

**LIMITATION ACT
NO. 8 OF 1997**

ARRANGEMENT OF SECTIONS

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SCHEDULE.



[L.S.]

I Assent,

Joseph Myers,
Governor-General's Deputy.

11th March, 1997.

ANTIGUA AND BARBUDA

1997, No. 8

AN ACT to make provision for the limitation of actions.

[12th June, 1997]

ENACTED by the Parliament of Antigua and Barbuda as follows —

PART I

Preliminary

1. This Act may be cited as the *Limitation Act 1997*. Short title.

2. (1) In this Act —

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

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

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

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

“rent” includes a *rentcharge* and a *rentservice*;

“rentcharge” means any annuity or periodical sum of money charged upon or payable out of land, except a *rentservice* or interest on a mortgage on land.

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

(3) For the purposes of subsection (2) a person is of unsound mind if he is a person who, by reason of being of unsound mind within the meaning of the Mental Treatment Act (Cap 274) is incapable of managing and administering his property and affairs.

(4) Without prejudice to the generality of subsection (3), a person shall be conclusively presumed for the purposes of subsection (2) to be of unsound mind —

- (a) while he is liable to be detained under the Mental Treatment Act; and
- (b) while he is receiving treatment as an inpatient in any mental hospital or licensed house within the meaning of that Act without being liable to be detained under that Act, being treatment which follows without any interval a period during which he was liable to be detained under that Act.

(5) Subject to subsection (6), a person shall be deemed to claim through another person if he became entitled by, through, under, or by the act of that other person to the right claimed.

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

(7) References in this Act to a right of action to recover land 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 include references to the making of such an entry or distress.

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

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

- (a) a cause of action;
- (b) a right to receive money secured by a mortgage or charge on any property;
- (c) a right to recover proceeds of the sale of land; and
- (d) a right to receive a share or interest in the personal estate of a deceased person.

(10) References in Part III to the date of the accrual of a right of action be construed —

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

PART II

ORDINARY TIME LIMITS FOR DIFFERENT CLASSES OF ACTION

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

Time limits under Part II subject to extension or exclusion under Part III.

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

4. An action founded on tort shall not be brought after the expiration of six years from the date on which the cause of action accrued.

Time limit for actions founded on tort.

Time limit in case of successive conversions and extinction of title of owner of converted goods.

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

(2) Where any such cause of action has accrued to any person and the period prescribed for bringing that action has expired and he has not during that period recovered possession of the chattel, the title of that person to the chattel shall be extinguished.

Special time limit in case of larceny.

6. (1) The right of any person from whom a chattel is stolen to bring an action in respect of the larceny shall not be subject to the time limits under section 4 and 5 (1), but if his title to the chattel is extinguished under section 5 (2) he may not bring an action in respect of a larceny preceding the loss of his title unless the larceny in question preceded the conversion from which time began to run for the purposes of section 5 (2).

(2) Subsection (1) shall apply to any conversion related to the larceny of a chattel as it applies to the larceny of a chattel; and except as provided below, every conversion following the larceny 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 larceny.

(3) If anyone purchases a stolen chattel in good faith neither the purchase nor any conversion following it shall be regarded as related to the larceny.

(4) Any cause of action accruing in respect of the larceny, or any conversion related to the larceny, of a chattel to any person from whom the chattel is stolen shall be disregarded for the purposes of applying section 5 (1) or (2) to his case.

(5) Where in any action brought in respect of the conversion of a chattel it is proved that the chattel was stolen from the plaintiff or anyone through whom he claims it shall be presumed that any conversion following the larceny is related to the larceny unless the contrary is shown.

(6) In this section "larceny" includes —

- (a) any conduct outside Antigua and Barbuda which would be larceny if committed in Antigua and Barbuda; and

- (b) obtaining any chattel (in Antigua and Barbuda or elsewhere) in the circumstances described in section 27 of the Larceny Act, or by blackmail within the meaning of section 34 of that Act; and references in this section to a chattel being "stolen" shall be construed accordingly.

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

Time limit for actions founded on simple contract.

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

Special time limit for actions in respect of certain loans.

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

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

except where in connection with the taking the loan the debtor enters into any collateral obligation to pay the amount of the debt or any part of it (as, for example, by delivering a promissory note as security for the debt) on terms which would exclude the application of this section to the contract of loan if they applied directly to repayment of the debt.

(3) Where a demand in writing for repayment of the debt under a contract of loan to which this section applies is made by or on behalf of the creditor (or, where there are joint creditors, by or on behalf of any one of them) section 7 shall thereupon apply as if the cause of action to recover the debt had accrued on the date on which the demand was made.

(4) In this section "promissory note" has the same meaning as in the Bills of Exchange Act.

Cap. 48.

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

Time limit for actions to enforce certain awards.

Time limit for
actions on a
specialty

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

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

Time limit for
actions for sums
recoverable by
statute.

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

(2) Subsection (1) shall not affect any action to which section 12 applies.

Special time limit
for claiming a
contribution.

12. (1) Where under any Act, any person becomes entitled to a right to recover contribution in respect of any damage from any other person, no action to recover contribution by virtue of that right shall be brought after the expiration of two years from the date on which that right accrued.

(2) For the purposes of this section the date on which a right to recover contribution in respect of any damage accrues to any person (referred to below in this section as ("the relevant date")) shall be ascertained as provided in subsections (3) and (4).

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

- (a) by a judgment given in any civil proceedings; or
- (b) by an award made on any arbitration; the relevant date shall be the date on which the judgment is given, or the date of the award, as the case may be; 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 person in question.

(4) If, in any case not within subsection (3), the person in question makes or agrees to make any payment to one or more persons in compensation for that damage (whether he admits any liability in respect of the damage or not), the relevant date shall be the earliest date on which the amount to be paid by him is agreed between him (or his representative) and the person (or each of the persons, as the case may be) to whom the payment is to be made.

(5) An action to recover contribution shall be one to which sections 28, 32 and 35 apply, but otherwise Parts III and IV (except sections 34 and 37) shall not apply for the purposes of this section.

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

Special time limit for actions in respect of personal injuries.

(2) None of the time limits given in the preceding provisions of this Act shall apply to an action to which this section applies.

(3) An action to which this section applies shall not be brought after the expiration of the period applicable in accordance with subsection (4) or (5).

(4) Except where subsection (5) applies, the period is three years from —

- (a) the date on which the cause of action accrued; or
- (b) the date of knowledge (if later) of the person injured.

(5) If the person injured dies before the expiration of the period mentioned in subsection (4), the period applicable as respects the cause of action surviving for the benefit of his estate shall be three years from —

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

(6) For the purposes of this section "personal representative" includes any person who is or has been a personal representative of the deceased, including an executor who has not proved the will (whether or not he has renounced probate) but not anyone appointed only as a special representative in relation to settled land; and regard shall be had to any knowledge acquired by any such person while a personal representative or previously.

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

Special time limit
for actions under
fatal accidents
legislation.

Cap. 166.

14. (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 Act, or for any other reason). Where any such action by the injured person would have been barred by the time limit in section 13, no account shall be taken of the possibility of that time limit being overridden under section 33.

Cap. 166.

(2) None of the time limits given in the preceding provisions of this Act shall apply to an action under the Fatal Accidents Act, but no such action shall be brought after the expiration of four years from —

- (a) the date of death; or
- (b) the date of knowledge of the person for whose benefit the action is brought;

whichever is the later.

(3) An action under the Fatal Accidents Act, shall be one to which section 28, 33 and 35 of this Act apply but otherwise parts III and IV shall not apply to any such action.

Operation of time
limit under section
14 relation to
different
dependents.

15. (1) Where there is more than one person for whose benefit an action under the Fatal Accidents Act is brought, section 14 (2) (b) of this Act shall be applied separately to each of them.

(2) Subject to subsection (3), if by virtue of subsection (1) the action would be outside the time limit given by section 14(2) as regards one or more, but not all, of the persons for whose benefit it is brought, the court shall direct that any person as regards whom the action would be outside that limit shall be excluded from those for whom the action is brought.

(3) The court shall not give such a direction if it is shown that if the action were brought exclusively for the benefit of the person in question it would not be defeated by a defence of limitation (whether in consequence of section 28 or an agreement between the parties not to raise the defence, or otherwise).

Definition of date
of knowledge for
purposes of
sections 13 and
14.

16. (1) In sections 13 and 14 references to a person's date of knowledge are references to the date on which he first had knowledge of the following facts —

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

- (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 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 persons knowledge includes knowledge which he might reasonably have expected to acquire —

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

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

Action to recover land and rent

17. (1) No action shall be brought by any person to recover any land after the expiration of twelve years from the date on which the right of action accrued to him or, if it first accrued to some person through whom he claims, to that person.

Time limit for actions to recover land.

(2) Subject to the following provisions of this section, where —

- (a) the estate or interest claimed was an estate or interest in reversion or remainder or any future estate or interest and the right of action to recover the land accrued on the date on which the estate or interest fell into possession by the determination of the preceding estate or interest; and
- (b) the person entitled to the preceding estate or interest (not being a term of years absolute) was not in possession of the land on that date;

no action shall be brought by the person entitled to the succeeding estate or interest after the expiration of 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.

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

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

(5) This section does not apply to Crown Lands.

Time limit for redemption actions.

18. When a mortgage or charge of land has been in possession of any of the mortgaged or charged land for a period of twelve years no action to redeem the land of which the mortgagee or chargee has been so in possession shall be brought after the end of that period by the mortgagor or chargor or any person claiming through him.

Extinction of title to land after expiration of time limit.

19. Subject to section 20, at the expiration of the period prescribed by this Act for any person to bring an action to recover land (including a redemption action) the title of that person to the land shall be extinguished.

20. (1) Subject to section 23(1) and (2), the provisions of this Act shall apply to equitable interests in land, including interests in the proceeds of the sale of land held upon trust for sale, as they apply to legal estates; and accordingly a right of action to recover the 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 interest in the like manner and circumstances, and on the same date, as it would accrue if his interest were a legal estate in the land.

Settled land and
land held on trust.

(2) Where the period prescribed by this Act has expired for the bringing of an action to recover land by a tenant for life or a statutory owner of settled land -

- (a)** his legal estate shall not be extinguished if and so long as the right of action to recover the land of any person entitled to a beneficial interest in the land either has not accrued or has not been barred by this Act; and
- (b)** the legal estate shall accordingly remain vested in the tenant for life or statutory owner and shall devolve in accordance with the Settled Estates Act;

Cap. 398

but if and when every such right of action has been barred by this Act, his legal estate shall be extinguished.

(3) Where any land is held upon trust (including a trust for sale) and the period prescribed by this Act has expired for the bringing of an action to recover the land by the trustees, the estate of the trustees shall not be extinguished if and so long as the right of action to recover the land of any person entitled to a beneficial interest in the land or in the proceeds of sale either has not accrued or has not been barred by this Act; but if and when every such right of action has been so barred the estate of the trustees shall be extinguished.

(4) Where —

- (a)** any settled land is vested in a statutory owner; or
- (b)** any land is held upon trust (including a trust for sale)

an action to recover the land may be brought by the statutory owner or trustees on behalf of any person entitled to a beneficial interest in possession in the land or in the proceeds of sale whose right of action has not been barred by this Act, notwithstanding that the right of action of the statutory owner or trustees would

apart from this provision have been barred by this Act.

Time limit for
actions to recover
rent.

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

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

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

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

(b) proceeds of the sale of land;

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

(2) No foreclosure action in respect of mortgaged personal property shall be brought after the expiration of twelve years from the date on which the right to foreclose accrued; but if the mortgagee was in possession of the mortgaged property after that date, the right to foreclose on the property which was in his possession shall not be deemed to have accrued for the purposes of this subsection until the date on which his possession discontinued.

(3) The right to receive any principal sum of money secured by a mortgage or other charge and the right to foreclose on the property subject to the mortgage or charge shall not be deemed to accrue so long as the property comprises any future interest or life insurance policy which has not matured or been determined.

(4) Nothing in this section shall apply to a foreclosure action in respect of mortgaged land, but the provisions of this Act relating to actions to recover land shall apply to such an action.

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

(6) Where —

- (a) a prior mortgagee or other incumbrancer has been in possession of the property charged; and
- (b) an action is brought within one year of the discontinuance of that possession by the subsequent incumbrancer;

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

(7) Where —

- (a) the property subject to the mortgage or charge comprises any future interest or life insurance policy; and
- (b) it is a term of the mortgage or charge that arrears of interest shall be treated as part of the principal sum of money secured by the mortgage or charge;

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

**Actions in respect of trust property or the
personal estate of deceased persons**

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

Time limit for actions in respect of 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 of trust property in the possession of the trustee, or previously received by the trustee and converted to his use.
- (2)(a) Where a trustee who is also a beneficiary under the trust receives or retains trust property or its proceeds as his share on a distribution of trust property under the trust, his liability in any action brought by virtue of subsection (1)(b) to recover that property shall be limited to the excess over his proper share;

- (b) This subsection only applies if the trustee acted honestly and reasonably in making the distribution.

(3) Subject to the preceding provisions of this section, an action by a beneficiary to recover trust property or in respect of any breach of trust, not being an action for which a period of limitation is prescribed by any other provision of this Act, shall not be brought after the expiration of six years from the date on which the right of action accrued. For the purposes of this subsection the right of action shall not be treated as having accrued to any beneficiary entitled to a future interest in the trust property until the interest fell into possession.

(4) No beneficiary as against whom there would be a good defence under this Act shall derive any greater or other benefit from a judgment or order obtained by any other beneficiary than he could have obtained if he had brought the action and this Act had been pleaded in defence.

Time limit for actions claiming personal estate of a deceased person.

24. Subject to section 23 (1) and (?) —

- (a) no action in respect of any claim to the personal estate of a deceased person or to any share or interest in any such estate (whether under a will or on intestacy) shall be brought after the expiration of twelve years from the date on which the right to receive the share or interest accrued; and
- (b) no action to recover arrears of interest in respect of any legacy, or damages in respect of such arrears, shall be brought after the expiration of six years from the date on which the interest became due.

Time limit in respect of actions for an account.

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

Time limit for actions to enforce judgments.

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

(2) No arrears of interest in respect of any judgment debt shall be recovered after the expiration of six years from the date on which the interest became due.

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

Administration to relate back to death.

PART III

**EXTENSION OR EXCLUSION OF
ORDINARY TIME LIMITS**

Disability

28. (1) Subject to the following provisions of this section, on the date when any right of action accrued for which a period of limitation is prescribed by this Act, the person to whom it accrued was under a disability, the action may be brought at any time before the expiration of six years from the date when he ceased to be under a disability or died (whichever first occurred) notwithstanding that the period of limitation has expired.

Extension of limitation period in case of disability.

(2) This section shall not affect any case where the right of action first accrued to some person not under a disability through whom the person under a disability claims.

(3) When a right of action which has accrued to a person under a disability accrues, on the death of that person while still under a disability, to another person under a disability, no further extension of time shall be allowed by reason of the disability of the second person.

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

(5) If the section is one to which section 12 applies, subsection (1) shall have effect as if for the words "six years" there were substituted the words "two years".

(6) If the action is one to which section 13 or 14(2) applies, subsection (1) shall have effect as if for the words "six years" there were substituted the words "three years".

Acknowledgement and part payment

Fresh accrual of action on acknowledgement or part payment.

29. (1) Subsection (2) and (3) apply where any right of action (including a foreclosure action) to recover land or any right of a mortgage of personal property to bring a foreclosure action in respect of the property has accrued.

(2) If the person in possession of the land or personal property in question acknowledges the title of the person to whom the right of action has accrued, the right shall be deemed to have accrued on and not before the date of the acknowledgement.

(3) In the case of a foreclosure or other action by a mortgagee, if the person in possession of the land or personal property in question or the person liable for the mortgage debt makes any payment in respect of the debt (whether of principal or interest) the right shall be deemed to have accrued on and not before the date of payment.

(4) Where a mortgagee is by virtue of the mortgage in possession of any mortgaged land and either —

- (a) receives any sum in respect of the principal or interest of the mortgage debt; or
- (b) acknowledges the title of the mortgagor or his equity of redemption;

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

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

- (a) any debt or other liquidated or pecuniary claim; or
- (b) any claim to the personal estate of a deceased person or to any share or interest in any such estate;

and the person liable or accountable for the claim acknowledges the claim or makes any payment in respect of it, the right shall be deemed to have accrued on and not before the date of the acknowledgement or payment.

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

(7) Subject to subsection (6), a current period of limitation may be repeatedly extended under this section by further acknowledgements or payments but a right of action, once barred by this Act, shall not be revived by any subsequent acknowledgement or part payment.

30. (1) To be effective for the purposes of section 29, an acknowledgement must be in writing and signed by the person making it.

Formal provisions as to acknowledgements and part payments.

(2) For the purposes of section 29, any acknowledgement or payment —

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

31. (1) An acknowledgement of the title to any land or mortgaged personality by any person in possession of it shall bind all other persons in possession during the ensuing period of limitation.

Effect of acknowledgement 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 ensuing period of limitation.

(3) Where two or more mortgagees are by virtue of the mortgage in possession of the mortgaged land, an acknowledgement 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 acknowledgement is given is entitled to a part of the

mortgaged land and not to any ascertained part of the mortgage debt the mortgagor shall be entitled to redeem that part of the land on payment, with interest, of the part of the mortgage debt which bears the same proportion to the whole of the debt as the value of the part of the land bears to the whole of the mortgaged land.

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

(6) An acknowledgement of any debt or other liquidated pecuniary claim shall bind the acknowledger 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 acknowledgement by one of several personal representatives of any claim to the personal estate of a deceased person or to any share or interest in any such estate, or a payment by one of several personal representatives in respect of any such claim, shall bind the estate of the deceased person.

(9) In this section "successor", in relation to any mortgagee or person liable in respect of any debt or claim, means his personal representatives and any other persons 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 concealment and mistake

Postponement of
limitation period
in case of fraud
concealment of
mistake.

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

- (a) the action is based upon the fraud of the defendant; or
- (b) any fact relevant to the plaintiff's right of action has been deliberately concealed from him by the defendant; or

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

(7) Subject to subsection (6), a current period of limitation may be repeatedly extended under this section by further acknowledgements or payments but a right of action, once barred by this Act, shall not be revived by any subsequent acknowledgement or part payment.

30. (1) To be effective for the purposes of section 29, an acknowledgement must be in writing and signed by the person making it.

Formal provisions as to acknowledgements and part payments.

(2) For the purposes of section 29, any acknowledgement or payment —

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

31. (1) An acknowledgement of the title to any land or mortgaged personality by any person in possession of it shall bind all other persons in possession during the ensuing period of limitation.

Effect of acknowledgement 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 ensuing period of limitation.

(3) Where two or more mortgagees are by virtue of the mortgage in possession of the mortgaged land, an acknowledgement 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 acknowledgement is given is entitled to a part of the

- (c) the action is for relief from the consequences of a mistake;

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

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

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

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

to be brought against the purchaser of the property or any person claiming through him in any case where the property has been purchased for valuable consideration by an innocent third party since the fraud or concealment or, as the case may be, the transaction in which the mistake was made took place.

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

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

(5) References in this subsection to the defendant include references to the defendant's agent and to any person through whom the defendant claims and his agent.

PART IV
MISCELLANEOUS AND GENERAL

Application of Act
and other
limitation
enactments to
arbitrations.

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

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

(3) For the purposes of this Act and of any other limitation enactment an arbitration shall be deemed to be commenced —

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

(4) Any such notice may be served either —

- (a) by delivering it to the person on whom it is to be served;
- (b) by leaving it at the usual or last-known place of abode in Antigua and Barbuda of that person; or
- (c) by sending it by post in a registered letter addressed to that person at his usual or last-known place of abode in Antigua and Barbuda,

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

(5) Where the High Court —

- (a) orders that an award be set aside; or
- (b) orders, after the commencement of an arbitration, that the arbitration agreement shall cease to have effect with respect to the dispute referred,

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

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

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

Acquiescence.

35. (1) Except as otherwise provided in this Act, and without prejudice to section 36, this Act shall apply to proceedings by or against the Crown in like manner as it applies to proceedings between subjects.

Application to the Crown.

(2) Notwithstanding subsection (1), this Act does not apply to —

- (a) any proceedings by the Crown for the recovery of any tax or duty or interest thereon;
- (b) any forfeiture proceedings under any enactment relating to customs and excise; or
- (c) any proceedings in respect to the forfeiture of a ship.

(3) For the purposes of this section, proceedings by or against the Crown include proceedings by or against any Government

department or any officer of the Crown acting as such or any person acting on behalf of the Crown.

Saving for other
limitation
enactments.

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

Cap. 352.

(2) This Act does not affect the Public Authorities Protection Act.

Transitional.

37. *This Act does not apply to any action brought upon a right of action which accrued before the commencement of this Act or to any arbitration in which a party to the arbitration relies upon such a right of action.*

Barred actions.

38. Nothing in this Act shall enable any action to be brought which was barred before the commencement of this Act by any enactment repealed by this Act.

Repeal Cap. 367.

39. The Real Property Limitation Act is repealed.

Passed the House of Representatives this 26th day of February, 1997.

Passed the Senate this 5th day of March, 1997.

B. Harris,
Speaker.

M. Percival,
President.

S. Walker,
Clerk to the House of Representatives.

S. Walker,
Clerk to the Senate.