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CHAPTER 18

LIMITATION

AN ACT TO CONSOLIDATE AND AMEND THE LAW RELATING TO LIMITATION OF ACTIONS AND ARBITRATIONS

3 of 1984

[1st October 1984]

CHAPTER I

PRELIMINARY

1. This Act may be cited as the Limitation Act. Short title

2. In this Act, unless the context otherwise requires- Interpretation

"action" means an original proceeding that lies in a court under any law for the enforcement of a legal right, or for the redress of any legal wrong or legal injury or breach of a legal duty, or for any other legal relief and includes-

(a) an action as defined in the Rules of Court; or

(b) a suit as defined in the Magistrates' Courts Act, Cap. 20

but shall not include a criminal proceeding;

"arbitration" means a reference pursuant to an agreement, enactment, or otherwise, of a present or future legal dispute or difference between two or more persons, for determination in a judicial manner, by a third person other than a court;

"cause of action" is that which forms or relates to the basis of an action, and includes, in relation to an arbitration, that which forms or relates to the basis of the dispute or difference which is subject-matter of reference in that arbitration;

"commence" in relation to an arbitration means the commencement thereof as provided in subsection (2), and cognate expressions shall be construed accordingly;

"disability" in relation to an individual means-

(a) that he is under infancy; or

(b) that he is of unsound mind, that is to say, by reason of any mental disease, defect or disorder he is incapable of managing and administering his property and affairs, or he is liable to be detained or subject to guardianship under the Mental Treatment Act;

Cap. 103

"land" has the meaning assigned to it in section 2 of the Land and Titles Act, and includes any legal or equitable interest in that land or proceeds of sale thereof;

Cap. 133

"law" means-

(a) an Act of Parliament;

(b) an Ordinance cited as an Act by virtue of the Citation of Ordinances Act 1978 and any other existing law as defined in section 2 of the Solomon Islands Independence Order 1978;

(c) such Act of Parliament of the United Kingdom of general application or a principle or rule of common law or equity as has effect as part of the law of Solomon Islands by virtue of the provisions of section 76 read with Schedule 3 of the Constitution;

(d) the Solomon Islands Act 1978 as amended by the British Nationality Act 1981, of the Parliament of the United Kingdom; and

(e) an Ordinance enacted by a Provincial Assembly or the Honiara City Council, as and when such Council or similar law making body is established by an Act of Parliament,

and includes subsidiary legislation made under such law, and the word "legal" shall be construed accordingly;

"prescribed period" means the period of limitation prescribed for an action or arbitration under Chapter II and calculated in accordance with the provisions of Chapter III and Chapter IV wherever applicable;

"public authority" means any of the following public authorities constituted or established by law, and by whatever named called in relation to their functions if they are similar to the functions of-

- (a) a provincial Government; or
- (b) a provincial assembly; or
- (c) the Government of Honiara City; or
- (d) the Honiara City Council; or
- (e) a town council; or
- (f) an area council; or
- (g) a body corporate,

but does not include a company incorporated under the Companies Act;

Cap. 175

"rent charge" 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; and

"Rules of Court" means-

(a) rules made under section 22 of the Western Pacific (Courts) Order in Council 1961; or

(b) rules made under section 39 of the Court of Appeal Act; or

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(c) rules made under section 90 of the Constitution.

(2) For the purposes of this Act, an arbitration shall be deemed to commence-

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

(b) on the day on which the notice as aforesaid is first received by one of the parties to the arbitration agreement, where such notice is served by more than one of the parties to the arbitration, to the other party or parties thereto.

(3) Any such notice shall be deemed to be served on a party or parties to the arbitration on the day on which it is actually, or presumptively received or first received, as the case may be, as provided in subsection (4).

(4) Any such notice-

(a) is actually received or first received, by a party or the parties to an arbitration on the day-

(i) on which it is delivered in person to that party or parties; or

(ii) on which it is delivered at the usual or last known place of abode of that person in Solomon Islands; or

(iii) on which it is delivered in any other manner provided in the arbitration agreement; and

(b) is presumptively received or first received unless the contrary is proved, by a party or the parties to an arbitration, on the day and at the time at which a registered letter addressed to that party or parties at his or their usual or last known place of abode in Solomon Islands would have delivered to him or them, if such notice is sent to him or them in a registered letter addressed to him or them as aforesaid.

(5) Where an arbitration takes effect in pursuant of an enactment, subsections (2) to (4) shall have effect as if for the references to the arbitration agreement there were substituted references to such of the provisions of that enactment or of any order, scheme, rules, regulations, by-laws and other subsidiary legislation made thereunder as relate to the arbitration.

(6) For the purposes of this Act-

(a) a person shall be deemed to claim through another person, if he became entitled by, through, under or by the act of that person to the right claimed, and any person whose estate or interest might have been barred by a person entitled to an entailed interest in possession shall be deemed to claim through the person 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 appointer; and

(b) references in this Act-

- (i) to a plaintiff or defendant shall be deemed to include any person claiming through that plaintiff or defendant;
- (ii) to a plaintiff in relation to an arbitration shall be deemed to be the references to the party to that arbitration which commences the arbitration as provided in subsection (2); and
- (iii) to a defendant, in relation to an arbitration shall be deemed to be a reference to the other party to the arbitration on whom the notice referred to in subsection (2) is served, or first served, as the case may be.

3. (1) Subject to the provisions of subsections (3) and (4), this Act-

Application of the Act

(a) applies to all actions and arbitrations; and

(b) binds the Crown and a public authority.

(2) Save as otherwise expressly provided in this Act, where any other law prescribes a period of limitation for any action or arbitration, including an action or arbitration specified in subsection (3), that other law shall have effect as if for that period of limitation, the prescribed period were substituted:

Provided that the provisions of this Act shall not affect the period of limitation prescribed by or under the following enactments for an action or arbitration-

(a) the Carriage of Goods by Sea Act;

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(b) the Maritime Conventions Act 1911;

(c) the Carriage by Air Act 1961;

(d) any other law enacted in pursuance of, or for giving effect to any international convention.

(3) Except as otherwise provided in subsection (2), the provisions of this Act shall not apply to an action or arbitration-

(a) for the recovery, by the Crown, or a public authority, of any tax, duty, rate, fees service charges, debt or any other money due to it, or any interest due thereon;

(b) for the forfeiture, by the Crown, of any ship;

(c) for exercising, by the Crown, of any right in foreshore, offshore, continental shelf, maritime belt or exclusive economic zone or territorial waters of Solomon Islands, or for the recovery of any claim arising out of, or in relation to the exercise of any such right;

(d) for the recovery, by the Crown, of the possession of any land or any other movable or immovable property or any interest therein, accruing to the Crown by escheat or lapse or as bona vacantia for want of a lawful owner or heir; or

(e) arising out of or relating to any claim to a customary land as defined in the Land and Titles Act; or

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(f) falling within the jurisdiction of a local court established under the Local Courts Act,

Cap. 19

(4) Nothing contained in this Act shall apply-

(a) to the institution of any proceeding by way of appeal against any judgment, decision or order for which a period of limitation is prescribed by the Rules of Court or any other law;

(b) to an action or arbitration for which a period of limitation is prescribed by the Rules of Court; and

(c) to an action or arbitration the cause of action in relation to which is within the Admiralty jurisdiction of the High Court which is enforceable *in rem*.

CHAPTER II

BAR OF LIMITATION

4. The period of limitation prescribed under the provisions of this Chapter shall have effect subject to the other provisions of this Act.

Period of limitation to be subject to other provisions

5. Except as otherwise provided in this Act, no action shall be brought, nor any arbitration shall commence, after the expiration of six years from the date on which the cause of action accrued.

General limitation

6. (1) No action shall be brought upon any judgment after the expiration of six years

Limitation to enforce judgments and awards

from the date on which the judgment became enforceable.

(2) No action to enforce an award shall be brought-

(a) if the award was made in an arbitration commenced after the expiration of six years from the date on which the cause of action accrued;

(b) if the award was made in an arbitration commenced within a period of six years from the date on which the cause of action accrued, after the expiration of six years from the date on which the award became enforceable:

Provided that where an arbitration agreement provides for any shorter period of limitation for the enforcement of an award, no action shall be brought for the enforcement of the award made thereunder after the expiration of that period.

(3) No action for the recovery of arrears of interest due under any judgment or award shall be brought after the expiration of six years from the date on which the interest became due.

7. (1) In this section and in section 8-

Limitation for personal injuries

(a) "damages" means damages for negligence, nuisance, or breach of duty (whether the duty exists by virtue of a contract or of a provision made by or under a statute or independently of any contract or any such provision) where the damages so claimed consist of or include damages in respect of a personal injury to the claimant or to any other person;

(b) "personal injury" includes any disease and any impairment of a person's physical or mental condition.

(2) No action shall be brought, nor any arbitration shall commence, to recover damages for personal injuries after the expiration of six years from-

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

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

(3) If the person injured dies before the expiration of the period mentioned in subsection (1), no such action shall be brought, nor such arbitration shall commence-

(a) as respects the cause of action surviving for the benefit of his estate by virtue of section 1 of the Law Reform (Miscellaneous Provisions) Act 1934; or

24 & 25 Geo. 5C. 41

(b) as respects the cause of action surviving for the benefit of a person referred to in section 2 of the Fatal Accidents Act 1846 after the expiration of six years from-

9 & 10 Vic. C. 93

(i) the date of death; or

(ii) the date of the knowledge of the personal representative, if the action or arbitration relates to the cause of action referred to in paragraph (a), or the date of knowledge of the person for whose benefit the action is brought or the arbitration is commenced, in respect of the cause of action referred to in paragraph (b), whichever is later:

Provided that nothing contained in this subsection shall entitle any person to bring an action or commence an arbitration to recover damages for personal injuries under the Fatal Accidents Act 1846, if the deceased would not have been entitled to maintain that action or commence that arbitration if he were alive on the date of the action or the commencement of the arbitration.

9 & 10 Vic. C. 93

(4) For the purpose of this section "personal representative" includes any person who is or has been a personal representative of the deceased including an executor.

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

(6) Where there is more than one person for whose benefit an action for personal injuries is brought or an arbitration is commenced under the Fatal Accidents Act 1846, subsection (3) (b)(ii) shall apply separately to each of them.

9 & 10 Vic. C. 93

(7) Where by virtue of subsection (6) an action or arbitration for personal injuries would be outside the time limit prescribed by subsection (3) as regards one or more but not all, of the persons for whose benefit it is brought, or commenced, the court shall direct that any person as regards whom the action or arbitration is outside that limit shall be excluded from those for whom the action is brought or the arbitration is commenced:

Provided that the court shall not give such a direction if it is shown that if the action were brought or the arbitration had commenced 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).

8. (1) In section 7 references to a person's date of knowledge are references to the date on which he first had knowledge of the following facts-

Date of knowledge for purposes of section 7

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

(b) that the personal 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 or commencement of an arbitration 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 a personal 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, legal 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.

9. (1) No action shall be brought, nor any arbitration shall be commenced, by the Crown or a public authority to recover any land after the expiration of thirty years from the date on which the cause of action accrued to the Crown or the public authority or, if it first accrued to some person through whom the Crown or the public authority claims, to that person.

Limitation to recover land

(2) No action shall be brought, nor any arbitration shall be commenced by any other person to recover any land after the expiration of twelve years from the date on which

the cause of action accrued to him or, if it accrued to some person through whom he claims to that person:

Provided that if the cause of action first accrued to the Crown or a public authority, through whom the person bringing the action or commencing the arbitration claims, the action may be brought or the arbitration may commence at any time before the expiration of the period during which the action could have been brought or the arbitration could have commenced by the Crown or the public authority or before the expiration of twelve years from the date on which the cause of action accrued to some person other than the Crown or the public authority, whichever period first expires.

(3) The provisions of this section shall have effect as supplementary to but not in derogation of the provisions of the Land and Titles Act.

Cap. 133

10. (1) Where in an action or arbitration the estate or interest claimed in any land is 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 no such action shall be brought, nor any arbitration shall commence, after the expiration of twelve years from the date on which the estate or interest fell into possession by the determination of the preceding estate or interest.

Limitation for actions on future interests in land

(2) If the person entitled to the preceding estate or interest, not being a term of years absolute, was not in possession of the land on the date of the determination thereof, no action shall be brought by, nor any arbitration shall commence at the instance of, the person entitled to the succeeding estate or interest-

(a) after the expiration of twelve years from the date on which the estate or interest fell into possession of the person entitled to the preceding estate or interest; or

(b) after the expiration of six years from the date on which the estate or interest fell into the possession of the person entitled to the succeeding estate or interest on the determination of the preceding estate or interest;

whichever period last expires:

Provided that where the Crown or a public authority 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 by a reference to thirty years, and for the reference to six years, by a reference to twelve years.

(3) The foregoing provisions of this section shall not apply to any estate or interest

which falls into possession on the determination of the entailed interest and which might have been barred by the person entitled to the entailed interest.

(4) Where any person is entitled to any estate or interest in land in possession and, while so entitled is also entitled to any future estate or interest in that land, and his right to recover the estate or interest is barred under this Act, no action shall be brought by nor any arbitration shall commence at the instance of, that person, or by or at the instance of any other person claiming through him, in respect of such future estate or interest, unless in the meantime possession of the land has been recovered by the person entitled to an intermediate estate or interest.

(5) The provisions of this section shall have effect as supplementary to but not in derogation of the provisions of the Land and Titles Act.

Cap. 133

11. (1) Where a mortgagee of land has been in possession of the mortgaged land for a period of twelve years no action shall be brought, nor any arbitration shall commence, to redeem the land of which the mortgagee has been so in possession, after the expiration of that period by the mortgager or any person claiming through him.

Limitation in cases of mortgages, etc.

(2) No action shall be brought, nor any arbitration shall commence, to recover any principal sum of money secured by a mortgage or other charge on land or other property, or to recover proceeds of the sale of land, after the expiration of twelve years from the date on which the right to receive the money accrued.

(3) No action shall be brought, nor any arbitration shall commence, for foreclosure of mortgaged land or other property after the expiration 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 land or other property, the right to foreclose on the land or other property which was in his possession shall not, for the purpose of this subsection, be deemed to have accrued until the date on which his possession discontinued.

(4) 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.

(5) No action shall be brought, nor any arbitration shall commence, 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 damages in respect of such arrears, after the expiration of six years from the date on which the

interest became due:

Provided that-

(a) where a prior mortgagee or other incumbrancer has been in possession of the land or other property charged, and an action is brought or an arbitration is commenced, within one year of the discontinuance of such possession by the subsequent incumbrancer, he may recover by that action or arbitration all the arrears of interest which fell due during the period of possession by the prior incumbrancer or damages in respect thereof, notwithstanding that the period exceeded six years;

(b) where the land or other 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.

(6) This section shall not apply to any mortgage or charge on a ship.

(7) The provisions of this section shall have effect as supplementary to but not in derogation of the provisions of the Land and Titles Act.

Cap. 133

12. Subject to section 14-

Limitation for claims to personal estate of deceased persons

(a) no action shall be brought, nor any arbitration shall commence 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) after the expiration of twelve years from the date on which the right to receive the claim accrued; and

(b) no action shall be brought, nor any arbitration shall commence to recover arrears of interest in respect of any legacy, or damages in respect of such arrears, after the expiration of twelve years from the date on which the interest became due.

13. Where any cause of action in respect of a conversion of a chattel, other than a conversion related to theft within the meaning of section 15, has accrued to any person, and before he recovers possession of the chattel, a further conversion takes place, no action shall be brought nor any arbitration shall commence in respect of the further conversion after the expiration of six years from the date of accrual of the cause of action in respect of the original conversion.

Limitation in cases of successive conversion

14. (1) No prescribed period shall apply to an action brought, or to an arbitration commenced, by a beneficiary under a trust, being an action or arbitration-

Limitation for actions on trust property

(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 possession of the trustee, or previously received by the trustee and converted to his use.

(2) Subject as aforesaid, no action shall be brought nor any arbitration shall commence by a beneficiary to recover trust property, or in respect of any breach of trust, after the expiration of six years from the date on which the cause of action accrued:

Provided that the cause of action shall not be deemed to have accrued to any beneficiary entitled to any future interest in the trust property, until the interest fell into possession.

15. (1) Except as provided in subsection (3), no prescribed period shall apply to an action brought by, or to an arbitration commenced at the instance of an owner of a chattel stolen by theft, for claiming possession of, or title to, the chattel, from the thief or from any person holding the chattel through the thief.

Limitation for actions on theft

(2) Subject to subsection (3) every conversion of a chattel following theft thereof, before the person from whom it is stolen recovers its possession shall be regarded for the purposes of this section as related to theft, and subsection (1) shall apply to every conversion of the chattel related to theft as it applies to the theft of the chattel.

(3) Where a person purchases a stolen chattel for value and in good faith, neither the purchase nor any conversion of the same following the purchase shall be regarded as related to theft, and no action shall be brought by, nor any arbitration shall commence at the instance of any owner of the chattel against that person after the expiration of six years from the date on which the chattel was stolen from him.

(4) In this section "theft" has the same meaning as in section 258 of the Penal Code, as if for the words "anything" and "thing" wherever they appear in that section the words "any chattel" and "chattel" were respectively substituted.

Cap. 26

16. (1) For the purposes of this Act, any claim by way of set-off or counter claim in the course of an action or arbitration, hereafter in this section referred to as the principal action or principal arbitration, shall be deemed to be a separate action or separate arbitration, as the case may be, and to have been brought or commenced on the same date on which the principal action was brought or the principal arbitration had commenced.

Limitation for set-off or counter claim

(2) No claim by way of set-off or counter claim shall be pleaded nor allowed by the court or the arbitrator, as the case may be, in the course of any principal action or principal arbitration after the expiration of the prescribed period from the date on which the cause of action for the principal action or the principal arbitration, as the case may be, accrued.

CHAPTER III

ACCRUAL OF CAUSE OF ACTION

17. Subject to the other provisions of this Act, a cause of action shall be deemed to accrue on the date on which the right to relief sought by an action first arises:

Cause of action when accrues

Provided that where the cause of action is founded on a continuing wrong, a fresh cause of action shall be deemed to accrue on each day the wrong continues.

18. (1) Subject to the other provisions of this Act, a cause of action in relation to an arbitration shall be deemed to accrue on the day on which the dispute or difference which is subject-matter of reference in that arbitration first arises:

Cause of action in relation to an arbitration

Provided that where such dispute or difference relates to any continuing wrong, a fresh cause of action in relation to such arbitration arises on each day the wrong continues.

(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 purpose of this Act and in relation to the commencement of an arbitration commenced in pursuance of that agreement, be deemed to have accrued in respect of such matter at the time when it would have accrued but for that term in the agreement.

19. Where a contract of loan-

Cause of action in
respect of certain loans

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

(b) does not make the obligation to repay the debt conditional on a demand for repayment made by the creditor, or on the occurrence of some other event,

the cause of action to recover such debt shall be deemed to accrue on the date on which the demand for repayment of the debt is made or on the date on which the other event, as the case may be, occurs.

20. (1) Where the person bringing an action or commencing an arbitration 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 disposed or discontinued his possession, the cause of action shall be treated as having accrued on the date of the dispossession or discontinuance.

Cause of action to
recover land

(2) Where any person brings an action or commences an arbitration 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 rent charge 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 cause of action shall be treated as having accrued on the date of his death.

(3) Subject to subsection (4), a cause 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.

(4) If any such cause of action 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 cause of action to recover the land shall not be treated as having accrued to that person until his estate or interest fell into possession, as if no such forfeiture or breach of condition had occurred.

(5) No cause of action to recover land shall be treated as accruing unless the land

is in the possession of some person in whose favour the prescribed period can run (hereafter in this section referred to as adverse possession), and where under the foregoing provisions of this section, any cause of action is treated as accruing on a certain date and no person is in adverse possession on that date, the cause of action shall not be treated as accruing unless and until some person is in adverse possession of the land.

(6) Where a cause of action to recover land has accrued and thereafter, before the action or the commencement of the arbitration is barred, the land ceases to be in adverse possession the cause of action shall no longer be treated as having accrued and no fresh cause of action shall be treated as accruing unless and until the land is again taken into adverse possession.

(7) For the purposes of this section-

(a) possession of any land subject to a rent charge by a person (other than the person entitled to the rent charge) who does not pay the rent shall be treated as adverse possession of the rent charge;

(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; and

(c) 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 of action to recover the land.

21. (1) In an action or arbitration founded on negligence, nuisance or breach of duty (whether the duty exists by virtue of a contract or of a provision made by or under a statute or independently of any such contract or provision) where the damages claimed by the plaintiff include any claim for latent damage to his property, no cause of action shall be deemed to accrue until such day as the plaintiff has knowledge, or ought with reasonable diligence to have had knowledge, that such negligence, nuisance or breach of duty on the part of the defendant has caused the damage.

Cause of action on latent damage to immovable property

(2) For the purpose of construing the date of knowledge of the plaintiff under subsection (1), the provisions of section 8 shall apply as if for the words "personal injury" used in that section, the words "latent damage to property" were substituted.

(3) In this section "latent damage" means damage which does not manifest itself until some time after the act or omission which causes it is discovered.

22. (1) A tenancy at will shall, for the purposes of this Act, be deemed to be determined at the expiration of a period of one year from the commencement thereof, unless it has previously been determined, and accordingly the cause 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.

Cause of action in cases of certain tenancies

(2) 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 expiration of the first year or other period, and accordingly the cause 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 cause of action shall be deemed to have accrued on the date of the last receipt of rent.

(3) Where any person is in possession of land by virtue of a lease in writing by which a rent 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 cause of action of the last-named person to recover the land shall be deemed to have accrued on 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.

(4) Subsections (1) and (3) shall not apply to any tenancy at will or lease granted by the Crown.

(5) The provisions of this section shall have effect as supplementary to but not in derogation of the provisions of the Land and Titles Act.

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23. For the purposes of the provisions of this Act relating to actions or arbitrations for the recovery of land, an administrator of the estate of the 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.

Administration to date back to death

CHAPTER IV

EXTENSION OF LIMITATION

24. Subject to the provisions hereafter mentioned, once the prescribed period begins to run, no subsequent inability or disability to bring an action or to commence an arbitration as the case may be, shall prevent that period from continuing to run, and the provisions of this Act shall have effect accordingly.

Limitation not affected by subsequent inability or disability

25. In computing the prescribed period, the date on which the cause of action accrued shall be excluded.

Exclusion of date of accrual of the cause of action

26. Where the prescribed period expires on a Sunday, public holiday or on any other day, on which the court or public offices are closed and by reason of such closure an action cannot be brought, nor an arbitration can be commenced on such day, such action shall be deemed to have been brought or such arbitration shall be deemed to have been commenced, within the prescribed period, if it is brought, or commenced, as the case may be, on the day on which the court or the public offices next be open.

Exclusion of the day of closure of court, etc.

27. Where by an express provision of any law, a person is required to serve a notice on the Crown, a public authority or any other person from whom he claims any legal relief, before he can bring an action or commence an arbitration for claiming such relief, and the person serves such notice, the period of that legal notice shall be excluded in computing the prescribed period.

Exclusion of the period of legal notice

28. (1) Where a court, in the exercise of its jurisdiction conferred by any law, restrains a person from bringing, or proceeding with an action, or from commencing, or proceeding with an arbitration, the court may, while finally disposing of the restraint order, further order that the period between the date on which the restraint order was made and the date of the final order of the disposal of the restraint order shall be excluded in computing the prescribed period with respect to that action or arbitration, as the case may be.

Exclusion of time lost in judicial proceedings

(2) Where the High Court, exercising jurisdiction in an arbitration-

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

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

the High Court may further order that the period between the commencement of the arbitration and the date of the order of the High Court shall be excluded in computing the prescribed period with respect to the dispute or difference referred in that arbitration.

29. (1) Subject to the following provisions of this section, where in relation to an action or an arbitration, if on the day on which the cause of action accrued, the person to whom it accrued was under a disability, the action may be brought, or the arbitration may be commenced, at any time before the expiration of six years from the date when he ceased to be under that disability or died (whichever first occurred) notwithstanding that the period of limitation specified in Chapter II has expired.

Extension of limitation in case of disability

(2) This section shall not affect any action or arbitration in relation to which the cause of action accrued to some person (not under disability) through whom the person under disability claims.

(3) Where a cause 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 disability no further extension of time shall be allowed by reason of the disability of the second person.

30. (1) Where after the accrual of a cause of action but before the expiry of the prescribed period-

Fresh accrual of cause of action on acknowledgment or part payment

(a) a person in possession of any immovable property acknowledges the title of the person to whom the cause of action for its recovery has accrued; or

(b) a mortgagee in possession of the mortgaged property acknowledges the title of the mortgager or his equity of redemption to whom the cause of action to redeem the mortgaged property has accrued; or

(c) a person liable for any debt or other liquidated pecuniary claim, or accountable for any claim to the personal estate of a deceased person, or to any share or interest in such estate, acknowledges such debt or claim,

a fresh cause of action to recover such immovable property, mortgaged property, debt, or claim, as the case may be, shall accrue to the person in whose favour such acknowledgment has been made.

(2) Where after the accrual of a cause of action but before the expiry of the prescribed period-

(a) in the case of a foreclosure or other action by a mortgagee of any property, if the person in possession of that property or the person liable for the mortgage debt makes any payment in respect of the principal or interest of the debt; or

(b) where a mortgagor of the mortgaged property makes any payment in respect of the principal or interest of the mortgage debt to the mortgagee in

possession of the mortgaged property; or

(c) a person liable for any debt, or other liquidated pecuniary claim, or accountable for any claim to the personal estate of a deceased person, or to any share or interest in such estate, makes any payment in respect of it,

a fresh cause of action to redeem or recover such mortgaged property, debt or claim, as the case may be, shall accrue.

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

(4) Subject to subsection (3), a current prescribed period may be repeatedly extended by accrual of a fresh cause of action under this section upon further acknowledgments or payments, but a cause of action once barred, or a title to any chattel or immovable property once extinguished, by this Act, shall not be revived by any subsequent acknowledgment or payment.

(5) To be effective for the purposes of this section and section 31, every acknowledgment must be in writing and signed by the person making it.

(6) Any such acknowledgment or payment as aforesaid-

(a) may be made by an agent of the person by whom it is required to be made under this section; and

(b) shall be made to the person, or to an agent of the person, whose title or claim is being acknowledged or, as the case may be, in respect of whose claim the payment is made.

31. (1) An acknowledgment of title to any immovable property or mortgaged property made by any person in possession of it, to any other person to whom the cause of action to recover has accrued, shall bind all other persons in possession during the prescribed period next following such acknowledgment.

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

(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 prescribed period next following.

(3) Where two or more mortgagees are by virtue of the mortgage in possession of

the mortgaged property, 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 property and not to any ascertained part of the mortgaged debt the mortgagor shall be entitled to redeem that part of the property on payment, with interest, or the part of the mortgaged 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 property.

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

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

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

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

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

32. (1) In this section, "fraud" means a false representation made knowingly, or without honest belief in its truth, or recklessly without care whether it be true or false, and includes such unconscionable or blameworthy act or omission as amounts to fraud in equity.

Extension of limitation in
case of fraud,
concealment or mistake

(2) Subject to subsection (4)-

(a) where a claim in an action or arbitration is based on fraud of the defendant;
or

(b) where a claim in an action or arbitration is based on any fact relevant to the plaintiff's cause of action which has been deliberately concealed from him by the defendant, or

(c) where a claim in an action or arbitration is based on a relief from the consequences of a mistake,

the prescribed period for such action or arbitration, as the case may be, shall not begin to run until the plaintiff has discovered such fraud, concealment or mistake, or could with reasonable diligence have discovered it.

(3) For the purposes of subsection (2) deliberate commission of a breach of a legal duty in the 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.

(4) Nothing in this section shall enable any action or arbitration-

(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, or commenced, as the case may be, 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.

(5) A purchaser is an innocent third party for the purpose of this section-

(a) in the case of fraud or concealment of any fact relevant to the plaintiff's cause of action, if he was not a party to the fraud, or, as the case may be, to the concealment of that fact and he 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.

CHAPTER V

EFFECT OF BAR OF LIMITATION

33. Except as otherwise provided in sections 34 to 36, but subject to section 39, the expiry of the prescribed period in relation to an action, or the commencement of an arbitration, as the case may be, bars the legal remedy by that action or arbitration, it does not bar the legal right involved therein or abate the cause thereof.

Limitation bars legal remedy but not right

34. Where any cause of action has accrued to a person in respect of a conversion or wrongful detention of a chattel other than theft or in respect of any further conversion or detention of that chattel other than conversion related to theft within the meaning of section 15, and the period prescribed for bringing an action or commencing an arbitration for such conversion or wrongful detention of the chattel or for such further conversion or detention of the chattel, 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.

Extinguishment of title to chattel

35. (1) At the expiration of the prescribed period to bring an action or to commence an arbitration, for the recovery of any land, or profits therefrom or for the enforcement of any easement thereon, the title of the person to the land or the right of the person to such profits or easement shall be extinguished.

Extinguishment of title to land by prescription

(2) The provisions of subsection (1) shall have effect without prejudice to the provisions of the Land and Titles Act and any other law relating to land.

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36. Where a mortgagee of land or any other person claiming through him has been in possession of the mortgaged land for the prescribed period and no action is brought, or arbitration is commenced, to redeem the land within that period, the title of the mortgagor or any other person claiming through him to redeem the mortgaged land, or to the equity of redemption of that land shall be extinguished.

Extinguishment of title of the mortgagor

37. (1) Where an action is brought in any court after the expiration of the prescribed period, the court shall dismiss the action, unless the court acts under section 39 notwithstanding that the bar of limitation has not been specifically pleaded as a defence to that action.

Dismissal of action barred by limitation

(2) While dismissing an action under subsection (1), the court may impose such terms as to costs or otherwise as it may think fit.

(3) For the purpose of this section an appeal against an action shall be deemed to be the continuation of that action.

38. (1) Where an arbitration is commenced after the expiration of the prescribed period, and an action is brought in any court-

Dismissal of action on arbitration commenced after limitation

(a) if that action is for the enforcement of an award made in that arbitration, the court shall dismiss that action, and declare that the award is null and void unless the court acts under section 39;

(b) if that action is for any other relief arising out of or relating to such arbitration, the court shall dismiss the action and declare the arbitration to be null and void unless the court acts under section 39,

notwithstanding that the bar of limitation to the commencement of such arbitration has not been specifically pleaded as a defence to any such action as is referred to in paragraph (a) or paragraph (b).

(2) While dismissing an action under subsection (1), the court may impose such terms as to costs or otherwise as it may think fit.

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

Condonation by court of the delay in actions

(a) the provisions of this Act prejudice the plaintiff;
and

(b) any decision of the court under this subsection would prejudice the defendant,

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

(2) 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 or the arbitration had commenced within the prescribed period; or

(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, if any, 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 cause of action was attributable, might be capable at the time of bringing an action or commencing an arbitration;

(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.

(3) In any case where the time limit, or one of the time limits, depends on the date of knowledge of a person other than the plaintiff, this section 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.

CHAPTER VI

MISCELLANEOUS

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

Saving of other equitable reliefs

41. (1) Any action brought, or any arbitration commenced, before the date of coming into force of this Act and pending on that date shall, thereafter, continue to be decided in accordance with the law relating to limitation repealed by this Act as if this Act had not come into force.

Transitional provisions

(2) Where the title to any chattel, land, or mortgaged land which is subject of any action or arbitration referred to in subsection (1), was not extinguished, on the date on which that action was brought, or that arbitration had commenced, in accordance with the law relating to limitation repealed by this Act, nothing contained in this Act shall affect that title, and that action or arbitration shall upon the coming into force of this Act, continue to be decided in accordance with that law as if this Act had not come into force.

(3) Where any action or arbitration which could be brought or commenced within the time prescribed by the law relating to limitation repealed by this Act, and which is not barred on the date of coming into force of this Act, but-

(a) if the period of limitation prescribed in relation to such action or arbitration has been reduced by this Act, such action may be brought, or such arbitration may be commenced before the expiry of the period of limitation prescribed by that law; or

(b) if the period of limitation prescribed by that law in relation to such action or arbitration has been increased by this Act, such action may be brought, or such arbitration may be commenced before the expiration of the period of limitation provided by this Act, that is to say, the prescribed period.

(4) Save as otherwise provided in the foregoing subsections, nothing in this Act shall enable-

(a) any action to be brought, or any arbitration to be commenced, upon the coming into force of this Act, if such action, or the commencement of such arbitration was barred before the date on which this Act comes into force in accordance with the law relating to limitation repealed by this Act; or

(b) any title to any chattel, land or mortgaged land, which was extinguished before the date on which this Act comes into force, in accordance with the law relating to limitation repealed by this Act, to be revived on the coming into force of this Act.

42. (1) Upon the coming into force of this Act, laws shall have effect subject to the amendments specified in subsection (2), being amendments consequential on the provisions of this Act.

Consequential amendments

(2) Any reference in any law to any enactment repealed by this Act or to any provision of that enactment-

(a) shall be deemed to be a reference to this Act, or to the corresponding provision of this Act, as the case may be; and

(b) where there is no such corresponding provision in this Act, shall be deemed to be a reference to such provision in this Act as the Minister may, by order published in the Gazette, specify;

and accordingly the provisions of this Act shall apply to that law, with such modifications and adaptations in that law, as the Minister may, in that order further specify to bring that law into conformity with the provisions of this Act.

(3) Any amendment made in any law in accordance with the provisions of subsection (2) shall not be construed as prejudicing the operation of section 24 of the Interpretation and General Provisions Act.

(4) An order under subsection (2) may be made with retrospective effect as from the date of coming into force of this Act or from any later date.

(5) An order under subsection (2) shall be subject to an affirmative resolution of Parliament.

43. The following enactments of the Parliament of the United Kingdom to the extent they have effect as part of the law of Solomon Islands by virtue of the provisions of section 76 read with Schedule 3 to the Constitution are hereby repealed-

Repeals
21 Jac. C. 16>
2 & 3 Geo. 6C. 21

(a) the Limitation Act 1623; and

(b) the Limitation Act 1939.

44. (1) If any difficulty arises in giving effect to any provision of this Act, the Minister may, by order published in the Gazette, make such provision, not inconsistent with this Act, as may be necessary for removing the difficulty:

Removal of difficulty

Provided that no such order shall be made after the expiry of one year from the date on which this Act comes into force.

(2) An order made under subsection (1) shall be subject to an affirmative resolution of Parliament.

(No Subsidiary Legislation)