than the person making the payment and that person's successors, and shall not bind any successor on whom the liability devolves on the determination of a preceding estate or interest in property under a settlement taking effect before the date of the payment.

(7) 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 therein, or a payment by one of several personal representatives in respect of any such claim shall bind the estate of the deceased person.

(8) In this section the expression "successor" in relation to any mortgagee or person liable in respect of any debt or claim, means that mortgagee's or that person's personal representatives and any other person on whom the rights under the mortgage or, as the case may be, the liability in respect of the debt or claim devolve, whether on death or bankruptcy or the disposition of property or the determination of a limited estate or interest in settled property or otherwise.

Fraud, Mistake and Deliberate Concealment

*Postponement of
limitation period
in case of fraud,
mistake or
concealment.*

41. (1) Subject to subsection (4), 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) the action is for relief from the consequences of a mistake,

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

(2) Subject to subsection (4), where in the case of any such action any fact relevant to the plaintiff's right of action has been deliberately concealed from the plaintiff by the defendant, the period of limitation shall not begin to run until the plaintiff has discovered the defendant's concealment of the fact in question or could with reasonable diligence have discovered it.

(3) For the purposes of subsection (2), 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 the breach of duty.

(4) 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 such purchaser 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.

(5) 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 such purchaser 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 such purchaser did not at the time of the purchase know or have reason to believe that the mistake had been made.

(6) References in this section to the defendant include reference to the defendant's agent and to any person through whom the defendant or the defendant's agent claims.

(7) Sections 13 and 14 shall not apply to any action to which subsection (2) 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 subsection (1) of section 5.

PART IV General

Application of Act and other limitation written laws to arbitrations.

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

(2) Notwithstanding any term in a submission to the effect that no cause of action shall accrue in respect of any matter required by the submission to be referred until an award is made under the submission, the cause of action shall for the purposes of this Act and any such written law as aforesaid (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 submission.

(3) For the purposes of this Act and of any such written law as aforesaid an arbitration shall be deemed to be commenced when one party to the arbitration serves on the other party or parties a notice requiring that party or those parties to appoint an arbitrator or to

agree to the appointment of an arbitrator, or, where the submission provides that the reference shall be to a person named or designated in the submission, requiring that party or those parties to submit the dispute to the person so named or designated.

- (4) Any such notice as aforesaid may be served either —
- (a) by delivering it to the person on whom it is to be served;
 - (b) by leaving it at that person's usual or last known place of abode in The Bahamas; or
 - (c) by sending it by post in a registered letter addressed to that person at that person's usual or last known place of abode in The Bahamas,

as well as in any other manner provided in the submission; and where a notice is sent by post in the manner prescribed by paragraph (c), service thereof shall, unless the contrary is proved, be deemed to have been effected at the time at which the letter would have been delivered in the ordinary course of post.

(5) Where the Supreme Court orders that an award be set aside or orders after the commencement of an arbitration, that the submission 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 any such written law as aforesaid for the commencement of proceedings (including arbitration) with respect to the dispute referred.

(6) This section shall apply to an arbitration under any Act as well as to an arbitration pursuant to a submission, and subsections (3) and (4) shall have effect in relation to an arbitration under an Act as if for the references to the submission there were substituted references to such of the provisions of the Act or of any order, scheme, rules, regulations or bye-laws made thereunder as relate to the arbitration.

Provisions as to set-off and counterclaim.

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

Acquiescence.

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

Application to Crown.

45. (1) Except as is otherwise provided by this Act and without prejudice to section 46, this Act shall apply to proceedings by or against the Crown in like manner as it applies to proceedings between subjects.

(2) 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 the written laws relating to customs or excise.

(3) For the purposes of this section, proceedings by or against the Crown shall include proceedings instituted by or against an officer or other agent of the Crown in that officer's official capacity.

*Saving for other
limitation written
laws.*

46. 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, 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 written law.

Transitional.

47. (1) Nothing in this Act shall —

- (a) enable any action to be brought which was barred before- the commencement of this Act by any written law 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 the provisions of this Act; or
- (b) affect any action or arbitration commenced before the commencement of this Act 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 the provisions of section 9 apply in respect of a cause of action which has accrued before the commencement of this Act, shall, if it has not then already expired, expire at the time when it would have expired apart from those provisions or at the time when it would have expired if those provisions had at all material times been in force, whichever is the later.

(3) An action which has been commenced and is pending at the commencement of this Act shall be continued to final determination in accordance with the law in force immediately preceding that commencement.

*Repeal and
Amendment.*

48. The written laws mentioned in the Schedule to this Act are repealed or amended to the extent specified in the third column of that Schedule.

SCHEDULE (Section 48)
Repeals and Amendments

Ch. 58	Public Authorities Protection Act	The whole Act is repealed.
Ch. 61	Fatal Accidents Act	Subsection (2) of section 8 is repealed.
Ch. 66	Civil Procedure Act	Sections 3, 4 and 5 are repealed.
Ch. 68	Limitation of Actions Act	The whole Act is repealed.
Ch. 69	Real Property Limitation (Crown) Act	The whole Act is repealed.
Ch. 70	Real Property Limitation (No. 1) Act	The whole Act is repealed.
Ch. 71	Real Property Limitation (No. 2) Act	The whole Act is repealed.
Ch. 72	Real Property Limitation (1874) Act	The whole Act is repealed.
Ch. 307	Mercantile Law Amendment Act	Sections 9, 10, 11 and 14 are repealed.