

**REPORT OF THE LAW REFORM COMMITTEE**  
**ON**  
**THE REVIEW OF THE LIMITATION ACT (CAP 163)**



SINGAPORE ACADEMY OF LAW

**LAW REFORM COMMITTEE**

**FEBRUARY 2007**

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## **About the Law Reform Committee**

The Law Reform Committee (LRC) of the Singapore Academy of Law makes recommendations to the authorities on the need for legislation in any particular area or subject of the law. In addition, the Committee reviews any legislation before Parliament and makes recommendations for amendments to legislation (if any) and for carrying out law reform.

## **About the Report**

In recent years, several deficiencies in the Limitation Act (Cap 163) have surfaced. One particular deficiency relates to actions in unjust enrichment. Such an action is not based on either contract or tort and is thus not covered by the Limitation Act. Other deficiencies include the unduly complex rules which result in different limitation periods being applicable to the same set of facts, and the issue of “discoverability” as a starting date for limitation periods.

In early 2005, the Law Reform Committee was of the view that a comprehensive review of the law of limitations was due and a law reform subcommittee was formed for this purpose. The subcommittee’s recommendations, which were accepted by the LRC in February 2007, are consolidated in this publication.

The report reflects the authors’ current thinking on the researched area of law and does not represent the official position of Singapore Academy of Law or any governmental agency. The report has no regulatory effect and does not confer any rights or remedies.

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## Summary of Recommendations

This Report reviews the Limitation Act (Cap 163, 1996 Rev Ed) and makes the following recommendations:

1. We do not recommend any radical reform of limitation law to provide for a uniform limitation period for Singapore. Instead, piecemeal amendments should be made to the Limitation Act to address specific difficulties that have arisen.
2. **Claims for restitution.** The Limitation Act should be amended to provide specifically for a limitation period of six years for “restitutionary claims”. This term should be left to the courts to interpret (see new s 6(1)(e) of the proposed amended Limitation Act, at **Annex A**). A long-stop of 12 years should apply in respect of actions in which relief is sought from the consequences of mistake, whether of law or fact (see new s 29(3) and (4)).
3. **A sweeping-up or default provision.** There should be a “sweeping-up” or default limitation provision which should apply to all civil claims where no provision is made for such claims in the Limitation Act or in any other written law (see new s 6(1)(f)).
4. **Loans payable on demand.** The Limitation Act should be amended to provide that:
  - (a) The limitation period for a loan payable on demand should run from the date a demand for repayment is first made in writing. The provision should not affect the accrual or nature of the cause of action (see new s 6B(1), (2) and (3)).
  - (b) The limitation period for loans payable on demand should be six years after the demand has been made (see new s 6B(3)).
  - (c) A long-stop should apply 20 years from the date the loan was made (see new s 6B(4)).
  - (d) “Demand for payment” should be defined to mean an unconditional demand for immediate payment, including a demand that allows the borrower a reasonable time to arrange payment (see new s 6B(7)).
  - (e) A demand for part only of the loan should not have the effect of barring future demands in respect of the balance of the loan (see new s 6B(5)).

5. **Personal injury actions.** The Limitation Act should be amended:
  - (a) to move ss 24A and 24B to Pt II and amend the header (see new ss 6D and 6E);
  - (b) to insert a provision, modelled on s 11(2) of the UK Limitation Act 1980, expressly excluding the operation of other limitation periods set out in the Act from actions to which the section applies (see new s 6D(2));
  - (c) to extend the long-stop limitation period for personal injury claims from 15 years to 30 years (see new s 6E(1));
  - (d) to extend the limitation period to three years from death for claims by the estate, in the event of the death of the claimant where the limitation period has not accrued at the time of death (modelled on s 11(5) to (7) of the UK Limitation Act 1980) (see new s 6D(4), (5) and (6));
  - (e) to enact a new limitation provision for fatal accident claims made under s 20 of the Civil Law Act (Cap 43) (modelled on ss 12 to 14 of the UK Limitation Act 1980) (see new ss 6F, 6G and 6F(3)); and
  - (f) to repeal the existing limitation provision in s 20(5) of the Civil Law Act (see clause on consequential amendment to Civil Law Act at Annex A).
6. **Actions on a judgment.** Section 6(3) of the Limitation Act should be amended to reduce the limitation period for an action upon a judgment from 12 years to 6 years (see amended s 6(3)).
7. **Defamation.** The current limitation period of six years from accrual of cause of action for defamation actions should be modified to three years from the date when the publication or communication first comes to the notice of the pursuer (*ie* actual knowledge), with a long-stop of 15 years from the date of publication (see new s 6C). Legal developments relating to defamation on the Internet should be monitored.
8. **Suspension of limitation period for companies in administration or administrative receivership.** We do not recommend any reform on this issue.
9. **Disability.** The Limitation Act should be amended as follows:
  - (a) The reference to a person “of unsound mind” should be replaced with a reference to a person “under a mental disability”, and “mental disability” should be defined as set out in cl 29(6) and

(7) of the UK Law Commission's draft Limitation Bill (see amended s 24(1), and new s 24(1A) and (1B)); and

- (b) The extension of time under s 24 in relation to adults with disability should be limited to a period of ten years from the date on which the cause of action accrues, even if the disability has not ceased (see new s 24(1A)).
- (c) Under current law, the claimant does not receive the benefit of an extension of the limitation period where he suffers from a disability after the cause of action accrues. We do not recommend any reform on this.

10. **Transitional Provisions.** As a general rule, the Act should have retrospective effect, except where (a) limitation has accrued, (b) proceedings have been commenced, or (c) a final order or judgment has been given. Special modifications should be made for restitutionary claims, actions on judgments, and defamation claims. The transitional provisions should be supplemented with a long lead-in time of one year between enactment and commencement of the Amendment Act (see cl X of the proposed Limitation (Amendment) Bill, at **Annex A**).

## I. Introduction

1 The current law on limitations has developed in a piecemeal way over several centuries, with little thought given to its overall coherence.

2 Our Limitation Act (Cap 163) was enacted in 1959 (Ordinance No 57 of 1969) and is modelled on the UK Limitation Act 1939. The 1939 Act has since been replaced by the Limitation Act 1980 (c 58) in UK, but in Singapore, although piecemeal amendments have been made from time to time, no comprehensive review of our Limitation Act has been undertaken since its enactment.<sup>1</sup>

3 One particular defect of our Limitation Act came to light recently in the Singapore Court of Appeal in *Management Corporation Strata Title No 473 v De Beers Jewellery Pte Ltd*.<sup>2</sup> The Court of Appeal affirmed the decision of the Honourable Justice Judith Prakash at first instance that an action in unjust enrichment is not based on either contract or tort and is therefore not covered by the Limitation Act. The result, as the Court of Appeal held, is that no limitation period applies to such claims, although the doctrine of laches applies.

4 In recent years, many countries, *eg* UK,<sup>3</sup> New Zealand,<sup>4</sup> Canada,<sup>5</sup> and Australia<sup>6</sup> have undertaken a comprehensive review of their limitation laws. In particular, in UK, the Law Commission published a report in 2001 recommending a complete overhaul of the law of limitations.<sup>7</sup> The UK Government accepted the recommendations in 2002 subject to further consideration of certain aspects of the report. It remains to be seen whether the UK Parliament will implement the Law Commission's proposals.<sup>8</sup>

5 The Law Reform Committee (LRC) of the Singapore Academy of Law therefore at its 117th meeting established a subcommittee to undertake a comprehensive review of the Limitation Act with a view to recommending improvements to the law.

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<sup>1</sup> The legislative history of the Limitation Act (Cap 163) is set out in the next chapter.

<sup>2</sup> [2002] 2 SLR 1.

<sup>3</sup> UK, Law Commission of England and Wales, *Limitation of Actions* (Report No 270, 2001). The UK government accepted the recommendations in 2002 but has yet to implement them.

<sup>4</sup> New Zealand Law Commission, *Tidying the Limitation Act* (Report No 61, 2000).

<sup>5</sup> Uniform Law Conference of Canada, *Report of the Uniform Limitations Act Working Group* (presented at the ULCC Annual Meeting 2004), available at [http://www.ulcc.ca/en/poam2/CLS2004\\_New\\_Uniform\\_Limitations\\_Act\\_En.pdf](http://www.ulcc.ca/en/poam2/CLS2004_New_Uniform_Limitations_Act_En.pdf). Alberta, Ontario and British Columbia have already significantly amended their Limitation Act.

<sup>6</sup> Queensland Law Reform Commission, *Review of the Limitation of Actions Act 1974 (Qld)* (Report No 53, 1998); Law Reform Commission of Western Australia, *Limitation and Notice of Actions* (Project Reference No 36(II), 1997)

<sup>7</sup> UK Law Com Report No 270, *supra* n 3.

<sup>8</sup> See n 47 and accompanying text.

6 We have completed our review and, for the reasons set out in this report, we are *not* recommending a radical overhaul of the Limitation Act. We have sought to identify the deficiencies in the existing Limitation Act. We recommend that piecemeal amendments be made to the Limitation Act, to plug the lacunae and to address any deficiencies requiring attention.

## II. The Current Law

### A. *Definition*

7 A limitation period generally refers to any time-limit within which legal proceedings of a particular kind must be brought or, exceptionally, within which notice of a claim or dispute must be given to another party.<sup>9</sup>

### B. *Purpose*

8 The purpose of laws relating to limitation periods is to lay down rules for determining the cut-off dates after which it is too late for an intending plaintiff to bring a civil claim. There is a public interest in protecting potential defendants from stale claims. Furthermore, the adverse economic effect on potential defendants of having the uncertainty of potential claims lurking indefinitely is not conducive to a business-friendly legal environment.<sup>10</sup>

### C. *No limitation at common law*

9 Limitation of actions is entirely a statutory matter. The common law does not provide for explicit periods within which actions must be commenced.<sup>11</sup> Equity, however, developed the doctrine of *laches*<sup>12</sup> at a fairly early stage. Even so, “the situation was not considered satisfactory and the legislature therefore remedied it by passing legislation to provide for various periods of limitation for various causes of action. Thus, to find out whether a particular cause of action is time-barred and when such time bar accrued, one must look within the confines of the Limitation Act (Cap 163).”<sup>13</sup>

### D. *Application of statutory time limits to equitable claims*

10 In the UK, s 36(1) of the Limitation Act 1980 lays down that the time-limits in the Act for contract, tort, defamation and malicious falsehood, specialties, enforcement of arbitration awards and judgments, and the recovery of sums recoverable by statute, shall not apply to claims for specific performance, injunctions, or other equitable relief; but this is then subject to the proviso “except in so far as any such time limit may be applied by the court by analogy in like manner as the corresponding time limit under any enactment repealed by the Limitation Act 1939 was applied before 1st July

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<sup>9</sup> Andrew McGee, *Limitation Periods* (Sweet & Maxwell, 4th Ed, 2002) at para 1.001.

<sup>10</sup> These issues are elaborated further below in Section G “Policy and public interest”.

<sup>11</sup> *Management Corporation Strata Title No 473 v De Beers Jewellery Pte Ltd* [2001] 4 SLR 90, per Prakash J at [66]. See also Andrew McGee, *supra* n 9, at paras 1.002 and 1.041.

<sup>12</sup> The term “laches” is derived from the French “lecher” and is nearly synonymous with negligence. The limits of the doctrine are discussed in Section E “Laches” below.

<sup>13</sup> *Management Corp Strata Title No 473 v De Beers*, *supra* n 11, per Prakash J at [66].

1940”.<sup>14</sup> Section 36(2) goes on to provide that nothing in the Act is to affect any equitable jurisdiction to refuse relief on the grounds of acquiescence or otherwise.

11 With regard to the UK’s use of analogy, it has been written that:<sup>15</sup>

The point of section 36(1) is that strict limitation periods are considered to be inappropriate to those remedies which had their origin in courts of equity. With regard to the use of analogy, a court of equity has a discretion to take account of the expiry of any statutory period of limitation when considering whether to grant an equitable remedy. It might, for example, be a relevant consideration that the plaintiff’s common law remedy was time-barred, and that the application for an equitable remedy was an attempt to circumvent this problem. In practice, it seems, however, likely that the action in this case can be dismissed on the similar ground of laches ... and it seems unlikely that there will be many cases where the statutory limitation period has expired but the court is prepared to grant an equitable remedy.

12 The first part of s 36(1) means that, for example, the standard six-year limitation periods for tort and contract in ss 2 and 5 of the 1980 Act do not apply to equitable remedies, for example, specific performance or injunctions. The exception in s 36(1) is where the limitation period can be applied by analogy but, although the authorities conflict on this, the better view is that, for example, specific performance for breach of contract would not fall within the “by analogy” exception.<sup>16</sup> If there is no direct or “by analogy” statutory limitation period applicable to specific performance or an injunction or an account of profits for a breach of contract or tort, laches can be applied without contradicting Wilberforce J’s view in *In re Pauling’s Settlement Trusts*<sup>17</sup> that laches cannot be invoked where there is a statutory limitation period.

13 In Singapore, s 6(7) of the Limitation Act (Cap 163) states:

Subject to sections 22 and 32, this section shall apply to all claims for specific performance of a contract or for an injunction or for other equitable relief whether the same be founded upon any contract or tort or upon any trust or other ground in equity.

14 The two qualifications in ss 22 and 32 are:

- (a) there is no period of limitation for an action by a beneficiary against a trustee based on fraud or fraudulent breach of trust or to recover trust property in the hands of a trustee (s 22(1));

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<sup>14</sup> The proviso to s 36(1) “is of great importance”. Before the UK Limitation Act 1939, there was no comparable rule in the statute. The 1623 Act did not apply to equitable remedies. However, the courts had developed a more general principle whereby limitation periods could be applied to equitable remedies. The date of 1 July 1940 was chosen because it was the date of the first major consolidation of the law on limitation periods since the original Act of 1623. See Andrew McGee, *supra* n 9, at para 3.008.

<sup>15</sup> Andrew McGee, *id.*, at para 1.037.

<sup>16</sup> UK, Law Commission of England and Wales, *Limitation of Actions* (Consultation Paper 151, 1997) at para 13.160.

<sup>17</sup> [1962] 1 WLR 86 at 115, approved by the Court of Appeal in [1964] Ch 303 at 353.

(b) any equitable defence based on acquiescence or delay (laches) or otherwise is unaffected even though the period of limitation has not expired (s 32).

15 When s 6(7) was enacted in 1959 (then s 6(6)), it had read:

Subject to the provisions of sections 22 and 32 of this Ordinance the provisions of this section shall apply (*if necessary by analogy*) to all claims for specific performance of a contract or for an injunction or for other equitable relief whether the same be founded upon any contract or tort or upon any trust or other ground in equity. [emphasis added]

16 However, the italicised words were removed sometime between 1959 and 1970. This deletion cannot be traced to any amendment between 1959 and 1970, and was probably made in the 1970 revision of the Limitation Act (Cap 10, 1970 Rev Ed).

17 Therefore, in Singapore, there is direct application of statutory limitation periods to equitable remedies and it is no longer necessary, for the purposes of limitation periods, to deal with the characterisation issue of whether a remedy that is being sought had originated at common law or in equity. However, the omission of the italicised words does not remove the need to consider in Singapore whether the equitable remedy that is being sought relates to an institutional trust or to a remedial trust. The former (for example, a personal liability of an institutional trustee (whether of an express or constructive trust) to account) falls within s 22 but the personal liability of a knowing recipient or of a fraudulent transferee to account falls within s 6(7).

18 Our approach also avoids the need to decide the question of the extent to which statutory limitation periods are to be applied by analogy, notwithstanding that the confusion as to how the analogy works<sup>18</sup> has been clarified in *Gwembe Valley Development Co Ltd (in receivership) v Koshy*.<sup>19</sup>

19 The good sense of this approach was recently commented upon by Sir Christopher Staughton who observed, in *Companhia de Seguros Imperio v Heath*<sup>20</sup> that:

It is not obvious to me why it is still necessary to have special rules for the limitation of claims for specific performance, or an injunction, or other equitable relief. And if it is still necessary to do so, I do not see any merit in continuing to define the circumstances where a particular claim will be time-barred by reference to what happened, or might

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<sup>18</sup> See Mr William Swadling's observation in chapter 11 "Limitation" of *Breach of Trust* (ed Peter Birks and Arianna Pretto) (Hart Publishing, 2002) at p 319. The Court of Appeal in *Gwembe Valley Development Co Ltd (in receivership) and another v Koshy and others* [2003] EWCA Civ 1048; [2004] 1 BCLC 131, CA, describes Mr Swadling's view as pessimistic.

<sup>19</sup> *Ibid*. The Court of Appeal commented that the position has been considerably improved by several important Court of Appeal and House of Lords decisions.

<sup>20</sup> [1999] LRIR 571.

have happened, more than 60 years ago. If a distinction still has to be drawn between common law and equitable claims for limitation purposes, I would hope that a revised statute will enact with some precision where that distinction should be drawn, rather than leave it to the product of researches into cases decided long ago.

20 Or as Michael Lerego QC noted:<sup>21</sup>

There may be good reasons for having different limitation periods for different causes of action, but 125 years after the fusion of law and equity the historical origin of the remedy is not one of them.

21 The UK Law Commission has recommended that a limitation period applying to common law remedies for a cause of action should apply also to equitable remedies for that cause of action (see the draft Limitation Bill, cl 1, at **Annex D**), but no limitation period should apply to applications for specific performance where, under the present law, delay does not operate to bar such applications (draft Bill, cl 34(1)).<sup>22</sup>

22 The New Zealand Law Commission has recommended that s 4(9) of their Limitation Act 1950 (which is *in pari materia* with s 36(1) of the UK Limitation Act 1980) be repealed and that the following be inserted at the end of s 4(1) (which is *in pari materia* with s 6(1) of our Act):

(e) any other civil claim for which no other provision is made by this Act.<sup>23</sup>

23 The proposed New Zealand amendment if implemented will do away with the need to distinguish between common law and equitable claims in computing limitation periods. It will also serve as a “default” or “sweeping-up” provision so that all civil claims will be subject to a limitation period, even if they do not fall into the existing categories in the Limitation Act.

### ***E. Laches***

24 Section 32 preserves the court’s power to dismiss a claim on the ground of laches.

25 The doctrine is based upon the maxim that equity aids the vigilant and not those who slumber on their rights.<sup>24</sup> There are two ingredients: the length of the delay and secondly, whether such delay has caused prejudice or injustice.<sup>25</sup>

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<sup>21</sup> In his response to the UK Law Com Consultation Paper 151, *supra* n 16. Cited in UK Law Com Report No 270, *supra* n 3, at para 4.268.

<sup>22</sup> See UK Law Com Report No 270, *supra* n 3, at para 4.273.

<sup>23</sup> NZ Law Com Report No 61, *supra* n 4, at para 24–26.

<sup>24</sup> Black’s Law Dictionary (West Publishing, 6th Ed, 1990).

<sup>25</sup> Goff and Jones, *The Law of Restitution* (Sweet & Maxwell, 6th Ed, 2002), cited with approval by Prakash J in *Management Corp Strata Title No 473 v De Beers*, *supra* n 11, at [116].

26 The classic statement is in the judgment of Lord Selborne LC in *Lindsay Petroleum Co v Hurd*:<sup>26</sup>

Now the doctrine of laches in courts of equity is not an arbitrary or a technical doctrine. Where it would be practically unjust to give a remedy, either because the party has by his conduct done that which might fairly be regarded as equivalent to a waiver of it, or where by his conduct and neglect he has, though perhaps not waiving that remedy, yet put the other party in a situation in which it would not be reasonable to place him if the remedy were afterwards to be asserted, in either of these cases lapse of time and delay are most material, but in every case if an argument against relief which would otherwise be just is founded upon mere delay, that delay, of course, not amounting to a bar by any statutory limitations, the validity of that defence must be tried upon principles substantially equitable.

Two circumstances always important in such cases are: the length of the delay and the nature of the acts done during the interval which might affect either party and cause a balance of justice or injustice in taking the one course or the other so far as relates to the remedy.

(1) *Is doctrine of laches applicable to common law claims?*

27 The “orthodox” position is that laches is an equitable doctrine and should only apply where the plaintiff is seeking an equitable remedy such as an account of profits, rescission and other equitable proprietary remedies.<sup>27</sup> The High Court of Australia has stated that “Laches ... is not available in answer to a legal claim”.<sup>28</sup>

28 However, some authorities suggest that the doctrine of laches applies equally to legal and equitable rights.<sup>29</sup>

29 In *Management Corporation Strata Title No 473 v De Beers Jewellery Pte Ltd*,<sup>30</sup> the Court of Appeal applied laches to a common law claim where no equitable relief was sought.<sup>31</sup> The court did not explain why this equitable defence should be available as a defence to a common law claim, but this approach could be justified on

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<sup>26</sup> (1874) LR 5 PC 221 at 230, 240.

<sup>27</sup> See *Syed Ali Redha Alsafoff v Syed Salim Alhadad* [1996] 3 SLR 410; *Scan Electronics (S) Ltd v Syed Ali Redha Alsafoff* [1997] 3 SLR 13; and H M McLean, “Limitation of Actions in Restitution” [1989] CLJ 472 at 481–482.

<sup>28</sup> *Orr v Ford* (1989) 167 CLR 316 at 340. See also John McGhee, *Snell’s Equity* (Sweet & Maxwell, 30th Ed, 2000) at p 33.

<sup>29</sup> See *Shaw v Applegate* [1977] 1 WLR 970; *Habib Bank Ltd v Habib Bank AG Zurich* [1982] RPC 1; *Hoover plc v George Hulme (Stockport) Ltd* [1982] FSR 565; *Ind Coope Limited v Paine & Co Ltd* [1983] RPC 326; *Genelabs Diagnostics Pte Ltd v Institut Pasteur* [2001] 1 SLR 121; Kwek Mean Luck, “The Biotechnology Era: Ramifications of *Genelabs Diagnostics v Institut Pasteur*” (2001) 13 SAclJ 89 at 113–115.

<sup>30</sup> *Supra* n 2.

<sup>31</sup> In this case, De Beers founded its claim in restitution. The High Court held that the restitutionary claim for recovery of moneys paid under a mistake is not founded in equity, but is a common law claim.

policy grounds, since there would otherwise be no applicable time constraint whatsoever.<sup>32</sup>

30 It would therefore appear after the *De Beers* case that in Singapore, the court is not likely to be deterred by the common law-equity distinction in applying laches to a common law claim.

(2) *Laches vs statutory limitation periods*

31 An obvious difference is that it is impossible to set any fixed time limit for the operation of laches, as everything depends on the damage caused in the particular case.

32 Secondly, laches kicks in only when the plaintiff knows of the wrong, whereas most provisions in the Limitation Act do not require any knowledge in order for time to start running.

33 Thirdly, it may be possible to circumvent the operation of laches if the plaintiff is prepared to accept a suitably restricted remedy.<sup>33</sup>

34 In *De Beers*, no statutory limitation period was found to apply, and the court found that laches was not established on the facts. In *Ching Mun Fong (executrix of the estate of Tan Geok Tee, deceased) v Liu Cho Chit (No 2)*,<sup>34</sup> Woo J considered laches on the alternative ground that the statutory limitation period was inapplicable to the remedial constructive trust claim. He held that even if there was some sort of remedial constructive trust in favour of the plaintiff, this might avoid periods of limitation prescribed by the Act but it did not affect the court's equitable jurisdiction to refuse relief on the ground of acquiescence, laches or otherwise.

35 Our Limitation Act does not explicitly state that an action may be brought at any time within the statutory period.<sup>35</sup> On a literal reading of the Act, it would appear that laches may, in an appropriate case, bar a claim even before the expiry of the statutory limitation period. However, an academic has stated his opposite view, at least in relation to common law claims:

[t]he clear intention is that the period provided by statute shall be available for the bringing of an action, subject only to the possibility that an action might be regarded as an abuse of the process of court. ...

The Limitation Acts are the only general provision which require that an action be brought within a given time. There is no such thing as a common law limitation period and it would be inappropriate at the

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<sup>32</sup> See Yeo Tiong Min, "Unilateral Mistake in Contract: Five Degrees of Fusion of Common Law and Equity" [2004] SJSLS 227 at n 87.

<sup>33</sup> Andrew McGee, *supra* n 9, at para 3.015.

<sup>34</sup> [2000] 4 SLR 610.

<sup>35</sup> Provisions are usually in the form "no action shall be brought after the expiry of ...".

present time for the courts to attempt to develop such a common law doctrine.<sup>36</sup>

36 However, it is suggested that the position in Singapore is different after the Court of Appeal decision in *De Beers*, which applied the doctrine of laches to a common law claim. Such claims being subject to laches, applying s 32, laches may in an appropriate case bar a claim (whether equitable or not) before the statutory period has expired.

#### ***F. Procedural questions***

37 The law of limitation periods also overlaps with the rules governing the procedural conduct of an action, including those relating to delay after proceedings have been commenced. One conspicuous feature of these rules is that they generally impose much shorter time-limits than the limitation statutes, but at the same time confer much greater discretion upon the court to override the limits when it appears just to do so.

38 Procedural issues include whether a claim can be dismissed for want of prosecution if there is inordinate delay within the limitation period, and where a party wishes to amend the claim or pleadings after the limitation period has expired. It is not intended to deal with these issues in any detail since no reform of such procedural issues is being recommended. The UK Law Commission had also given relatively little attention to such procedural issues.<sup>37</sup>

##### *(1) Abuse of process (Order 18 rule 19)*

39 Order 18, rule 19 of the Rules of Court (Cap 322, 2006 Rev Ed) allows the court to dismiss a claim that is an abuse of the court's process. For a long time, it was thought that delay before the issue of the writ but within the limitation period can never be regarded as inordinate and inexcusable thus rendering the action an "abuse of the process of court". However, an exceptional situation occurred in *Hogg v Hamilton and Northumberland HA* (1 April 1992, CA, unreported), where the plaintiff was under irreversible disability as a result of a surgical operation. His action would consequently never have become time-barred. One writ was issued and not proceeded with; after a long delay a second writ was issued. Although the action was not time-barred, the UK Court of Appeal struck out the action as an abuse of process.

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<sup>36</sup> Andrew McGee, *supra* n 9, at paras 3.015–3.016. In the case of equitable remedies, the author also stated that "it is clear that lapse of time amounting to much less than the statutory limitation periods can cause such prejudice to the defendant as to render the granting of the remedy inappropriate."

<sup>37</sup> Although it did recommend the retention of the present rule that the event which stops time from running should be the issue of proceedings, rather than service. The Courts and Legal Services Bill 1990 had contained a proposal to change this rule so that time ran until service, but the proposal was dropped, and the matter does not seem to have received serious attention since.

### ***G. Policy and public interest***

40 The task of devising a fair limitations law is generally approached as one of holding the balance between what is fair to intending plaintiffs (who would wish to have as long a period as possible to bring a claim), and what is fair to intended defendants (who must be protected from stale claims). When that balance can be properly struck, then the public interest will usually be found to have been taken care of.<sup>38</sup>

41 Policy arguments fall into three main types. The first relates to the position of the defendant. It is said to be unfair that a defendant should have a claim hanging over him for an indefinite period and it is in this context that such enactments are sometimes described as “statutes of peace”. The second looks at the matter from a more objective point of view. It suggests that a time-limit is necessary because with the lapse of time, proof of a claim becomes more difficult – documentary evidence is likely to have been destroyed and memories of witnesses faded. The third relates to the conduct of the plaintiff, it being thought right that a person who does not promptly act to enforce his rights should lose them.

42 The reason it is desirable for prospective defendants to have a cut-off date that is certain is so they know where they stand. They need to know, for example, when they can destroy records or when insurance cover can safely cease to be renewed. The desirability for certainty would affect the technique to be employed in defining the limitation period, for example, discretionary extensions of time should be discouraged if there is a strong need for certainty.

43 It will never be possible to achieve complete fairness between the parties. Indeed, the imposition of any limitation could be regarded as doing “rough justice” to the claimant. Providing for different regimes may give rise to fairer results; however the trade-off may well be the introduction of needless complexity into what is already a notoriously technical area of law.<sup>39</sup>

### ***H. UK legislative history***

44 The first statute on limitation in the UK was the Statutes of Limitation 1623. Over the succeeding centuries, a number of other relevant statutes were passed in the UK.<sup>40</sup> These were consolidated, with amendments, in the Limitation Act 1939. The

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<sup>38</sup> NZ Law Com Report No 61, *supra* n 4, at para 1.

<sup>39</sup> The complication of the Limitation Ordinance 1897 (which preceded our Limitation Act (Cap 163)) was said to have given rise to the need for bulky commentaries. In an introduction to one of those commentaries, Mr Justice Walsh said: “Was it necessary in order to prevent a man from sleeping over his rights to devise 183 methods of defeating him, or is it to be that in order to appreciate the right interpretation of these 183 methods, a lawyer should be forced to investigate no less than 8,000 reported decisions?” (State of Singapore, *Legislative Assembly Debates*, Official Report (2 September 1959) vol 11 at col 587 (Mr KM Byrne, Minister for Labour and Law).

<sup>40</sup> The principal ones before the 20th century being the Civil Procedure Act 1833, the Real Property Limitation Acts 1833 and 1874 and the Public Authorities Protection Act 1893.

1939 Act was the principal enactment in the UK until the present Limitation Act 1980.<sup>41</sup>

### *I. Singapore legislative history*

45 The earliest limitation statute to apply to Singapore directly was the Limitation of Suits Act, Act XIV of 1859. This was during the period of the “Indian Acts” when the Legislative Council of India wielded legislative power over Singapore. The Act was superseded by the Straits Settlements Ordinance VI of 1896, which was modelled on the Indian Limitation Act 1877 (Act 15 of 1877).

46 The Indian Limitation Act 1877 was found to be overly complicated.<sup>42</sup> In the Federation of Malaya, a committee was set up in 1950 to consider the law relating to limitations. This committee recommended the adoption of the English law of limitations as contained in the Limitation Act of 1939. As a result, the Federation, in 1953, enacted the Limitation Ordinance (Ordinance No 4 of 1953), repealing the Straits Settlements Limitations Ordinance of 1896.

47 The Singapore Bar Committee also considered the matter and recommended that legislation along the lines of the English Limitation Act 1939 and the Federation Limitation Ordinance 1953 be enacted in Singapore. In 1959, the Limitation Ordinance 1959 (No 57 of 1959) superseded the Straits Settlements Ordinance VI of 1896.

48 Since 1959, there has been no major overhaul of the Limitation Act, although piecemeal amendments have been made to our Limitation Act in 1966 (to reduce the limitation period for damages for personal injuries from six years to three years), 1992 (addition of provisions to deal with latent damage (physical and other)),<sup>43</sup> 1998 (right to contribution under the Civil Law Act),<sup>44</sup> and 2001 (to modify the effect of the Act on arbitration proceedings).<sup>45</sup> These reforms principally emanated from England.

49 In contrast, the UK overhauled their Limitation Act in 1980 and is now considering another overhaul.

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<sup>41</sup> The 1980 Act dealt, most importantly, with equitable remedies (s 36); fraud, concealment and mistake (s 32).

<sup>42</sup> It listed over 100 different kinds of actions and provided varying periods of limitation, varying from one year up to 60 years. Many of the variations were “extremely arbitrary” and Indian courts had varied in their interpretation of the Act: *Legislative Assembly Debates* (2 September 1959), *supra* n 39, at col 587.

<sup>43</sup> Sections 24A–24C.

<sup>44</sup> Section 6A.

<sup>45</sup> Arbitration Act 2001 (Cap 10, 2002 Rev Ed).

### III. A Uniform Limitation Period for Singapore

50 The first issue we had to deal with was whether to recommend reform along the lines proposed by the UK Law Commission in 2001 (Report No 270). The UK proposals are breathtaking in their scope and a summary of the Law Commission's recommendations are attached at **Annex D**.

51 In essence, the Law Commission recommended a single, core limitation period of three years to apply, as far as possible, to all claims for a remedy for a wrong, claims for enforcement of a right, and claims for restitution.

52 Time does not run until the claimant knows or ought reasonably to know that he has a cause of action ("the date of discoverability"). The date of discoverability is defined as the date on which the claimant knew or ought reasonably to know:

- (a) the facts which give rise to the cause of action;
- (b) the identity of the defendant; and
- (c) if the claimant has suffered injury, loss or damage or the defendant has received a benefit, that the injury, loss, damage or benefit was significant.

53 The adoption of the date of discoverability as the starting point for the running of time is counterbalanced by the introduction of a long-stop for all classes of case, including personal injuries. The long-stop is 10 years in most cases, but 30 years in the case of personal injury. The long-stop runs from the date of the accrual of the cause of action. The long-stop period would not run where the defendant has concealed relevant facts, but only if the concealment is dishonest.

54 Further, the core regime in personal injury cases will be modified. The court will have discretion to disapply the primary limitation period, and no long-stop period will apply.

55 Claims to recover land and related claims will not be subject to the core regime but will be subject to a limitation period of the same length as the long-stop limitation period.

56 The core regime will apply to equitable actions, but delay should still bar a remedy before the limitation has expired.

57 Finally, parties may reduce or extend the initial limitation period by agreement. However, they will not be allowed to reduce the protection on concealment, minority or other disability, or to modify the long-stop limitation period for claims under the Consumer Protection Act 1987 (c 43).

## A. *Analysis*

58 The UK proposals in many ways represent an improvement on the present law. A uniform limitation period would be a welcome simplification. The traditional limitation period of six years had originated in 1623 when communication and information gathering was far more difficult; shortening the time norm to three years would be in keeping with modern trends. It would also help to resolve cases more quickly, since the effluxion of time (in its effect on witness memory, for example) may make trials slower and therefore more expensive to the state as provider of the dispute resolution mechanism.<sup>46</sup>

59 We do not however consider that holistic reform of our Limitation Act is required in Singapore at the present time. In UK, the Law Commission's recommendations have not yet been implemented although the UK government accepted the proposals three years ago. An academic, while expressing the hope that:

[s]ome legislative space can be found to deal with a number of problems which, though undeniably technical in character, are capable of having unfortunate and unjust effects in a number of cases ...

also queried sceptically:

whether [the UK] Parliament will find the time to implement ... [the] proposals. Limitation of actions is hardly to be regarded as a vote-winner, and there must be some danger that the Report will simply be left to gather dust.<sup>47</sup>

60 We also note that in New Zealand, the New Zealand Law Commission had in 1988 recommended a complete repeal of their 1950 Limitation Act and its replacement by a new statute containing different rules and employing a different vocabulary. However, that recommendation was never acted on, and since then the Law Commission has issued a Report in 2000 recommending piecemeal amendments to address urgently needed changes.<sup>48</sup>

61 More critically, while we recognise the merits of UK's holistic approach, we are not at present aware of any *major* problems that have arisen under our current limitation regime such that it is necessary to jettison the current Limitation Act. Limitation does not appear to be an issue that is raised too often in the Singapore courts.<sup>49</sup> The problems with existing law (these are discussed in the next chapter) can in our view be satisfactorily resolved by amending the existing Act.

62 The courts, lawyers and other stakeholders have by and large become accustomed to the technicalities of the existing regime, and we think that a more prudent approach would be for Singapore to await the outcome of developments in

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<sup>46</sup> NZ Law Com Report No 61, *supra* n 4, at para 1.

<sup>47</sup> Andrew McGee, *supra* n 9, at para 1.045.

<sup>48</sup> NZ Law Com Report No 61, *supra* n 4, at para 2.

<sup>49</sup> There were 26 reported decisions since 1995 where the Limitation Act was raised.

other countries and to consider their experiences, before coming to a decision on whether such radical changes to our limitation regime should be recommended.

***B. Recommendation***

63 We do not, at this point of time, recommend radical reform to the limitation regime in Singapore. Instead, we recommend that piecemeal amendments be made to the Limitation Act to plug existing lacunae and deficiencies.

## IV. Problems with Existing Law

### A. *Claims for restitution*

64 Our Limitation Act adopts the approach of categorising limitation periods based on particular causes of action. It is couched only in terms of obligations known to the drafters at the time of drafting. Obligations such as unjust enrichment and other restitutionary claims were not known in 1959 when the Act was drafted. As the UK Law Commission stated:<sup>50</sup>

[W]hen it comes to the bulk of restitutionary claims the Limitation Act 1980 does not explicitly apply. This means that the central choice facing the courts has been to construe the 1980 Act, albeit artificially, as applying to these claims; or to conclude that no limitation period applies to common law restitutionary claims and that any equitable restitutionary claims should be left to the doctrine of laches.

65 Thus in the *Ching Mun Fong* case,<sup>51</sup> Woo J held that the words in s 6 of the Limitation Act “are wide enough to cover claims for the recovery of moneys paid pursuant to a contract where the underlying subject matter of the agreement did not exist or did not materialise.” This is fiction, of course, but it is quite justifiable as a matter of policy.

66 This approach has not however commanded wide acceptance. Some critics, including judges<sup>52</sup> and Law Commissions,<sup>53</sup> feel that these obligations now form a third branch of the law of obligations. In *Management Corp Strata Title No 473 v De Beers*,<sup>54</sup> the Court of Appeal rejected the implied contract fiction and held that claims to recover payments made under mistakes of law were not based on either contract or tort and such claims fell outside the ambit of the Act.

67 Thus under present law, limitation of actions in relation to the law of restitution is plainly in need of reform.

#### (1) *UK recommendation*

68 The UK Law Commission has recommended that restitutionary actions should be dealt with as part of their proposed “core regime”. The proposed core regime applies to “civil claims”, which would be widely defined and would specifically include “restitution”:

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<sup>50</sup> UK Law Com Consultation Paper 151, *supra* n 16, at para 5.3.

<sup>51</sup> *Supra* n 34, at [73].

<sup>52</sup> See, for example, *BP Exploration Co (Libya) Ltd v Hunt (No 2)* [1979] 1 WLR 783, where the decision of Robert Goff J (as he then was) was affirmed without reference to this point in [1983] 2 AC 352, HL.

<sup>53</sup> The UK Law Commission observed in their report that the Limitation Act 1980 cannot be applied straightforwardly to causes of action in restitution founded on unjust enrichment. See UK Law Com Report No 270 at para 1.9.

<sup>54</sup> *Supra* n 2.

1(4) In this Act “civil claim” means a claim made in civil proceedings in which the claimant seeks —

- (a) a remedy for a wrong,
- (b) restitution, or
- (c) the enforcement of a right.

69 “Restitution” would not be legislatively defined, but the Law Commission considered that it would include any claim for unjust enrichment (such as for the recovery of money paid under mistake).<sup>55</sup>

(2) *New Zealand recommendation*

70 The New Zealand Law Commission’s approach differs slightly. No specific reference to restitution was made, but a “default” or “sweeping-up” provision imposes a limitation period of six years to all civil claims for which no other provision was made by the Act. The proposed new s 4(1)(e) reads:

(e) any other civil claim for which no other provision is made by this Act.

(3) *Analysis*

71 The need for reform is clear, as the current limitation regime clearly does not deal adequately with the newly recognised law of restitution.

72 The next issue concerns the appropriate length of the limitation period for restitutionary claims. A six-year limitation period has generally been applied to quasi-contractual (now restitutionary) claims (with the usual suspension of time for mistake under s 29, where applicable). Thus far, this period appears to be accepted as appropriate. We accordingly recommend that a limitation period of six years be applied to restitutionary claims.

73 Formulating the new provision is rather more problematic as the law of restitution, having only been recently authoritatively recognised,<sup>56</sup> is still developing and at this point in time there is no real consensus on what is covered under “restitutionary claim”. Any legislative definition would only be able to take into account present restitutionary claims and could be outdated in a short time.

74 There would appear to be four options available:

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<sup>55</sup> UK Law Com Report No 270, *supra* n 3, at para 3.3.

<sup>56</sup> In *Lipkin Gorman v Karpnale Ltd* [1991] 2 AC 548.

(a) Option A

The narrowest approach would be to prescribe a limitation period only in respect of the particular head of restitution for which a limitation period was found lacking in *Management Corporation Strata Title No 473 v De Beers Jewellery Pte Ltd*,<sup>57</sup> ie autonomous unjust enrichment.<sup>58</sup>

(b) Option B

Alternatively, a limitation period may be prescribed for “restitutionary claims”, leaving it to the courts to define this term. This is the approach recommended by the UK Law Commission.

(c) Option C

A third option would be to prescribe a limitation period for “restitutionary claims”, with an attempt at a legislative definition or clarification. We note that an inclusive definition is set out in O 11, r 1(o) of the Rules of Court (Cap 322). The rule provides that service out of Singapore is permissible with leave of court if in an action:

(o) the claim is a restitutionary one (including a claim for quantum meruit or quantum valebat) ...

(d) Option D

A fourth option is to leave the limitation period for restitutionary claims to the proposed “sweeping-up” or default provision.<sup>59</sup> Under this approach, no reference to “restitutionary claims” is made.

75 We felt that Option A was too narrow and therefore insufficient as a reform option. As between Options B and C, we noted that the subject of restitution was still in its developmental stages. A legislative definition of “restitutionary claim” would only be able to take into account restitutionary claims known at the time of drafting (assuming a consensus on this could be reached, given the lack of any real consensus on this issue). Given the pace of development in this area, we believed that any definition is likely to become outdated in a short time.

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<sup>57</sup> *Supra* n 2.

<sup>58</sup> The classification of restitutionary claims into “autonomous unjust enrichment” and “restitution for wrongs”, put forward by Peter Birks, is significant legally and is also convenient. See Peter Birks, *An Introduction to the Law of Restitution* (Oxford University Press, 1985). Autonomous unjust enrichment deals with the situation where the defendant’s unjust enrichment has been subtracted from the wealth of the plaintiff, ie the defendant’s gain is equivalent to the plaintiff’s loss. Payments made by a mistake or for a consideration that has failed are examples. Restitution for wrongs refers to restitutionary claims which strip away gains made by the commission of a wrong, such as a tort or breach of trust. See UK Law Com Consultation Paper 151 (1998), *supra* n 16, at para 5.4.

<sup>59</sup> Proposed in Section C “A sweeping-up or default position” below.

76 Option D drew much debate and interest. On the one hand, it sufficiently closed the lacuna for restitutionary claims while avoiding definitional issues. However, the drawback was that it would not make it immediately plain on the face of the provision that the legislature had examined this area of law and addressed this issue. More fundamentally, we felt that a “sweeping-up” provision should properly be reserved for residuary application only. If restitution was recognised as an established body of law, it followed that there should rightly be a provision devoted to restitutionary claims, in the same way that there is currently a specific provision for tort and contract claims.

77 After much deliberation, we felt that it was best to prescribe a limitation period for “restitutionary claims” and leave it to the court to decide on a case-by-case basis whether the claim before it was a restitutionary one or not (*ie* Option B). This was the approach recommended in UK. Option B found favour with those of us who felt that, until sufficient time had passed to allow the law of restitution to mature fully, this approach probably struck the best balance between flexibility and clarity. While the law of restitution was still developing, it was no longer in its infancy and even at this point of time, the courts already had sufficient material by way of case law and academic writing on which to determine the issue of whether a claim before it was restitutionary.

(4) *Recommendation*

78 A limitation period of six years should be provided specifically for “restitutionary claims”; this term should be left to the courts to interpret (Option B) (new s 6(1)(e) of the proposed amended Limitation Act, at **Annex A**). This should be supplemented with a sweeping-up provision (see **Section C “A sweeping-up or default position”** below).

**B. *Limitation period for recovery under mistakes of law***

79 A further issue arises in the context of limitation periods for restitutionary claims. This is the question of whether s 29 needs to be amended in the light of the abrogation of the distinction between mistakes of fact and mistakes of law.<sup>60</sup>

80 *Kleinwort Benson* and *De Beers* recognised that money paid under a mistake of law should be recoverable, even where the “mistake” in question results from a change in the law after the relevant payment has been made. In *Kleinwort Benson*, the Law Lords held that s 32(1) of the Limitation Act 1980<sup>61</sup> applied, so that the period of limitation did not begin to run until the claimant could with reasonable diligence have discovered the mistake. Where the courts change an understanding of the law which has applied for several years (and under which the claimant made the relevant payment), the claimant will have six years from that date to bring his or her claim, however long ago the relevant payments were made. The following comments were made:

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<sup>60</sup> See the Singapore Court of Appeal decision in *De Beers*, *supra* n 2, and the UK House of Lords decision in *Kleinwort Benson Ltd v Lincoln City Council* [1999] 2 AC 349.

<sup>61</sup> Which corresponds to s 29(1) of our Limitation Act.

I recognise that the effect of section 32(1)(c)<sup>62</sup> is that the cause of action in a case such as the present may be extended for an indefinite period of time. I realise that this consequence may not have been fully appreciated at the time when this provision was enacted, and further that the recognition of the right at common law to recover money on the ground that it was paid under a mistake of law may call for legislative reform to provide for some time limit to the right of recovery in such cases. The Law Commission may think it desirable, as a result of the decision in the present case, to give consideration to this question; indeed they may think it wise to do so as a matter of some urgency. (*per* Lord Goff of Chieveley)<sup>63</sup>

The most obvious problem is the Limitation Act, which as presently drafted is inadequate to deal with the problem of retrospective changes in law by judicial decision. (*per* Lord Hoffmann)<sup>64</sup>

(1) *UK recommendation*

81 The UK Law Commission's proposed core limitation regime would largely alleviate the above problems. The discoverability regime provides a similar starting point as that under s 32(1)(c) of the Limitation Act 1980. However, the long-stop limitation period of ten years under the core regime will run from the date of the accrual of the cause of action. In a claim to recover money paid under mistake of law this will be the date on which the defendant is enriched. No enrichment received by the defendant over ten years before the date of the judgment could therefore be recovered.<sup>65</sup>

(2) *Analysis*

82 The Law Reform Committee of the Singapore Academy of Law had earlier suggested that the extension of time under s 29(1)(c) of our Limitation Act should be subject to a 12-year long-stop period (from the date of payment or conferment of benefit).<sup>66</sup> The long-stop should apply to actions for recovery under both mistakes of law and mistakes of fact.

83 We note that an academic has suggested that the Law Reform Committee's proposal for a 12-year long-stop is "impractical and disproportionately favourable to the plaintiff".<sup>67</sup> Unfortunately, there was no discussion as to why 12 years was disproportionately favourable to the plaintiff, whereas ten years as recommended by the UK Law Commission and which the author also recommended, was not.

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<sup>62</sup> Which corresponds to s 29(1)(c) of our Limitation Act.

<sup>63</sup> *Kleinwort Benson*, *supra* n 60, at 389B.

<sup>64</sup> *Id.*, at 401E.

<sup>65</sup> See UK Law Com Report No 270, *supra* n 3, at para 4.78.

<sup>66</sup> Law Reform Committee of the Singapore Academy of Law, *Paper on Reforms to the Law of Restitution on Mistakes of Law* (April 2001).

<sup>67</sup> Tan Sook Yee, "Chapter 12 Equity, Trust and Restitution" (2001) 2 SAL Ann Rev 198, at para 12.39.

84 The exact period to be chosen is obviously to some extent arbitrary. The 12-year time limit had been chosen for familiarity as this is the limitation period applicable to most land-related claims.<sup>68</sup> Other law reform bodies have proposed long-stop periods of 10, 15 or 30 years.<sup>69</sup> In our view, a long-stop period of 12 years, apart from having the benefit of familiarity, would also remove the need to consider having a separate long-stop period for land-related claims.<sup>70</sup> As for the long-stop of ten years recommended in UK, there is precedent for such a limitation period under the Consumer Protection Act 1987. This is not the case for Singapore.

(3) *Recommendation*

85 We recommend that a long-stop period of 12 years should apply in respect of actions in which relief is sought from the consequences of mistake, whether the mistake is a mistake of law or of fact (new s 29(3) and (4)).

**C. A sweeping-up or default position**

86 We also considered whether our Limitation Act should include a “sweeping-up” or default clause prescribing a limitation period to all other causes of action not explicitly set out in the Act. Such a provision would cover new causes of action which are not currently known: for example, in the *Ching Mun Fong* case,<sup>71</sup> it was argued that a remedial constructive trust arose in favour of the plaintiff. While doubting that the doctrine of remedial constructive trusts applied in Singapore, Woo J did not close the door on such causes of action in Singapore.<sup>72</sup>

87 A sweeping-up clause would also mean, for example, that for the purpose of the law on limitation, there would be no need to determine whether “bailment” is a cause of action separate from an action in tort, contract or restitution.<sup>73</sup>

88 In the UK, examples of causes of action for which there is (in UK) no statutory limitation period and which would for the first time be subject to a statutory limitation period under such a provision, are: (a) equitable wrongs that are not covered by their provisional recommendations on breach of trust and related actions (for example, breach of confidence); (b) actions for pronouncing for or against a will in solemn form, actions contesting the title under which a grant of probate or letters of administration is made, and actions for the revocation of a grant of representation; (c) actions arising out of the exercise of the royal prerogative; (d) claims by Her Majesty the Queen or the Duke of Cornwall to gold and silver mines under the royal prerogative right to such

<sup>68</sup> It is also the limitation period applicable to actions on judgments (s 6(3)), although we are recommending that this period should be reduced to six years (see Section F “Limitation period for actions on a judgment” below).

<sup>69</sup> UK Law Com Consultation Paper 151, *supra* n 16, at para 12.101.

<sup>70</sup> *Id.*, at para 12.110.

<sup>71</sup> *Supra* n 34.

<sup>72</sup> At [141], the learned judge observed, “I have doubts as to whether the doctrine of remedial constructive trusts should apply in Singapore. However, it is not necessary for me to decide that as I am satisfied that on the particular facts before me, the plaintiff has failed to establish such a trust.”

<sup>73</sup> UK Law Com Consultation Paper 151, *supra* n 16, at para 13.185.

mines; (e) proceedings by the Crown for the recovery of any tax or duty or interest on any tax or duty; and (f) forfeiture proceedings under the Customs and Excise Acts.

89 A sweeping-up clause provides much-needed certainty that no cause of action would be rendered free of a limitation period because the list of actions falling under the Limitation Act is not sufficiently comprehensive, or becomes so through the effluxion of time. If it is found that a cause of action not previously considered has been adversely and unfairly affected, it is possible for this oversight to be remedied by Parliament. We think that this would be preferable to a regime which is not universal and which can give rise to questions of whether a limitation regime applies at all. Both UK<sup>74</sup> and New Zealand<sup>75</sup> have proposed the adoption of a sweeping-up or default limitation provision.

(1) *Actions on a statute other than for recovery of a sum of money: specialties*

90 In Singapore, a sweeping-up provision would introduce, for the first time, a limitation period for an action on a statute where the relief sought is something other than the payment of a sum of money. Our Limitation Act does not currently specify any limitation period in respect of such actions.<sup>76</sup> In contrast, in UK, such actions are subject to a limitation period of 12 years<sup>77</sup> under s 8 of the 1980 Limitation Act, as a statute is a form of “specialty”.<sup>78</sup>

91 Although our Act was based on the UK Limitation Act 1939, the UK provision on specialties *ie* s 2(3) was not adopted. The non-retention of this clause in 1959 appears to have been deliberate. However it could have been based on the assumption that “specialties” meant contracts under seal only, as the relevant part of the Explanatory Statement to the Limitation Bill 1959 reads:

The scheme departs from English law in that no distinction is proposed to be drawn here between ordinary parol contracts and contracts under seal. No such distinction is recognised by the Limitation Ordinance, 1953, in the Federation of Malaya and it is proposed not to retain it in Singapore. Where money is secured by a mortgage or charge of property it is provided that the right to bring an action on the debt should be enforceable as long as the right to enforce the security continues, that is for 12 years (See Clause 21). Such action is,

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<sup>74</sup> UK Law Com Report No 270, *supra* n 3, at paras 4.289–4.293, implemented in the draft UK Bill (Annex D) via cl 1 (wide definition of “civil claim”) and cl 36 (exclusion where express provision made in the Act or other enactment).

<sup>75</sup> See para 70 above.

<sup>76</sup> Although limitation periods are prescribed for actions on a statute to recover a sum of money, where such a sum is a penalty or forfeiture, the limitation period is one year from accrual of cause of action (s 6(4)); in any other case, it is six years (s 6(1)(d)).

<sup>77</sup> The UK Law Commission has recommended that specialties should be subsumed within the core regime: UK Law Com Report No 270, *supra* n 3, at para 4.9.

<sup>78</sup> A specialty includes contracts and other obligations in documents under seal, and also, traditionally, obligations arising under statutes: see Michael Franks, *Limitation of Actions* (Sweet & Maxwell, 1959), p 188, approved by Potter J in *Aitken v Stewart Wrightson Members' Agency Ltd* [1994] 3 All ER 449 at 459. In *Collin v Duke of Westminster* [1985] QB 581, CA, at 603, Oliver LJ rejected the argument that “specialties” were limited to deeds or contracts under seal.

therefore, excepted from the general rule. In England, in similar circumstances, the same result would in most cases be effected, since in the case of a mortgage or other such security, the debtor would usually contract under seal.

92 In our view, such actions should be subject to a limitation period under the sweeping-up provision.

(2) *Recommendation*

93 We recommend that the Limitation Act should be amended to include a “sweeping-up” or default clause to apply to all civil claims where no provision is made for such claims in the Limitation Act or in any other written law (new s 6(1)(f)).

**D. *Loans payable on demand***

(1) *The current law*

94 It is settled law that a loan payable on demand (*ie* where no time for repayment is specified or where the loan is stated to be payable “on demand”) creates an immediate debt and is payable immediately when the money is lent, whether or not the parties intended the loan to be repayable immediately.<sup>79</sup>

95 The lender’s cause of action accrues when the borrower receives the money and the lender can then commence action for its recovery at any time. Under s 6(1)(a) of our Limitation Act, the loan is therefore time-barred six years from when the borrower receives the money.

96 This may cause injustice in the case of loans between friends or family members where the expectation is often that the money will not be repaid until the creditor demands it. In such informal circumstances, such parties are unlikely to have the benefit of legal advice. They would not expect that the mere lapse of six years from the date of receipt of the loan would defeat the claim. At most, they would expect a limitation period (of whatever duration) to run from the date of the demand for repayment.

97 The administration of an insolvent estate and the division of property in a divorce are other particular examples of situations where limitations on debts payable on demand may operate unfairly. In these cases, the borrower can potentially take advantage of the operation of the limitation to retain the benefit of the loan.

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<sup>79</sup> *Reeves v Butcher* [1891] 2 QB 509. Such a loan is to be distinguished from a loan payable on condition that a demand is made.

98 Such a scenario arose in Singapore in *Tay Ivy v Tay Joyce*.<sup>80</sup> In 1972, the plaintiff, at the oral request of one T, lent to T the sum of \$10,000. It was intended to be a friendly loan to be repaid when the plaintiff required payment. T passed away and the plaintiff wrote to T's executrix in 1988 demanding repayment of the loan. The High Court held that, being a loan repayable as from the date of advance, the action was time-barred under s 6 of the Act. Michael Hwang JC (as he then was) observed that the UK Limitation Act 1980 had been amended to make the limitation period run only from the date of demand, and recommended that a similar solution be considered for Singapore:<sup>81</sup>

In conclusion, I should observe that the United Kingdom Law Reform Committee in its 21st Report (referred to earlier) considered (at paras 3.19–3.26) that it was unfair that loans made without any express term as to repayment and without any qualification should be time-barred six years after the date of the loan. This would be particularly true in the case of friendly and family loans where long periods might pass before any demand were made. As a result of this report, the law was amended in England and Wales by s 6 of the Limitation Act 1980 which now provides that if:

- (a) a contract of loan 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) make the obligation to repay the debt conditional on demand for repayment made by or on behalf of the creditor or any other matter,

then the right of action on the contract of loan is not barred after six years from the date of the loan. Instead, the six-year period does not start to run unless and until a demand in writing for repayment of the debt is made by or on behalf of the creditor. It may well be that the legislation should consider adopting a similar amendment to our Limitation Act.

99 More recently, in *Hong Guet Eng v Wu Wai Hong (liquidator of Xiang Man Lou Food Court Pte Ltd)*,<sup>82</sup> the plaintiff, a shareholder, made two loans to a company for various sums in 1985. There were no conditions or terms accompanying the loans. The High Court held that the claim for repayment, made 20 years later in 2005, was out of time. Andrew Phang J (as he then was) noted that the Singapore Limitation Act had never been amended in the manner the UK Act was, and hence the pre-existing law continues to subject friendly loans to the strictures of s 6 of the Singapore Act. His Honour stated (at [29]):

It is my own view that the Singapore Parliament ought to consider seriously whether or not our own Act should be amended to incorporate a provision similar to s 6 of the UK Act ... I should hasten to add that this suggestion for reform is by no means new. Indeed, in the Singapore High Court decision of *Tay*

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<sup>80</sup> [1992] 1 SLR 893.

<sup>81</sup> *Id.*, at [23].

<sup>82</sup> [2006] 2 SLR 458.

*Ivy v Tay Joyce* [1992] 1 SLR 893 at 901, Michael Hwang JC made precisely the same suggestion ...

(2) *Common law justification for the rule*

100 In *Thomson v Eastwood*<sup>83</sup> Lord Hatherley noted that one justification for the rule was to protect persons who had paid their debts but with the long passage of time had destroyed the proof of payment.<sup>84</sup> In *A'Court v Cross*<sup>85</sup> Best CJ noted the predominant intention of the rule which he described as follows:

Long dormant claims have often more of cruelty than of justice in them. Christianity forbids us to attempt enforcing the payment of a debt which time and misfortune have rendered the debtor unable to discharge. The legislature thought that if a demand was not attempted to be enforced for six years, some good excuse for the non-payment might be presumed, and took away the legal power of recovering it.<sup>86</sup>

(3) *Current UK position*

101 In the UK, the law has been reformed to overcome the injustice. The first of these reforms, contained in the Prescription and Limitation (Scotland) Act 1973 (c 52), was recommended by the Scottish Law Commission in 1970.<sup>87</sup>

102 This was followed in England and Wales by reforms now contained in the Limitation Act 1980<sup>88</sup> which were recommended by the Law Reform Committee, England and Wales, in 1977.<sup>89</sup>

103 The English provisions create an exception, by s 6, to the general six-year limitation period applicable to simple contracts under s 5. Section 6 of the Limitation Act 1980 reads:

6 Special time limit for actions in respect of certain loans

(1) Subject to subsection (3) below, section 5 of this Act shall not bar the right of action on a contract of loan to which this section applies.

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

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

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<sup>83</sup> [1877] 2 AC 215.

<sup>84</sup> *Id.*, at 248–249.

<sup>85</sup> (1825) 130 ER 540.

<sup>86</sup> *Id.*, at 541–542.

<sup>87</sup> Scottish Law Commission, *Reform of the Law Relating to Prescription and Limitation of Actions* (Report No 15, 1970) at para 79. See also Scottish Law Commission, *Prescription and Limitation of Actions* (Memorandum No 9, 1969) at para 57.

<sup>88</sup> Originally inserted as Limitation Act (Eng) s 2AA by Limitation Amendment Act 1980 (c 24) s 1.

<sup>89</sup> England and Wales, Law Reform Committee, *Twenty-first Report: Final Report on Limitation of Actions* (Cmnd 6923, 1977) at paras 3.19–3.26.

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

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

(3) Where a demand in writing for repayment of the debt under a contract of loan to which this section applies is made by or on behalf of the creditor (or, where there are joint creditors, by or on behalf of any one of them) section 5 of this Act 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 1882.

104 The effect of the reform is that if no date of repayment is specified, then the cause of action is deemed, for limitation purposes, to accrue on the date on which a demand is made. If there is a collateral document that specifies some date for payment, then that will determine the appropriate date. There is no long-stop; a loan repayable on demand continues to be recoverable indefinitely until a demand is made. Subsequent cases<sup>90</sup> have demonstrated that the legislative reform in England has been successful. Claims which would otherwise have been statute-barred have now been successful as a direct result of the new provisions.

#### (4) *UK recommendation*

105 The UK Law Commission stated that it did not wish to undermine the policy behind the current English provisions. The Law Commission recommended that, in such cases, the cause of action “should not accrue until a written demand for repayment has been made”.<sup>91</sup>

106 The UK recommendation appears to go further than s 6 of the Limitation Act 1980 since it directly affects the accrual of the cause of action, as opposed to the time at which the limitation period begins to run.

#### (5) *Australian recommendations*

107 Law reform has also been recommended in other jurisdictions including Western Australia, Queensland and New South Wales.

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<sup>90</sup> For example, *Boot v Boot* [1996] 2 FCR 713; *Re Westminster Property Management Ltd* [2002] EWHC 52 (Ch).

<sup>91</sup> UK Law Com Report No 270, *supra* n 3, at paras 4.4–4.6.

108 The Queensland Law Reform Commission recommended in 1998 that, in claims for repayment of a debt payable on demand, the limitation period should commence “when a default in performance has occurred after a demand for performance has been made”.<sup>92</sup> This follows the recommendation of the Law Reform Commission of Western Australia (adopting an Alberta provision)<sup>93</sup> that “a claim based on a demand obligation” should arise “when a default in performance occurs after a demand for performance is made”.<sup>94</sup>

109 The New South Wales Law Reform Commission recommended in 2004 that the Limitation Act 1969 (NSW) should be amended to provide that the limitation period for a loan payable on demand should run from the date on which demand is first made for repayment. This provision “should not affect the accrual of the cause of action”.<sup>95</sup> The limitation period should be three years after the demand has been made,<sup>96</sup> with an ultimate bar or long-stop of 30 years from the date the loan was made,<sup>97</sup> Such demand need not be in writing before the limitation period can begin to run,<sup>98</sup> but it must be an “unconditional demand for immediate payment”, including a demand that allows the borrower a reasonable time to arrange payment.<sup>99</sup> A demand for part only of the loan should not have the effect of barring future demands in respect of the balance of the loan.<sup>100</sup>

(6) *Need for reform in Singapore*

110 We agree with Michael Hwang JC (as he then was) in *Tay Ivy v Tay Joyce*<sup>101</sup> and Andrew Phang J (as he then was) in *Hong Guet Eng v Wu Wai Hong*<sup>102</sup> that the current law gives rise to unfairness and injustice. In the latter case, Andrew Phang J stated his view that:

I find the rationale for amendment, as set out, *inter alia*, by the UK Law Reform Committee<sup>103</sup> above, both principled and persuasive. The reasoning it adopted transcends national borders inasmuch as it is, *inter alia*, infused with ideas of general justice and fairness. There is therefore no reason why an amendment along similar, if not identical, lines ought not to be adopted in the Singapore context.<sup>104</sup>

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<sup>92</sup> Queensland Law Reform Com Report No 53, *supra* n 6, at p 221.

<sup>93</sup> Limitations Act 1996 (Alta) s 3(3)(c). Recommended by Alberta Law Reform Institute, *Limitations* (Report No 55, 1989) at p 71–72.

<sup>94</sup> Law Reform Com of W Australia, Project No 36(II), *supra* n 6, at p 156.

<sup>95</sup> New South Wales Law Reform Commission, *Time Limits on Loans Payable on Demand* (Report No 105, 2004), Recommendation 1, p 10.

<sup>96</sup> *Id.*, Recommendation 2, p 11.

<sup>97</sup> *Id.*, Recommendation 3, p 12.

<sup>98</sup> *Id.*, Recommendation 4, p 13.

<sup>99</sup> *Id.*, Recommendation 5, p 14.

<sup>100</sup> *Id.*, Recommendation 6, p 14.

<sup>101</sup> *Supra* n 80.

<sup>102</sup> *Supra* n 82.

<sup>103</sup> Referring to the UK Law Reform Committee that published the 21st Report, *supra* n 89.

<sup>104</sup> *Supra* n 82, at [30].

111 In our view, the common law justification for the rule is difficult to accept in modern times. Those who make loans to family and friends are the very people likely to be unaware of the existence of the rule. The rule operates to defeat the general intention and expectations of the parties to the loan. The repayment of a loan is quite different from an action for compensatory damages for breach of contract or in tort; in the case of a loan the parties fully intend that the loan be repaid. The current provisions simply provide a windfall for a borrower who fails to repay the loan in circumstances where the plaintiff fails to commence proceedings until after the relevant limitation period has lapsed.

112 The rule appears to unduly favour borrowers and does not fairly balance the interests of lenders and borrowers. The injustice has been recognised both locally as well as overseas, as is evident from the many calls for legislative reform.

(7) *Broad approaches*

113 In seeking to address the injustice, a number of broad approaches present themselves.

114 The first broad approach is to modify the *commencement* of the limitation period so that the limitation period runs from the *date of demand for repayment* rather than the date of disbursement of the loan. The limitation period in effect commences at the election of the lender.

115 Another approach would be for the commencement of the limitation period to remain unchanged (*ie* upon disbursement of loan), but to allow *an extension of time* where there is good reason to do so. If desirable, in an application for extension of time, the onus could be placed on the borrower to show why the period should *not* be extended. This would have the effect of discouraging some litigation.

116 In our view, the second approach probably gives too much scope for unnecessary litigation, especially given the tensions that sometimes arise in disputes between family members and friends.<sup>105</sup> If the extension of time were to be automatic instead of discretionary, this would achieve the same result as the first approach but in a more circuitous manner.

117 We therefore recommend the first broad approach. This would render the limitation period applicable to loans payable on demand, similar to that applicable to loans payable on *condition* that a demand is made (such as, for example, bank deposits, where the limitation period also, in effect, commences at the election of the lender).

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<sup>105</sup> This was also the view of the NSW Law Reform Commission (see Report No 105, *supra* n 95, at para 4.1).

(8) *Modifying the commencement of the limitation period*

118 Under the first broad approach, the following specific details have to be decided:

- (a) when the limitation period should commence;
- (b) the length of the limitation period;
- (c) whether the demand should be in writing; and
- (d) what a demand should constitute.

(a) Commencement of the limitation period

119 The first option is that time should run from when *demand* for repayment has been made. The second is that it should run from when a *default* in performance has occurred after a demand for payment has been made.

120 We feel that the latter alternative would create uncertainty. It may not always be easy to determine the precise point in time of a default in performance. This must depend on the nature and terms of the demand.

121 In our view, the preferable approach is that in s 6 of the UK Limitation Act 1980, where the limitation period is deemed to run upon *demand* for repayment rather than upon *default* of payment after demand.

122 In making this recommendation, we do not propose any change to the accrual or the nature of the cause of action. We note that the UK Law Commission's proposals extend to changing the accrual of the cause of action;<sup>106</sup> however, no reasons had been given for such wide-reaching reform, nor was there a discussion on its implications.<sup>107</sup> In changing the current law, we seek reform of the law that would not (a) alter the ingredients of a cause of action for the repayment of a debt under a contract of loan; (b) alter other settled bodies of law; or (c) defeat legitimate commercial expectations. Careful drafting is necessary to avert this danger. Section 6(3) of the UK Limitation Act 1980, which allows a loan to be recoverable by providing that the limitation period applies "*as if* the cause of action to recover the debt had accrued on the date on which the demand was made" (emphasis added), is one way of leaving the cause of action intact.

123 What of commercial loans payable on demand? The effect of our proposals would have the effect of extending the life of such loans beyond the limitation period. We do not however think that this is a concern, since commercial loans normally specify a date for repayment, or are conditional on a demand for repayment or on some other matter, thus taking them outside the category of debts payable "on demand".

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<sup>106</sup> See cl 32 of the draft Bill (Annex D) and explanatory notes.

<sup>107</sup> See paras 4.4–4.6 of the UK Law Com Report No 270, *supra* n 3.

Furthermore, commercial loans are also highly likely to involve the periodic payment of interest. Loans involving the periodic payment of interest will generally not come within the proposed reform since payments will be required on specific dates. Moreover, periodic payments, if made, may amount to acknowledgement of the debt.<sup>108</sup>

(b) Length of limitation period and long-stop

124 We considered whether the limitation period should be six years once a demand for repayment has been made. It might be argued that a limitation period of six years after demand is too long, especially as the commencement date would be at the election of the lender. But we do not consider this as being unduly long. In view of the nature of such loans, we think that a shorter period could give rise to injustice. A six-year limitation period, on the other hand, is consistent with current provisions in relation to other contracts and is preferred.

125 If time runs only upon a demand, loans payable on demand could continue to be recoverable indefinitely until a demand is made. An ultimate bar or long-stop might be considered necessary so that there will not be an indefinite time for bringing actions no matter what other circumstances pertain.<sup>109</sup>

126 New South Wales has proposed that loans payable on demand should be subject to an ultimate bar of 30 years from the date of loan, thus avoiding a situation where loans payable on demand would continue to be recoverable for an indefinite period until a demand is made.<sup>110</sup>

127 In contrast, neither the existing UK law nor the Law Commission's proposed regime<sup>111</sup> provides any long-stop for loans payable on demand. The issue does not appear to have been addressed by the UK Law Commission, although it seems to have been the intention that claims for such loans should be recoverable indefinitely.<sup>112</sup>

128 On balance, we agree with the principle and rationale of including a long-stop as proposed in NSW. However, it seems to us that the NSW proposal of a 30-year long-stop may be a little too long. On the other hand, 15 years (the long-stop for latent defects) would be too short. In our view, a period of 20 years seems appropriate on the basis that it constitutes one generation, bearing in mind the mischief that the reform seeks to address. We are also mindful that the 30-year long-stop as proposed in NSW

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<sup>108</sup> Section 26(2), Limitation Act (Cap 163). This was also the view of the NSW Law Reform Commission.

<sup>109</sup> NSW Law Reform Commission, *First Report on Limitation of Actions* (Report No 3, 1967) at p 127, reiterated in Report No 105, *supra* n 95, at para 4.7.

<sup>110</sup> NSW Law Reform Com, Report No 105, *supra* n 95, at paras 4.6–4.8.

<sup>111</sup> Since the UK Law Commission's proposal involves changing the date of accrual of a cause of action for such loans such that the cause of action does not accrue until a written demand for repayment is made, the long-stop limitation period (of ten years) under the core regime will not start until the date of the demand.

<sup>112</sup> See UK Law Com Report No 270, *supra* n 3, at paras 4.4–4.6.

may merely be the influence of current NSW law, where an ultimate bar of 30 years applies generally.<sup>113</sup>

(c) Requirement that demand be in writing

129 The UK Law Commission recommended that the demand for repayment to trigger the limitation period should be in writing. The NSW Law Reform Commission however recommended that the demand need not be in writing. It appeared to be persuaded by arguments that the trend in some cases is to move away from a requirement of writing (*eg* in sale of goods) and also that under such informal circumstances, the lender may not think of asking for repayment in writing. It might also be considered odd that a loan which may not be evidenced by writing would require writing in order to be recalled.

130 On balance, we agree with the UK Law Commission's recommendation that the demand for repayment should be in writing. This approach is more reliable particularly where the borrower is dead. It would also clarify parties' intentions, often unclear in a family setting, as to whether repayment was in fact being sought. Apart from evidential issues, we think that this rule is also more consistent with parties' expectations. In a family situation, it is probably not uncommon for parties to speak first and think later (if at all). The lender may complain or grumble about being put out of funds (and interest) and may even make an informal demand for repayment. We think it would be unfair to have this taken against him, especially if neither party had expected such an informal demand to have the effect of commencing the limitation period. In our view, the requirement for writing is necessary to provide the appropriate threshold for commencement of the limitation period.

131 In our view, "writing" should include electronic communications as provided by the Electronic Transactions Act (Cap 88, 1999 Rev Ed) so that such demands should be able to be made by email.

(d) The meaning of demand

132 The question may arise as to what constitutes a "demand" such that it triggers the running of time. A demand may:

- (a) specify a fixed future date for payment (*eg* "pay me next year");
- (b) specify a determinable future date for payment (*eg* "pay me when I retire");
- (c) be conditional (*eg* "pay me if I reach retirement age"); or
- (d) allow time for payment (*eg* "pay me by close of business on Monday").

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<sup>113</sup> Section 51, Limitation Act 1969 (NSW).

133 In the case of loans payable on condition that demand is made, authority establishes that:

[t]here must be a clear intimation that payment is required to make a demand; nothing more is necessary, and the word 'demand' need not be used; neither is the validity of a demand lessened by its being clothed in the language of politeness; it must be of a peremptory character and unconditional, but the nature of the language is immaterial provided that it has this effect.<sup>114</sup>

134 In our view, the law should mirror this position in the case of loans payable on demand. If the law allowed the lender to demand payment subject to a condition or at a fixed future date, the lender would effectively have the power to change the nature of the obligation (under which the borrower is liable to pay at once and at any time).

135 "Demand" should, therefore, mean an unconditional demand for immediate payment, subject to one qualification. If the lender's demand allows the borrower a time within which to arrange payment which is reasonable, having regard to the consideration that the borrower under such a loan should maintain an ability to repay it promptly if required, the demand should not be regarded as falling foul. Even if a demand does not expressly allow a reasonable time for payment, it may be construed as doing so, even if this means only such time as is reasonably necessary to effect the mechanics of payment.

136 A demand for part only of the loan should not, for the purpose of statutory limitation law, operate so as to bar future demands for the outstanding balance of the loan.

(9) *Recommendation*

137 We recommend that:

- (a) The limitation period for a loan payable on demand should run from the date a demand for repayment is first made in writing. The provision should not affect the accrual or nature of the cause of action (new s 6B(1), (2) and (3)).
- (b) The limitation period for loans payable on demand should be six years after the demand has been made (new s 6B(3)).
- (c) A long-stop should apply 20 years from the date the loan was made (new s 6B(4)).

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<sup>114</sup> *Re Colonial Finance, Mortgage, Investment and Guarantee Corp Ltd* (1905) 6 SR (NSW) 6 at 9, *per* Walker J.

(d) “Demand” should be defined to mean an unconditional demand for immediate payment, including a demand that allows the borrower a reasonable time to arrange payment (new s 6B(7)).

(e) A demand for part only of the loan should not have the effect of barring future demands in respect of the balance of the loan (new s 6B(5)).

### ***E. Personal injury actions***

138 Section 24A(2) of our Limitation Act sets out a special limitation regime for any claim in negligence, nuisance or breach of duty which consists of, or includes a claim for damages for *personal injuries*. The limitation period for such actions is the later of:

(a) three years from the date on which the cause of action accrues, or

(b) three years from the earliest date on which the plaintiff has the knowledge<sup>115</sup> required for bringing an action for damages in respect of the relevant injury.

139 In practice, the touchstone is the date of knowledge, as “the plaintiff can never have knowledge before the action has accrued”.<sup>116</sup>

#### *(1) Interaction between section 6(1)(a) and section 24A*

140 An “action for damages for negligence, nuisance or breach of duty”, to which the special limitation regime under s 24A applies, is also at the same time an “[action] founded on a contract or on tort”, to which s 6(1)(a) applies. Section 6(1)(a) provides for a limitation period of six years from the accrual of the cause of action. In such an action (that is, for damages for negligence, nuisance or breach of duty), does one provision apply to the exclusion of the other, or is a claimant entitled to rely on whichever section affords the longer limitation period?

141 To understand the current structure of the Act that is relevant to this issue, it is important to understand s 24A(2) from its origins in s 6, as this set the context for the 1992 amendments. In 1966, s 6(4) was inserted,<sup>117</sup> reducing the limitation period for damages for personal injuries, in a claim for damages for negligence, nuisance or breach of duty, from six to three years. Section 6(4) then read:

An 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 any written law or independently of any contract or any such provision) where the damages claimed by the plaintiff for the

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<sup>115</sup> For the meaning of “knowledge”, see s 24A(4)–(7), Limitation Act (Cap 163).

<sup>116</sup> M A Jones, *Limitation Periods in Personal Injury Actions* (Blackstone Press Ltd, London, 1995) at para 2.16.

<sup>117</sup> By the Limitation (Amendment) Act 1966 (Act 7 of 1966) s 3.

negligence, nuisance or breach of duty consist of or include damages in respect of personal injuries to any person, shall not be brought after the expiration of three years from the date on which the cause of action accrued.

142 At that time, s 6(1) had read:

**6.—(1)** *Save as hereinafter provided* the following actions shall not be brought after the expiration of six years from the date on which the cause of action accrued, that is to say —

(a) actions founded on a contract or on tort;

...

143 The effect of the words in italics is that s 6(1) was read subject to s 6(4).

144 In 1992, Parliament was alerted to the problem of the potential unfair operation of limitation statutes against a plaintiff who was not aware of the injuries or damage at the time of the accrual of the cause of action, and there had been no fraud or concealment as such. The reform had been initiated by the Singapore Academy of Law's Law Reform subcommittee on *Civil Law and Civil Proceedings on Limitation Periods for Latent Damage*. The result of the amendment was, *inter alia*, the replacement of s 6(4) by the more comprehensive provision in s 24A. Section 24A(1) and (2) track the terminology of the repealed s 6(4), and make clear references to claims for damages consisting of or including damages for personal injuries. The ordinary meaning of s 24A(1) and (2) is that it creates two time limitations for personal injury claims arising from negligence, nuisance or breach of duty (including breach of contract): an ordinary three-year limitation from the accrual of the cause of action, and an extended three-year limitation from the date of acquisition of relevant knowledge for the institution of proceedings against the defendant if the knowledge is lacking at the date that the cause of action accrued.

145 In the UK, it is expressly provided that the special limitation regime for claims for personal injuries under s 11 shall apply to the *exclusion* of other limitation periods set out in the Act. Section 11(2) states:

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

146 Section 24A of our Limitation Act does not contain such a provision. However, s 6(1) does state that the time limits in that section are "subject to this Act". Moreover, s 24A is in Pt III of the Act and s 5 makes it clear that the time limits in Pt II of the Act have effect subject to Pt III:

Part II to be subject to Part III

**5.** The provisions of this Part shall have effect subject to the provisions of Part III.

147 The position is therefore clear that, under the Act as it stands, an action for damages for negligence, nuisance or breach of duty is subject to s 24A to the exclusion of s 6(1)(a). However, this position, based as it is on the location of s 24A within Pt III of the Act, would change if ss 24A and 24B are moved to Pt II of the Act, which we are recommending below. In such a situation, it may be necessary to insert an express provision similar to s 11(2) of the UK Act. This is dealt with below.

(a) Moving sections 24A and 24B to Part II

148 It seems odd to us that ss 24A and 24B should have been inserted in Pt III rather than in Pt II of the Act. In our view, it is more appropriate for ss 24A and 24B, which set out primary limitation periods for personal injury claims, to be in Pt II together with other provisions setting out the primary limitation periods for other causes of action.

149 The corresponding UK provision, s 11 of the Limitation Act 1980, from which our provision was derived, is also set out at Pt I of their Act which deals with primary limitation periods.

(b) Recommendation

150 We therefore recommend that ss 24A and 24B should be moved from Pt III to Pt II of the Act (new ss 6D and 6E).<sup>118</sup> We do not consider that this would effect any substantive change to the law; the amendment is simply a measure to rationalise the provisions. However, one consequence would be that s 5 would cease to exclude from the operation of s 6 claims falling under s 24A if s 24A is relocated to Pt II. Although the words “subject to this Act” in s 6(1)(a) will still apply, it is perhaps desirable to avoid any doubt in the matter, by simply inserting an express exclusionary provision, along the lines of s 11(2) of the UK Limitation Act 1980 (new s 6D(2)).

(2) *Section 24A heading*

151 The heading of s 24A is also misleading. The words “in respect of latent injuries and damage” in the heading give the impression that s 24A applies only to latent injuries and damage, whereas the plain words of s 24A(1) indicates its scope of application beyond latent injury. Moreover, s 24A(2)(a) and s 24A(3)(a) would be meaningless if s 24A were confined to latent damage cases. These subsections will never be invoked, because all latent damages cases would be considered under s 24A(2)(b) and (3)(b) respectively.<sup>119</sup>

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<sup>118</sup> A good place may be in between ss 6 and 7.

<sup>119</sup> Moreover, to have the applicability of s 24A turn on whether there was patent or latent damage can be highly problematic. First, there is the anomaly of giving the plaintiff more time when it is obvious to the plaintiff that he should consider suing than when it is not obvious. Secondly, the distinction can lead to anomalous results because whether the “latency” before an injury reveals itself can be a matter of chance. If in the morning a sack falls on P as a result of D’s carelessness in failing to maintain safe working conditions, causing immediate external bleeding, P would have six years to sue under s 6(1)(a). If P is seemingly fine in the morning, but later in the afternoon P gets a headache and discovers internal bleeding at the hospital, the injury is latent in the morning and patent in the afternoon, but being a case of latent injury, it would trigger s 24A, with a three-year limitation. If the fallen sack causes an immediate headache (thereby triggering discoverability of a latent injury of internal bleeding), P would

152 The section heading refers to “latent injuries” probably because this was the main reason driving the law reform in 1992, and was so identified in the Minister’s speech in moving the motion to have the amending Bill read a second time. In any case, a header cannot circumscribe the clear wording of the provision. We note that s 11 of the UK Limitation Act 1980, from which s 24A appears to have been derived, makes no reference to “latent” injuries, whether in the marginal note or elsewhere.

(a) Recommendation

153 We recommend that the header to s 24A should be amended to delete the phrase “in respect of latent injuries and damage” (new s 6D header).

(3) *Reviewing the long-stop*

154 The 1992 amendments introduced a long-stop of 15 years for personal injury claims.<sup>120</sup> This means that after 15 years,<sup>121</sup> a person’s claim may be barred even before he knew he had it, or even before the claim has accrued.<sup>122</sup> In light of medical evidence of injuries with long latency periods, in particular in relation to cases of mesothelioma,<sup>123</sup> we considered whether it was desirable to relook at the 15-year long-stop limitation period for personal injuries with a view to either extending it, or abolishing it altogether.

(a) UK position: no long-stop for personal injuries

155 Since 1963, the law of limitations in personal injury cases in the UK has been based on discoverability.<sup>124</sup> However, there is no long-stop for such claims; the long-stop applies only to negligence claims not involving personal injuries,<sup>125</sup> and to claims under the Consumer Protection Act 1987.<sup>126</sup>

(b) UK recommendation: no long-stop for personal injuries

156 The UK Law Commission in 1997 had tentatively proposed a long-stop of 30 years for personal injuries,<sup>127</sup> citing cases where problems had been caused<sup>128</sup> and a

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have three years to sue for internal bleeding but six years to sue for the headache. It is difficult to defend such results, especially in view of the mischiefs sought to be addressed respectively in 1966 and 1992.

<sup>120</sup> See s 24B of the Limitation Act (Cap 163).

<sup>121</sup> From the date of the act or omission giving rise to the claim: s 24B(1) and (2).

<sup>122</sup> Section 24B(3).

<sup>123</sup> In *Guidera v NEI Projects (India) Limited* (unreported, Trial No 60 of 1990, 30 January 1990, CA), the plaintiff did not develop symptoms of asbestosis until 23 years after he had been exposed to asbestos dust.

<sup>124</sup> UK Limitation Act 1963, subsequently replaced by the Limitation Act 1975, which is now consolidated in the Limitation Act 1980. See s 11 of the 1980 Act.

<sup>125</sup> Section 14B of the UK Limitation Act 1980.

<sup>126</sup> Section 11A(3) of the UK Limitation Act 1980.

<sup>127</sup> Tentatively reversing its earlier decision in 1974 that a long-stop limitation period was not desirable in the case of personal injuries, in UK, Law Commission of England and Wales, *Twentieth Report: Interim Report on Limitation of Actions in Personal Injury Claims* (Cmnd 5630, May 1974), at para 37.

“wide-ranging consensus” among law reform bodies on the need for a “long-stop” as a fair counterbalance to the use of the date of discoverability as the commencement point for the limitation period.<sup>129</sup> However, the Law Commission amended their provisional recommendation after consultation;<sup>130</sup> their final recommendation was that no long-stop limitation period should be applied to claims in respect of personal injuries.

157 The main concern was that a long-stop, even of 30 years, would be unjust to claimants suffering from latent diseases, where the disease in question does not manifest itself within the long-stop period, *eg* in asbestos-related diseases, where the latency period for mesothelioma (cancer of the lining of the lung caused by exposure to asbestos) can be anywhere between 15 and 60 years.<sup>131</sup> Another concern was in relation to victims of sexual abuse. Victims of such abuse frequently need time to recover sufficiently from the trauma to contemplate bringing a claim against the abusers. The Law Commission was of the view that the public interest in protecting the defendant from stale claims, and in ensuring that there is an end to litigation, does not apply where the defendant has been guilty of sexual abuse.

158 The Law Commission then considered the possibility of *increasing* the length of the long-stop (from the 30 years that they had provisionally proposed). However they concluded that would make the long-stop too long to serve any useful purpose, while not guaranteeing that all claimants with latent disease claims are covered. Other *modifications* to the long-stop were considered<sup>132</sup> but rejected on the basis that it would increase the complexity of the regime without necessarily providing any compensating advantages.

(c) Analysis

159 There is no publicly available record explaining the reason for Singapore’s deviation from UK law on this issue in 1992. It appears that the Law Reform subcommittee in 1992 considered that the primary limitation period under s 24A(2) and (3) “would most probably expire” before the 15-year long-stop period. The overriding period would thus come into play “only in exceptional cases”.<sup>133</sup> With our better knowledge of diseases today, we now know that this is not the case. In the UK, the Law

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<sup>128</sup> For example, *Colegrove v Smyth* [1994] 5 Med LR 111 where proceedings were issued 28 years after the events in question, by which time one of the defendant doctors had died, one was over 80, and the medical notes of both defendants had been destroyed.

<sup>129</sup> See UK Law Com Consultation Paper 151, *supra* n 16, at paras 12.97–12.103.

<sup>130</sup> 55% of consultees rejected the Law Commission’s proposal for a long-stop of 30 years for personal injury claims. See UK Law Com Report No 270, *supra* n 3, at para 3.102.

<sup>131</sup> *Ibid.* The Law Commission was informed by consultees who were consultant physicians practising in asbestosis-related diseases that the median latency period is over 30 years.

<sup>132</sup> For example, by disapplying the long-stop where the claim relates to personal injury and the claimant was not diagnosed as suffering from that injury until a date less than three years before proceedings were issued. This would protect personal injury claimants where they do not know of their injury at the end of the long-stop limitation period (but not where the primary limitation period has not expired because they do not know one of the other relevant facts). See UK Law Com Report No 270, *supra* n 3, at para 3.104.

<sup>133</sup> Singapore Academy of Law, Law Reform subcommittee, *Civil Law and Civil Proceedings on Limitation Periods for Latent Damage*, Discussion Paper No 2.

Commission was informed that the incidence of asbestos-related diseases is increasing, and is expected to do so for at least the next 25 years.<sup>134</sup>

160 One comment might perhaps be made about the argument based on sexual abuse.<sup>135</sup> The Law Commission appears to have been influenced by evidence<sup>136</sup> of the “growing number of cases in which victims are now coming forward to testify about sexual abuse which took place in the 1970s and early 1980s”. Fortunately for us, this is not our experience in Singapore. Furthermore, in Singapore, we think that the primary form of redress or retribution that victims are likely to seek is more likely to be criminal sanctions, for which there is no limitation period, rather than civil damages. It has also been suggested that there is *more* need for a limitation period to protect defendants in sexual abuse cases, because of the possibility that the claim may stem from “recovered memory syndrome” where claimants do not suspect that they may have suffered child abuse until memories of that abuse emerge on prompting, often during therapy. It has been alleged that such memories are wholly unreliable.<sup>137</sup>

161 In our view, the task of distinguishing between genuine and mistaken claimants in cases of sexual abuse must be one for the courts, not the limitation regime. Given that there are well-documented cases where the victims of such abuse have been unable to bring actions against their abusers for several years,<sup>138</sup> the risk that some claims might be false cannot be used as the sole justification for having a long-stop limitation period for personal injury claims.

162 On the other hand, a key concern is the need to protect defendants from claims being brought at such a late date that they are no longer properly able to defend themselves, because witnesses may no longer be available and any documentary evidence may have been lost or destroyed. The absence of a long-stop limitation period can increase costs for businesses by increasing the costs of storing records for an indefinite period and costs of maintaining liability insurance, thus placing a great burden on medical professionals. Defendants are, in our view, entitled to some limit on their need to insure themselves against liability. As a matter of public policy, arguments based on certainty and the need for closure of claims could also be made.

(d) Recommendation

163 In our view, weighing up the conflicting interests of both parties, the fairest result would be achieved by extending the long-stop for personal injuries claims under s 24A from 15 years to 30 years.

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<sup>134</sup> UK Law Com Report No 270, *supra* n 3, at para 3.102.

<sup>135</sup> Note however that intentional torts fall outside the ambit of s 24A of the Limitation Act (Cap 163). The UK Law Commission argument was in relation to a long-stop for torts in general.

<sup>136</sup> Presented to an enquiry into child abuse in local authority homes in North Wales: *Lost in Care: Report of the Tribunal of Inquiry into the abuse of children in care in the former county council areas of Gwynedd and Clwyd since 1974* (1999–2000) HC 201, chaired by Sir Ronald Waterhouse.

<sup>137</sup> See S Brandon, J Boakes, D Glaser and R Green, “Recovered Memories of Childhood Sexual Abuse” (1998) 172 Br J Psychiatry 296–307). The prospect of such claims causes organisations such as the British False Memory Society considerable concern.

<sup>138</sup> UK Law Com Report No 270, *supra* n 3, at para 3.103, at n 80.

(4) *Time limit where claimant dies before bringing action: disparity between estate claim and dependency claim*

164 In the UK, s 11(5) of the UK Limitation Act 1980 provides that if the claimant dies before the expiry of the limitation period in respect of his claim, the period applicable, as regards the cause of action surviving for the benefit of his estate, is three years from the later of the date of his death and the date when his personal representative first has knowledge of the facts relevant to the cause of action.<sup>139</sup> When s 24A of the Singapore Limitation Act was introduced in 1992 based on the UK Limitation Act 1980, the provisions which dealt with estate claims (s 11(5) to (7)) were not included. In Singapore, therefore, the limitation period applicable to the estate for claiming damages for wrongful death continues to run as though the claimant had not died. The death of the claimant has no impact on the expiry of the limitation period.

165 If, on the other hand, the claim is not an estate claim but a dependant's claim under s 20(5) of the Civil Law Act (Cap 43, 1999 Rev Ed), the limitation period for claiming damages is *three years from the death* of the deceased.<sup>140</sup> There is a disparity in limitation periods between estate claims and dependency claims in respect of the same wrongful death. Is this policy justifiable?

166 The Law Reform subcommittee in 1992 appeared to be aware of this disparity but chose not to extend the limitation period in respect of estate claims:

Section 12(5) of the Civil Law Act (claim for dependants and bereavement) [now section 20(5)] provides that the action shall be brought within 3 years of death. Should date of knowledge provision be extended to this sort of action? I do not think that the existing provision is unduly unjust. Indeed it may not be desirable for personal injuries actions to be brought after the person has died; proper evidence may be lacking as the parties did not contemplate an action at the time and fresh evidence will no longer be obtainable.<sup>141</sup>

(a) Recommendation

167 We do not think it is desirable to maintain different rules for estate and dependant's claims in respect of the applicable limitation period, nor are we aware of any policy reasons for retaining this disparity. We think the UK approach of extending, in the event of death of the claimant, the limitation period to three years from death or knowledge of the personal representative, whichever is later, is to be preferred. We recommend the adoption in Singapore of s 11(5) to (7) of the UK Limitation Act 1980 (new s 6D(4), (5) and (6)).

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<sup>139</sup> "Knowledge" is as defined in s 14 of the UK Limitation Act 1980.

<sup>140</sup> See paras 168–177 below, where we raise possible law reform of other aspects of the limitation law relating to dependency claims.

<sup>141</sup> At para 8 of one of the Working Papers prepared by the Law Reform subcommittee of the Singapore Academy of Law in 1992. See n 133.

(5) *Dependency claims under section 20 Civil Law Act (Cap 43)*

168 Section 20 of the Civil Law Act allows an action to be brought<sup>142</sup> for the benefit of the dependants of the deceased where the death was caused by any wrongful act, neglect or default which would have entitled the injured person to maintain an action to recover damages. Section 20 creates a statutory cause of action distinct from any claim made by the estate to enforce the rights of the deceased; it is not the deceased's own cause of action which is caused to survive, it is a new action for the benefit of his dependants.

169 The cause of action has existed in Singapore since 1909, when s 20 was first enacted as s 8 of the Civil Law Ordinance (No 8 of 1909). The development of the cause of action in Singapore followed the development of fatal accidents legislation in UK<sup>143</sup> which since 1846<sup>144</sup> overturned the common law rule (at least so far as those dependants specified in the Act were concerned) that while those who survived an accident could recover substantial damages, the dependants of those who were killed could recover nothing.

170 Our law follows closely the UK legislation, which was consolidated in the Fatal Accidents Act 1976. There was an important amendment to s 20 in 1987 with respect to the heads of damage under which dependants could recover,<sup>145</sup> but this is not an issue that need concern us since we are here concerned with limitation periods, and the relevant provision for this is s 20(5),<sup>146</sup> which reads:

(5) Not more than one action shall lie for or in respect of the same subject-matter of complaint *and every such action shall be brought within 3 years after the death of such deceased person.* [emphasis added]

171 This provision has not been amended since 1909, except for the relaxation of the limitation period from 12 calendar months to three years after death.

(a) UK position

172 The developments in England are summarised as follows:

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<sup>142</sup> Usually by the executor or administrator of the estate. In certain circumstances the action may be commenced by the dependants.

<sup>143</sup> Which was a result of a great upsurge in the number of accidents, fatal and non-fatal, arising from the development of railways in England: see *Winfield & Jolowicz on Tort* (Sweet & Maxwell, 13th Ed, 1989) at p 647.

<sup>144</sup> Fatal Accidents Act 1846, otherwise known as Lord Campbell's Act.

<sup>145</sup> To deal with the problem of "lost years", see *Low Kok Tong v Teo Chan Pan* [1982–1983] SLR 346, CA, which followed *Gammell v Wilson* [1982] AC 27, HL. The 1987 amendments (a) increased the categories of dependants who could bring an action (at s 12, now renumbered s 20); (b) introduced a new claim for damages for bereavement, fixed at \$10,000 (at s 12A, now s 21); and (c) set out the principles in the assessment of damages to be awarded in fatal accident cases (s 12B, now s 22).

<sup>146</sup> *cf* s 2(3) of the UK Fatal Accidents Act 1976.

Year		Estate Claim	Dependant's claim
1846			<p><b>Fatal Accidents Act 1846</b><sup>147</sup></p> <p>s 3: Dependant's claim to be commenced within 1 year after death of the deceased</p>
1934		<p><b>Law Reform (Miscellaneous Provisions) Act 1934 (c 41)</b><sup>148</sup></p> <p>s 1(1): Cause of action subsisting against or vested in deceased to survive for benefit of estate</p> <p>s (3)(b): No proceedings surviving under sub-s (1) maintainable unless proceedings taken out within 6 months after personal representative has taken out representation.</p>	
1954	<p><b>Limitation Act 1939</b></p> <p>s 2(1), proviso: For actions for damages for negligence, nuisance or breach of duty where claim includes personal injuries to any person, action to be brought within 3 years of accrual of cause of action.</p> <p><i>[proviso inserted in 1954, reducing limited period for personal injuries from 6 to 3 years.]</i></p>		<p><b>Fatal Accidents Act 1846</b></p> <p>s 3: Dependant's claim to be commenced within [3 years] after death of deceased.</p> <p><i>[limitation period increased from 1 to 3 years via Law Reform (Limitation of Actions, etc) Act 1954, s 3.]</i></p>
1963	<p><b>Limitation Act 1963</b></p> <p>s 1: For actions for damages for negligence, nuisance or breach of duty where claim includes personal injuries to plaintiff or any other person, limitation of 3 years under s 2(1) of the Limitation Act 1963 does not afford a defence if proven that the</p>	<p><b>Limitation Act 1963</b></p> <p>s 3(1): Section 1 to apply to actions under s 1 of the Law Reform (Miscellaneous Provisions) Act 1934, provided such actions brought before end of 12 months from date of death.</p>	<p><b>Limitation Act 1963</b></p> <p>s 3(2): Section 1 to apply to actions by dependants under Fatal Accidents Act, provided such actions brought before end of 12 months from date of death.</p>

<sup>147</sup> *In pari materia* with ss 20, 21 and 22 of our Civil Law Act (Cap 43).

<sup>148</sup> *In pari materia* with s 10 of our Civil Law Act (Cap 43).

Year		Estate Claim	Dependant's claim
	<p>material facts relating to that cause of action was outside actual or constructive knowledge of plaintiff until</p> <p>(a) either after end of the 3-year limitation or not earlier than 12 months before expiry of the 3 years; and</p> <p>(b) in either case a date not earlier than 12 months before the date on which the action was brought.</p>		
1975	<p><b>Limitation Act 1975</b></p> <p>s 2A(1) to (4): For actions for damages for negligence, nuisance or breach of duty where claim includes personal injuries to plaintiff or any other person, limitation period is 3 years from accrual of cause of action or plaintiff's knowledge (whichever is later).</p> <p><i>[now s 11(1) to (4) of the Limitation Act 1980]</i></p>	<p><b>Limitation Act 1975</b></p> <p>s 2A(5) to (7): If person dies before expiration of limitation period set out in s 2A, limitation period is 3 years from date of death or personal representative's knowledge (whichever is later).</p> <p><i>[now s 11(5) to (7) of the Limitation Act 1980]</i></p>	<p><b>Limitation Act 1975</b></p> <p>s 2B: Where dependant's claim under Fatal Accidents Act 1846, limitation period is 3 years from date of death or knowledge of person for whose benefit action brought (whichever is later).</p> <p><i>[now s 12 of the Limitation Act 1980]</i></p>

173 In the UK, the concept of discoverability for determining the limitation period for claims involving personal injuries was first introduced in 1963. At the same time, specific provisions were included in the Limitation Act for estate claims and dependants' claims and the knowledge provisions were extended to these claims (with a 12-months-from-date-of-death cap). In 1975, the provisions concerning personal injuries, estate claims and dependant's claims were amended to the present form.

(b) Analysis

174 The differences between the UK and Singapore limitation regime for dependency claims for fatal accidents are set out in the following table:

<p align="center"><b>UK Limitation Act 1980 (sections 12–14)</b></p>	<p align="center"><b>Civil Law Act (Cap 43) (section 20(5))</b></p>
<p><b>Accrued defences</b> – s 12(1)</p> <p>Action may not be brought if at time of death, deceased could no longer maintain an action and recover damages in respect of the injury.<sup>149</sup></p>	<p>(no provision)</p>
<p><b>Limitation period</b> – s 12(2)</p> <p>3 years from the later of: (a) death; and (b) date of knowledge of person for whose benefit the action is brought.</p> <p>But this provision is subject to s 39, <i>ie</i> any other shorter time-limit provided by this or any other Act will prevail over s 12.</p>	<p><b>Limitation period</b> – s 20(5)</p> <p>3 years from death.</p>
<p><b>Provisions on disability, judicial discretion, and new parties</b> – s 12(3)</p> <p>ss 28, 33 and 35 apply: – extension in case of disability (s 28) – judicial discretion to disapply (s 33) – complex rules on addition of new parties to action (s 35)</p> <p>(<i>ie</i> time limits cannot be extended by acknowledgement, nor do fraud, concealment or mistake postpone running of time.<sup>150</sup>)</p>	<p>(no provision)</p>
<p><b>More than one dependant</b> – s 13</p> <p>Date of knowledge of dependant applies to each defendant separately, <i>ie</i> time runs separately in respect of each dependant – s 13(1)</p> <p>If this has the effect that one or more of them, but not all, is time-barred, the court must direct that any person who would be so time-barred must be excluded from those for whom the action is brought – s 13(2)</p> <p>Some circumstances under which direction in sub-s (2) shall not be given, <i>eg</i> where there is an agreement between parties not to raise the defence – s 13(3)<sup>151</sup></p>	<p>(no provision)</p>
<p><b>Definition of date of knowledge for purposes of ss 11 and 12</b> – s 14</p>	<p>(no provision)</p>

<sup>149</sup> Disregarding the judicial discretion to disapply under s 33.

<sup>150</sup> Andrew McGee, *supra* n 9, at para 8.064.

<sup>151</sup> Andrew McGee is of the view that “[s]ection 13(3) is apparently unnecessary, since in the case with which it deals the requirements of section 13(2) would in any event not be satisfied. It should perhaps be regarded as having been included for the avoidance of doubt. It also serves the useful purpose of emphasising the possibility of contracting-out of the use of the limitation defence.”: Andrew McGee, *supra* n 9, at para 8.063.

175 The absence of the above UK provisions in Singapore does not appear to have been raised in our courts yet. Notwithstanding, we are of the view that the UK provisions (ss 12 to 14 of the Limitation Act 1980) are useful and should be incorporated into our Limitation Act.

176 This amendment would address certain inconsistencies and anomalies. For example, under our current law, a minor, being under legal disability with no capacity to sue, may lose the benefit of a claim under s 20 of the Civil Law Act (Cap 43) because of the inaction of, for example, the widow of the deceased. This is because no extension is provided for in the event of disability, unlike in the UK (s 12(3)). Another example of an inconsistency under the current regime occurs where a claimant's claim is already time-barred at the time of his death. Under s 20(5), the death of the injured resets the limitation clock to zero in respect of a claim by his dependants under s 20(5). The defendant, assuming he no longer had to meet a claim, may have arranged his business accordingly and may have destroyed his files relating to the matter. The issue would not arise in the UK where s 12(1) preserves the validity of any accrued limitation defences and thus prevents the revival of stale claims.

(c) Recommendation

177 Sections 12 to 14 of the UK Limitation Act 1980 (with the necessary modifications) should be incorporated into our Limitation Act (Cap 163) (new ss 6F, 6G and 6F(3)).

(6) *Summary of recommendations*

178 Our recommendations with respect to personal injury claims are as follows:

- (a) to move ss 24A and 24B to Pt II and amend the header (new ss 6D and 6E);
- (b) to insert a provision, modelled on s 11(2) of the UK Limitation Act 1980, expressly excluding the operation of other limitation periods set out in the Act to actions to which the section applies (new s 6D(2));
- (c) to extend the long-stop for personal injury claims under s 24A from 15 to 30 years (new s 6E(1));
- (d) to extend the limitation period to three years from death, for claims by the estate in the event of the death of the claimant where limitation period has not accrued at time of death (modelled on s 11(5) to (7) of the UK Limitation Act 1980) (new s 6D(4), (5) and (6));
- (e) to enact a new limitation provision for fatal accident claims made under s 20 of the Civil Law Act (Cap 43) (modelled on ss 12 to 14 of the UK Limitation Act 1980) (new ss 6F, 6G and 6F(3)); and

(f) to repeal the existing limitation provision in s 20(5) of the Civil Law Act (clause on consequential amendment to Civil Law Act, at **Annex A**).

**F. Limitation period for actions on a judgment**

*(1) Section 6(3) Limitation Act*

179 By s 6(3) of our Limitation Act, no action may be brought on a judgment more than 12 years after the judgment becomes enforceable.<sup>152</sup> A distinction is recognised by the courts between enforcing a judgment by suing on it, and enforcing a judgment by execution. Section 6(3) only applies to suing on a judgment. This was confirmed in *National Westminster Bank Plc v Powney*<sup>153</sup> with respect to s 24 of the UK Limitation Act 1980.<sup>154</sup> The court endorsed the distinction between the substantive right to sue on a judgment and the procedural remedies provided by the courts for execution of a judgment. It was held that applications to levy execution did not come within the definition of “action” under s 24 of the UK Act, therefore, no limitation period under the 1980 Act applied to them.<sup>155</sup>

180 Section 6(3) also provides that arrears of interest in respect of a judgment debt are not recoverable after the expiry of six years from the date on which the interest became due. In *Lowsley v Forbes*,<sup>156</sup> the UK Court of Appeal held that this limitation period is also only applicable to the interest the plaintiff can claim in actions on a judgment; it does not apply to the interest the plaintiff can claim in executing a judgment.

*(2) UK and other jurisdictions*

181 In the UK, the limitation period for actions upon judgments was 12 years until 1980 when it was reduced to six years.<sup>157</sup> The reason for the change in the UK is not clear. There was no explanatory statement in the amendment Bill, nor have we located the reasons in Hansard. There also did not appear to be any law commission report in consequence of which the amendment was made.

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<sup>152</sup> By O 42 r 7 of the Rules of Court (Cap 322), a judgment takes effect on the date it is given, unless the court orders it to take effect on a later day.

<sup>153</sup> [1991] Ch 339. See also *Berliner Industriebank Aktiengesellschaft v Jost* [1971] 1 QB 278 at 293, affirmed by the Court of Appeal [1971] 2 QB 463; *Lowsley v Forbes*, *The Times*, 5 April 1996; and *In re A Debtor* [1997] 2 WLR 57.

<sup>154</sup> Which is *in pari materia* with s 6(3) of our Act.

<sup>155</sup> Under O 46, r 2 of the Rules of Court, *supra* n 152, leave of the court is necessary to levy execution where six years or more have elapsed since the date of the judgment or order. An action on the judgment can, by producing a fresh judgment, extend the time available for enforcing the earlier judgment either by execution without leave of the court for a further six years, or by reliance on the later judgment in related proceedings. In *ED & F Man (Sugar) Ltd v Haryanto*, CA (unreported, 17 July 1996), an action on the judgment brought expressly for this purpose was held to be permissible by the Court of Appeal. The burden is on the defendant to show that such an action is an abuse of the process of court. See UK Law Com Consultation Paper 151, *supra* n 16, at para 7.1.

<sup>156</sup> *Supra* n 153.

<sup>157</sup> Limitation Amendment Bill (HL), Sched 1, para 2(d). The UK provision is now contained in the UK Limitation Act 1980, at s 24(1). It is *in pari materia* with the Singapore provision (except for the specified limitation period).

182 In both New Zealand<sup>158</sup> and New South Wales,<sup>159</sup> the limitation period for actions upon judgments is currently 12 years.

(3) *Analysis*

183 The bringing of actions on local judgments is a fairly rare occurrence today. The practice could have been more common in the days when the common law presumption was that a judgment was satisfied after a year and a day if no execution had been issued; in such cases the only way to “enforce” the judgment was by an action of debt upon it.<sup>160</sup> Nonetheless, even today, bringing a second action in this way is a matter of right, subject only to the court’s discretion to decline to give judgment in the second action if it regards it as an abuse of process.<sup>161</sup>

184 However, with respect to foreign judgments, suing on those judgments remains an important method of “enforcing” these judgments in Singapore. This is especially the case where no reciprocal enforcement legislation is in force between Singapore and the foreign jurisdictions. Enforcement by action is frequently how judgments, in both superior and inferior courts, from Canada, the United States, the Central and South American countries, the European countries, the Middle-Eastern and the non-Commonwealth Asian countries are enforced.<sup>162</sup>

185 In our Limitation Act (Cap 163), the relatively long 12-year limitation period is the exception<sup>163</sup> to the norm of six years. There does not appear to be any compelling reason why such a long limitation period should operate. Indeed, the interests of commercial certainty would justify a shorter limitation period, so that contingent liabilities are not left unresolved and uncertain for long periods of time. A limitation period of six years would also be consistent with the time limit within which foreign judgments may be registered under the Reciprocal Enforcement of Foreign Judgments Act (Cap 265)<sup>164</sup> and the proposed Foreign Judgments Bill recommended by the Law Reform Committee of the Singapore Academy of Law.<sup>165</sup>

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<sup>158</sup> Section 4(4), Limitation Act 1950 (NZ)

<sup>159</sup> Section 17, Limitation Act 1969 (NSW)

<sup>160</sup> *ED & F Man (Sugar) Ltd v Haryanto*, The Times, 9 August 1996, CA, cited in Andrew McGee, *supra* n 9, at para 17.003.

<sup>161</sup> The burden of which lies on the defendant.

<sup>162</sup> Law Reform Committee of the Singapore Academy of Law, *Report of the Law Reform Committee on Enforcement of Foreign Judgments* (July 2005) at para 12.

<sup>163</sup> Found only in relation to actions relating to land (ss 9(1), 11(2), 21(1)), and claims to the personal estate of a deceased person (s 23).

<sup>164</sup> At s 4. Under s 3 of the Reciprocal Enforcement of Commonwealth Judgments Act (Cap 264, 1985 Rev Ed) (“RECJA”), the time limit is presently 12 months but this appears to be based on historical reasons which are no longer applicable today. The Law Reform Committee has in its report on *Enforcement of Foreign Judgments*, *supra* n 162, recommended that the six-year time limit under the REFJA (Cap 265) be applied instead.

<sup>165</sup> Clause 4 of the draft Bill in the LRC report on *Enforcement of Foreign Judgments*, *supra* n 162.

(4) *Recommendation*

186 We recommend that s 6(3) of the Limitation Act (Cap 163) be amended to reduce the limitation period for an action upon a judgment from 12 to 6 years (amended s 6(3)).

**G. Defamation**

187 In Singapore, the time limit for bringing an action for defamation is six years from the accrual of the cause of action.<sup>166</sup> A cause of action for defamation accrues on the date of publication of the defamatory material,<sup>167</sup> and a new cause of action accrues upon each publication.<sup>168</sup> Our Limitation Act does not draw any distinction between defamation and other torts. Unlike the UK Act,<sup>169</sup> our Limitation Act does not contain a provision for a judicial discretion to extend limitation period, whether for defamation or for any other claim.

(1) *UK*

188 In the UK, an action for defamation or other malicious falsehood must be brought within one year of the date on which the cause of action accrues.<sup>170</sup> However, s 32A of the 1980 Act confers on the court a limited discretion to allow an action to be brought outside that one-year period.

(a) *Time limit*

189 In the UK, the time limit for defamation actions was progressively reduced: from six years to three years in 1984<sup>171</sup> and again from three years to one year in 1996.<sup>172</sup>

190 The 1996 reduction had been recommended by the Supreme Court Procedure Committee in 1991 (*Report of Practice and Procedure in Defamation*, July 1991). The Committee had stressed the difficulties faced by media representatives in defending claims brought after some time, and recommended a one-year limitation period, coupled with discretion for the court to disapply that period to avoid injustice. Reasons given include:

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<sup>166</sup> Under s 6(1)(a), Limitation Act (Cap 163).

<sup>167</sup> See *Clerk & Lindsell on Torts* (Sweet & Maxwell, 17th Ed, 1995), at para 31-05.

<sup>168</sup> *Duke of Brunswick v Harmer* (1849) 14 QB 185.

<sup>169</sup> Which provides for a judicial discretion for defamation (s 32A) and personal injury claims (s 33) (discussed further in subsection (c) below.)

<sup>170</sup> Section 4A, Limitation Act 1980, as inserted by the Defamation Act 1996 (c 31). There are also special rules in the case of disability.

<sup>171</sup> Administration of Justice Act 1985 (c 61), implementing the recommendation of the Faulks Committee on Defamation 1975 (Cmnd 5909).

<sup>172</sup> Defamation Act 1996, *supra* n 170.

(a) The general recognition that claims to protect one's reputation ought to be pursued with vigour, especially in view of the ephemeral nature of most media publications.

(b) Difficulties faced by media representatives in defending claims brought after some time (due in particular to the loss of supporting evidence). Memories fade. Journalists and their sources scatter and become, not infrequently, untraceable. Notes and other records are retained only for a short period, not least because of limitations on storage.

(b) Judicial discretion

191 The discretion to extend the primary limitation period on grounds of equity is almost unique in the law of limitations.<sup>173</sup> Judicial discretion was first introduced by the UK Limitation Act 1975 for personal injury actions. For defamation actions, the discretion originated in the Administration of Justice Act 1985 (which reduced the limitation period for defamation actions from six years to three).

192 Under s 32A of the UK Limitation Act 1980, the court is given the power to direct that s 4A shall not apply to an action if it considers that it is equitable for the action to proceed, having regard to the degree to which the limitation period prescribed by s 4A prejudices the plaintiff and whether a decision to allow the action to proceed would prejudice the defendant. The court is directed to have regard to the factors set out in s 32A(2)(a) to (c), which corresponds to s 33(3)(a), (b) and (e).

(c) UK recommendation

193 In its report on Limitation of Actions, the UK Law Commission recommended that claims for defamation and for malicious falsehood should be subject to the core regime of a three-year limitation period from the date of discoverability (with no discretion for extension).

194 The increase of the time period from one to three years would represent a reversal of legislation introduced in 1996. One reason given was feedback that a one-year limitation period does not give claimants sufficient time to prepare a claim properly, in particular to carry out all the factual investigations necessary to serve a fully detailed statement of claim.<sup>174</sup> The Law Commission was also recommending that the judicial discretion be abolished for defamation claims; and in the absence of a discretion to disapply, a one-year limitation period was not acceptable. Moreover, in Scotland, the limitation period for defamation is three years from date of knowledge. Allowing such a significant difference between the limitation regimes applicable in England and Wales and in Scotland would encourage forum shopping. The UK Law Commission recognised that subjecting defamation claims to the core regime would, on

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<sup>173</sup> In the UK, such a discretion currently exists only for defamation and personal injury claims (s 33 of the UK Limitation Act 1980). The UK Merchant Shipping Act 1995 (c 21) also confers such a discretion.

<sup>174</sup> UK Law Com Report No 270, *supra* n 3, at para 4.39.

the other hand, increase uniformity, reducing the complexity of the law on limitations. It would also avoid anomalous differences such as that between the limitation period applicable to claims for negligent misstatement and that applicable for defamation and malicious falsehood.<sup>175</sup>

195 As for judicial discretion, the UK Law Commission did not explicitly state why it was recommending its abolition. But it did mention that the discretion had originally been introduced in order to avoid injustice to claimants caused by the one-year limitation period. It would appear that the reason for abolishing the discretion is that it was no longer needed alongside the three-year limitation period for defamation recommended by the Law Commission.

(2) *Scotland*

196 Section 18A of the Prescription and Limitation (Scotland) Act 1973, inserted by s 12 of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985, creates a limitation period of three years for actions for defamation. This limitation period runs from the date of accrual of the cause of action, but the date of accrual is defined by s 18A(4)(b) as being the date when the publication or communication first comes to the notice of the pursuer. This appears to go even further than the personal injuries rules in protecting pursuers, since the test is actual knowledge rather than constructive knowledge. The court has discretion to extend the limitation period if it appears equitable to do so.<sup>176</sup>

(3) *New South Wales*

197 The Defamation Amendment Act 2002 reduced the limitation period for an action for defamation from six years to one year from the date of publication, but the court has a discretion to extend the period to up to three years if it decides that it is “just and reasonable” to do so.

(4) *New Zealand*

198 Defamation actions have a limitation period of two years from the date the cause of action arose, with a discretion granted to the court to extend it to a maximum of six years.<sup>177</sup>

(5) *Canada*

199 In Alberta, British Columbia and New Brunswick, the limitation period for defamation is two years from publication. The same applies in Manitoba, Prince Edward Island and Saskatchewan, although actions for slander not actionable *per se*

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<sup>175</sup> *Id.*, at para 4.45.

<sup>176</sup> Prescription and Limitation (Scotland) Act 1973, s 19A.

<sup>177</sup> Limitation Act 1950 (NZ), s 4(6A) and (6B), inserted by the Defamation Act 1992 (NZ), s 55.

must be brought within two years of the date of occurrence of the special damage which is the gist of that action. In Newfoundland and Ontario, an action for slander must be brought within two years after the words were spoken; libel actions must be brought within six years of publication. In Nova Scotia, an action for slander must be brought within one year and an action for libel within six years after the cause of action arose.

200 The position is complicated by special provisions applying to newspapers and broadcasters. Some provinces provide that an action for any defamation published in a newspaper, or broadcast, must be commenced within six months after the publication came to the notice or knowledge of the person defamed. In Ontario and Newfoundland, the relevant period is three months.<sup>178</sup>

(6) *Arguments for a shorter limitation period for defamation*

201 The New South Wales Law Reform Commission has made the following arguments for and against a shorter limitation period for defamation.<sup>179</sup>

202 Persons concerned about damage to reputation normally would be expected to vigorously pursue efforts to restore it. Memories fade, and journalists and their sources can be hard to trace after time has elapsed. Notes, tapes and other records are often retained only for short periods. The prospect of a defamation action can lead to self-censorship by writers and the stifling of a legitimate debate. Plaintiffs need not adduce proof of damage, and have a lighter burden of proof to satisfy than in other torts.

(7) *Arguments against a shorter limitation period for defamation*

203 In all types of civil actions, defendants face difficulties if plaintiffs do not commence proceedings quickly. There is no reason to give special treatment to defamation defendants. Most defamation actions are brought quickly anyway. A recent study of New South Wales cases found that approximately 80% of matters were commenced within six months of publication; only 7.9% were commenced more than twelve months after publication.<sup>180</sup> Delay in commencing is already a factor which is considered when assessing damages. Considerable time may be needed to realise and fully assess the extent of injury to the plaintiff's reputation and to obtain legal advice. Furthermore, attempts to settle without litigation may be handicapped if litigation must be commenced quickly. Applying a shorter limitation period in New South Wales alone will also encourage forum shopping.

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<sup>178</sup> See *eg* s 6, Ontario Libel and Slander Act (RSO 1990, c L 12)

<sup>179</sup> Discussion Paper 32 (1993), *Defamation*, at paras 5.11 – 5.12.

<sup>180</sup> T Sourdin *Defamation Study* (unpublished paper, University of New South Wales, 1990) at para 10-14. These figures are based on a sample size of 264 actions commenced between 1 January 1987 and 31 December 1988.

(8) *Analysis*

204 Some common law jurisdictions surveyed appeared to lean towards a shorter limitation period for defamation as compared to torts in general. However, the UK Law Commission proposed to bring defamation within the regime for general torts (three years).

205 For the reasons given in the arguments above, we think that a limitation period of six years is too long for defamation claims. On the other hand, one year is too short, especially without a discretion to disapply. It is unfair to claimants as one year is not usually sufficient preparation time for a claimant to carry out all the factual investigations necessary and to adequately prepare his case. Furthermore, with the expeditious litigation system in Singapore, a would-be plaintiff has to be very well-prepared before commencing action. The period of two years is inconsistent and “out of sync” with existing limitation periods.

206 We think that three years, commencing from the date when the publication or communication first comes to the notice of the pursuer (*ie* actual knowledge) represents a fair balance between the interests of claimants and defendants. This is the position in Scotland under s 18A of the Prescription & Limitation (Scotland) Act 1973,<sup>181</sup> which reads:

Limitation of defamation and other actions.

18A.—(1) Subject to subsections (2) and (3) below and section 19A of this Act, no action for defamation shall be brought unless it is commenced within a period of 3 years after the date when the right of action accrued.

(2) In the computation of the period specified in subsection (1) above there shall be disregarded any time during which the person alleged to have been defamed was under legal disability by reason of nonage or unsoundness of mind.

(3) Nothing in this section shall affect any right of action which accrued before the commencement of this section.

(4) In this section —

(a) “defamation” includes *convicium* and malicious falsehood, and “defamed” shall be construed accordingly; and

(b) references to the date when a right of action accrued shall be construed as references to the date when the publication or communication in respect of which the action for defamation is to be brought first came to the notice of the pursuer.

207 As for a judicial discretion to extend time, the chief merit is that it allows the court to take into account the individual circumstances of a particular case. However,

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<sup>181</sup> Inserted by s 12, Law Reform (Miscellaneous Provisions) (Scotland) Act 1985.

the disadvantage is that it produces uncertainty on two counts. First, defendants must face potential liability for a past event for an indefinite period, with all the associated costs (such as cost of maintaining indemnity insurance for a prolonged period and retaining records). Secondly, uncertainty results from the exercise of the discretion as different judges may well reach a different decision on cases with similar facts; it is impossible to ensure consistency in the exercise of a discretion and this in turn gives rise to unfairness. In the UK, the Law Commission's provisional view was that the current discretion to extend time had caused significant uncertainty and costs.<sup>182</sup>

208 We do not think this level of uncertainty is justified in the context of defamation suits, especially if a period of say, three years, is prescribed. As noted above, in the UK, the Law Commission has recommended abolishing the judicial discretion, and subjecting defamation claims to the core three-year limitation period with no discretion to extend.

(9) *Recommendation*

209 The current limitation period of six years from accrual of cause of action for defamation actions should be modified to three years from the date when the publication or communication first comes to the notice of the pursuer (*ie* actual knowledge), with a long-stop of 15 years from the date of publication (new s 6C).

**H. *Defamation on the Internet***

210 A further issue bears mention. This relates to the problems in the way in which the limitation period applies to defamatory material on the Internet. With the greater availability and prominence of online newspapers, it is probably only a matter of time before the matter is brought to public attention. In the UK, liability for archived material has already generated considerable concern.<sup>183</sup>

(1) *The English multiple publications rule*

211 The standard English rule is that a cause of action accrues each time a libel is disseminated. In *Loutchansky v Times Newspapers Ltd*,<sup>184</sup> the Court of Appeal held (at [55]) that:

it is a well established principle of the English law of defamation that each individual publication of a libel gives rise to a separate cause of action, subject to its own limitation period.

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<sup>182</sup> UK Law Commission Consultation Paper 151, *supra* n 16, at paras 12.187–12.196.

<sup>183</sup> The BBC informed the UK Law Commission that the questions the latter had posed about online archives raise “some of the most important legal issues facing Internet publishers at the moment”: UK Law Commission, *Defamation and the Internet: A Preliminary Investigation*, Scoping Study No 2 (16 December 2002), at para 3.1.

<sup>184</sup> [2002] 1 All ER 652.

212 This follows a long line of authority, based on the nineteenth century case of *Duke of Brunswick v Harmer*,<sup>185</sup> where the Duke's agent bought a back issue of a newspaper published 17 years earlier, which the court held constituted a separate publication, actionable in its own right.

213 On this basis, each "hit" on an online archive effectively amounts to a republication, and the limitation period runs from the time the material was accessed. The defendant in the *Loutchansky* case argued that this would have a chilling effect on freedom of expression. They suggested that the English courts should instead follow the US example, by recognising a "single publication rule" in which a newspaper was said to be published only once, at the time of the original publication.

214 The court however gave short shrift to this argument and found no reason to introduce such a radical step. It held that although maintaining archives had "a social utility", it was "a comparatively insignificant aspect of freedom of expression". While permitting actions based on fresh disseminations of articles published long ago was "at odds with some of the reasons for the introduction of a 12-month limitation period", any resulting damages were "likely to be modest".

215 Thus the limitation period runs from each occasion on which a "hit" is made on a website. This means that where a newspaper is placed in an online archive, a libel action may be brought many years after its original publication, when it is difficult to mount an effective defence.

(a) Criticisms of the English rule

216 The English rule may be criticised on the grounds that it would effectively remove the limitation period for newspapers placed in an archive. By bringing an action in respect of the online archive, rather than the original publication, claimants could pursue actions many years after the article had been written. As memories fade and notes are destroyed, defendants will become incapable of mounting an effective defence.<sup>186</sup>

(b) Possible alternatives

217 Two alternative methods of reform have been suggested. One would be to adopt the US "single publication rule", that a publication happens only once, when it is first distributed. The second would be to provide a specific "archive defence", for material that has been held for over a year.<sup>187</sup>

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<sup>185</sup> *Supra* n 168. The principle was upheld by the House of Lords in *Berezovsky v Michaels* [2000] 1 WLR 1004.

<sup>186</sup> UK Law Com Scoping Study No 2, *supra* n 183, at para 3.7, citing views received from BBC and others.

<sup>187</sup> *Id.*, at para 3.16.

(2) *US single publication rule*

218 Under US law, a single edition of a newspaper or book is considered to be a “single publication”, however many copies are distributed. As the American Law Institute said in their Restatement (Second) of Torts, “any one edition of a book or newspaper, or any one radio or television broadcast... is a single publication”.<sup>188</sup>

219 This has two implications: firstly, only one action may be brought, in one jurisdiction, even if the defamation has been communicated to many different places. Secondly, the limitation period starts to run at the time of the first publication, even if copies continue to be sold several years later.<sup>189</sup>

220 The rule has a long history. First developed in 1938 in respect of newspapers,<sup>190</sup> it was applied to books in 1948, in *Gregoire v GP Putnam’s Sons*.<sup>191</sup> Here a book, originally put on sale in 1941, had been reprinted seven times, and was still being sold from stock in 1946. The New York Court of Appeals held that the limitation period started to run in 1941, when the book was first put on sale. The contrary rule, as set out in *Duke of Brunswick v Harmer*, had its origin “in an era which long antedated the modern process of mass publication”. It was no longer suited to modern conditions:

Under such a rule the Statute of Limitation would never expire so long as a copy of such book remained in stock and is made by the publisher the subject of a sale or inspection by the public. Such a rule would thwart the purpose of the legislature, clearly expressed... to bar ‘completely and forever’ all actions which... overpass the limitation...upon litigation.

221 In 2002, the New York Court of Appeals applied the same rule to a website publication. In *George Firth v State of New York*,<sup>192</sup> a report had been published at a press conference on 16 December 1996, and placed on the internet the same day. The claimant, however, did not file a claim for over a year. The court found that the limitation period started when the information was first placed on the website, not from each “hit” received. Nor was it relevant that unrelated modifications had been made to other parts of the website. As “many Web sites are in a constant state of change”, this was only to be expected. Levine J observed that the policies behind the original development of the single publication rule “are even more cogent when considered in connection with the exponential growth of the instantaneous, worldwide ability to communicate through the Internet”. The alternative would give “even greater potential for endless retriggering of the statute of limitations, multiplicity of suits and harassment of defendants”:

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<sup>188</sup> Restatement (Second) of Torts (1976) s 577A.

<sup>189</sup> See UK Law Com Scoping Study No 2, *supra* n 183, at para 3.17.

<sup>190</sup> *Wolfson v Syracuse Newspapers, Inc* 279 NY 716 (1939).

<sup>191</sup> 298 NY 119 (1948).

<sup>192</sup> 2002 NY Int 88.

Inevitably there would be a serious inhibitory effect on the open, pervasive dissemination of information and ideas over the Internet, which is, of course, its greatest beneficial promise.

(a) Criticisms of the US rule

222 Applying the “single publication rule” to Internet defamation may create two unjust results: (a) once a plaintiff misses his window of opportunity to sue, the defamatory material can sit in cyberspace for an eternity, and the defamed person can do nothing about it; and (b) someone who posts defamatory material has no incentive ever to remove it, since the law makes no distinction between one day's worth of posting and a year or more of it.

223 The “single publication” rule, by treating the first day of defamation as the only point of injury, excuses all continuing illegality and injury. Arguably, this contradicts all other areas of the law, where statutes of limitation always begin at the end of an ongoing illegal activity.

(3) *Analysis*

224 The English rule creates the possibility of harassment and multiple recoveries against defendants. This may “substantially impair the administration of justice”.<sup>193</sup>

225 The single publication rule, on the other hand, avoids the problem by recognising that, for practical purposes, the mass communication of a single defamatory communication constitutes a single wrong.<sup>194</sup> However, the main problem of the single publication rule, from the claimant’s point of view, is that they may be unaware of the original publication, or only start to suffer significant damage to their reputation some years after the original publication.

226 This, however, is a general problem with all limitation periods. In this report, we propose a three-year period for defamation claims which would only start to run from the time when the claimant knows of the relevant facts. If time runs only upon knowledge by the plaintiff, this should mitigate much of the adverse effects of the US “single publication” rule, assuming the US rule is adopted judicially in Singapore.

227 As the law in this area is still in its infancy, we do not recommend legislative reform on this issue for the time being. In the meantime, we should monitor developments locally and overseas.

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<sup>193</sup> Chief Justice Dyer of the Supreme Court of Tennessee in *Applewhite v Memphis State University*, 495 SW 2d 190, at 194 (Tenn, 1973).

<sup>194</sup> *Ferber v Citicorp Mortgage, Inc*, No 94 Civ 3038, 1996 US Dist LEXIS 1210, at 12.

(4) *Recommendation*

228 No legislative action is required for the time being. Developments overseas and locally should be monitored.

***I. Suspension of limitation period for companies in administration or administrative receivership***

229 In its reform proposals, the UK Law Commission recommended that the core limitation period should be suspended in respect of claims by a company or partnership during any period in which the company or partnership is in either administration or administrative receivership, except where the administrative receiver is the defendant to the company's claim. The rationale for the suspension was that the operation of a limitation period applicable to claims brought by a company or partnership could create problems for companies and partnerships in administration or receivership, since the manner in which an administrator or receiver may exercise his or her powers is limited – he is subject to an overriding duty to essentially preserve the assets of the company. We may wish to consider a similar provision for Singapore in relation to companies under judicial management or in receivership.

230 The UK Law Commission also made a recommendation that the limitation regime should be modified in relation to claims brought by a liquidator on behalf of a company or partnership in liquidation:

(a) where the limitation period has started to run before the company has gone into insolvent liquidation but has not expired by that date, it should be suspended for one year from the date of liquidation;

(b) where the primary liquidation period in respect of a claim has not started running, it should start on the later of the date of the liquidator's knowledge, or one year after the date of liquidation.<sup>195</sup>

231 Although it is far less likely that a liquidator will be reluctant to bring proceedings when it is in the interests of creditors, it has been argued that the liquidator needs sufficient time to investigate the claim and bring proceedings. It also takes the liquidator time to find the funds to commence an action.

(1) *Analysis*

232 The UK Law Commission's recommendations on this issue gain significance in the context of their recommendation to reduce the limitation period from six to three years generally.

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<sup>195</sup> UK Law Com Report No 270, at para 4.247.

233 In Singapore, we are not aware that the current regime has given rise to any difficulties. In the context of our relatively longer limitation period of six years (for most claims), we do not recommend reform on this issue.

(2) *Recommendation*

234 We do not recommend any reform on this issue.

**J. Disability**

235 Under s 24 of our Limitation Act, disability extends the limitation period where the claimant is under a disability at the time his right of action accrues. The limitation period starts to run only when the plaintiff's disability has ceased or he dies, whichever is earlier. The claimant is allowed (subject to certain exceptions)<sup>196</sup> a period equivalent to the appropriate limitation period in which to commence his proceedings, calculated from the date on which he ceases to be under the disability.<sup>197</sup> For example, in the case of a person who suffers a latent personal injury which he discovers<sup>198</sup> whilst still a minor, time will not begin to "run against him" until he reaches 21.

236 The phrasing of s 24(1) can potentially create alternative periods of limitation in different cases. For example, if the period which would have been applicable to the action in the absence of any disability is 12 years, it is possible that the six-year period from the ending of the disability will expire before the 12-year period from the accrual of the cause of action. In such circumstances the effect of s 28(1) is that the action may still be brought at any time within the 12-year period. In other words, s 24(1) can extend the limitation period, but can never abbreviate it.<sup>199</sup>

(1) *Definition of "disability"*

237 "Disability" is not, as such, defined in our Limitation Act (Cap 163). However, s 2(2) deems infants and persons of unsound mind to be under a disability for the purposes of the Act:

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

238 The term "of unsound mind" is, in turn, left undefined by the Act. At common law, the expression "person of unsound mind" has the meaning of a "lunatic" in the Lunacy Act of 1890.<sup>200</sup> "Unsound mind" or *insanae memoriae* is understood to be a

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<sup>196</sup> For example, this principle does not extend to those cases for which the limitation period is normally 12 years.

<sup>197</sup> Section 24(1).

<sup>198</sup> As allowed by s 24A(2).

<sup>199</sup> Andrew McGee, *supra* n 9, at para 19.011.

<sup>200</sup> See *Wan Chon v Chua Ka Bu* [1990] 2 MLJ 460, *per* Chan Sek Keong J (as he then was), citing Devlin LJ in *Buxton v Jayne* [1960] 2 All ER 688 at 697.

depravity of reason or want of it.<sup>201</sup> A person of unsound mind is *non compos mentis* in Latin.<sup>202</sup> A person who loses the use of his mental faculty as a result of a motor vehicle accident is a person of unsound mind for the purpose of the common law.<sup>203</sup>

239 In *Kirby v Leather*,<sup>204</sup> Lord Denning MR held, based on UK provisions identical to ours, that the term “of unsound mind” must be construed in context, so that if the plaintiff is incapable of managing his affairs in relation to an accident, by consulting a solicitor and undertaking proceedings as a reasonable man would do, then he is under a disability. However, the fact that the plaintiff was suffering from mental illness does not necessarily mean that he was incapable of managing his affairs, and if he is capable of managing his affairs the disability provision does not apply.<sup>205</sup> It has recently been noted that “of unsound mind” is not a phrase with which any medical practitioner today is comfortable.<sup>206</sup>

240 We considered whether the expression “of unsound mind” is still appropriate today. We also considered whether other incapacitating events which may make it more difficult for the claimant to pursue his action should count as disabilities for limitation purposes.

(a) UK position

241 In the UK, under s 38(3) of the Limitation Act 1980, a person is “of unsound mind” if he is a person “who, by reason of mental disorder within the meaning of the Mental Health Act 1983, is incapable of managing and administering his property and affairs”. Under s 1(2) of the Mental Health Act 1983 (c 20), “mental disorder” is defined as “mental illness, arrested or incomplete development of mind, psychopathic disorder and any other disorder or disability of mind”. “Psychopathic disorder” is defined as “a persistent disorder or disability of mind (whether or not including significant impairment of intelligence) which results in abnormally aggressive or seriously irresponsible conduct on the part of the person concerned”.

(b) UK recommendation

242 The UK Law Commission recommended a new definition of “lack of capacity”, stating that “[t]his definition would resolve many of the problems which have been identified with the definition now used in the 1980 Act”.<sup>207</sup> The definition is adapted

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<sup>201</sup> *Per* Lord Hardwicke LC in *Barnsley’s Case* [1667–1744] 2 Eq Ca Abr 580, [1745] 22 ER 489.

<sup>202</sup> *Per* Chan Sek Keong J (as he then was) in *See Wan Chon v Chua Ka Bu*, *supra* n 200, at 462H. See *Ex parte Cranmer* [1789–1817] 12 Ves 445, 33 ER 168, for the four classes of *non compos mentis* recognised at common law (*per* Lord Erskine LC, at 450–452).

<sup>203</sup> *See Wan Chon v Chua Ka Bu*, *supra* n 200, at 462E, *per* Chan Sek Keong J (as he then was).

<sup>204</sup> [1965] 2 QB 367, CA.

<sup>205</sup> *Dawson v Scott-Brown* (1988) unreported, CA. See generally M A Jones, “Limitation Periods and Plaintiffs Under a Disability – A Zealous Protection?” (1995) 14 CJQ 258.

<sup>206</sup> Nugent, *The Statute of Limitations in Sexual Abuse Cases*, vol 3, issue 5, *The Bar Review*, 1998, at p 222, cited by the Irish Law Reform Commission in their *Consultation Paper on the Statutes of Limitation: Claims in Contract and Tort in Respect of Latent Damage (Other than Personal Injury)*, 1998, at para 4.74.

<sup>207</sup> UK Law Com Consultation Paper 151, *supra* n 16, at para 12.124.

from that proposed by the Law Commission in its review of mental incapacity, where the Law Commission had considered the ways in which decisions may lawfully be made on behalf of those unable to make decisions for themselves.<sup>208</sup>

243 The proposed definition emphasises the inability of the claimant to make a decision in relation to his claim or to communicate that decision, where this inability is caused by a disability or disorder of the mind or brain, whether permanent or temporary, which results in an impairment or disturbance of mental functioning. The definition reads:

(6) A person is under a disability for the purposes of this section if —

(a) he is unable by reason of mental disability to make decisions on matters relating to the cause of action concerned, or

(b) he is unable to communicate such decisions because of mental disability or physical impairment.

(7) In subsection (6) “mental disability” means a disability or disorder of the mind or brain, whether permanent or temporary, which results in an impairment or disturbance of mental functioning.<sup>209</sup>

244 The Law Commission considered that this definition:

... ensures that claimants will be protected both in the case where they are unable to appreciate or to remember the facts relevant to the claim because of their disability, and where the nature of the disability is such that, although aware of the facts, they are unable to reach any decision in relation to the claim.<sup>210</sup>

(c) Analysis

245 We are of the view that the expression “of unsound mind” in our Limitation Act is inappropriate in this day and age.

246 On the issue of the scope of adult disability for the purpose of extending limitation periods, the UK Law Commission had noted<sup>211</sup> the alternative definitions of adult disability proposed and in some cases enacted in other common law jurisdictions:

(a) A person who is unable by reason of mental disorder, intellectual handicap or other mental disability to make a reasonable judgment in respect of his affairs (Western Australia Law Reform Commission).<sup>212</sup>

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<sup>208</sup> UK Law Commission, *Mental Incapacity* (Report No 231, 1995).

<sup>209</sup> Clause 29(6) and (7) of the UK draft Bill in UK Law Com Report No 270, *supra* n 3.

<sup>210</sup> *Id.*, at para 3.124.

<sup>211</sup> UK Law Com Consultation Paper 151, *supra* n 16, at para 12.119.

<sup>212</sup> Western Australia LRC Project No 36(II), *supra* n 6, at para 17.64. The current definition of disability in Western Australia is derived from the English Real Property Limitation Acts of 1833 and 1874.

(b) A person who is “in fact incapable of or substantially impeded in the management of his affairs” (British Columbia Limitation Act RSBC 1979, s 7(5)).<sup>213</sup>

(c) “An adult who is unable to make reasonable judgments in respect of matters relating to the claim” (Alberta Limitations Act 1996, c L-15.1, s 1(i)).<sup>214</sup>

(d) Incapacity by reason of “impairment of ... physical or mental condition, restraint of ... person, and ... war or warlike operations or conditions” provided that the claimant proves “that [the] incapacity resulted in his or her being actually incapable of (or substantially impaired in) managing their affairs in relation to the claim for a continuous period of 28 days or more” (New Zealand Law Commission).<sup>215</sup>

(e) A person “incapable of the management of his or her affairs because of disease or impairment of his or her physical or mental condition” (Newfoundland Limitations Act 1995, c L-16.1, s 15(5)).<sup>216</sup>

(f) A person “incapable of commencing a proceeding in respect of a claim because of his or her physical, mental or psychological condition, or because of physical restraint, war or war-like conditions” (Ontario Limitations (General) Bill 1992, cl 9).<sup>217</sup>

247 We have concluded that the UK Law Commission’s proposed scope for adult disability provides the most appropriate model.

(d) Recommendation

248 We recommend that the reference to a person “of unsound mind” be replaced with a reference to a person “under a mental disability”, and “mental disability” be defined as set out in cl 29(6) and (7) of the UK Law Commission’s draft Bill (amended s 24(1) and new s 24(1A) and (1B)).

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<sup>213</sup> Implementing the recommendations of the Law Reform Commission of British Columbia, *Report on Limitations (Project No 6) Part 2 - General* (LRC 15, 1974), at p 71.

<sup>214</sup> Implementing the recommendations of the Alberta Law Reform Institute, *Limitations* (Report No 55, 1989), at p 41.

<sup>215</sup> New Zealand Law Commission, *Limitation Defences in Civil Proceedings* (Report No 6, 1988), at para 258. Under s 2(2) of the New Zealand Limitation Act 1950, a person “shall be deemed to be under a disability while he is an infant or of unsound mind”.

<sup>216</sup> Implementing the recommendations of the Newfoundland Law Reform Commission, *Report on Limitation of Actions*, (Report No 1, 1986), ch VII, at para 6.

<sup>217</sup> The current definition of “disability”, under the Limitations Act 1990 (c L-15), is derived from the English Real Property Limitations Acts 1833 and 1874.

(2) *Supervening disability*

249 Under current law, the claimant does not receive the benefit of an extension of the limitation period where he suffers from a disability which commences after the cause of action accrues.<sup>218</sup> We considered whether the period or periods during which the claimant was under a disability should be discounted in the computation of the limitation period.

250 As the UK Law Commission noted,<sup>219</sup> a number of jurisdictions, including New South Wales, South Australia, Northern Territory and Australian Capital Territory, Alberta, British Columbia, Manitoba, Newfoundland and Saskatchewan, have provided that supervening disability should suspend the running of the limitation period.<sup>220</sup>

251 Although we accept that the current position could cause hardship, especially in the case of personal injuries, we felt that the difficulties involved in recognising subsequent disability outweighed the case for reform. The difficulties were most obvious in the case of intermittent disability; if time were to be suspended during these periods of disability, evidence would have to be tendered to show when precisely the plaintiff started and then stopped suffering from a disability after the cause of action accrued, thus lengthening the trial considerably.

(a) Recommendation

252 We recommend no reform of the law on this issue.

(3) *Should there be a limit to the protection given to adults under a disability?*

253 Unlike in the case of infant disability where the incapacity has a definite end, s 24 of the Limitation Act has the effect of postponing time indefinitely in the case of adult disability. The only exception is found in s 24(6)(c) which imposes a long-stop of 30 years for claimants under a disability in the case of an action to recover land or money charged on land.

254 In all other cases, a claimant with a permanent disability is therefore, in practice, not subject to a limitation period. For example, in *Headford v Bristol and District Health Authority*<sup>221</sup> proceedings were commenced 28 years after the birth of a claimant who had suffered brain damage at birth, despite the fact that the parents, who

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<sup>218</sup> Based on the wording in s 24(1) of the Limitation Act (Cap 163).

<sup>219</sup> UK Law Com Consultation Paper 151, *supra* n 16, at para 12.128.

<sup>220</sup> New South Wales Limitation Act 1969 s 52; Northern Territory Limitation Act 1981 s 36(1); South Australia Limitation of Actions Act 1936 s 45(1); Alberta Limitations Act 1996 s 5(1); British Columbia Limitation Act 1979 s 7(3); Manitoba Limitation of Actions Act 1987 s 7(2); Newfoundland Limitations Act 1995 s 5(3); Saskatchewan Limitations of Actions Act 1978 s 6. This has also been recommended by the Western Australia LRC, Project No 36(II), *supra* n 6, at para 17.65, and by the Ontario Law Reform Commission, *Report on Limitation of Actions* (1969), at p 97.

<sup>221</sup> [1995] PIQR P180.

brought the proceedings, were aware that there were grounds for a claim within a few months of birth.

255 While the policy behind s 24 in giving special protection to those under a disability cannot be faulted, defendants face the possibility of actions being brought by persons under a disability many years after the events in question. The question is whether the protection accorded claimants under s 24 goes too far, considering the serious injustice that may be done to defendants who may not be able to defend their claim after a substantial interval. In *Turner v WH Malcolm Ltd*,<sup>222</sup> Glidewell LJ observed:

... in s 28 and 38 of the 1980 [Limitation] Act, Parliament in effect provided that there is no limitation period for a plaintiff who is under a permanent disability if he, or his solicitor, does not proceed with his action expeditiously. This means that the maxim that it is in the public interest that there should be an end to litigation has little or no application to an action by such a plaintiff.<sup>223</sup>

256 And in *Headford v Bristol and District Health Authority*,<sup>224</sup> Ralph Gibson LJ commented that:

... the present state of the statute law, in which no ultimate or long stop period of limitation is provided, in any case with reference to a person under a disability, seems to call for consideration in the light of such cases as this.<sup>225</sup>

257 Professor Michael Jones has suggested that the protection given to disabled claimants is haphazard, and some disabled claimants receive too much protection under the present law.<sup>226</sup>

258 To remove the possibility of indefinite postponement, we propose that in the case of adult disability, any extension under s 24 should be limited to and should last only for a period of 10 years from the date on which the cause of action accrues. This means that where a claimant is under a mental disability at the time the cause of action accrues, and except where the action is for recovery of land or money charged on land under s 24(6)(c) (where a 30-year long-stop is provided), the limitation period expires after the expiration of:

- (a) the applicable limitation period as prescribed by the Act (this incorporates the 30-year long-stop for personal injuries, 15-year long-stop for non-personal injuries, 12-year limitation period for actions involving land, etc),
- or

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<sup>222</sup> (1992) 15 BMLR 40.

<sup>223</sup> *Id*, at 48.

<sup>224</sup> *Supra* n 221.

<sup>225</sup> *Id*, at p 185.

<sup>226</sup> M A Jones, *supra* n 205.

- (b) ten years from the date the right of action accrued,

whichever is later.

259 We recognise that the adoption of the “date of accrual” as the starting date for the 10-year limit means that the long-stop begins to run irrespective of whether the damage was discovered or even discoverable, and it may be argued that this would be unfair to claimants. On the other hand, in claims actionable only on proof of damage, *eg* the tort of negligence, the long-stop will not commence until damage occurs, which may be long after the events giving rise to it, and it may be argued that this is unfair to defendants.

260 We accept these arguments, but believe there is no escaping the fact that the introduction of any long-stop provision will result in hardship in isolated cases. In identifying a solution to this problem, we are mindful to avoid as far as possible fragmenting still further the existing law on limitations. In this regard, the “date of accrual” accords with existing legal principle and is currently the trigger for the limitation period in most actions. We also note that the starting date for the long-stop under s 24B is the date of breach (*ie* “act or omission”), however in our view the policy in favour of protecting claimants under a disability requires a later starting date than this. We therefore considered that the “date of accrual” should be adopted as the starting date for the long-stop in s 24.

261 Some elements of our proposed approach were drawn from the UK Law Commission’s recommendations in their report *Limitation of Actions*,<sup>227</sup> albeit substantial modifications were required due to a difference in treatment of other issues, in particular that a long-stop for personal injuries had been rejected in UK.

(a) Recommendation

262 The extension of time under s 24 in relation to adults with disability should be limited to a period of ten years from the date on which the cause of action accrues, even if the disability has not ceased (new s 24(1A)).

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<sup>227</sup> UK Law Com Report No 270, *supra* n 3, in particular the recommendations at para 3.133.

## V. Transitional Provisions

### A. General approaches

263 The approach of providing that the new law would apply only to *causes of action accruing after its commencement date* (“prospective application”) has the merit of simplicity, clarity and certainty. However, it would mean that the old law would continue in tandem with the new regime for a period of time. For restitutionary claims, for which no limitation period existed before this Act, the old regime could co-exist indefinitely. The continuance of the old regime might be of particular concern where the shortcomings of the present law are evident and delay in correcting them may be thought unacceptable.

264 Another approach would be to provide for some degree of retrospective application of the new law. The UK Limitation Acts 1963 and 1975 applied the new law prospectively to causes of action accruing after its commencement, but also *retrospectively* to causes of actions arising before its commencement, *except to causes of actions where a final order or judgment was given before the Limitation Amendment Act was passed*. To this we would add a third exception: *where a final judgment or order has been made or given in respect of the cause of action*. The concern here is that some defendants could suddenly find themselves deprived of an accrued limitation defence, for example in the case of informal loans or defamation, while other potential plaintiffs could suddenly find themselves deprived of an existing right to bring an action, for example, on a judgment (where the limitation period will be reduced from 12 to 6 years) or on a restitutionary claim (where a new limitation period of six years will be introduced). One way to get around this problem may be to provide for a sufficiently long “lead-in” time after the enactment of the Act and before any of the provisions come into force. This will give sufficient notice to those who may be adversely affected by the change in the law to settle their affairs ahead of those changes. However, the concern here is that this approach would require the continuance of the old regime for at least the duration of the “lead-in” time; this might be of particular concern in relation to those claims where the shortcomings of the present law are very evident and delay in correcting them may be thought unacceptable.

265 A third approach is seen in the UK Limitation Act 1939, the UK Limitation Act 1980 and the UK Latent Damage Act 1986, where the new law applies prospectively, but also retrospectively to causes of action arising before its commencement *except where (a) the cause of action had been barred by the expiry of a limitation period imposed by a previous Act, (b) proceedings had been commenced in respect of that cause of action prior to commencement, or (c) a final judgment or order has been made or given in respect of the cause of action*. This, though slightly more complex than the first alternative, allows for the more rapid implementation of the Act’s provisions, which (a) is critical in those cases where the shortcomings of the present law are very evident; and (b) would prevent the present regime running in tandem with the new regime for an indefinite time into the future. At the same time, no defendant would be deprived of an accrued limitation defence. However, where the limitation period would

be reduced (this includes instances where a new limitation period would be introduced), this approach would deprive some plaintiffs of an existing right to bring an action.

266 A fourth approach<sup>228</sup> rides on the third but with still a further limitation on its retrospective effect. The new law will still apply to all causes of action accruing before or after its commencement date except where (a) the claim has been barred by the expiry of a limitation period under the provisions of a previous Act, (b) proceedings have been issued in respect of the claim before the commencement of the Act, or (c) a final judgment or order has been made or given in respect of the cause of action. There will be a year's delay after the Act is passed before any provisions come into force. *In addition, where the cause of action accrued before the commencement of the new Act, the limitation period shall expire on the later of the two dates: (a) the date on which time would have expired under the previous law, or (b) the date on which time would expire under the new Act.* This would ensure that, in most cases, the claimant whose cause of action accrued before commencement will not be prejudiced by the implementation of the Amendment Act. Where the old law would allow the claimant the benefit of a longer limitation period, that limitation period will continue to apply. However the proposal thus far would leave untouched accrued causes of action where no limitation period at all applies under the old law (restitutionary claims and claims falling under the sweeping-up provision); such claims would continue to co-exist with the new law indefinitely, which is unacceptable. For such cases, an exception provides that the claimant shall have *six years from the date of commencement of the Amendment Act, but no longer (unless the claimant would have the benefit of a longer period under the current law, because he or she does not have the relevant knowledge to trigger the limitation period).*

267 Having surveyed some of the general approaches adopted previously, we now turn to the specific causes of action in question.

## **B. Recommendations**

### *(1) General approach*

268 We generally favour the fourth approach above. There should be a long lead-in time of one year between the enactment and the commencement of the new law (new cl 1 of the proposed Limitation (Amendment) Bill, at **Annex A**). This would address any unfairness where a limitation period is retrospectively reduced under the new law, *eg* for restitutionary claims and actions on judgments.

269 As a default rule, the Act should have retrospective effect and should apply to all causes of action accruing before or after its commencement date (new cl X(1)).

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<sup>228</sup> This is the approach recommended by the UK Law Commission in their draft Limitation Bill in Report No 270, *supra* n 3.

270 However, the rule of retrospectivity is subject to three exceptions, *ie* (a) claims which are already time-barred as of the commencement date of the Act, (b) claims where proceedings have already been commenced as of the commencement date of the Act, and (c) claims where a final order or judgment has been given (new cl X(2)).

271 The above general approach operates in the following manner to the following causes of action:

- (a) **Loans payable on demand:** new regime will apply to loans of up to six years old.
- (b) **Estate claim for wrongful death:** new regime will apply to claims that are not time-barred.
- (c) **Dependant's claim for wrongful death:** dependant has a one-year lead-in period in which to lodge "stale" claims "resurrected" by the amendment to s 20(5) of the Civil Law Act (Cap 43).

272 The general rule is also subject to modifications for specific causes of actions (new cl X(3)–(5)).

(2) *Modifications for specific causes of action*

- (a) Restitutionary claims and claims falling under the sweeping-up provision (new limitation period of six years; previously no limitation period)

273 With respect to such claims, we consider that the new law should apply to all causes of action whether accruing before or after the commencement of the Amendment Act (new cl X(1)). However, where the cause of action had accrued before commencement, the limitation period should expire six years from commencement (new cl X(3)).

274 The proviso deals with claimants with claims older than six years who, without the proviso, would be deprived of an existing right of action. It also allows claimants with claims reaching six years old at the commencement date more time in which to bring their claims.

275 The New Zealand Law Reform Commission, which also proposed a sweeping-up provision, did not address the issue of transitional periods in their report, nor is there a Bill. The UK Law Commission's proposed transitional provision is that which we recommend.<sup>229</sup>

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<sup>229</sup> *Id*, cl 40.

- (b) Loans payable on demand  
(limitation period extended from six years from loan, to six years from written demand for repayment, subject to long-stop of 30 years from loan)

276 With respect to loans payable on demand, we consider that the new law should apply to all causes of action whether accruing before or after the commencement date (new cl X(1)), except that nothing in the Act shall (a) enable any civil claim to be brought which was barred under the old law, or (b) affect any civil claim in civil proceedings commenced before the new law or any title to property which is the subject of such claims, or (c) affect any civil claim in respect of which a final order or judgment has been made or given before the commencement of this Act (new cl X(2)). Loans already time-barred under the old law (*ie* loans older than six years) remain time-barred, while loans entered into less than six years from commencement of the Act will come under the new limitation regime.

277 **UK Limitation Amendment Act 1980.**<sup>230</sup> The new law applies to causes of action accruing before and after commencement, except that nothing in the Act shall enable any action to be brought which was barred under the old law, or affect any action or arbitration commenced before the new law or any title to property which is the subject of such action or arbitration.

278 **New South Wales Law Reform Commission proposal.** The NSW LRC proposed that the new law have prospective application only. The new law applies only to causes of action accruing after the commencement of the Act.

- (c) Latent personal injury claims  
(increase of long-stop period from 15 to 30 years)

279 The UK Parliament has accepted the proposition that, as far as personal injury claims are concerned, a change in the law of limitation should, if beneficial to plaintiffs, apply notwithstanding that the relevant cause of action arose before the change in the law and notwithstanding that by then the plaintiff's claim was, under the old law, already statute-barred.<sup>231</sup>

280 We however disagree with this approach; our view is that latent personal injury claims that are already time-barred under the current law should remain time-barred, as per the general principle enunciated above.

- (d) Estate claim for wrongful death  
(limitation period extended from three years from discoverability, to three years from later of death or personal representative's knowledge, but no revival of stale claims)

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<sup>230</sup> This Act introduced s 2AA of the Limitation Act 1939 on loans payable on demand. The Act also dealt with other issues involving a wide range of causes of action.

<sup>231</sup> Although the UK Parliament has not, however, gone so far as to approve a measure of retrospection which would enable a judgment or settlement to be upset because of the change in the limitation period. See Pt VIII, UK Law Reform Committee 20th Report, *supra* n 127.

281 With respect to estate claims, we consider that the new law should apply to all causes of action accruing before or after the commencement date (new cl X(1)), except in respect of causes of action where the limitation period has already accrued (new cl X(2)). (Even if the new Act were to apply, the result would be the same, since the new law does not resurrect claims that are already time-barred on date of death.)

282 **UK Limitation Act 1963.** The new law applied to causes of action accruing before or after the passing of the Act, even if action in respect thereof has been commenced.

- (e) Dependant's claim for wrongful death  
(a main impact of the amendment is that it will prevent a revival of stale claims upon injured's death)

283 With respect to these claims, we consider that the new law should apply to causes of action accruing before or after the commencement date (new cl X(1)). The new law (s 6F(1)) will apply to prevent a revival of claims already stale at the death of the injured. The new law will therefore deprive some dependants of vested claims under the current three-years-from-death limitation regime under s 20(5) of the Civil Law Act (Cap 43).

284 The long lead-in time period of one year (new cl 1) should address any potential unfairness of the new law in extinguishing a claimant's vested right of action.

285 **UK Limitation Act 1963.** The new law applied to causes of action accruing before or after the passing of the Act, even if action in respect thereof has been commenced.

- (f) Actions on a judgment  
(limitation period reduced from 12 years to 6 years)

286 The simplest approach would be to provide that the new law shall apply to new causes of action only (*ie* prospective application). But this will mean that some actions will remain alive for up to 12 years after commencement.

287 We consider that the new law should apply to all such causes of action whether accruing before or after commencement, but where a cause of action has accrued which is not time-barred as at commencement date, the limitation period for such actions should expire at the end of the period of six years from commencement, notwithstanding that it would otherwise have ended later (new cl X(4)). This would reduce the limitation period for actions which have already accrued before commencement. The provision of six years from commencement is necessary to allow claimants with, for example, five-year-old claims, more time than one year to bring their claims.

288 The considerations and approach here is similar to that for restitutionary or sweeping up claims above (both involve reducing the limitation period).

(g) Defamation

(modification of limitation period: from six years from publication to three years from actual knowledge of publication, subject to long-stop of 15 years from publication)

289 With respect to these claims, we consider that the new law should apply only to causes of action accruing after the commencement date (prospective application). Time in respect of causes of action that have accrued before the commencement date should run from publication whether or not the plaintiff has knowledge. We are of the view that there is no strong policy reason to extend the benefit of the discovery regime under the new law to plaintiffs at the expense of defendants who may have ordered their affairs based on the old law (new cl X(5)).

(h) Consequential amendment: repeal of section 24C

290 As a consequential amendment, s 24C should be repealed in its entirety. The transitional provision for latent injuries and damage is preserved by the new cl X(1) and (2) which has the same effect as the current s 24C(1) and (2). Latent injury or damage claims that were already barred at or in respect of which action had already been commenced before 26 June 1992, remain barred under the new law.

(i) Sample transitional provisions in other laws

(i) UK Limitation Act 1980 (c 58), s 40(1), Sched 2:

Paragraph 9 of Sched 2 provides that the Act does not apply to actions barred before sections relating to relevant action were brought into force. There are also specific provisions relating to certain types of action, *eg* contribution actions.

*Comment:* This was a consolidating Act. Transitional considerations may be different.

(ii) UK Limitation Amendment Act 1980 (c 24), section 12

Section 12 provides that the Act applies to causes of action accruing before and after the Act comes into force, except that nothing in the Act shall enable any action to be brought which was barred under the old law, or affect any action or arbitration commenced before the new law or any title to property which is the subject of such action or arbitration.

*Comment:* The Limitation Amendment Act 1980 introduced new provisions on limitation for loans payable on demand, limitation for theft, and other matters. The transitional provision thus had to deal with other issues apart from those relating to loans payable on demand.

(iii) UK Limitation Act 1975 (c 54), section 3

Section 3(1) provides that the Act shall apply to causes of action which accrued before, as well as after, the commencement of Act, notwithstanding that an action has been commenced and is pending.

*Comment:* Provisions are exceptional in accepting that the change in law beneficial to plaintiff should apply notwithstanding the cause of action had accrued and would by then, under the old law, be statute-barred (see 24th report,<sup>232</sup> at p 26; 20th report,<sup>233</sup> at paras 137–146)

(iv) UK Limitation Act 1963 (c 47), section 6

(1) Subject to the following provisions of this section, the provisions of this Part of this Act (other than section 4 thereof) shall have effect in relation to causes of action which accrued before, as well as causes of action which accrue after, the passing of this Act, and shall have effect in relation to any cause of action which accrued before the passing of this Act notwithstanding that an action in respect thereof has been commenced and is pending at the passing of this Act. ...

(3) For the purposes of this section an action shall not be taken to be pending at any time after a final order or judgment has been made or given therein, notwithstanding that an appeal is pending or that the time for appealing has not expired; and accordingly section 1 of this Act shall not have effect in relation to a cause of action in respect of which a final order or judgment has been made or given before the passing of this Act.

*Comment:* The 1963 Limitation Act introduced the discoverability regime for personal injuries. The Act was applied retrospectively to all causes of action with the single exception of past causes of action where a final order or judgment had been made.

(v) Singapore Limitation Act (Cap 163), section 24C

Section 24C provided that the Act applies to causes of action accruing before and after the Act comes into force, except that nothing in the Act shall enable any action to be brought which was barred under the old law, or affect any action commenced before the new law comes into force.

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<sup>232</sup> UK, Law Reform Committee of England and Wales, *Twenty-Fourth Report: Latent Damage* (Cmnd 9390, 1984) (the Scarman Report).

<sup>233</sup> UK, Law Reform Committee 20th Report, *supra* n 127.

*Comment:* Sections 24A and 24B introduced the discoverability regime for damages for negligence, nuisance or breach of duty, and a 15-year long-stop for both personal and non-personal injury claims.



**ANNEX A:**

**PROPOSED AMENDMENTS**

**TO THE LIMITATION ACT**

\* Insertions are underlined and deletions are indicated by a single strikethrough line.

## LIMITATION ACT

### (CHAPTER 163)

An Act regulating the limitation of actions and arbitrations.

[11th September 1959]

#### Arrangement of Provisions

#### **PART I**

- 1 Short title.
- 2 Interpretation.
- 3 Saving for other limitation laws.
- 4 Limitation not to operate as a bar unless specially pleaded.

#### **PART II**

- 5 Part II to be subject to Part III.

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- 6 Limitation of actions of contract and tort and certain other actions.
- 6A Special time limit for claiming contribution.
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**PART III**

24 Extension of limitation period in case of infancy or mental disability.

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31 Provisions as to set-off or counter-claim.

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# LIMITATION ACT

## (CHAPTER 163)

An Act regulating the limitation of actions and arbitrations.

[11th September 1959]

### Short title.

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

### Interpretation.

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

"action" includes a suit or any other proceedings in a court;

"land" includes things attached to the earth or permanently fastened to anything attached to the earth, rentcharges and any legal or equitable estate or interest in land (including an interest in the proceeds of the sale of land held upon trust for sale) but does not include any right of way, easement, servitude, profit over or in respect of land, or right in the nature of an easement, servitude or profit over or in respect of land, or any other incorporeal hereditament;

"personal estate and personal property" do not include land or chattels real;

"personal injuries" includes any disease and any impairment of a person's physical or mental condition;

"rent" includes a rentcharge and a rent service;

"rentcharge" means any annuity or periodical sum of money charged upon or payable out of land except a rent service or interest on a mortgage or charge on land or a rent payable in respect of a grant or lease of State land;

"trust" and "trustee" have the same meanings as in the Trustees Act.

Cap. 337.

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

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

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

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

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

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

(b) in the case of an action upon a judgment, be construed as references to the date on which the judgment became enforceable;

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

7/66.

**Saving for other limitation laws.**

3. This Act shall not apply to any action or arbitration for which a period of limitation is prescribed by any other written law or to any action or arbitration to which the Government is a party and for which if it were between private persons a period of limitation would have been prescribed by any other written law.

**Limitation not to operate as a bar unless specially pleaded.**

4. Nothing in this Act shall operate as a bar to an action unless this Act has been expressly pleaded as a defence thereto in any case where under any written law relating to civil procedure for the time being in force such a defence is required to be so pleaded.

**PART II**

**Part II to be subject to Part III.**

5. The provisions of this Part shall have effect subject to the provisions of Part III.

*Action of contract and tort and certain other actions*

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

6. —(1) Subject to this Act, the following actions shall not be brought after the expiration of 6 years from the date on which the cause of action accrued:

(a) actions founded on a contract or on tort;

(b) actions to enforce a recognizance;

(c) actions to enforce an award;

(d) actions to recover any sum recoverable by virtue of any written law other than a penalty or forfeiture or sum by way of penalty or forfeiture;

(e) actions founded on restitution including restitutionary claims;

(f) actions for which no other provision is made by this Act or by written law.

(2) An action for an account shall not be brought in respect of any matter which arose more than 6 years before the commencement of the action.

(3) An action upon any judgment shall not be brought after the expiration of ~~12~~ 6 years from the date on which the judgment became enforceable and no arrears of interest in respect of any judgment debt shall be recovered after the expiration of 6 years from the date on which the interest became due.

(4) An action to recover any penalty or forfeiture or sum by way of penalty or forfeiture recoverable by virtue of any Act or other written law shall not be brought after the expiration of one year from the date on which the cause of action accrued.

22/92.

(5) For the purposes of subsection (4), “penalty” shall not include a fine to which a person is liable on conviction for a criminal offence.

(6) Nothing in this section shall apply to —

22/92.

(a) any cause of action within the admiralty jurisdiction of the High Court which is enforceable in rem other than an action to recover the wages of seamen; or

(b) any action to recover money secured by any mortgage of or charge on land or personal property.

(7) Subject to sections 22 and 32, the time limits in this section and in sections 6B to 6G shall apply to all claims for specific performance of a contract or for an injunction or for other equitable relief whether the same be founded upon any contract or tort or upon any trust or other ground in equity.

22/92.

### **Special time limit for claiming contribution.**

**6A.** —(1) Where under section ~~1544~~ of the Civil Law Act (Cap. 43) 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, subject to subsection (3), be brought after the end of the period of 2 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 in this section as the relevant date) shall be ascertained as provided in subsections (3) and (5).

(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.

(4) For the purposes of subsection (3), 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.

(5) 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.

(6) An action to recover contribution shall be one to which sections 24 and 29 apply, but otherwise Parts III and IV (except sections 30 and 33) shall not apply for the purposes of this section.

**Special time limit for actions in respect of certain loans.**

**6B.** – (1) This section shall apply to any contract of loan which –

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

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

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

(2) The time limit under section 6(1)(a) shall not apply to an action on a contract of loan to which this section applies.

(3) Subject to subsection (4), an action on a contract of loan to which this section applies shall not be brought after the expiration of 6 years from the date on which a demand in writing for repayment of the debt is made by or on behalf of the creditor (or, where there are joint creditors, by or on behalf of any one of them).

(4) An action on a contract of loan to which this section applies shall not be brought after the expiration of 20 years from the date of the loan.

(5) Where demand is made for payment of only part of the debt arising from the loan, this section applies to an action only to the extent that it is in respect of part of the debt that is the subject of the demand.

(6) In the case of joint lenders, a demand for payment by or on behalf of any one of them constitutes a demand for payment for the purposes of this section.

(7) In this section –

(a) "promissory note" has the same meaning as in the Bills of Exchange Act (Cap. 23);

(b) "demand for payment" means an unconditional demand for immediate payment, but includes a demand for payment that allows a reasonable time for payment.

**Special time limit for actions for defamation or malicious falsehood.**

**6C.** – (1) This section shall apply to any action for—

(a) libel or slander, or

(b) slander of title, slander of goods or other malicious falsehood.

(2) The time limit under section 6(1)(a) shall not apply to an action to which this section applies.

(3) Subject to subsection (4), an action to which this section applies shall not be brought after the expiration of 3 years from the date on which the publication or communication in respect of which the action for defamation is to be brought first came to the notice of the plaintiff.

(4) Notwithstanding subsection (3), an action to which this section applies shall not be brought after the expiration of 15 years from the date of publication.

**Special Time limits for negligence, nuisance and breach of duty actions in respect of latent injuries and damage.**

**6D24A.** —(1) This section shall apply to any action for damages for negligence, nuisance or breach of duty (whether the duty exists by virtue of a contract or of a provision made by or under any written law or independently of any contract or any such provision).

22/92.

(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, where the damages claimed consist of or include damages in respect of personal injuries to the plaintiff or any other person, shall not be brought after the expiration of —

22/92.

(a) 3 years from the date on which the cause of action accrued; or

(b) 3 years from the earliest date on which the plaintiff has the knowledge required for bringing an action for damages in respect of the relevant injury, if that period expires later than the period mentioned in paragraph (a).

(4) If the person injured dies before the expiration of the period mentioned in subsection (3) above, the period applicable as respects the cause of action surviving for the benefit of his estate by virtue of section 10 of the Civil Law Act (Cap. 43) shall be—

(a) 3 years from the date of death; or

(b) 3 years from the date of the earliest date on which the personal representative has the knowledge required for bringing an action for damages in respect of the relevant injury, if that period expires later than the period mentioned in paragraph (a).

(5) For the purposes of subsection (4), “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 personal 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.

(6) If there is more than one personal representative, and their dates of knowledge are different, subsection (4)(b) above shall be read as referring to the earliest of those dates.

(73) An action to which this section applies, other than one referred to in subsection (23), shall not be brought after the expiration of the period of —

22/92.

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

(b) 3 years from the earliest date on which the plaintiff or any person in whom the cause of action was vested before him first had both the knowledge required for bringing an action for damages in respect of the relevant damage and a right to bring such an action, if that period expires later than the period mentioned in paragraph (a).

(84) In subsections (23), (4) and (37), the knowledge required for bringing an action for damages in respect of the relevant injury or damage (as the case may be) means knowledge —

22/92.

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

(b) of the identity of the defendant;

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

(d) of material facts about the injury or damage which would lead a reasonable person who had suffered such injury or damage to consider it sufficiently serious to justify his instituting proceedings for damages against a defendant who did not dispute liability and was able to satisfy a judgment.

(95) Knowledge that any act or omission did or did not, as a matter of law, involve negligence, nuisance or breach of duty is irrelevant for the purposes of subsections (23), (4) and (37).

22/92.

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

22/92.

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

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

(117) A person shall not be taken by virtue of sub-section (106) to have knowledge of a fact ascertainable only with the help of expert advice so long as he has taken all reasonable steps to obtain (and, where appropriate, to act on) that advice.

**Overriding time limits for negligence, nuisance and breach of duty actions involving latent injuries and damage.**

6E24B. —(1) An action for damages for negligence, nuisance or breach of duty to which section 6D(3) applies shall not be brought after the expiration of 30 years from the starting date.

(2) An action for damages for negligence, nuisance or breach of duty to which section ~~24A~~6D(7) applies shall not be brought after the expiration of 15 years from the starting date.

(3) For the purposes of this section ~~subsection (1)~~,

"starting date" means the date (or, if more than one, from the last of the dates) on which there occurred any act or omission —

(a) which is alleged to constitute negligence, nuisance or breach of duty; and

(b) to which the injury or damage in respect of which damages are claimed is alleged to be attributable (in whole or in part).

(4) This section bars the right of action in a case to which subsection (1) or (2) applies notwithstanding that the cause of action has not yet accrued before the end of the period of limitation prescribed by this section.

22/92.

**Special time limit for actions under section 20 of the Civil Law Act (Cap. 43).**

6F.—(1) An action under section 20 of the Civil Law Act (Cap. 43) 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).

(2) None of the time limits given in the preceding provisions of this Act shall apply to an action under section 20 of the Civil Law Act, but no such action shall be brought after the expiration of 3 years from--

(a) the date of death; or

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

whichever is the later.

(3) In subsection (2), references to a person's date of knowledge shall be construed in accordance with section 6D(8) to (11).

(4) An action under section 20 of the Civil Law Act shall be one to which section 24 applies; but otherwise Parts III and IV shall not apply to any such action.

(5) The application to any action of the time limit under subsection (2) shall be subject to section 3.

**Operation of time limit under section 6F in relation to different dependants.**

**6G.—(1) Where there is more than one person for whose benefit an action under section 20 of the Civil Law Act (Cap. 43) is brought, section 6F(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 6F(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 24 of this Act or an agreement between the parties not to raise the defence, or otherwise).**

**Limitation in case of successive conversions and extinction of title of owner of converted goods.**

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

**(2) Where any such cause of action has accrued to any person and the period prescribed for bringing that action and for bringing any action in respect of such a further conversion or wrongful detention under subsection (1) 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.**

**Limitation of certain actions in respect of revenue matters.**

**8. An action —**

**(a) to set aside a sale in pursuance of the order of a collector or other officer of revenue;**

**(b) to set aside a sale for arrears of Government revenue or for any demand recoverable as such arrears;**

**(c) to set aside any attachment, lease or transfer of immovable property by the revenue authorities for arrears of Government revenue;**

**(d) against the Government to recover money paid under protest in satisfaction of a claim made by the revenue authorities on account of arrears of revenue or on account of demands recoverable as such arrears,**

**shall not be brought after the expiration of one year from the date on which the sale was confirmed or would otherwise have become final or conclusive had no such action been brought or when the attachment ceased or when the lease, transfer or payment was made, as the case may be.**

14/69.

### *Actions to recover land and rent*

#### **Limitation of actions to recover land.**

**9.** —(1) No action shall be brought by any person to recover any land after the expiration of 12 years from the date on which the right of action accrued to him, or, if it first accrued to some person through whom he claims, to that person.

(2) Nothing in this section or in section 11 (2) shall be deemed to affect the provisions of the Government Proceedings Act, or to apply to any person registered under or by virtue of the provisions of the Land Titles Act as the proprietor of the land sought to be recovered, or to any person claiming through a person so registered, except to the extent that such Act so provides or permits.

Cap. 121.

Cap. 157.

(3) This section shall not apply to an action to recover land from a person by reason only of his unauthorised occupation of the land.

27/93.

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

**10.** —(1) Where the person bringing an action to recover land or some person through whom he claims has been in possession thereof and has, whilst entitled thereto, been dispossessed or discontinued his possession, the right of action shall be deemed to have accrued on the date of the dispossession or discontinuance.

(2) Where any person brings an action to recover any land of a deceased person whether under a will or intestacy and the deceased person was on the date of his death in possession of the land and was the last person entitled to the land to be in possession thereof, the cause of action shall be deemed to have accrued on the date of his death.

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

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

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

(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 the person entitled to the succeeding estate or interest after the expiration of 12 years from the date on which the right of action accrued to the

person entitled to the preceding estate or interest, or 6 years from the date on which the right of action accrued to the person entitled to the succeeding estate or interest, whichever period last expires.

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

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

#### **Provisions in case of land held on trust.**

**12.** —(1) Subject to section 22 (1), this Act shall apply to equitable interests in land, including interests in the proceeds of the sale of land held upon trust for sale, in like manner as it applies 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 like manner and circumstances and on the same date as it would accrue if his interest were a legal estate in the land.

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

(3) Where any land is held upon trust, including a trust for sale, an action to recover the land may be brought by the trustees on behalf of any person entitled to a beneficial interest in possession in the land or in the proceeds of sale whose right of action has not been barred by this Act notwithstanding that the right of action of the trustees would apart from this provision have been barred by this Act.

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

**Accrual of right of action in case of certain tenancies.**

**13.** —(1) For the purposes of this Act, a tenancy at will shall 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 right of action of the person entitled to the land subject to the tenancy shall be deemed to have accrued on the date of such determination.

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

(3) Where any rent has subsequently to the determination of any tenancy been received in respect of the tenancy, the right of action shall be deemed to have accrued on the date of the last receipt of rent.

(4) Where any person is in possession of land by virtue of a lease in writing by which a rent of not less than \$10 is reserved, and the rent is received by some person wrongfully claiming to be entitled to the land in reversion immediately expectant on the determination of the lease, and no rent is subsequently received by the person rightfully so entitled, the right of action of the last-named person to recover the land shall be deemed to have accrued at the date when the rent was first received by the person wrongfully claiming as aforesaid and not at the date of the determination of the lease.

(5) This section shall not apply to any tenancy at will or lease granted by the Government.

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

**14.** —(1) A right of action to recover land by virtue of a forfeiture or breach of condition shall be deemed to have accrued on the date on which the forfeiture was incurred or the condition broken.

(2) If a right referred to in subsection (1) has accrued to a person entitled to an estate or interest in reversion or remainder and the land was not recovered by virtue thereof, the right of action to recover the land shall not be deemed to have accrued to that person until his estate or interest fell into possession, as if no such forfeiture or breach of condition had occurred.

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

**15.** —(1) No right of action to recover land shall be deemed to accrue unless the land is in the possession of some person in whose favour the period of limitation can run (referred to in this section as adverse possession).

(2) Where under this Act any such right of action is deemed to accrue on a certain date and no person is in adverse possession on that date, the right of action shall not be deemed to accrue unless adverse possession is taken of the land.

(3) Where a right of action to recover land has accrued and thereafter, before the right is barred, the land ceases to be in adverse possession, the right of action shall no longer

be deemed to have accrued and no fresh right of action shall be deemed to accrue unless the land is again taken into adverse possession.

(4) For the purposes of this section —

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

(b) receipt of rent under a lease by a person wrongfully claiming, in accordance with section 13 (4), the land in reversion shall be deemed to be adverse possession of the land.

**16.** *(Repealed by Act 27/93).*

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

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

**Right of person out of possession extinguished.**

**18.** Subject to section 12, at the determination of the period limited by this Act to any person for bringing an action to recover land, the right and title of the person to the land for the recovery of which the action might have been brought within that period shall be extinguished.\*

\* *See* section 50 of the Land Titles Act (Cap. 157).

**Administrator's claim to date back to death.**

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

**Limitation of actions to recover rent.**

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

***Actions to recover money secured by mortgage or charge or to recover proceeds of sale of land***

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

**21.** —(1) No action shall be brought to recover any principal sum of money secured by a mortgage or other charge on land or personal property or to enforce such mortgage or charge, or to recover proceeds of the sale of land or personal property after the expiration of 12 years from the date when the right to receive the money accrued.

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

(3) If, after the date referred to in subsection (1), the mortgagee was in possession of the mortgaged property, the right to foreclose on the property which was in his possession shall not, for the purposes of that 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 interests or any life insurance policy which has not matured or been determined.

(5) Nothing in subsections (1) to (4) 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.

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

(7) Notwithstanding subsection (6) —

(a) where a prior mortgagee or other incumbrancer has been in possession of the property mortgaged or charged, and an action is brought within one year of the discontinuance of such possession by the subsequent incumbrancer, he 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 thereof, notwithstanding that the period exceeded 6 years;

(b) where the property subject to the mortgage or charge comprises any future interest or life insurance policy and it is a term of the mortgage or charge that arrears of interest shall be treated as part of the principal sum of money secured by the mortgage or charge, interest shall not be deemed to become due before the right to receive the principal sum of money has accrued or is deemed to have accrued.

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

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

#### **Limitations of actions in respect of trust property.**

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

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

(b) to recover from the trustee trust property or the proceeds thereof in the possession of the trustee, or previously received by the trustee and converted to his use.

(2) Subject to subsection (1), an action by a beneficiary to recover trust property or in respect of any breach of trust, not being an action for which a period of limitation is

prescribed by any other provision of this Act, shall not be brought after the expiration of 6 years from the date on which the right of action accrued.

(3) The right of action referred to in subsection (2) shall not be deemed to have 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.

### **Limitation of actions claiming personal estate of deceased person.**

**23.** Subject to section 22 (1), no action —

(a) in respect of any claim to the personal estate of a deceased person or to any share or interest in the estate, whether under a will or on intestacy, shall be brought after the expiration of 12 years from the date when the right to receive the share or interest accrued; and

(b) to recover arrears of interest in respect of any legacy, or damages in respect of such arrears, shall be brought after the expiration of 6 years from the date on which the interest became due.

## **PART III**

### **Extension of limitation period in case of infancy or mental disability.**

**24.** —(1) Subject to subsection (2), If, on the date when any right of action accrued for which a period of limitation is prescribed by this Act, the person to whom it accrued (“the relevant person”) was an infant or was under a mental disability, the action may be brought at any time before the expiration of —

(a) 6 years;

(b) in the case of actions to which sections 6C and 24A(2)6D(3) applies, 3 years; ~~or~~

(c) in the case of actions to which section 6 (4) or section 8 applies, one year; or

(d) in the case of actions to which section 6A applies, 2 years,

from the date when the relevant person ceased to be an infant or under a mental disability or died, whichever event first occurred, notwithstanding that the period of limitation has expired.

(1A) Subject to subsection (6)(c), where the relevant person is under a mental disability, nothing in subsection (1) shall enable the relevant person to bring an action—

(a) after the expiration of the limitation period prescribed by this Act; or

(b) after the expiration of 10 years from the date when the right of action accrued,

whichever is the later.

(1B) In this section—

(a) “mental disability” means a disability or disorder of the mind or brain, whether permanent or temporary, which results in an impairment or disturbance of mental functioning; and

(b) a person is under a mental disability if—

(i) he is unable by reason of mental disability to make decisions on matters relating to the cause of action concerned; or

(ii) he is unable to communicate such decisions because of mental disability or physical impairment.

(2) In any case to which section 29 applies, subsection (1) shall apply as if the date from which the period of limitation begins to run were substituted for the date when the right of action accrued.

(3) Where any such person as is referred to in subsection (1) was on such date under two disabilities or where before the disability which he was under on such date had ceased he was affected by another disability, he shall be deemed for the purposes of this section to have continued under a disability until both the disabilities have ceased.

(4) When one of several joint creditors or claimants is under any such disability, and when a discharge can be given without the concurrence of that person, time will run against them all.

(5) Where no discharge under subsection (464) can be given, time will not run as against any of them until all those persons cease to be under a disability or until one of them becomes capable of giving a discharge without the concurrence of the others whichever shall first occur.

(6) This section shall take effect subject to the following provisions:

(a) nothing in this section shall 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;

(b) 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;

(c) no action to recover land or money charged on land for which a period of limitation is prescribed under this Act shall be brought by virtue of this section by any person after the expiration of 30 years from the date on which the right of action accrued to that person or some person through whom he claims;

(d) nothing in this section shall apply to any action to recover a penalty or forfeiture, or sum by way thereof, by virtue of any written law, except where the action is brought by an aggrieved party.

22/92.

**Time limits for negligence, nuisance and breach of duty actions in respect of latent injuries and damage.**

~~24A.— (1) This section shall apply to any action for damages for negligence, nuisance or breach of duty (whether the duty exists by virtue of a contract or of a provision made by or under any written law or independently of any contract or any such provision).~~

~~22/92.~~

~~(2) An action to which this section applies, where the damages claimed consist of or include damages in respect of personal injuries to the plaintiff or any other person, shall not be brought after the expiration of—~~

~~22/92.~~

~~(a) 3 years from the date on which the cause of action accrued; or~~

~~(b) 3 years from the earliest date on which the plaintiff has the knowledge required for bringing an action for damages in respect of the relevant injury, if that period expires later than the period mentioned in paragraph (a).~~

~~(3) An action to which this section applies, other than one referred to in subsection (2), shall not be brought after the expiration of the period of—~~

~~22/92.~~

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

~~(b) 3 years from the earliest date on which the plaintiff or any person in whom the cause of action was vested before him first had both the knowledge required for bringing an action for damages in respect of the relevant damage and a right to bring such an action, if that period expires later than the period mentioned in paragraph (a).~~

~~(4) In subsections (2) and (3), the knowledge required for bringing an action for damages in respect of the relevant injury or damage (as the case may be) means knowledge—~~

~~22/92.~~

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

~~(b) of the identity of the defendant;~~

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

~~(d) of material facts about the injury or damage which would lead a reasonable person who had suffered such injury or damage to consider it sufficiently serious to justify his instituting proceedings for damages against a defendant who did not dispute liability and was able to satisfy a judgment.~~

~~(5) Knowledge that any act or omission did or did not, as a matter of law, involve negligence, nuisance or breach of duty is irrelevant for the purposes of subsections (2) and (3).~~

~~22/92.~~

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

22/92.

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

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

~~(7) A person shall not be taken by virtue of sub-section (6) to have knowledge of a fact ascertainable only with the help of expert advice so long as he has taken all reasonable steps to obtain (and, where appropriate, to act on) that advice.~~

22/92.

*[Moved to Part II - see new s 6D]*

**Overriding time limit for negligence, nuisance and breach of duty actions involving latent injuries and damage.**

~~24B.—(1) An action for damages for negligence, nuisance or breach of duty to which section 24A applies shall not be brought after the expiration of 15 years from the starting date.~~

~~(2) For the purposes of subsection (1),~~

~~"starting date" means the date (or, if more than one, from the last of the dates) on which there occurred any act or omission—~~

~~(a) which is alleged to constitute negligence, nuisance or breach of duty; and~~

~~(b) to which the injury or damage in respect of which damages are claimed is alleged to be attributable (in whole or in part).~~

~~(3) This section bars the right of action in a case to which subsection (1) applies notwithstanding that the cause of action has not yet accrued before the end of the period of limitation prescribed by this section.~~

22/92.

*[Moved to Part II - see new s 6E]*

**Transitional provisions relating to section 24A.**

~~24C.—(1) Nothing in section 24A shall—~~

22/92.

~~(a) enable any action to be brought which was barred by this Act immediately before 26th June 1992; or~~

~~(b) affect any action commenced before 26th June 1992.~~

~~(2) Subject to subsection (1), sections 24A and 24B shall have effect in relation to causes of action accruing before or after 26th June 1992.~~

22/92.

*[Deleted and subsumed within new Transitional Provisions.]*

**Extension of limitation period where debtor administers estate of his creditor.**

**25.** Where letters of administration of the estate of a creditor have been granted to his debtor, the running of the time prescribed for an action to recover the debt shall be suspended while the administration continues.

**Fresh accrual of action on acknowledgement or part payment.**

**26.** —(1) Where any right of action has accrued to recover land or to enforce a mortgage or charge in respect of land or personal property, and —

(a) the person in possession of the land or personal property acknowledges the title of the person to whom the right of action has accrued; or

(b) in the case of any such action by a mortgagee or chargee the person in possession as aforesaid or the person liable for the debt secured by the mortgage or charge makes any payment in respect thereof, whether of principal or interest,

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

(2) Where any right of action has accrued to recover any debt or other liquidated pecuniary claim, or any claim to the personal estate of a deceased person or to any share or interest therein, and the person liable or accountable therefor acknowledges the claim or makes any payment in respect thereof, the right shall be deemed to have accrued on and not before the date of the acknowledgment or the last payment.

(3) A payment of a part of the rent or interest due at any time shall not extend the period for claiming the remainder of the rent or interest then due, but any payment of interest shall have effect, for the purposes of subsection (2) only, as if it were a payment in respect of the principal debt.

**Formal provisions as to acknowledgements and part payments.**

**27.** —(1) Every such acknowledgment as is referred to in section 26 shall be in writing and signed by the person making the acknowledgment.

(2) Any such acknowledgment or payment as is referred to in section 26 may be made by the agent of the person by whom it is required to be made under that section, and shall be made to the person, or to an agent of the person, whose title or claim is being acknowledged or, as the case may be, in respect of whose claim the payment is being made.

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

**28.** —(1) For the purposes of this Act, an acknowledgment of the title to any land, or mortgaged or charged property by any person in possession thereof shall bind all other persons in possession during the ensuing period of limitation.

(2) A payment in respect of a debt secured by a mortgage or charge by the mortgagor or any person in possession of the mortgaged or charged land or personal property shall, so far as any right of the mortgagee or chargee 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 there are 2 or more mortgagors of land or personal property and the title or right to redemption of one of the mortgagors is acknowledged as aforesaid, the acknowledgment shall be deemed to have been made to all the mortgagors.

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

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

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

(7) A payment made after the expiration of the period of limitation prescribed for the bringing of an action to recover the debt or other claim shall not bind any person other than the person making the payment and his successors and shall not bind any successor on whom the liability devolves on the determination of a preceding estate or interest in property under a settlement taking effect before the date of the payment.

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

(9) In this section,

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

#### **Postponement of limitation period in case of fraud or mistake.**

**29.** —(1) Where, in the case of any action for which a period of limitation is prescribed by this Act —

(a) the action is based upon the fraud of the defendant or his agent or of any person through whom he claims or his agent;

(b) the right of action is concealed by the fraud of any such person as aforesaid; or

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

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

(2) Nothing in this section shall enable any action to be brought to recover, or enforce any charge against, or set aside any transaction affecting, any property which —

(a) in the case of fraud, has been purchased for valuable consideration by a person who was not a party to the fraud and did not at the time of the purchase know or have reason to believe that any fraud had been committed; or

(b) in the case of mistake, has been purchased for valuable consideration, subsequently to the transaction in which the mistake was made, by a person who did not know or have reason to believe that the mistake had been made.

(3) Notwithstanding subsection (1), no action for relief from the consequences of a mistake shall be brought after the expiration of 12 years from the date of the occurrence of the event which gave rise to the cause of action or, if the event occurred over a series of dates, from the last of such dates.

(4) For the purposes of this section, “mistake” means a mistake of law or fact.

## PART IV

**30.** *Repealed by Act 37 of 2001 wef 01/03/2002.*

### **Provisions as to set-off or counter-claim.**

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

### **Acquiescence.**

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

### **Application to Government.**

**33.** —(1) Subject to this Act and without prejudice to section 3, this Act shall apply to proceedings by or against the Government in like manner as it applies to proceedings between private persons.

(2) This Act shall not apply to any proceedings by the Government for the recovery of any tax, duty or interest thereon or to any forfeiture proceedings under any written law in force in Singapore relating to customs duties or excise or to any proceedings in respect of the forfeiture of a ship.

(3) For the purposes of this section, proceedings by or against any Government department or any officer of the Government as such or any person acting on behalf of the Government shall be deemed to be proceedings by or against the Government.

### **Provisions as to actions already barred and pending actions.**

**34.** Nothing in this Act shall —

(a) enable any action to be brought which was barred before 11th September 1959 by the Limitation Ordinance, except in so far as the cause of action or right of action may be revived by an acknowledgment or part payment made in accordance with the provisions of this Act; or

(b) affect any action or arbitration commenced before 11th September 1959 or the title to any property which is the subject of any such action or arbitration.

Cap. 7, 1955 Ed.

### **Exclusion of occupation and moratorium periods.**

**35.** In computing the period of limitation prescribed for any action, the period commencing on 15th February 1942 and ending on 30th September 1949 shall be excluded.

### **Consequential Amendment to Civil Law Act (Cap. 43)**

#### **Right of action for wrongful act causing death**

**20.** —(5) Not more than one action shall lie for or in respect of the same subject-matter of complaint ~~and every such action shall be brought within 3 years after the death of such deceased person.~~

[11/87]

### **Commencement and Transitional Provisions in Proposed Limitation (Amendment) Bill**

#### **Short title and commencement**

1. This Act may be cited as the Limitation (Amendment) Act 200\_\_\_\_\_ and shall come into operation on \_\_\_\_\_.

*[Clause 1 will provide a Long lead-in time of 1 year between enactment and commencement to address claims where limitation period is to be retrospectively reduced under the new law, eg. restitutionary claims; actions on judgments.]*

#### **Transitional provisions**

**X.**—(1) Subject to the following provisions of this section, this Act shall have effect in relation to causes of action accruing and things taking place before, and in relation to causes of action accruing and things taking place after, the commencement of this Act.

(2) Nothing in this Act shall—

(a) enable any civil claim to be made which was barred by any written law before the commencement of this Act;

(b) apply to any civil claim made in civil proceedings which were commenced before the commencement of this Act or the title to any property which is the subject of any such claim; or

(c) apply to any civil claim in respect of which a final order or judgment has been made or given before the commencement of this Act.

(3) Where—

(a) a cause of action has accrued before the commencement of this Act; and

(b) no provision was made by any written law passed or made before the passing of this Act, or by any rule of equity, for a limitation period to apply to a civil claim in respect of the cause of action,

any limitation period under this Act which applies to a civil claim in respect of the cause of action shall, if it would otherwise end earlier, be treated as ending at the end of the period of 6 years beginning with the day on which this Act comes into force.

(4) Where a cause of action to which section 6(3) applies is not time-barred as at the commencement date, the limitation period for such a cause of action shall expire at the end of the period of six years from commencement of the Act, unless it would otherwise end earlier under the law if this Act had not been passed.

(5) Section 6C shall only have effect in relation to causes of action accruing before the commencement of this Act.

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**ANNEX B: COMPARISON BETWEEN  
LIMITATION ACT (CAP 163) AND  
UK LIMITATION ACT 1980**

<b>Nature of Action</b>	<b>Limitation Act (Cap. 163)</b>	<b>UK Limitation Act 1980 (c 58)</b>	<b>Our Recommendation</b>
Action founded on simple contract	6 years from accrual of cause of action: <i>s 6(1)(a)</i>	6 years from accrual of cause of action: <i>s 5</i>  Action on loans payable on demand: 6 years from date of written demand: <i>s 6</i>	No change  New limitation provision for actions on loans payable: 6 years from date of written demand ( <i>as per UK s 6</i> )
Action on a specialty	No specific provision on specialties	12 years from accrual of cause of action: <i>s 8</i>	Specialty actions not currently subject to any limitation period will be subject to 6-year default limitation period under the new sweeping-up provision ( <i>covers actions on a statute other than for recovery of a sum of money</i> )
Restitution	No specific provision	No specific provision	New limitation provision for restitutionary claims: 6 years
Action to recover a sum of money under written law	6 years from accrual of cause of action: <i>s 6(1)(d)</i>  1 year for recovery of penalty or forfeiture or sums by way of penalty of forfeiture: <i>s 6(4)</i>	6 years from accrual of cause of action: <i>s 9</i>	No change

<b>Nature of Action</b>	<b>Limitation Act (Cap. 163)</b>	<b>UK Limitation Act 1980 (c 58)</b>	<b>Our Recommendation</b>
Action for an account	6 years: <i>s 6(2)</i>	Time limit is that applicable under the Act to the claim which is the basis of the duty to account: <i>s 23</i>	No change
Action on a judgment	12 years (6 years for interest) from date judgment becomes enforceable: <i>s 6(3)</i>	6 years from date judgment becomes enforceable: <i>s 24</i>	To reduce limitation period from 12 to 6 years
Actions in respect of revenue matters	1 year from date on which sale was confirmed or would otherwise have become final or conclusive, or when the attachment ceased, or when the lease, transfer or payment was made, as the case may be: <i>s 8</i>	None	No change
Action founded on tort (other than for personal injuries; under the Civil Law Act (Cap 43); or for latent damage)	6 years from accrual of cause of action: <i>s 6(1)(a)</i>	6 years from accrual of cause of action: <i>s 2</i>  1 year from accrual of cause of action, for defamation or malicious falsehood (with discretion to disapply): <i>s 4A</i>	For defamation or malicious falsehood: 3 years from actual knowledge (as <i>per</i> Scotland), subject to long-stop of 15 years from publication.  To monitor legal developments relating to defamation on the Internet

<b>Nature of Action</b>	<b>Limitation Act (Cap. 163)</b>	<b>UK Limitation Act 1980 (c 58)</b>	<b>Our Recommendation</b>
Action for personal injuries	3 years from later of accrual of cause of action or date of knowledge: <i>s 24A(2)</i>  Long-stop of 15 years: <i>s 24B(1)</i>	3 years from later of accrual of cause of action or date of knowledge (with discretion to disapply): <i>s 11</i>	To extend long-stop for latent personal injuries from 15 to 30 years.
Action under fatal accidents legislation	3 years from date of death: <i>s 20(5)</i>	3 years from later of date of death or date of knowledge of person for whose benefit the action is brought (with discretion to disapply): <i>Civil Law Act (c 43) s 12</i>  Extension of period in case of disability: <i>s 28</i>	To extend limitation period in favour of a person under disability (as per UK <i>s 28</i> )
Action for latent damage (in tort of negligence)	Later of (a) 6 years from accrual of cause of action or (b) 3 years from date of knowledge: <i>s 24A(3)</i>  Long-stop of 15 years: <i>s 24B(1)</i>	Later of (a) 6 years from accrual of cause of action or (b) 3 years from date of knowledge: <i>s 14A</i>  Long-stop of 15 years: <i>s 14B</i>	No change
Action under consumer protection legislation	1 year from various starting dates (depending on action): <i>Consumer Protection (Fair Trading) Act (Cap 52A) s 12</i>	3 years from later of accrual of cause of action or date of knowledge; long-stop of 10 years: <i>s 11A</i>	No change
Action for contribution	2 years from date of accrual of right: <i>s 6A</i>	2 years from date of accrual of right: <i>s 10</i>	No change

<b>Nature of Action</b>	<b>Limitation Act (Cap. 163)</b>	<b>UK Limitation Act 1980 (c 58)</b>	<b>Our Recommendation</b>
Successive conversion or detention of chattels	6 years from accrual of cause of action in respect of original conversion: <i>s 7</i>	6 years from accrual of cause of action in respect of original conversion: <i>s 3</i>	No change
Foreclosure action in respect of mortgaged personal property	12 years from date on which the right to foreclose accrued: <i>s 21(2)</i>	12 years from date on which the right to foreclose accrued: <i>s 20(2)</i>	No change
Action to recover land, proceeds of sale of land, or money secured by a mortgage or charge	12 years from accrual of cause of action ( <i>ie</i> dispossession or discontinuance of possession): <i>ss 9, 21</i>	12 years from accrual of cause of action ( <i>ie</i> dispossession or discontinuance of possession): <i>ss 15, 20</i>	No change
Action to recover arrears of rent or damages in respect thereof	6 years from accrual of cause of action ( <i>ie</i> date rent arrears became due): <i>s 20</i>	6 years from accrual of cause of action ( <i>ie</i> date rent arrears became due): <i>s 19</i>	No change
Action for non-fraudulent breach of trust	6 years from accrual of cause of action: <i>s 22(2)</i>	6 years from accrual of cause of action: <i>s 21(3)</i>	No change
Action for fraudulent breach of trust, to recover trust property or proceeds from the trustee	Unlimited: <i>s 22(1)</i>	Unlimited: <i>s 21(1)</i>	No change

<b>Nature of Action</b>	<b>Limitation Act (Cap. 163)</b>	<b>UK Limitation Act 1980 (c 58)</b>	<b>Our Recommendation</b>
Action claiming personal estate of a deceased person	12 years from accrual of cause of action ( <i>ie</i> accrual of right to share in the estate); for arrears of interest or damages in respect of such arrears: 6 years from date on which interest became due: <i>s 23</i>	12 years from accrual of cause of action ( <i>ie</i> accrual of right to share in the estate); for arrears of interest or damages in respect of such arrears: 6 years from date on which interest became due: <i>s 22</i>	No change
Case of disability	6 years for most claims from the date when the person either ceases to be under a disability, or dies, whichever is earlier: <i>s 24(1)(a)</i>  <u>Exceptions:</u> 3 years from death or end of disability, whichever is earlier, for physical injury: <i>s 24(1)(b)</i> ;  1 year for action for penalty or forfeiture or for any revenue matter from the same date: <i>s 24(1)(c)</i> ;	6 years for most claims from the date when the person either ceases to be under a disability, or dies, whichever is earlier: <i>s 28(1)</i>  <u>Exceptions:</u> 3 years from death or end of disability, whichever is earlier, for physical injury and death: <i>s 28(6)</i> ;  1 year from end of disability for libel/slander: <i>s 28(4A)</i> ;  2 years from end of disability for contribution proceedings: <i>s 28(5)</i> ;  3 years from end of disability but subject to 10-year long-stop for actions under the Consumer Protection Act 1987 (c 43): <i>s 28(7)</i> ;	No change  To amend Civil Law Act (Cap 43) to extend limitation period under s 20(5) of the Civil Law Act (Cap 43) in favour of a person under a disability.

Nature of Action	Limitation Act (Cap. 163)	UK Limitation Act 1980 (c 58)	Our Recommendation
	<p>overriding time limit for latent injuries and damage: <i>s 24B</i>;</p> <p>overriding long-stop of 30 years (from accrual of cause of action) for actions to recover land or money charged on land: <i>s 24(6)(c)</i></p>	<p>separate provision for latent damage: <i>s 28A</i>;</p> <p>overriding long-stop of 30 years (from accrual of cause of action) for actions to recover land or money charged on land: <i>s 28(4)</i></p>	
Fraud, concealment or mistake	Limitation period does not run until fraud or mistake discovered: <i>s 29</i>	Limitation period does not run until fraud or mistake discovered, or could have been discovered with reasonable diligence: <i>s 32</i>	New long-stop of 12 years in respect of actions in which relief is sought from the consequences of mistake, whether of law or fact
Sweeping-up or default limitation provision	None	None	New sweeping-up or default clause to apply to all civil claims where no provision is made for such claims in the Limitation Act or in any written law



**ANNEX C:**

**STATUTORY LIMITATION PERIODS**

**OUTSIDE THE LIMITATION ACT (CAP 163)**

<b>Statute</b>	<b>Nature of Action</b>	<b>Starting Point</b>	<b>Limitation Period</b>
Arbitration Act (Cap 10) s 11	Proceedings under the Arbitration Act.	Limitation Act to apply.	Limitation Act to apply. Judicial discretion to exclude period between commencement of arbitration and date of order in computing period for certain actions.
Carriage by Air Act (Cap 32A) s 8(1)	Action against a carrier's employee or agent which arises out of damage, to which the Warsaw Convention, the Warsaw (Hague) Convention or the Warsaw (Hague) (Montreal) Convention relates, if he was acting within the scope of his employment.	Date of arrival at the destination, or date on which the aircraft ought to have arrived, or date on which the carriage stopped.	2 years.
Carriage by Air Act (Cap 32A) s 8(3)	Action by a person, liable for any damage to which the Warsaw Convention, the Warsaw (Hague) Convention or the Warsaw (Hague) (Montreal) Convention relates, to recover contribution from any other person in respect of the damage.	Time when a court gives judgment or makes an award against the person seeking to recover the contribution.	2 years, subject to ss 4 and 29 of the Limitation Act (Cap 163).

<b>Statute</b>	<b>Nature of Action</b>	<b>Starting Point</b>	<b>Limitation Period</b>
Consumer Protection (Fair Trading) Act (Cap 52A) s 12(1)	Action by consumer against supplier in respect of consumer transaction involving unfair practice.	(a) Date of the occurrence of the last material event on which the action is based; or (b) earliest date on which the consumer had knowledge that the supplier had engaged in the unfair practice to which the action relates.	1 year.
Consumer Protection (Fair Trading) Act (Cap 52A) s 12(2)	Various actions for breach of undertakings given in voluntary compliance agreement entered into under s 8.	Date of the failure to comply with the undertaking sought to be enforced.	1 year.
Consumer Protection (Fair Trading) Act (Cap 52A) s 12(3)	Application for declaration or injunction.	Date of the occurrence of the last material event on which the action is based.	1 year.
Consumer Protection (Fair Trading) Act (Cap 52A) s 12(4)	Action under any regulations made under s 11 (providing for consumer's right to cancel certain contracts within cancellation period).	Date of the cancellation of the contract.	1 year.
Contracts (Rights of Third Parties) Act (Cap 53B) s 8(3)	Action by a person who is not a party to a contract to enforce a term of the contract in his own right.	Section 6 of the Limitation Act on actions founded on contract applies.	Section 6 of the Limitation Act on actions founded on contract applies.

<b>Statute</b>	<b>Nature of Action</b>	<b>Starting Point</b>	<b>Limitation Period</b>
Conveyancing and Law of Property Act (Cap 61)	Period of limitation for title to be deduced.		15 years or a period extending further back than a grant or lease by the Crown or the State, whichever period is the shorter.
Copyright Act (Cap 63) s 142	Action for infringement of copyright.	Time when the infringement took place.	6 years.
Estate Duty Act (Cap 96) s 34	Claim by Commissioner for estate duty.	No limitation period.	No limitation period. Minister has discretion to remit any estate duty remaining unpaid after 25 years of death.
Goods and Services Tax Act (Cap 117A) s 78(6)	Recovery of taxes and penalties under the GST Act.	No limitation period as s 33 of the Limitation Act applies.	No limitation period as s 33 of the Limitation Act applies.
Income Tax Act (Cap 134) s 100	Recovery of penalties under various sections of the ITA.	No limitation period as s 33(2) of the Limitation Act applies.	No limitation period as s 33(2) of the Limitation Act applies.
Inheritance (Family Provision) Act (Cap 138) s 4	Application for an order for payment out of net estate of deceased for benefit of surviving spouse or child.	Application must be made within 6 months from date on which representation in regard to the deceased's estate is first taken out.	6 months, subject to judicial discretion to extend period.

<b>Statute</b>	<b>Nature of Action</b>	<b>Starting Point</b>	<b>Limitation Period</b>
International Arbitration Act (Cap 143A) s 8A	Proceedings under the IAA.	Limitation Act to apply.	Limitation Act to apply. Judicial discretion to exclude period between commencement of the arbitration and the date of the order in computing period for certain actions.
Land Revenue Collection Act (Cap 155) s 21(1)	Application to annul sale where validity of sale disputed.	Date of sale.	3 months, except in the case of fraud to which the purchaser is proved to be a party.
Land Revenue Collection Act (Cap 155) s 21(2)	Suit for damages against the State or against any officer thereof in respect of any sale had under this Act.	Date of sale.	3 months, except in the case of actual fraud to which any officer of the State employed in or about the sale is proved to be a party or unless it is proved that the sum for the recovery of which the sale was had was not in fact an arrear at the date of the sale.
Land Title Act (Cap 157) s 158	Action for recovery of damages against assurance fund.	Date on which the deprivation occurred or the loss or damage was sustained.	12 years. Disability of infancy or mental incapacity: limitation period is 12 years from the date on which the disability ceases.

<b>Statute</b>	<b>Nature of Action</b>	<b>Starting Point</b>	<b>Limitation Period</b>
Maritime Conventions Act 1911 (2004 Rev Ed) s 8(1)	Claim or lien against a ship or her owners in respect of: (a) any damage or loss to another ship, her cargo or freight, or any property on board her, or damages for loss of life or personal injuries suffered by any person on board her, caused by the fault of the former ship, whether such ship be wholly or partly in fault; or (b) any salvage services.	Date when the damage, loss or injury was caused or the salvage services were rendered.	2 years, subject to judicial discretion to extend limitation period.
Maritime Conventions Act 1911 (2004 Rev Ed) s 8(2)	Action to enforce any contribution in respect of an overpaid proportion of any damages for loss of life or personal injuries.	Date of payment.	1 year, subject to judicial discretion to extend limitation period.
Road Traffic Act (Cap 276) s 31	Proceedings brought for enforcing any repayment of tax to which a person may be entitled in respect of any over-payment of tax made on a vehicle licence taken out by him.	End of the period in respect of which the licence was taken out.	12 months.
Stamp Duties Act (Cap 312)	Recovery of penalty to be paid under Stamp Duties Act.	No limitation period as s 33 of the Limitation Act applies.	No limitation period as s 33 of the Limitation Act applies.

<b>Statute</b>	<b>Nature of Action</b>	<b>Starting Point</b>	<b>Limitation Period</b>
State Lands Encroachments Act (Cap 315) s 11(3)	Claim from Consolidated Fund in respect of forfeiture of land where claim or interest thereto established to the satisfaction of the President.	Forfeiture of land.	6 years.



**ANNEX D:**

**EXTRACTS FROM**

**THE UK LAW COMMISSION'S**

**REPORT NO 270: LIMITATION OF ACTIONS**

- (a) Executive Summary
- (b) Draft Bill

Source: Law Commission of England and Wales.

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# **The Law Commission**

**(LAW COM No 270)**

## **LIMITATION OF ACTIONS**

### **Item 2 of the Seventh Programme of Law Reform: Limitation of Actions**

*Laid before Parliament by the Lord High Chancellor pursuant to section 3(2) of the  
Law Commissions Act 1965*

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*Ordered by The House of Commons to be printed  
9 July 2001*

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HC 23

The Law Commission was set up by the Law Commissions Act 1965 for the purpose of promoting the reform of the law.

The Law Commissioners are:

The Honourable Mr Justice Carnwath CVO, *Chairman*  
Professor Hugh Beale  
Mr Charles Harpum  
Professor Martin Partington  
Judge Alan Wilkie QC

The Secretary of the Law Commission is Mr Michael Sayers and its offices are at Conquest House, 37-38 John Street, Theobalds Road, London WC1N 2BQ.

The terms of this report were agreed on 3 April 2001.

**The text of this report is available on the Internet at:**

<http://www.lawcom.gov.uk>

## EXECUTIVE SUMMARY

The current law on limitation periods suffers from a number of problems. The Limitation Act 1980 makes different provision in respect of different causes of action. It is not always clear which category a cause of action falls into, and thus how it should be treated for limitation purposes. The date on which the limitation period starts to run does not always take account of the claimant's knowledge of the relevant facts, leading in some cases to unfairness. In some cases the Act provides no protection to the claimant under a disability; in others, the protection given is too extensive, giving the claimant unlimited protection at the expense of the defendant even when the claimant has a representative who is fully aware of the relevant facts. Cases such as *Brocklesbury v Armitage & Guest*<sup>1</sup> have shown that the provisions of the Act on deliberate concealment do not work well with the limitation regime applying to claims for latent damage other than personal injuries, and that they can penalise defendants who had no intention of concealing information from the claimant. In addition, the Act cannot readily be applied to new causes of action, such as claims for restitution.

In this Report we recommend that these problems should be resolved by the introduction of a single, core limitation regime, which will apply, as far as possible, to all claims for a remedy for a wrong, claims for the enforcement of a right and claims for restitution. This regime will consist of:

1. A primary limitation period of three years starting from the date on which the claimant knows, or ought reasonably to know (a) the facts which give rise to the cause of action; (b) the identity of the defendant; and (c) if the claimant has suffered injury, loss or damage or the defendant has received a benefit, that the injury, loss, damage or benefit was significant.
2. A long-stop limitation period of 10 years, starting from the date of the accrual of the cause of action or (for those claims in tort where loss is an essential element of the cause of action, or claims for breach of statutory duty) from the date of the act or omission which gives rise to the cause of action (but for personal injuries claims see below).

We recommend that the above core regime should apply without any qualification to the following actions: the majority of tort claims, contract claims, restitutionary claims, claims for breach of trust and related claims, claims on a judgment or arbitration award, and claims on a statute.

The core regime will be modified in its application to claims in respect of personal injuries. The court should have a discretion to disapply the primary limitation period, and no long-stop limitation period will apply. All personal injury claims will be subject to this modified regime, whether the claim concerned is made in negligence or trespass to the person.

We recommend that claims to recover land and related claims, though not subject to the core regime, should be subject to a limitation period of the same length as the long-stop limitation period, running from the date on which the cause of action accrues.

<sup>1</sup> [2001] 1 All ER 172.

We also recommend that the core regime should extend, but with some qualifications, to the following claims: claims under the Law Reform (Miscellaneous Provisions) Act 1934, the Fatal Accidents Act 1976 and the Consumer Protection Act 1987; claims for conversion; claims by a subsequent owner of damaged property; claims in relation to mortgages and charges; and claims under the Companies Act 1985 and in insolvency proceedings. Subject to a few exceptions, we do not propose to alter other specific limitation periods laid down in enactments other than the Limitation Act 1980.

We further recommend that where the core regime applies to common law remedies for a cause of action, it should also apply to equitable remedies for that cause of action; but that delay may still bar a remedy before the limitation period under the core regime has expired. We recommend that the core regime should apply to all claims unless excluded by another provision of the proposed Bill (or any other enactment).

During the claimant's minority the initial limitation period should not run. The long-stop limitation period should run during minority, but not so as to bar an action before the claimant reaches the age of 21. Adult disability (including supervening disability) should suspend the initial limitation period, but will not affect the long-stop limitation period.

However, the protection given to the adult claimant suffering from a disability will not be unlimited. Where the claimant under a disability has suffered personal injury (to which no long stop period will apply) and is in the care of a responsible adult ten years after the later of (a) the act or omission giving rise to the claim and (b) the onset of disability, the primary limitation period should run from the date the responsible adult knew or ought to have known the relevant facts unless the responsible adult is a defendant to the claim.

The long-stop limitation period should not run where the defendant has concealed relevant facts, but only if the concealment was dishonest. Acknowledgments and part payments should start time running again, but not once the initial or long-stop limitation period has expired.

The parties may agree that the limitation regime we recommend should not apply to disputes between them, or should only apply in modified form. They will not however be able to reduce the protection afforded by our provisions on concealment, minority or other disability nor to modify the application of the long-stop limitation period to claims under the Consumer Protection Act 1987.

# Limitation Bill

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## ARRANGEMENT OF CLAUSES

### PART I

#### THE STANDARD LIMITATION PROVISIONS

##### *The standard limitation defences*

Clause

1. The standard limitation defences.

##### *The date of knowledge*

2. The date of knowledge.

##### *The starting date*

3. The starting date.

##### *Constructive knowledge etc*

4. Constructive knowledge.
5. Corporate knowledge etc.

##### *Application of s. 1(1) to particular cases*

6. Joint claims.
7. Assignment.

### PART II

#### MODIFICATIONS OF THE STANDARD LIMITATION PROVISIONS FOR PARTICULAR CLAIMS ETC

##### *Consumer protection*

8. Claims under Part I of the Consumer Protection Act 1987.

##### *Personal injury claims, claims for the benefit of an estate and claims under the Fatal Accidents Act 1976*

9. Disapplication of section 1(2).
10. Application of section 1(1) to claims for the benefit of an estate.
11. Claims under the Fatal Accidents Act 1976: further provision.

##### *Court's discretionary power*

12. Court's discretionary power in certain cases.

*Limitation**Claims for a contribution*

Clause

13. Claims for a contribution.

*Conversion*

14. Conversion.

*Mortgages*

15. Mortgages.

*Land*

16. Recovery of land.  
 17. Recovery of land; supplementary.  
 18. Extinction of title to land  
 19. Recovery of proceeds of the sale of land.  
 20. Certain claims for compensation or indemnity.  
 21. Cure of defective disentailing assurance.

*Trusts and charities*

22. Trusts and charities.

*Insolvency and bankruptcy*

23. Insolvency and bankruptcy.

*Derivative claims*

24. Derivative claims.

*Certain new claims*

25. Certain new claims.

## PART III

## GENERAL MODIFICATIONS OF THE STANDARD LIMITATION PROVISIONS ETC

*Concealment*

26. Concealment.

*Acknowledgments and part payments*

27. Acknowledgments and part payments.

*Special parties*

28. Children.  
 29. Persons under a disability.

*Limitation*

*Restrictions on making claims*

Clause

30. Restrictions on making claims.

PART IV

MISCELLANEOUS AND SUPPLEMENTAL

*Miscellaneous*

31. Agreements.  
32. Claims in respect of certain loans.  
33. Family proceedings.  
34. Equitable jurisdiction and remedies.  
35. Crown application.  
36. Saving for other limitation enactments.  
37. Burden of proof.

*Supplemental*

38. Interpretation.  
39. Amendments and repeals.  
40. Commencement.  
41. Citation and extent.

SCHEDULES:

- Schedule 1—Accrual of rights of action to recover land.  
Schedule 2—Application of section 1(1) in case of insolvency  
and bankruptcy.  
Part I—Companies and insolvent partnerships.  
Part II—Individuals.  
Schedule 3—Minor and consequential amendments.  
Schedule 4—Repeals.

*Limitation*

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OF A

**B I L L**

TO

Make provision about time limits on the making of civil claims; and for connected purposes. A.D. 2001.

**B**E IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

5

## PART I

## THE STANDARD LIMITATION PROVISIONS

*The standard limitation defences*

1.—(1) It is a defence to a civil claim that the claim was not made before the end of the period of three years from the date of knowledge of the claimant. The standard limitation defences.

(2) It is also a defence to a civil claim that the claim was not made before the end of the period of ten years from the starting date in relation to the cause of action on which the claim is founded.

(3) Subsections (1) and (2) are subject to the following provisions of this Act.

(4) In this Act “civil claim” means a claim made in civil proceedings in which the claimant seeks—

- (a) a remedy for a wrong,
- (b) restitution, or
- (c) the enforcement of a right.

(5) The reference in subsection (4) to a claim made in civil proceedings includes a reference to—

- (a) a claim made in the course of such proceedings by way of set-off or counterclaim,
- (b) a claim so made involving the addition or substitution of a new cause of action, and

*Limitation*

- PART I (c) a claim so made involving the addition or substitution of a party.
- (6) Where a civil claim is founded on more than one cause of action, this Act shall apply as if a separate civil claim were made in respect of each cause of action.
- (7) In this Act— 5
- “civil proceedings” includes any proceedings in a court of law, including an ecclesiastical court,
- “claimant” includes a person who makes a claim by way of set-off or counterclaim,
- “defendant” includes a person against whom a claim by way of set-off 10 or counterclaim is made.

*The date of knowledge*

- The date of knowledge. 2.—(1) Subject to the following provisions of this section and this Act, any reference in this Act to a person’s date of knowledge is a reference to the date on which he first had knowledge of— 15
- (a) the facts which give rise to the cause of action,
- (b) the identity of the defendant, and
- (c) where injury, loss or damage has occurred or a benefit has been obtained, the fact that the injury, loss, damage or benefit is significant. 20
- (2) Subject to subsections (3) and (4), in determining the date on which a person first had knowledge of the facts which give rise to a cause of action, there shall be disregarded the extent (if any) of his knowledge on any date of whether those facts would or would not, as a matter of law, give rise to a cause of action. 25
- (3) In the case of a cause of action in respect of a breach of duty (whether in tort, in contract or otherwise) which involves a failure to give correct advice as to the law, subsection (1) shall have effect as if it also required knowledge to be had of the fact that correct advice had not been, or may not have been, given. 30
- (4) In the case of a cause of action in respect of restitution based on a mistake of law, subsection (1) shall have effect as if it also required knowledge to be had of the fact that a mistake of law had been, or may have been, made.
- (5) For the purposes of this section, a person (“A”) shall be regarded as 35 having knowledge of the fact that any injury, loss, damage or benefit is significant—
- (a) if he has knowledge of the full extent of the injury, loss, damage or benefit, or
- (b) if a reasonable person with A’s knowledge of the extent of the 40 injury, loss, damage or benefit would think, on the assumption that the defendant did not dispute liability and was able to satisfy a judgment, that a civil claim was worth making in respect of the injury, loss, damage or benefit.

*Limitation**The starting date*

## PART I

The starting date.

**3.—**(1) Subject to the following provisions of this section and this Act, any reference in this Act to the starting date is a reference to the date on which the cause of action accrued.

5 (2) Subject to the following provisions of this section and this Act, any reference in this Act to the starting date—

(a) in the case of a cause of action in tort which does not accrue unless injury, loss or damage occurs, or

10 (b) in the case of a cause of action in respect of breach of statutory duty,

is a reference to the date of occurrence of the act or omission which gives rise to the cause of action (whether the cause of action accrues on that date or on a later date).

15 (3) Where two or more acts or omissions give rise to a single cause of action falling within subsection (2)(a) or (b), the starting date shall be determined by reference to the last of those acts or omissions.

(4) Subsections (2) and (3) do not apply to a cause of action in respect of a breach of the duty imposed by section 1 of the Defective Premises Act 1972.

1972 c. 35.

20 *Constructive knowledge etc*

**4.—**(1) For the purposes of this Act, a person's knowledge includes knowledge which he might reasonably have been expected to acquire—

Constructive knowledge.

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

25 (b) where he has acted unreasonably in not seeking appropriate expert advice, from facts ascertainable by him with the help of such advice.

(2) In determining for the purposes of this section—

(a) the knowledge which a person might reasonably have been expected to acquire, or

30 (b) whether a person has acted unreasonably in not seeking appropriate expert advice,

his circumstances and abilities (so far as relevant) shall be taken into account.

35 (3) For the purposes of this Act, a person shall be treated as having knowledge of a fact if an agent of his—

(a) who is under a duty to communicate that fact to him, or

(b) who has authority to take decisions about the cause of action concerned,

40 has actual knowledge of that fact; but except as so provided a person shall not be treated as having knowledge of a fact merely because an agent of his has knowledge of the fact.

(4) For the purposes of this section, a person has authority to take decisions about a cause of action if he has authority—

45 (a) to seek legal advice in connection with the making of a civil claim in respect of the cause of action, or

*Limitation*

- PART I (b) to take decisions about whether to make such a claim.
- Corporate knowledge etc. **5.**—(1) For the purposes of this Act, a relevant body shall be treated as having knowledge of a fact—
- (a) if a qualifying individual has knowledge of that fact, or
  - (b) if the relevant body is treated as having knowledge of that fact by virtue of section 4(3). 5
- (2) In this section “relevant body” means—
- (a) a body corporate,
  - (b) a corporation sole,
  - (c) a partnership, or 10
  - (d) a body of persons which does not fall within paragraph (a) or (c) but which is capable of suing and being sued in its own name.
- (3) In this section “qualifying individual”, in relation to a relevant body, means an individual—
- (a) who is an officer of the body or has authority on behalf of the body to take decisions about the cause of action concerned (or is one of a number of individuals who together have such authority), or 15
  - (b) who is an employee of the body and is under a duty to communicate any fact relevant to the cause of action concerned to any other employee of the body or to an individual falling within paragraph (a), 20
- but does not include an individual falling within subsection (4).
- (4) An individual falls within this subsection if he is an individual—
- (a) against whom the cause of action concerned subsists, or 25
  - (b) who has dishonestly concealed any fact relevant to the cause of action concerned from any other individual falling within subsection (3)(a) or (b).
- (5) Sections 4(4) and 26(6) shall apply for the purposes of this section as they apply for the purposes of those sections. 30
- (6) In this section “officer” includes a partner.

*Application of s. 1(1) to particular cases*

- Joint claims. **6.**—(1) Subject to the following provisions of this section, where a cause of action is vested in two or more persons jointly or jointly and severally, section 1(1) shall apply separately in relation to each of them. 35
- (2) Where, by virtue of subsection (1), the defence under section 1(1) is available against one or more, but not all, of the persons mentioned in that subsection, it may not be raised against the other or others.
- (3) Subsection (1) does not apply to—
- (a) a cause of action vested in a partnership, or 40
  - (b) a cause of action vested in trustees or personal representatives.
- (4) Where a cause of action is vested in trustees or personal representatives, the date of knowledge of the trustees or personal

*Limitation*

representatives shall be treated as falling on the same date as the earliest date of knowledge of any person who was a trustee or personal representative on that date.

## PART I

7.—(1) This section applies where a civil claim in respect of a cause of action is made by a person to whom the cause of action has been assigned (“the assignee”).

Assignment.

(2) It is a defence to a civil claim in respect of the cause of action made by the assignee that the assignment was made after the end of the limitation period under section 1(1) which would have applied to a civil claim in respect of the cause of action made by any person in whom the cause of action was vested before him.

(3) If the assignment was made after the limitation period mentioned in subsection (2) has begun to run but before it has ended, that limitation period shall apply to a civil claim in respect of the cause of action made by the assignee.

(4) If the assignment was made before the limitation period mentioned in subsection (2) has begun to run, the limitation period under section 1(1) which is to apply to a civil claim in respect of the cause of action made by the assignee shall be treated as running from the later of—

- (a) the date of the assignment, and
- (b) the date of knowledge of the assignee.

(5) For the purposes of this section, a cause of action is assigned by a person if he enters into any transaction the effect of which is to assign his right to make a civil claim in respect of the cause of action.

(6) In determining for the purposes of subsection (2) whether the limitation period under section 1(1) would have applied to a civil claim made by a person, his date of knowledge shall be disregarded if it falls after the cause of action ceased to be vested in him.

## PART II

30 MODIFICATIONS OF THE STANDARD LIMITATION PROVISIONS FOR PARTICULAR CLAIMS ETC

*Consumer protection*

8.—(1) Section 1(2) does not apply to a civil claim under any provision of Part I of the Consumer Protection Act 1987 (“the 1987 Act”).

Claims under Part I of the Consumer Protection Act 1987.

(2) A civil claim under any provision of Part I of the 1987 Act may not be made after the end of the period of ten years from the relevant time, within the meaning of section 4 of that Act.

1976 c. 30.

(3) Subsection (2) operates to extinguish any right to make the civil claim and does so—

- (a) whether or not that right has accrued, and
- (b) whether or not time under any other limitation period under this Act applicable to the claim has begun to run at the end of that ten year period.

*Limitation*

PART II	(4) Nothing in the following provisions of this Act—	
	(a) shall operate to override or extend the limitation period under subsection (2), or	
	(b) shall affect the operation of subsection (3).	
	<i>Personal injury claims, claims for the benefit of an estate and claims under the Fatal Accidents Act 1976</i>	5
Disapplication of section 1(2).	<b>9.</b> Section 1(2) does not apply to—	
1934 c.41.	(a) a civil claim if and to the extent that the remedy sought by the claimant is damages in respect of personal injury to him,	
1976 c. 30.	(b) a civil claim made by virtue of section 1 of the Law Reform (Miscellaneous Provisions) Act 1934 if and to the extent that the remedy sought by the claimant is damages in respect of personal injury to the deceased, or	10
	(c) a civil claim under the Fatal Accidents Act 1976.	
Application of section 1(1) to claims for the benefit of an estate.	<b>10.</b> —(1) This section applies where a civil claim in respect of a cause of action is made by virtue of section 1 of the Law Reform (Miscellaneous Provisions) Act 1934 (“the 1934 Act claim”).	15
	(2) It is a defence to the 1934 Act claim that the deceased died after the end of the limitation period under section 1(1) which would have applied to a civil claim in respect of the cause of action made by him.	20
	(3) If the deceased died before the end of the limitation period mentioned in subsection (2), the limitation period under section 1(1) which is to apply to the 1934 Act claim shall be treated as running from the later of—	
	(a) the date of the deceased’s death, and	25
	(b) the date of knowledge of the deceased’s personal representatives.	
Claims under the Fatal Accidents Act 1976: further provision.	<b>11.</b> —(1) It is a defence to a civil claim under the Fatal Accidents Act 1976 (“the 1976 Act”) that the person injured died when he could no longer maintain a civil claim for damages in respect of the injury.	
	(2) In relation to a civil claim under the 1976 Act—	30
	(a) the limitation period under section 1(1) shall be treated as running from the date of knowledge of the person for whose benefit the claim is made, and	
	(b) where there are two or more persons for whose benefit the claim is made, section 1(1) shall apply separately in relation to each of them.	35
	(3) Where, by virtue of subsection (2)(b), the defence under section 1(1) is available against one or more, but not all, of the persons mentioned in subsection (2)(b), it may not be raised against the other or others.	40
	(4) For the purposes of this section, the person injured shall be treated as having died when he could no longer maintain a civil claim for damages in respect of the injury if at the time of his death—	
	(a) a defence under this Act, or under any other enactment limiting the time within which proceedings may be taken, could have been raised in respect of such a claim, or	45

*Limitation*

(b) he could no longer maintain such a claim for any other reason.

PART II

(5) In determining for the purposes of this section whether the person injured died when he could no longer maintain a civil claim for damages in respect of the injury, no account shall be taken of the possibility of any  
5 defence under this Act which could have been raised in respect of such a claim being disapplied under section 12.

*Court's discretionary power*

**12.**—(1) This section applies where a defence under this Act is raised in respect of—

Court's  
discretionary  
power in certain  
cases.  
1976 c. 30.

- 10 (a) a personal injury claim, or  
(b) a civil claim under the Fatal Accidents Act 1976 (“the 1976 Act”).

(2) The court may direct that the defence shall not apply in relation to the claim if it is satisfied, having regard to—

- 15 (a) any hardship which would be caused to the defendant (or any person whom he represents) if such a direction were given, and  
(b) any hardship which would be caused to the claimant (or any person whom he represents) if such a direction were not given,  
that it would unjust not to give such a direction.

20 (3) In acting under this section the court must take into account—

- (a) the length of, and reasons for, the delay on the part of the claimant,  
(b) the effect of the passage of time on the ability of the defendant to defend the claim,  
25 (c) the effect of the passage of time on the cogency of any evidence adduced or likely to be adduced by the claimant or defendant,  
(d) 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 claimant for information or inspection  
30 for the purpose of discovering facts which were or might be relevant to the claim,  
(e) the extent to which the claimant acted promptly and reasonably once he knew that he might be entitled to make the claim,  
(f) the steps, if any, taken by the claimant to obtain medical, legal or  
35 other expert advice and the nature of any expert advice he may have received,  
(g) any alternative remedy or compensation available to the claimant,  
(h) the strength of the claimant's case, and  
(i) any other relevant circumstances.

40 (4) In relation to a personal injury claim falling within subsection (8)(b), any reference in subsection (3)(a) or (d) to (f) to the claimant includes a reference to the deceased.

45 (5) In relation to a civil claim under the 1976 Act, any reference in subsection (3)(a) or (d) to (f) to the claimant includes a reference to the deceased; and subsection (3) shall have effect with such modifications as may be appropriate in consequence of this subsection.

*Limitation*

## PART II

(6) Where a civil claim under the 1976 Act is made by personal representatives, any reference in subsection (3) to the claimant includes a reference to the person for whose benefit the claim is made.

(7) Where the court gives a direction under this section disapplying the defence under 11(1), the person injured shall be treated for the purposes of section 1(1) of the 1976 Act as if he had died when he could have maintained an action for damages in respect of the injury. 5

(8) In this section “personal injury claim” means—

- 1934 c.41.
- (a) a civil claim if and to the extent that the remedy sought by the claimant is damages in respect of personal injury to him, 10
  - (b) a civil claim made by virtue of section 1 of the Law Reform (Miscellaneous Provisions) Act 1934 if and to the extent that the remedy sought by the claimant is damages in respect of personal injury to the deceased.

*Claims for a contribution*

15

Claims for a contribution.  
1978 c. 47.

**13.**—(1) The starting date in relation to a cause of action under section 1 of the Civil Liability (Contribution) Act 1978 to recover contribution in respect of any damage from any person shall be determined in accordance with this section.

(2) If the person concerned is held liable in respect of the damage— 20

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

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

(3) For the purposes of subsection (2) 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 concerned. 25

(4) If, in a case not falling within subsection (2), the person concerned makes or agrees to make any payment to a person in compensation for that damage (whether he admits any liability in respect of the damage or not), the starting date shall be the earliest date on which the amount paid or to be paid by him is agreed between him (or his representative) and that person. 30

*Conversion*

Conversion.

**14.**—(1) Where— 35

- (a) a cause of action has accrued to a person in respect of a conversion of goods which was not a theft from that person, and
- (b) before that person recovers possession of the goods, a further conversion takes place,

the starting date in relation to the further conversion shall be treated as falling on the date on which the original conversion took place. 40

(2) Where a cause of action has accrued to a person in respect of a conversion of goods which was a theft from that person—

- (a) section 2(1) shall have effect in relation to the theft, and any conversion related to the theft, as if it also required knowledge to be had of the location of the goods, and 45

*Limitation*

PART II

(b) subject to subsection (3), section 1(2) shall not apply to the theft or any conversion related to the theft.

(3) Section 1(2) shall apply to—

5 (a) the first conversion related to the theft which involves a person purchasing the goods in good faith, and

(b) any subsequent conversion related to the theft;

and the starting date in relation to any conversion falling within paragraph (a) or (b) shall be treated as falling on the date on which the goods are purchased by the person mentioned in paragraph (a).

10 (4) Where—

(a) a cause of action in respect of the conversion of goods has accrued to a person,

15 (b) the limitation period under section 1(2) (if any) which applies to that or any further conversion has ended before a civil claim is made in respect of that or any further conversion, and

(c) that person has not recovered possession of the goods before the end of that period,

the title of that person to the goods shall be extinguished.

20 (5) A conversion of goods shall be treated for the purposes of this section as related to a theft of those goods if it occurs after the theft but before the person from whom they were stolen recovers possession of the goods.

(6) In this section—

25 “goods” includes all chattels personal other than things in action and money,

“theft” includes—

(a) any conduct outside England and Wales which would be theft if committed in England and Wales, and

30 (b) obtaining any goods (in England and Wales or elsewhere) in the circumstances described in section 15(1) of the Theft Act 1968 (obtaining by deception) or by blackmail within the meaning of section 21 of that Act.

1968 c. 60.

*Mortgages*

35 **15.**—(1) This Act does not apply to a civil claim to redeem a mortgage. Mortgages.

(2) Section 1(1) does not apply to—

(a) a civil claim for a remedy under a mortgage of land, or

(b) a civil claim which does not fall within paragraph (a) but which is a claim to enforce an obligation secured by a mortgage of land.

40 (3) Where any limitation period under this Act which applies to a civil claim by a mortgagee in respect of a mortgage would, apart from this subsection, end—

(a) during any period in which a prior mortgagee is in possession of the property subject to the mortgage, or

*Limitation*

## PART II

(b) during the period of one year beginning with the date on which the prior mortgagee ceases to be in possession of the property, it shall instead be treated as ending at the end of the period mentioned in paragraph (b).

(4) No limitation period under this Act which applies to a civil claim by a mortgagee in respect of a mortgage shall run during any period in which the property subject to the mortgage consists of or includes any future interest or any life policy which has not matured or been determined. 5

(5) No limitation period under this Act which applies to a civil claim to foreclose a mortgage shall run during any period in which the mortgagee is in possession of the property subject to the mortgage. 10

(6) Where the limitation period under section 1(2) which would apply to a civil claim by a mortgagee in respect of a mortgage has ended before any such claim is made, the interest of the mortgagee in the property which is subject to the mortgage shall be extinguished. 15

(7) Any reference in this section to a civil claim by a mortgagee in respect of a mortgage is a reference to—

- (a) a civil claim by a mortgagee for a remedy under the mortgage, or
- (b) a civil claim by a mortgagee which does not fall within paragraph (a) but which is a claim to enforce an obligation secured by the mortgage. 20

(8) Any reference in this section to a mortgage includes a reference to a charge, and any reference to a mortgagee shall be construed accordingly.

(9) Any reference in this section to a mortgage of land includes a reference to a mortgage of land and other property. 25

*Land*

## Recovery of land.

**16.**—(1) Subsections (1) and (2) of section 1 do not apply to a civil claim to recover land.

(2) Subject to the following provisions of this section, a civil claim to recover land may not be made by a person after the end of the period of ten years from the earlier of— 30

- (a) the date on which the right of action to recover the land first accrued to him, and
- (b) if it first accrued to some person through whom he claims, the date on which it first accrued to that person. 35

(3) In its application to a civil claim by the Crown to recover foreshore, subsection (2) shall have effect as if the period referred to in it were sixty years not ten years.

(4) Where any right of action to recover land which has ceased to be foreshore accrued to the Crown when the land was foreshore, a civil claim by the Crown to recover the land may not be made after the end of the period of— 40

- (a) sixty years from the date of accrual of the right of action, or

*Limitation*

## PART II

(b) ten years from the date on which the land ceased to be foreshore, whichever period ends first.

(5) No civil claim may be made 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—

- (a) the person by whom the assurance was made,
- (b) some person through whom he claimed, or
- (c) some person entitled to a preceding estate or interest,

unless the claim is made within the period in which the person by whom the assurance was made could have made such a claim.

(6) Where—

(a) 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

(b) his right of action to recover the estate or interest in possession is barred by this Act,

no civil claim may be made 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 in the land.

(7) In this section “foreshore” means the shore and bed of the sea and of any tidal water, below the line of the medium high tide between the spring tides and the neap tides.

**17.**—(1) Schedule 1 (which contains provisions for determining the date of accrual of rights of action to recover land) has effect.

Recovery of land; supplementary.

(2) The provisions of this Act relating to civil claims to recover land shall apply to equitable interests in land as they apply to legal estates in land.

(3) Accordingly a right of action to recover land shall be treated for the purposes of this Act as accruing to a person entitled in possession to an equitable interest in the land in the like manner and circumstances, and on the same date, as it would accrue if his interest were a legal estate in the land (and any relevant provision of Schedule 1 shall apply in any such case accordingly).

(4) For the purposes of the provisions of this Act relating to civil claims to recover 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.

(5) Where land is vested in the incumbent from time to time of a benefice as a spiritual corporation sole but the benefice is vacant, a civil claim to recover the land (or any part of it) may be made in the name of and on behalf of the corporation sole by the priest in charge of the benefice or the sequestrators of the benefice.

**18.**—(1) Subject to section 75 of the Land Registration Act 1925 and the following provisions of this section, where a civil claim to recover land is not made by a person before the end of the limitation period under

Extinction of title to land  
1925 c. 21.

*Limitation*

- PART II section 16 which would apply to the claim, the title of that person to the land shall be extinguished.
- (2) Where the limitation period under section 16 has expired for the making of a civil claim to recover land by a tenant for life or a statutory owner of settled land— 5
- (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 Land Act 1925; 10
- 1925 c. 18. 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 and the limitation period under section 16 has expired for the making of a civil claim 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 either has not accrued or has not been barred by this Act; but if and when every such right has been so barred 20 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,
- a civil claim to recover the land may be made by the statutory owner or trustees on behalf of any person entitled to a beneficial interest in possession in the land whose right of action to recover the land has not been barred by this Act, notwithstanding that the right of action to recover the land of the statutory owner or trustees would apart from this subsection have been barred by this Act. 30
- Recovery of proceeds of the sale of land. **19.** Section 1(1) does not apply to a civil claim to recover proceeds of the sale of land.
- Certain claims for compensation or indemnity. 1925 c. 21. 1969 c. 59. **20.**—(1) Section 1(2) does not apply to—
- (a) a civil claim for indemnity under the Land Registration Act 1925,
- (b) a civil claim to recover compensation under section 25 of the Law of Property Act 1969, or 35
- (c) a civil claim to recover compensation under section 10 of the Local Land Charges Act 1975.
- 1975 c. 76. (2) For the purposes of this Act, a person's date of knowledge in the case of a cause of action to recover compensation under section 10 of the Local Land Charges Act 1975 shall be determined without regard to the provisions of section 198 of the Law of Property Act 1925 (under which registration under certain enactments is deemed to constitute actual notice). 40
- 1925 c. 20.

*Limitation*

21.—(1) Subsection (2) applies where—

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

10 (2) If the person taking possession of the land by virtue of the assurance, or any other person whatsoever (other than a person entitled to possession by virtue of the settlement), is in possession of the land for a period of ten years from the commencement of the time when the assurance could have operated as an effective bar, the assurance shall thereupon operate, and be treated as having always operated, to bar the

15 issue in tail and the estates and interests taking effect on the determination of the entailed interest.

(3) The reference in subsection (2) to the time when the assurance could have operated as an effective bar is a reference to the time at which the assurance, if it had then been executed by the person entitled to the

20 entailed interest, would have operated, without the consent of any other person, to bar the issue in tail and the estates and interests taking effect on the determination of the entailed interest.

(4) Where—

- 25 (a) a right of action to recover land has accrued to a person entitled to an estate or interest taking effect on the determination of an entailed interest,
- (b) time is running against that person under subsection (2), and
- (c) the person in possession of the land acknowledges the title of that person,
- 30 subsection (2) shall cease to apply to the land on the date of the acknowledgment.

*Trusts and charities*

22.—(1) No limitation period under this Act which applies to a civil claim by a beneficiary to recover trust property or the proceeds of trust

35 property shall run against him during any period in which he is entitled to a future interest in the trust property.

(2) A cause of action to recover property held on a bare trust shall not accrue unless and until the trustee acts in breach of trust.

40 (3) This Act does not apply to a civil claim made by the Attorney General or the Charity Commissioners for England and Wales with respect to a charity or the property or affairs of a charity.

45 (4) A beneficiary under a trust as against whom a defence under this Act could have been raised may not derive any greater or other benefit from a judgment or order obtained by any other beneficiary under the trust than he could have obtained if he had made the civil claim and a defence under this Act had been raised.

PART II  
Cure of defective  
disentailing  
assurance.

Trusts and  
charities.

*Limitation*

PART II  
1993 c. 10. (5) In this section “charity” has the same meaning as in the Charities Act 1993.

*Insolvency and bankruptcy*

Insolvency and  
bankruptcy. **23.** Schedule 2 (which makes provision as to the application of section 1(1) in the case of insolvency and bankruptcy) has effect. 5

*Derivative claims*

Derivative  
claims. **24.**—(1) Where—  
(a) a cause of action is vested in a body corporate or trade union, and  
(b) a civil claim in respect of the cause of action is made on behalf of the body corporate or trade union by a member of it, 10  
the limitation period under section 1(1) which is to apply to the claim shall be treated as running from the date of knowledge of the member.  
(2) Where a civil claim falling within subsection (1) is made by two or more members, section 1(1) shall apply separately in relation to each of them. 15  
(3) Where, by virtue of subsection (2), the defence under section 1(1) is available against one or more, but not all, of the persons mentioned in that subsection, it may not be raised against the other or others.

*Certain new claims*

Certain new  
claims. **25.**—(1) Where— 20  
(a) a civil claim is made in the course of any civil proceedings,  
(b) the claim is by way of set-off or counterclaim by a party who has not previously made any claim in the proceedings, and  
(c) if the claim had been made when the proceedings were commenced, it would not have been made after the end of any 25  
applicable limitation period under this Act,  
no defence under this Act may be raised in respect of the claim.  
(2) Where—  
(a) a civil claim (“the new claim”) is made in the course of any civil proceedings, 30  
(b) the new claim involves the addition or substitution of a new cause of action,  
(c) the new claim arises out of the same conduct, transaction or events as are already in issue in a civil claim previously made in the proceedings (“the existing claim”), and 35  
(d) the existing claim was not made after the end of any applicable limitation period under this Act or any other enactment,  
no defence under this Act may be raised in respect of the new claim.  
(3) Where—  
(a) a civil claim (“the new claim”) is made in the course of any civil 40  
proceedings,  
(b) the new claim involves the addition or substitution of a new party,

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(c) the addition or substitution is necessary for the determination of a civil claim previously made in the proceedings (“the existing claim”), and

5 (d) the existing claim was not made after the end of any applicable limitation period under this Act or any other enactment, no defence under this Act may be raised in respect of the new claim.

(4) The addition or substitution of a new party is not necessary for the determination of a civil claim previously made in civil proceedings unless—

10 (a) the new party is substituted for a party whose name was given in that claim in mistake for the new party’s name, or

(b) that claim cannot be maintained by or against an existing party unless the new party is joined or substituted as a party to that claim.

15 (5) Rules of court may make provision which allows a party to a civil claim to claim relief in a new capacity in respect of a new cause of action notwithstanding that he had no title to make that claim at the time when the claim was made.

20 (6) Subsection (5) shall not affect the power of rules of court to make provision which allows a party to a civil claim to claim relief in a new capacity without adding or substituting a new cause of action.

PART II

## PART III

## GENERAL MODIFICATIONS OF THE STANDARD LIMITATION PROVISIONS ETC

*Concealment*

25 **26.**—(1) This section applies where a person (“A”) against whom a cause of action subsists (or an agent of his) has dishonestly concealed from a person (“B”) in whom the cause of action is vested (or an agent of his) any fact relevant to the cause of action.

Concealment.

30 (2) In its application to a civil claim in respect of the cause of action made by B, or any person claiming through him, against A, or any person claiming through him, the limitation period under section 1(2) or 16 shall not run during the period beginning with the date on which the fact was first dishonestly concealed and ending with the earliest date on which B, or any person claiming through him, first had knowledge of the fact.

35 (3) In the case of the fresh cause of action which accrues by virtue of section 3(1) of the Latent Damage Act 1986 (accrual of cause of action to successive owners in respect of latent damage to property), a fact dishonestly concealed from the person in whom the original cause of action mentioned in that section was vested (or an agent of his) shall be  
40 treated for the purposes of subsection (1) as dishonestly concealed from the person in whom the fresh cause of action is vested.

1986 c. 37.

(4) Where the starting date in relation to a cause of action falling within section 3(2)(a) or (b) falls before the date of accrual of the cause of action, the cause of action shall be treated for the purposes of subsection  
45 (1) as subsisting against A, and vested in B, from the starting date.

*Limitation*

## PART III

(5) Nothing in this section enables a civil claim—

(a) to recover, or recover the value of, any property, or

(b) to enforce any charge against, or set aside any transaction affecting, property,

to be made against the purchaser (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 concealment took place. 5

(6) A person shall not be treated for the purposes of this section as concealing a fact from another person unless— 10

(a) he is a party to, or is privy to, any action the effect of which is to prevent that other person from discovering the fact for some time, or

(b) he fails to disclose the fact to that other person in breach of a duty to do so. 15

(7) The provisions of Part I of this Act which apply for determining the date on which a person first had knowledge of a fact shall also apply for the purposes of subsection (2).

(8) For the purposes of subsection (2), knowledge acquired by a person after a cause of action ceased to be vested in him shall be disregarded. 20

(9) A purchaser is an innocent third party for the purposes of this section if he was not a party to the concealment and did not at the time of the purchase have reason to believe that the concealment had taken place.

*Acknowledgments and part payments*

Acknowledgments and part payments.

**27.**—(1) Subject to the following provisions of this section, where— 25

(a) a person (“A”) against whom a cause of action subsists has acknowledged the cause of action or made a payment in respect of it,

(b) the acknowledgment or payment was made to a person (“B”) in whom the cause of action is vested, and 30

(c) the acknowledgment or payment was made before any limitation period under this Act which would apply to a civil claim in respect of the cause of action made by B (or any successor of his) against A (or any successor of his) has ended,

any such limitation period which has begun to run before the date on which the acknowledgment or payment was made shall instead be treated as running from that date. 35

(2) Subject to subsections (4) and (5), where—

(a) a cause of action subsists against two or more persons jointly or jointly and severally, and 40

(b) an acknowledgment or payment under this section is made by one or more, but not all, of those persons,

this section shall not operate to extend any limitation period under this Act which applies to any such person who does not make the acknowledgment or payment (or any successor of his). 45

*Limitation*

## PART III

(3) Subject to subsection (4), where—

(a) a cause of action is vested in two or more persons jointly or jointly and severally, and

5 (b) an acknowledgment or payment under this section is made to one or more, but not all, of those persons,

this section shall not operate to extend any limitation period under this Act which applies to any such person to whom the acknowledgment or payment is not made (or any successor of his).

(4) Where—

10 (a) a cause of action subsists against or is vested in, trustees or personal representatives, and

(b) an acknowledgment or payment under this section is made by or (as the case may be) to one or more, but not all, of the trustees or personal representatives,

15 the acknowledgment or payment shall bind or (as the case may be) be treated as made to all of the trustees or personal representatives.

(5) An acknowledgment or payment under this section in respect of the title to any land, benefice or mortgaged personal property by any person in possession of it shall bind all of the persons in possession of it during  
20 the ensuing limitation period.

(6) Where this section extends the limitation period under section 1(2) which applies to a civil claim in respect of the original cause of action mentioned in section 3 of the Latent Damage Act 1986 (accrual of cause of action to successive owners in respect of latent damage to property), it  
25 shall also extend the limitation period under section 1(2) which applies to a civil claim in respect of the fresh cause of action which accrues by virtue of that section.

1986 c. 37.

(7) Where the starting date in relation to a cause of action falling within section 3(2)(a) or (b) falls before the date of accrual of the cause of  
30 action, the cause of action shall be treated for the purposes of subsection (1) as subsisting against A, and vested in B, from the starting date; and subsection (2) to (4) and (11) and (12) shall be construed accordingly.

(8) To be effective for the purposes of this section an acknowledgment must be in writing.

35 (9) For the purposes of this section an acknowledgment or payment made by or to an agent of a person shall be treated as made by or to that person.

(10) A limitation period which has been extended under this section may be further extended under this section by further acknowledgments  
40 or payments.

(11) For the purposes of this section, a person acknowledges a cause of action if—

(a) he acknowledges liability in respect of the cause of action, or

45 (b) he acknowledges any right or title upon which the cause of action is based.

(12) For the purposes of this section, a person makes a payment in

*Limitation*

PART III respect of a cause of action if he makes a payment the effect of which is to—

- (a) acknowledge liability in respect of the cause of action, or
- (b) acknowledge any right or title upon which the cause of action is based.

5

(13) Where there is a payment of a part of the rent or interest due at any time, this section shall not operate to extend any limitation period under this Act which applies to a civil claim to recover the remainder then due.

(14) Any payment of interest shall be treated for the purposes of this section as a payment in respect of a cause of action to recover the principal debt.

*Special parties*

Children.

**28.** Where a cause of action is vested in a person who was under the age of 18 on the starting date in relation to the cause of action, any limitation period under this Act which would apply to a civil claim in respect of the cause of action made by him shall be treated as ending—

- (a) at the end of the period of three years from the date on which he attains the age of 18, or
- (b) at the end of the period when the limitation period would otherwise end,

whichever is the later.

Persons under a disability.

**29.—(1)** This section applies where a cause of action has accrued to a person (“the relevant person”) who is under a disability at any time after the date of accrual of the cause of action.

25

(2) Subject to the following provisions of this section, the limitation period under section 1(1), so far as applicable to a civil claim in respect of the cause of action made by the relevant person, shall not run during any period in which he is under a disability.

(3) Subsections (4) and (5) apply where—

30

(a) the remedy sought by the relevant person in the civil claim mentioned in subsection (2) is damages in respect of personal injury to him,

(b) the relevant person is under a disability at the end of the period of ten years from the later of the date of accrual of the cause of action and the date of the onset of disability (“the ten year period”),

(c) there is a person (“the responsible person”) who has responsibility for the relevant person at the end of the ten year period,

40

(d) the responsible person is not the defendant to the claim, and

(e) whether by virtue of subsection (2) or otherwise, the limitation period under section 1(1) has not ended by the end of the ten year period.

*Limitation*

(4) Subsection (2) shall not apply after the end of the ten year period.

PART III

(5) The limitation period under section 1(1) shall instead be treated as running from the earlier of the following dates—

- (a) the date of knowledge of the responsible person,
- 5 (b) the date of knowledge of any person who subsequently has responsibility for the relevant person, and
- (c) if the relevant person ceases to be under a disability after the end of the ten year period, the date of knowledge of the relevant person;

10 but if any such date of knowledge falls before the end of the ten year period, it shall be treated for the purposes of this subsection as falling on the date immediately following the end of the ten year period.

(6) A person is under a disability for the purposes of this section if—

- 15 (a) he is unable by reason of mental disability to make decisions on matters relating to the cause of action concerned, or
- (b) he is unable to communicate such decisions because of mental disability or physical impairment.

(7) In subsection (6) “mental disability” means a disability or disorder of the mind or brain, whether permanent or temporary, which results in an impairment or disturbance of mental functioning.

(8) For the purposes of this section a person has responsibility for the relevant person if—

- 25 (a) he is a member of the relevant person’s family who has attained the age of 18 and is responsible for the day to day care of the relevant person, or
- (b) he is a person who is authorised under Part VII of the Mental Health Act 1983 to conduct proceedings in the name of the relevant person.

1981 c. 20.

*Restrictions on making claims*

30 **30.**—(1) No limitation period under this Act which applies to a civil claim made by a person shall run against that person during any period after the accrual of the cause of action in which he is prevented by any enactment (other than this Act) or any rule of law from making the claim.

Restrictions on making claims.

35 (2) A person shall not be regarded for the purposes of this section as prevented from making a claim—

- (a) where the claim could have been made on his behalf by a litigation friend,
- (b) where he is prevented from making the claim by reason only of a contractual term, or
- 40 (c) if leave is required to make the claim, unless and until he has taken all reasonable steps to obtain that leave.

*Limitation*

## PART IV

## MISCELLANEOUS AND SUPPLEMENTAL

*Miscellaneous*

- Agreements. **31.**—(1) Subject to the following provisions of this section, nothing in this Act prevents the making of an agreement the terms of which— 5
- (a) modify or disapply any of the provisions of this Act, or
  - (b) make provision in place of any of the provisions of this Act.
- (2) An agreement is unenforceable if and to the extent that its terms—
- (a) modify or disapply, or make provision in place of, section 8 or this section, 10
  - (b) in the case of the limitation period under section 1(2) or an agreed limitation period to which subsection (5) applies, reduces the protection given to a claimant by section 26,
  - (c) reduces the protection given to a claimant by section 28, or
  - (d) in the case of the limitation period under section 1(1) or an 15 agreed limitation period to which subsection (4) applies, reduces the protection given to a claimant by section 29.
- 1977 c. 50. (3) Where neither the Unfair Contract Terms Act 1977 nor the Unfair S.I. 1999/2083. Terms in Consumer Contracts Regulations 1999 apply to any terms of an agreement falling within subsection (1)(a) or (b), those terms shall be of 20 no effect except in so far as they satisfy the requirement of reasonableness as stated in section 11(1) of the Unfair Contract Terms Act 1977; but this subsection shall not apply to an agreement to compromise or settle litigation.
- (4) Subject to subsection (7) and the terms of any agreement, the 25 provisions of this Act shall apply to an agreed limitation period which runs from a date determined by reference to a person's actual or constructive knowledge as they apply to the limitation period under section 1(1); and any reference in any provision of this Act (other than this section) to a limitation period or defence— 30
- (a) under section 1(1), or
  - (b) under this Act,
- shall be construed accordingly.
- (5) Subject to the terms of any agreement, the provisions of this Act shall apply to an agreed limitation period which runs from a date 35 determined otherwise than by reference to a person's actual or constructive knowledge as they apply to the limitation period under section 1(2); and any reference in any provision of this Act (other than this section) to a limitation period or defence—
- (a) under section 1(2), or 40
  - (b) under this Act,
- shall be construed accordingly.
- (6) Subject to subsection (7), section 29(1) and (2) shall apply to an agreed limitation period to which subsection (5) applies as if the reference in section 29(2) to the limitation period under section 1(1) were a 45 reference to the agreed limitation period.

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- (7) Section 29 (whether it applies by virtue of subsection (4) or subsection (6)) shall not operate to extend an agreed limitation period beyond the period of ten years from the starting date in relation to the cause of action.
- 5 (8) Any reference in this section to an agreed limitation period is a reference to a limitation period for which provision is made by the terms of any agreement (whether those terms modify any limitation period under this Act or provide for a limitation period in place of any limitation period under this Act).
- 10 **32.**—(1) A cause of action to recover the debt under a qualifying loan shall not accrue unless and until a demand in writing for repayment of the debt is made by or on behalf of the creditor (or, where there are joint creditors, by or on behalf of any one or more of them). PART IV  
Claims in respect of certain loans.
- (2) In this section “qualifying loan” means a contract of loan which—
- 15 (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
- 20 matter,
- but a contract of loan is not a qualifying loan if, in connection with taking the loan, the debtor enters into a 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 do not satisfy both of the
- 25 conditions in paragraphs (a) and (b).
- 33.**—(1) This Act does not apply to civil proceedings which are business of a description which in the High Court is for the time being assigned to the Family Division and to no other Division by or under section 61 of, and Schedule 1 to, the Supreme Court Act 1981. Family proceedings.  
1981 c. 54.
- 30 (2) Subsection (1) applies whether or not the civil proceedings there mentioned are commenced in the High Court.
- 34.**—(1) This Act does not apply to a civil claim for the specific performance of a contract to grant or transfer an interest in property if the claimant— Equitable jurisdiction and remedies.
- 35 (a) has acquired an interest in the property by virtue of the contract, and
- (b) is in possession of the property.
- (2) Nothing in this Act affects any equitable jurisdiction to refuse relief on the ground of delay, acquiescence or otherwise.
- 40 **35.**—(1) This Act binds the Crown. Crown application.
- (2) This Act does not apply to any civil claim by the Crown for the recovery of any tax or duty or interest on any tax or duty.

*Limitation*

- PART IV (3) For the purposes of this Act, a civil claim by petition of right shall be treated as made on the date on which the petition is presented.
- Saving for other limitation enactments. **36.** Except as provided by Schedules 3 and 4, this Act does not apply—  
 (a) to any civil claim for which a limitation period is provided by any other enactment (whenever passed or made), or  
 (b) to any civil claim to which the Crown is a party and for which, if it were between subjects, a limitation period would be provided by any such other enactment.
- Burden of proof. **37.**—(1) Where a defence to a civil claim is raised under section 1(1), 7(2) or 10(2) or paragraph 6(2) of Schedule 2, it is for the claimant to prove that the claim was made before the end of the limitation period applicable to that defence.  
 (2) Where a defence to a civil claim is raised under any other provision of this Act, it is for the defendant to prove that the claim was not made before the end of the limitation period applicable to that defence.
- Supplemental*
- Interpretation. **38.**—(1) In this Act—  
 “civil claim” shall be construed in accordance with section 1(4) to (6),  
 “civil proceedings” shall be construed in accordance with section 1(7),  
 “claimant” shall be construed in accordance with section 1(7),  
 “date of knowledge” shall be construed in accordance with sections 2, 6(4) and 14(2),  
 “defendant” shall be construed in accordance with section 1(7),  
 “enactment” includes an enactment comprised in subordinate legislation (within the meaning of the Interpretation Act 1978),  
 “land” includes corporeal hereditaments, tithes and rentcharges and any legal or equitable estate or interest therein, but except as so provided does not include any incorporeal hereditament,  
 “personal injury” includes any disease and any impairment of a person’s physical or mental condition,  
 “personal representative” includes an executor who has not proved the will (whether or not he has renounced probate), but not anyone appointed only as a special personal representative in relation to settled land,  
 “rent” includes a rentcharge and a rent service,  
 “rentcharge” means any annuity or periodical sum of money charged upon or payable out of land, except a rent service or interest on a mortgage on land,  
 “settled land”, “statutory owner” and “tenant for life” have the same meaning as in the Settled Land Act 1925,
- 1978 c. 30.
1925. c. 18.

*Limitation*

- “starting date” shall be construed in accordance with sections 3, 13 and 14, PART IV
- “successor”, in relation to a person in whom a cause of action is vested or against whom a cause of action subsists, means his personal representatives or any other person on whom his rights or, as the case may be, liabilities in relation to the cause of action 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),
- “trust” and “trustee” have the same meaning as in the Trustee Act 1925. 1925 c. 19.
- (2) Subject to subsection (3)—
- (a) a person shall be treated for the purposes of this Act as claiming through another person if he became entitled by, through, under or by the act of that other person to the right claimed, and
- (b) any person whose estate or interest might have been barred by a person entitled to an entailed interest in possession shall be treated for the purposes of this Act as claiming through the person so entitled.
- (3) A person becoming entitled to any estate or interest by virtue of a special power of appointment shall not be treated for the purposes of this Act as claiming through the appointor.
- (4) Any reference in this Act to a right of action to recover land shall include a reference to a right to enter into possession of the land or, in the case of rentcharges and tithes, to distrain for arrears of rent or tithe; and any reference in this Act to the making of a civil claim to recover land shall include a reference to the making of such an entry or distress.
- (5) Any reference in this Act to the possession of land shall, in the case of tithes and rentcharges, be construed as a reference to the receipt of the tithe or rent; and any reference in this Act to the date of dispossession or discontinuance of possession of land shall, in the case of rentcharges, be construed as a reference to the date of the last receipt of rent.
- (6) In the provisions of this Act relating to civil claims to recover land, any reference to the Crown includes a reference to the Duke of Cornwall.
- (7) For the purposes of this Act a cause of action upon a judgment shall be treated as accruing on the date on which the judgment became enforceable.
- 39.**—(1) Schedule 3 (minor and consequential amendments) has effect. Amendments and repeals.
- (2) Subject to subsection (3), the repeals set out in Schedule 4 have effect.
- (3) Notwithstanding the repeal by this Act of the Limitation Act 1980, section 38(2) to (6) of that Act shall continue to have effect for the purposes of section 3(4) of the Charitable Trusts (Validation) Act 1954. 1980 c. 58. 1954 c. 58.
- 40.**—(1) This Act comes into force at the end of the period of one year beginning with the day on which it is passed. Commencement.

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- PART IV
- (2) Subject to the following provisions of this section, this Act has effect in relation to causes of action accruing and things taking place before, as well as in relation to causes of action accruing and things taking place after, the commencement of this Act.
- (3) Nothing in this Act— 5
- 1980 c. 58. (a) enables any civil claim to be made which was barred by the Limitation Act 1980 or any other enactment before the commencement of this Act,
- (b) applies to any civil claim made in civil proceedings which were commenced before the commencement of this Act or the title to 10 any property which is the subject of any such claim, or
- (c) applies to any cause of action in respect of a contract under seal or executed as a deed where the contract was made before the commencement of this Act.
- (4) Where— 15
- (a) a cause of action has accrued before the commencement of this Act, and
- (b) no provision was made by any enactment passed or made before the passing of this Act, or by any rule of equity, for a limitation period to apply to a civil claim in respect of the cause of action, 20 any limitation period under this Act which applies to a civil claim in respect of the cause of action shall, if it would otherwise end earlier, be treated as ending at the end of the period of six years beginning with the day on which this Act comes into force.
- (5) Where— 25
- (a) the starting date in relation to a cause of action falls before the commencement of this Act, and
- (b) provision was made by any enactment passed or made before the passing of this Act, or by any rule of equity, for a limitation period to apply to a civil claim in respect of the cause of action, 30 any limitation period under this Act which applies to a civil claim in respect of the cause of action shall, if it would otherwise end earlier, be treated as ending at the end of the limitation period which would have applied to the claim if this Act had not been passed.
- (6) In determining for the purposes of subsection (5) the limitation 35 period which would have applied if this Act had not been passed—
- (a) section 32(1)(b) of the Limitation Act 1980 (concealment) shall be disregarded, and
- (b) section 32(1)(a) or (c) of that Act (fraud and mistake) shall not operate to extend the end of any limitation period under that Act 40 beyond the end of the period of six years beginning with the day on which this Act comes into force.
- (7) In determining for the purposes of this section whether a civil claim is barred by the Limitation Act 1980 or any other enactment, section 32A or 33 of that Act or any other enactment enabling a 45 limitation period to be overridden shall be disregarded.
- 1979 c. 17. (8) For the purposes of this section, a right to a payment under section 1(1) of the Vaccine Damage Payments Act 1979 shall be treated as a

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cause of action and a claim for such a payment shall be treated as a civil claim in respect of the cause of action.

PART IV

**41.**—(1) This Act may be cited as the Limitation Act 2001.

Citation and  
extent.

(2) This Act extends to England and Wales only.

*Limitation*

## SCHEDULES

Section 17.

## SCHEDULE 1

## ACCRUAL OF RIGHTS OF ACTION TO RECOVER LAND

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

1.—(1) No right of action to recover land shall be treated as accruing unless the land is in the possession of some person in whose favour a limitation period under section 16 can run (referred to in this paragraph as “adverse possession”). 5

(2) Where under the following provisions of this Schedule—

(a) a right of action to recover land is treated as accruing on a certain date, and

(b) no person is in adverse possession on that date, 10

the right of action shall not be treated as accruing unless and until adverse possession is taken of the land.

(3) Where—

(a) a right of action to recover land has accrued, and

(b) after its accrual, but before the right of action is barred, the land ceases to be in adverse possession, 15

the right of action shall no longer be treated as having accrued and no fresh right of action shall be treated as accruing unless and until the land is again taken into adverse possession.

(4) Where— 20

(a) a right of action to recover land has accrued, and

(b) after its accrual, but before the right of action is barred, there is a change of person in adverse possession of the land,

the right of action shall no longer be treated as having accrued and a fresh right of action shall be treated as having accrued on the date of the change. 25

(5) Sub-paragraph (4) does not apply—

(a) if any person in adverse possession of the land before the change continues to be in adverse possession of the land after the change, or

(b) where a person’s period of adverse possession of the land is followed by, and is continuous with, a period of adverse possession of the land by a person who claims through him. 30

(6) Where a person’s period of adverse possession of land is interrupted by a period of adverse possession of the land by another person which comes between, and is continuous with, his own periods of adverse possession, sub-paragraph (4) shall not apply— 35

(a) when his period of adverse possession of the land is interrupted, or

(b) when his period of adverse possession of the land is resumed.

(7) For the purposes of this paragraph—

(a) possession of any land subject to a rentcharge by a person (other than the person entitled to the rentcharge) who does not pay the rent shall be treated as adverse possession of the rentcharge, and 40

(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. 45

(8) For the purpose of determining whether a person occupying any land is in adverse possession of the land it shall not be assumed by implication of law that his occupation is by permission of the person entitled to the land merely by virtue of the

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fact that his occupation is not inconsistent with that person's present or future enjoyment of the land.

(9) Sub-paragraph (8) shall not be taken as prejudicing a finding to the effect that a person's occupation of any land is by implied permission of the person entitled to the land in any case where such a finding is justified on the actual facts of the case.

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

2. Where the person making a civil claim to recover land, or some person through whom he claims—

- 10 (a) has been in possession of the land, and  
 (b) has while entitled to the land been dispossessed or discontinued his possession,

the right of action to recover the land shall be treated as having accrued on the date of the dispossession or discontinuance.

15 3. Where—

- (a) a person makes a civil claim to recover any land of a deceased person (whether under a will or on intestacy),  
 (b) the deceased person was on the date of his death in possession of the land or, in the case of a rentcharge created by will or taking effect upon his death, in possession of the land charged, and  
 20 (c) the deceased person was the last person entitled to the land to be in possession of it,

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

25 4. Where—

- (a) a person makes a civil claim to recover an estate or interest in land in possession which was assured otherwise than by will to him, or to some person through whom he claims,  
 (b) the person making the assurance was on the date on which the assurance took effect in possession of the land or, in the case of a rentcharge created by the assurance, in possession of the land charged, and  
 30 (c) no person has been in possession of the land by virtue of the assurance,

the right of action to recover the land shall be treated as having accrued on the date on which the assurance took effect.  
 35

*Accrual of right in case of future interests*

5. Where—

- (a) the estate or interest claimed was an estate or interest in reversion or remainder or any other future estate or interest, and  
 40 (b) no person has taken possession of the land by virtue of the estate or interest claimed,

the right of action to recover the land shall be treated as having accrued on the date on which the estate or interest fell into possession by the determination of the preceding estate or interest.

45 6.—(1) Subject to sub-paragraph (2), a tenancy from year to year or other period, without a lease in writing, shall for the purposes of this Act be treated as being determined at the end of the first year or other period; and accordingly the right of action of the person entitled to the land subject to the tenancy shall be treated as having accrued on the date on which in accordance with this sub-paragraph the tenancy is determined.  
 50

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- SCH. 1 (2) Where any rent has subsequently been received in respect of the tenancy, the right of action shall be treated as having accrued on the date of the last receipt of rent.
- 7.—(1) Where—
- (a) a person is in possession of land by virtue of a lease in writing by which a rent of not less than ten pounds a year is reserved, 5
  - (b) the rent is received by some person wrongfully claiming to be entitled to the land in reversion immediately expectant on the determination of the lease, and
  - (c) no rent is subsequently received by the person rightfully so entitled, 10
- the right of action to recover the land of the person rightfully so entitled shall be treated as having accrued on the date on which the rent was first received by the person wrongfully claiming to be so entitled and not on the date of the determination of the lease.
- (2) Sub-paragraph (1) does not apply to any lease granted by the Crown. 15

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

- 8.—(1) Subject to sub-paragraph (2), a right of action to recover land by virtue of a forfeiture or breach of condition shall be treated as having accrued on the date on which the forfeiture was incurred or the condition broken.
- (2) If— 20
- (a) a right of action to recover land by virtue of a forfeiture or breach of condition has accrued to a person entitled to an estate or interest in reversion or remainder, and
  - (b) the land was not recovered by virtue of that right,
- the right of action to recover the land shall not be treated as having accrued to that person until his estate or interest fell into possession. 25

*Possession of beneficiary not adverse to others interested in settled land or land held subject to a trust of land*

9. Where any settled land or land subject to a trust of land is in the possession of a person— 30
- (a) who is entitled to a beneficial interest in the land, and
  - (b) who is not solely or absolutely entitled to the land,
- no right of action to recover the land shall be treated for the purposes of this Act as accruing during that possession to any person in whom the land is vested as tenant for life, statutory owner or trustee or to any other person entitled to a beneficial interest in the land. 35

Section 23.

## SCHEDULE 2

## APPLICATION OF SECTION 1(1) IN CASE OF INSOLVENCY AND BANKRUPTCY

## PART I

## COMPANIES AND INSOLVENT PARTNERSHIPS 40

*Administrator*

- 1.—(1) The limitation period under section 1(1) shall not run against a company or insolvent partnership in which a cause of action is vested during any period in which there is an administrator of the company or partnership.
- (2) An administrator of a company or insolvent partnership shall not be regarded as a qualifying individual for the purposes of section 5. 45

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(3) The reference in sub-paragraph (1) to a period in which there is an administrator includes a reference to a period in which there is a temporary vacancy in the office of administrator.

(4) Any reference in this paragraph to an administrator includes a reference to a person performing functions under the laws of a country outside Great Britain equivalent to those of an administrator.

*Administrative receiver*

2.—(1) Subject to sub-paragraph (2), the limitation period under section 1(1) shall not run against a company or insolvent partnership in which a cause of action is vested during any period in which there is an administrative receiver of the company or partnership.

(2) Sub-paragraph (1) does not apply to a cause of action which subsists against an administrative receiver.

(3) An administrative receiver of a company or insolvent partnership shall not be regarded as a qualifying individual for the purposes of section 5.

(4) The reference in sub-paragraph (1) to a period in which there is an administrative receiver includes a reference to a period in which there is a temporary vacancy in the office of administrative receiver.

(5) Any reference in this paragraph to an administrative receiver includes a reference to a person performing functions under the laws of a country outside Great Britain equivalent to those of an administrative receiver.

*Winding up*

3.—(1) This paragraph applies in the case of a cause of action vested in a company or insolvent partnership which is being wound up.

(2) Where the limitation period under section 1(1) has begun to run, but has not ended, before the date on which a liquidator of the company or partnership is first appointed, it shall be suspended for the period of one year beginning with the date of that appointment.

(3) Where the limitation period under section 1(1) has not begun to run before the date on which a liquidator of the company or partnership is first appointed, it shall be treated as running from the later of—

- (a) the first anniversary of the date of that appointment, and
- (b) the date of knowledge of the liquidator (or, where there are two or more liquidators, the earliest date of knowledge of any of them).

(4) Any reference in this paragraph to a company includes a reference to an unregistered company.

(5) Any reference in this paragraph to a liquidator includes a reference to a person performing functions under the laws of a country outside Great Britain equivalent to those of a liquidator.

40 *Civil claims under section 213, 214, 238, 239 or 423 of 1986 Act*

4.—(1) In its application to a civil claim by a liquidator under section 213 or 214 of the 1986 Act (fraudulent trading and wrongful trading), the limitation period under section 1(1) of this Act shall be treated as running from the later of—

- (a) the first anniversary of the date on which a liquidator is first appointed, and
- (b) the date of knowledge of the liquidator (or, where there are two or more liquidators, the earliest date of knowledge of any of them).

(2) In its application to a civil claim by an administrator or liquidator under section 238, 239 or 423 of the 1986 Act (transactions at an undervalue,

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- SCH. 2 preferences and transactions defrauding creditors), the limitation period under section 1(1) of this Act shall be treated as running from the later of—
- (a) the first anniversary of the date on which an administrator or (as the case may be) liquidator is first appointed, and
  - (b) the date of knowledge of the administrator or (as the case may be) liquidator (or, where there are two or more administrators or liquidators, the earliest date of knowledge of any of them). 5

*Interpretation of Part I*

- 5.—(1) In this Part—
- “administrator” means a person appointed as administrator, special administrator or special railway administrator under any provision of the 1986 Act,
  - “administrative receiver” has the meaning given by section 251 of the 1986 Act,
  - 1985 c. 6. “company” means a company as defined in section 735 of the Companies Act 1985 or a foreign company,
  - “foreign company” means a company incorporated outside Great Britain,
  - “insolvent partnership” includes an insolvent partnership under the laws of a country outside England and Wales,
  - “liquidator” means a persons appointed as liquidator or provisional liquidator under any provision of the 1986 Act, 20
  - 1986 c. 45. “the 1986 Act” means the Insolvency Act 1986,
  - “unregistered company” means an unregistered company as defined in section 220 of the 1986 Act.
- (2) Any reference in this Part to a person being appointed as a liquidator includes a reference— 25
- (a) to a person becoming liquidator by virtue of a nomination, and
  - (b) to the official receiver becoming liquidator by virtue of section 136 of the 1986 Act.

## PART II

30

## INDIVIDUALS

*Bankruptcy*

- 6.—(1) This paragraph applies where a cause of action has become vested in the trustee of a bankrupt’s estate.
- (2) It is a defence to a civil claim in respect of the cause of action made by the trustee that the bankruptcy order was made after the end of the limitation period under section 1(1) which would have applied to a civil claim in respect of the cause of action made by the bankrupt. 35
- (3) If the bankruptcy order was made after the limitation period mentioned in sub-paragraph (2) has begun to run but before it has ended, that limitation period shall apply to a civil claim in respect of the cause of action made by the trustee but it shall be suspended for the period of one year beginning with the date of the bankruptcy order. 40
- (4) If the bankruptcy order was made before the limitation period mentioned in sub-paragraph (2) has begun to run, the limitation period under section 1(1) which is to apply to a civil claim in respect of the cause of action made by the trustee shall be treated as running from the later of— 45
- (a) the first anniversary of that date, and

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(b) the date of knowledge of the trustee (or, where there are two or more trustees, the earliest date of knowledge of any of them).

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(5) This paragraph shall apply in relation to an individual who is subject to the insolvency laws of a country outside than England and Wales as it applies in relation to a bankrupt.

(6) In relation to such an individual—

(a) any reference in this paragraph to the trustee of a bankrupt's estate is a reference to a person performing functions under those laws which are equivalent to those of a trustee of a bankrupt's estate, and

10 (b) any reference in this paragraph to the making of bankruptcy order is a reference to the occurrence of any event under those laws which is equivalent to the making of a bankruptcy order.

*Civil claims under section 339, 340, 342A, 343 or 423 of 1986 Act*

7.—(1) The provisions to which this paragraph applies are—

15 (a) section 339 of the 1986 Act (transactions at an undervalue),

(b) section 340 of that Act (preferences),

(c) section 342A of that Act (recovery of excessive pension contributions),

(d) section 343 of that Act (extortionate credit transactions), and

(e) section 423 of that Act (transactions defrauding creditors).

20 (2) In its application to a civil claim by the trustee of a bankrupt's estate under a provision to which this paragraph applies, the limitation period under section 1(1) of this Act shall be treated as running from the later of—

(a) the first anniversary of the date of the bankruptcy order, and

25 (b) the date of knowledge of the trustee of the bankrupt's estate (or, where there are two or more trustees, the earliest date of knowledge of any of them).

*Interpretation of Part II*

8.—(1) In this Part “the 1986 Act” means the Insolvency Act 1986.

1986 c. 45.

30 (2) Expressions which are used in this Part and the 1986 Act shall have the same meaning in this Part as they have in the 1986 Act.

## SCHEDULE 3

Section 39.

## MINOR AND CONSEQUENTIAL AMENDMENTS

*Law of Property Act 1925 (c. 20)*

35 1. In section 205 of the Law of Property Act 1925 (general definitions), in subsection (1)(xii) for “the Real Property Limitation Acts 1833, 1837 and 1874” substitute “the Limitation Act 2001 and any other enactments (whenever passed) limiting the time within which proceedings may be taken”.

*Land Registration Act 1925 (c. 21)*

40 2. In section 3 of the Land Registration Act 1925 (interpretation), in paragraph (xii) for “the Real Property Limitation Acts 1833, 1837 and 1874, and any Acts amending those Acts” substitute “the Limitation Act 2001 and any other enactments (whenever passed) limiting the time within which proceedings may be taken”.

45 3. In section 83 of that Act (indemnity for errors or omissions in the register), omit subsection (12).

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*Administration of Estates Act 1925 (c. 23)*

4. In section 21A of the Administration of Estates Act 1925 (debtor who becomes creditor's executor by representation or administrator to account for debt to estate), in subsection (2) for "the Limitation Act 1939" substitute "the Limitation Act 2001, or any other enactment (whenever passed) limiting the time within which proceedings may be taken,". 5

*Limitation (Enemies and War Prisoners) Act 1945 (c. 16)*

5.—(1) In section 2 of the Limitation (Enemies and War Prisoners) Act 1945 (interpretation), in subsection (1), in the definition of "statute of limitation", for "the Limitation Act 1980" substitute "the Limitation Act 2001". 10

(2) After that subsection insert—

"(1A) The reference in section 1(1) of this Act to the period prescribed by any statute of limitation includes a reference to an agreed limitation period under section 31 of the Limitation Act 2001."

*Law Reform (Contributory Negligence) Act 1945 (c. 28)* 15

6.—(1) In section 1 of the Law Reform (Contributory Negligence) Act 1945 (apportionment of liability in case of contributory negligence), in subsection (5) for "the Limitation Act 1939" substitute "the Limitation Act 2001".

(2) After that subsection insert—

"(5A) The reference in subsection (5) of this section to a person pleading the Limitation Act 2001 includes a reference to a person pleading the expiry of an agreed limitation period under section 31 of that Act."

*Agriculture Act 1967 (c. 22)*

7. In Schedule 3 to the Agriculture Act 1967 (conditions applying to amalgamated agricultural units), in paragraph 7(6) for "the Limitation Act 1980" substitute "the Limitation Act 2001". 25

*Mines and Quarries (Tips) Act 1969 (c. 10)*

8. In Schedule 3 to the Mines and Quarries (Tips) Act 1969 (claims for compensation by owners and contributories), for paragraph 6(2) substitute— 30

"(2) In relation to England and Wales, Part III of the Limitation Act 2001 shall apply to the limitation period under sub-paragraph (1) above as it applies to the limitation period under section 1(2) of that Act."

*Law of Property Act 1969 (c. 59)*

9. In section 25 of the Law of Property Act 1969 (compensation in certain cases for loss due to undisclosed land charges), omit subsection (5). 35

*Animals Act 1971 (c. 22)*

10. In section 10 of the Animals Act 1971 (application of certain enactments to liability under sections 2 to 4), for "the Law Reform (Contributory Negligence) Act 1945 and the Limitation Act 1980" substitute "and the Law Reform (Contributory Negligence) Act 1945". 40

*Limitation**Defective Premises Act 1972 (c. 35)*

SCH. 3

11. In section 1 of the Defective Premises Act 1972 (duty to build dwellings properly), in subsection (5) for the words from “for the purposes” to “accrued” (in the first place where it occurs) substitute “for the purposes of the Limitation Act 2001 to have accrued”.

*Land Compensation Act 1973 (c. 26)*

12. In section 19 of the Land Compensation Act 1973 (interpretation of Part I), in subsection (2A) for “the Limitation Act 1939, a person’s right” substitute “the Limitation Act 2001, a cause”.

10 13. In section 32 of that Act (supplementary provisions about home loss payments), in subsection (7A) for “the Limitation Act 1939 a person’s right” substitute “the Limitation Act 2001 a cause”.

14.—(1) Section 36 of that Act (supplementary provisions about farm loss payments) is amended as follows.

15 (2) In subsection (1) for the words from “Subject to subsection (7)” to “complied with” substitute “No farm loss payment shall be made except on a claim in that behalf made by the person entitled thereto”.

(3) For subsection (3) substitute—

20 “(3) Where a person entitled to a farm loss payment dies without having claimed it, a claim to that payment may be made by his personal representatives.

(3A) For the purposes of the Limitation Act 2001, a cause of action to recover a farm loss payment shall be deemed to have accrued on the date on which the requirement in section 34(1)(b) above is complied with.”

25 (4) In subsection (6) for “mentioned in subsection (1) above” substitute “on which the requirement in section 34(1)(b) above is complied with”.

(5) Subsection (7) is omitted.

*Control of Pollution Act 1974 (c. 40)*

15. In section 88 of the Control of Pollution Act 1974 (civil liability for 30 contravention of section 3(3)), omit subsection (4)(c).

*Local Land Charges Act 1975 (c. 76)*

16. In section 10 of the Local Land Charges Act 1975 (compensation for non-registration or defective official search certificate), omit subsection (7).

*Fatal Accidents Act 1976 (c. 30)*

35 17. In section 1 of the Fatal Accidents Act 1976 (right of action for wrongful act causing death), in subsection (1) for “and recover” substitute “for”.

*Rent Act 1977 (c. 42)*

18. In section 57 of the Rent Act 1977 (recovery from landlord of sums paid in excess of recoverable rent etc), in subsection (3) for paragraphs (a) and (b) 40 substitute “any limitation period under the Limitation Act 2001 which would apply to a civil claim to recover that amount”.

19. In section 94 of that Act (recovery from landlord of sums paid in excess of recoverable rent etc), in subsection (3) for “2 years from the date of payment” 45 substitute “any limitation period under the Limitation Act 2001 which would apply to a civil claim to recover that amount”.

*Limitation*

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*Vaccine Damage Payments Act 1979 (c. 17)*

20.—(1) Section 3 of the Vaccine Damage Payments Act 1979 (determination of claims) is amended as follows.

(2) In subsection (1) omit paragraph (c).

(3) After that subsection insert—

“(1A) A claim may not be made after the time limit which would apply to the claim if it were a civil claim under the Limitation Act 2001 for damages in respect of personal injury which was made by the disabled person or, as the case may be, his personal representatives against the Secretary of State.

(1B) In its application for the purposes of subsection (1A), the Limitation Act 2001 shall have effect—

(a) as if section 12 were omitted,

(b) as if the reference in section 28 to the starting date were a reference to the date of the vaccination to which the claim relates,

(c) as if the references in section 29(1) and (3) to the date of accrual of the cause of action were references to the date of the vaccination to which the claim relates, and

(d) with such other modifications as may be appropriate.”

*Merchant Shipping (Liner Conferences) Act 1982 (c. 37)*

21. In section 8 of the Merchant Shipping (Liner Conferences) Act 1982 (time for bringing legal proceedings), for subsection (2) substitute—

“(2) In England and Wales the following provisions of the Limitation Act 2001 apply to the limitation period prescribed by subsection (1) as they apply to any limitation period under that Act—

(a) section 25 (certain new claims),

(b) section 26 (concealment),

(c) section 28 (children), and

(d) section 29 (disability).”

*Foreign Limitation Periods Act 1984 (c. 16)*

22. In section 1 of the Foreign Limitation Periods Act 1984 (application of foreign limitation law), in subsection (3) omit the words “and, accordingly” onwards.

*Latent Damage Act 1986 (c. 37)*

23.—(1) Section 3 of the Latent Damage Act 1986 (accrual of cause of action to successive owners in respect of latent damage to property) is amended as follows.

(2) For paragraph (b) of subsection (1) substitute—

“(b) another person acquires an interest in that property after the date on which the original cause of action accrued but before the earliest date of knowledge (within the meaning of the Limitation Act 2001) in relation to that cause of action of any person who has any interest in the property on that date of knowledge;”.

(3) For subsection (2) substitute—

“(2) A cause of action accruing to any person by virtue of subsection (1) above shall be treated as if based on breach of a duty of care at common law owed to the person to whom it accrues.

*Limitation*

SCH. 3

(2A) For the purposes of the Limitation Act 2001, the starting date in relation to a cause of action accruing to any person by virtue of subsection (1) above shall be treated as falling on the same date as the starting date in relation to the original cause of action.”

5 (4) Subsections (3), (5) and (6) are omitted.

*Consumer Protection Act 1987 (c. 43)*

24. In section 5 of the Consumer Protection Act 1987 (damage giving rise to liability) for subsections (5) to (7) substitute—

10 “(5) In determining for the purposes of this Part who has suffered any loss or damage to property and when any such loss or damage occurred, the loss or damage shall be regarded as having occurred on the earliest time at which a person with an interest in the property had knowledge that the loss or damage was significant.

15 (6) For the purposes of subsection (5) above, a person has knowledge that the loss or damage is significant—

- (a) if he has knowledge of the full extent of the loss or damage, or  
 (b) if a reasonable person with his knowledge of the extent of the loss or damage would think that a civil claim was worth making in respect of the loss or damage against a defendant who did not dispute liability and was able to satisfy a judgment.
- 20

(7) Sections 4 and 5 of the Limitation Act 2001 shall apply for the purposes of subsections (5) and (6) above as they apply for the purposes of that Act.”

*Copyright, Designs and Patents Act 1988 (c. 48)*

25 25. In section 99 of the Copyright, Designs and Patents Act 1988 (order for delivery up), in subsection (2) for the words from “An application” to “no order” substitute “No order under this section.”

26.—(1) Section 113 of that Act (period after which remedy of delivery up not available) is amended as follows.

30 (2) For subsection (1) substitute—

“(1) For the purposes of the Limitation Act 2001, the right to apply for an order under section 99 (order for delivery up in civil proceedings) shall be treated as accruing on the date on which the infringing copy or article in question was made.”

35 (3) Subsections (2) and (3) are omitted.

27. In section 195 of that Act (order for delivery up), in subsection (2) for the words from “An application” to “no order” substitute “No order under this section.”

40 28.—(1) Section 203 of that Act (period after which remedy of delivery up not available) is amended as follows.

(2) For subsection (1) substitute—

45 “(1) For the purposes of the Limitation Act 2001, the right to apply for an order under section 195 (order for delivery up in civil proceedings) shall be treated as accruing on the date on which the illicit recording in question was made.”

(3) Subsections (2) and (3) are omitted.

*Limitation*

- SCH. 3 29.—(1) Section 230 of that Act (order for delivery up) is amended as follows.
- (2) In subsection (2), for the words from “An application” to “no order” substitute “No order under this section”.
- (3) For subsection (3) substitute— 5
- “(3) For the purposes of the Limitation Act 2001, the right to apply for an order under this section shall be treated as accruing on the date on which the article or thing was made.”
- (4) Subsections (4) and (5) are omitted.
- Environmental Protection Act 1990 (c. 43)* 10
30. In section 73 of the Environmental Protection Act 1990 (appeals and other provisions relating to legal proceedings and civil liability), omit subsection (9)(c).
- Water Industry Act 1991 (c. 56)*
31. In section 209 of the Water Industry Act 1991 (civil liability of 15 undertakers for escapes of water etc), in subsection (4) for “the Fatal Accidents Act 1976 and the Limitation Act 1980” substitute “and the Fatal Accidents Act 1976”.
- Water Resources Act 1991 (c. 57)*
32. In section 208 of the Water Resources Act 1991 (civil liability of the 20 Agency for escapes of water etc), in subsection (4) for “the Fatal Accidents Act 1976 and the Limitation Act 1980” substitute “and the Fatal Accidents Act 1976”.
- Coal Industry Act 1994 (c. 21)*
33. In section 10 of the Coal Industry Act 1994 (protection for certain 25 interests in coal and coal mines), for subsection (2)(a) substitute—
- “(a) under sections 15 or 17 of the Limitation Act 1980 or sections 16 to 18 of the Limitation Act 2001 (time limits on proceedings to recover land and extinction of titles); or”.
- Trade Marks Act 1994 (c. 26)* 30
34. In section 16 of the Trade Marks Act 1994 (order for delivery up of infringing goods, materials or articles), in subsection (2) for the words from “An application” to “no order” substitute “No order under this section”.
- 35.—(1) Section 18 of that Act (period after which remedy of delivery up not available) is amended as follows. 35
- (2) For subsection (1) substitute—
- “(1) For the purposes of the Limitation Act 2001, the right to apply for an order under section 16 (order for delivery up of infringing goods, material or articles) shall be treated as accruing—
- (a) in the case of infringing goods, on the date on which the trade 40 mark was applied to the goods or their packaging,
- (b) in the case of infringing material, on the date on which the trade mark was applied to the material, or
- (c) in the case of infringing articles, on the date on which they were 45 made.”

*Limitation*

(3) Subsections (2) and (3) are omitted.

SCH. 3

*Arbitration Act 1996 (c. 23)*

36. In section 13 of the Arbitration Act 1996 (application of Limitation Acts), in subsection (4)(a) for “the Limitation Act 1980” substitute “the  
5 Limitation Act 2001”.

## SCHEDULE 4

Section 39.

## REPEALS

Chapter	Short title	Extent of repeal
10	1925 c. 21. The Land Registration Act 1925.	Section 83(12).
	1969 c. 59. The Law of Property Act 1969.	Section 25(5).
	1973 c. 26. The Land Compensation Act 1973.	Section 36(7).
15	1974 c. 40. The Control of Pollution Act 1974.	In section 88(4), paragraph (c) and the word “and” immediately preceding it.
	1975 c. 76. The Local Land Charges Act 1975.	Section 10(7).
20	1979 c. 17. The Vaccine Damage Payments Act 1979.	In section 3(1), paragraph (c) and the word “and” immediately preceding it.
25	1980 c. 58. The Limitation Act 1980.	The whole Act, except for sections 40(1) and 41(1) and (4) and paragraph 2 of Schedule 2.
	1981 c. 66. The Compulsory Purchase (Vesting Declarations) Act 1981.	Section 10(3).
30	1983 c. 20. The Mental Health Act 1983.	In Schedule 4, paragraph 55.
	1984 c. 16. The Foreign Limitation Periods Act 1984.	In section 1(3), the words “and, accordingly” onwards.
35	1986 c. 37. The Latent Damage Act 1986.	Sections 1 and 2. Section 3(3), (5) and (6). Section 4(1) and (2).
40	1987 c. 43. The Consumer Protection Act 1987.	In section 6(6), the words “the Limitation Act 1980 and”.
	1988 c. 48. The Copyright, Designs and Patents Act 1988.	In Schedule 1, Part I. Section 113(2) and (3). Section 203(2) and (3). Section 230(4) and (5).
45	1990 c. 43. The Environmental Protection Act 1990.	In section 73(9), paragraph (c) and the word “and” immediately preceding it.
	1994 c. 26. The Trade Marks Act 1994.	Section 18(2) and (3).

*Limitation*

SCH. 4

Chapter	Short title	Extent of repeal
1996 c. 31. 1997 c. 40.	The Defamation Act 1996. The Protection from Harassment Act 1997.	Section 5. Section 6.
1999 c. 31.	The Contracts (Rights of Third Parties) Act 1999.	Section 7(3). 5
2000 c. 14.	The Care Standards Act 2000.	In Schedule 4, paragraph 8.

# EXPLANATORY NOTES

This Bill introduces a new limitation regime in place of that enacted in the Limitation Act 1980. Under the new regime, claims will be subject to two limitation periods, a primary limitation period, of three years, running from the date on which the claimant knows, or ought to know of the relevant facts, and a long-stop limitation period, of ten years, running from either the accrual of the cause of action or the date of the act or omission which gives rise to the claim. A claim may be barred by the expiry of the long-stop limitation period even where the primary limitation period has not started running.

## **Clause 1**

This clause provides for the two limitation defences which are at the heart of the core limitation regime we recommend.

Subsection (1) implements the primary limitation period: it is a defence that the claimant failed to issue proceedings within three years of the date of his or her knowledge. The 'date of knowledge' is defined in clause 2.

Subsection (2) implements the long-stop limitation period: it is a defence that the claimant failed to issue proceedings within ten years of the starting date of the claim. This applies whether or not the primary limitation period has begun to run. The 'starting date' is defined in clause 3.

Subsection (3) provides that both the primary limitation period and the long stop limitation period are subject to the modifications made in the rest of the Bill.

Subsections (4) and (5) define the claims which will be subject to the provisions of the Bill. Purely administrative claims, such as an application for the appointment of a new trustee, or an application by a trustee for directions as to the exercise of his functions under the Settled Land Act, for example, will be excluded.

## EXPLANATORY NOTES

Subsection (6) ensures that where the claimant relies on more than one cause of action in bringing a claim, a separate limitation period will apply to each cause of action. It may therefore be the case that the defendant has a defence in respect of only one of the claims brought by the claimant.

### **Clause 2**

This clause defines the date of knowledge, the point at which the primary limitation period starts to run under clause 1(1). (See paragraphs 3.5 - 3.44 of the Report).

Subsection (1) sets out the facts which the claimant needs to know in relation to the claim. Where the claimant (or any other relevant person) has suffered loss, damage or injury, or the defendant (or any other relevant person) has received a benefit, these facts include the fact that the injury, loss, damage or benefit is “significant”.

Subsection (2) ensures that whether the claimant knows that the facts give rise to a legal claim is irrelevant. This will prevent the claimant who knows all the facts pleading ignorance of the law to extend the primary limitation period. This does not apply to claims which come within subsections (3) and (4).

Subsection (3) applies where the claim arises from the defendant’s failure to give correct advice as to the law. It ensures, for the avoidance of doubt, that the fact that the advice in question was incorrect is considered to be one of the facts which give rise to the cause of action which the claimant needs to know under subsection (1) before the primary limitation period starts to run against him or her.

Subsection (4) applies where the claimant claims restitution based on a mistake of law. It ensures (again for the avoidance of doubt) that the fact that a mistake of law has been made is treated as one of the facts giving rise to the cause of action which the claimant needs to know under subsection (1) before the primary limitation period starts to run against him or her.

Subsection (5) defines what is meant by “significant”, for the purpose of subsection (1), using a similar formula to that employed in section 11A(7) of the Limitation Act 1980 (“the 1980 Act”) in relation to claims for negligence not involving personal injuries. To ensure that the start of the primary limitation period is not delayed where the loss suffered by the claimant is trivial (so that it can never be considered to be ‘significant’ under this test) the claimant is also considered to know that the loss, injury, damage or benefit is significant if he or she knows the full extent of his or her loss, or the benefit to the defendant.

# EXPLANATORY NOTES

## Clause 3

This clause defines the starting date, the point at which the long-stop limitation period under clause 1(2) starts to run. See paragraphs 3.108 to 3.113 of the Report.

Subsection (1) sets out the general rule that the long-stop limitation period starts to run on the date on which the cause of action accrues.

Subsection (2) provides for an exception to this general rule for claims in tort where the claimant must prove loss or damage for the claim to succeed, and for claims for breach of statutory duty. In these cases the starting date will be the date on which the act or omission giving rise to the claim takes place, not the date on which the claimant suffers loss.

Subsection (3) clarifies the operation of subsection (2) where the claimant has a single cause of action which is founded on more than one act or omission. In this case, the starting date is the date of the last such act or omission. For example, the claimant may seek relief under section 459 of the Companies Act 1985 on the grounds that he has been unfairly prejudiced by the conduct of the defendants. The conduct relied on in support of the claim may be a series of actions none of which are sufficient, considered individually, to amount to unfair prejudice, but which collectively do give the claimant grounds on which to base a petition. If it is only the happening of the last event which gives the claimant sufficient grounds to make a claim, it is the date of that event which decides the starting date.

Subsection (4) preserves the effect of section 1 of the Defective Premises Act 1972, which determines when a cause of action under that Act accrues, and therefore what the starting date will be for claims under that Act.

## Clause 4

This clause defines the circumstances in which the claimant will be deemed to have constructive knowledge of the facts so that the primary limitation period will start running against him or her. See paragraphs 3.45 to 3.62 of the Report.

Subsection (1) provides that the claimant's constructive knowledge will depend first on those facts which the claimant can reasonably be expected to observe or ascertain for himself or herself. No account will be taken of any facts that the claimant could have discovered only with the assistance of an appropriate expert unless the claimant (a) has failed to consult any expert, and (b) was acting unreasonably in not consulting an expert. Where the claimant has consulted an expert, the claimant will not be fixed with knowledge of any facts which the expert either failed to find out, or failed to communicate to the claimant (unless the expert was also an agent of the claimant in which case facts which the expert knew but failed to communicate may be imputed to the claimant under subsection (3)).

Subsection (2) ensures that the circumstances and abilities of the claimant will be taken into account in determining what he or she could reasonably be expected to do.

Subsection (3) describes the circumstances in which the claimant will be considered to have knowledge of any facts known to his or her agent.

Subsection (4) defines the circumstances in which an agent will be considered to have the necessary authority for knowledge to be imputed to the claimant for the purposes of subsection (3).

## EXPLANATORY NOTES

### **Clause 5**

This clause defines the circumstances in which an organisation such as a company will be considered to have knowledge for the purposes of the ‘date of knowledge’. See paragraphs 3.63 to 3.80 of the Report.

Subsection (1) provides two ways in which an organisation will be treated as having the relevant knowledge. The knowledge (both actual and constructive) of ‘qualifying individuals’ will be treated as the knowledge of the organisation. In addition, the actual knowledge of its agents will be relevant under subsection 4(3).

Subsection (2) lists the organisations which are subject to the rules in this clause.

Subsections (3) and (6) identify those individuals whose knowledge is to be taken into account in determining the date of knowledge for an organisation which is subject to this clause.

Subsection (4) ensures that the organisation will not be fixed with knowledge which is possessed only by an individual who is a defendant to the claim, or who has dishonestly concealed information from the organisation.

Subsection (5) applies the test in clause 4(4) for “authority” to subsection (3) and the general test for ‘dishonest concealment’, set out in clause 26(6) of the Bill to subsection (4).

### **Clause 6**

This clause explains how the primary limitation period will apply where there are two or more claimants who are jointly, or jointly and severally, entitled to the remedy sought (see paragraphs 3.81 to 3.91 of the Report). Under subsection (1), each claimant is to be considered individually. Thus, there may be a defence against one of the claimants, but not against the others.

Subsection (2) clarifies the fact that if the defendant can show that one claimant is time-barred this will not prevent the other claimants from succeeding in their claim against the defendant, and from recovering the full amount of the claim from the defendant. Only when the primary limitation period as expired as against all of the joint claimants will the defendant have a complete defence.

Subsection (3) provides for an exception to this rule where the claimants are partners (where the date of knowledge is to be determined in accordance with clause 5, as described above), or trustees or personal representatives.

Subsection (4) provides that the primary limitation period will start running against all the trustees (or personal representatives) from the earliest date on which any one of them has the relevant knowledge.

# EXPLANATORY NOTES

## Clause 7

This clause explains how the primary limitation period will apply where the cause of action on which the claim is founded has been assigned to the claimant, ensuring that time starts running against the claimant from the first date on which someone had both the right to make a claim, and the knowledge of the relevant facts. See paragraphs 3.92 to 3.94 of the Report.

Subsection (1) sets out the circumstances in which the clause applies.

Subsection (2) applies where the primary limitation period in respect of a claim by a person in whom the cause of action was vested before the assignment has ended before the date of the assignment. It ensures that the defendant does not lose that defence because the cause of action has been assigned to a new claimant.

Subsection (3) applies where the primary limitation period has started to run in relation to a claim by a person in whom the cause of action was vested before the assignment, but has not ended before the date of the assignment. That limitation period will also apply to a claim by the claimant to whom the cause of action has been assigned. This ensures that the assignment will not extend the primary limitation period for the benefit of the new claimant.

Subsection (4) applies where the primary limitation period has not started to run in relation to any claim by a person in whom the cause of action was previously vested before the assignment of the cause of action. It ensures that where the new claimant knew the relevant facts before the cause of action was assigned to him that knowledge will not be taken into account to start the primary limitation period until the date of the assignment.

Subsection (5) explains what is meant by “assigns a cause of action”.

Subsection (6) ensures that where anyone in whom the cause of action was previously vested acquired the knowledge of the relevant facts required for the “date of knowledge” only after he or she had assigned the cause of action to another person, no primary limitation period is to be treated as running from that date for the purposes of subsection (2). The defence under subsection (2) will therefore only arise if a prior assignor of the cause of action had both the relevant knowledge and the right to bring the claim at the same time. Equally the limitation period can only be considered to have begun to run for the purposes of subsection (3) if someone in whom the cause of action was vested before the assignee had both the relevant knowledge and the right to bring an action at the same time.

## Clause 8

This clause modifies the core limitation regime in relation to claims brought under the Consumer Protection Act 1987, to ensure that the Bill complies with the terms of the Product Liability Directive 85/374 of 25 July 1985. See paragraphs 4.34 to 4.37 of the Report.

Subsection (1) provides that the long-stop limitation period does not apply to such a claim.

Subsection (2) provides that no claim may be brought more than ten years after the relevant time. This is defined in the Consumer Protection Act section 4 as the date on which the defective product is supplied by the producer of the product (or anyone holding himself out as the producer of the product), or by the person who imported the product into a Member State of the European Union. This ten year period replaces the long-stop limitation period provided for in subsection 1(2).

Subsection (3) provides that once this ten year period has expired, the rights of the claimant are extinguished.

## EXPLANATORY NOTES

Subsection (4) ensures that neither the ten year period or its effect on the claimant's rights can be modified whether under another provision of the Act or otherwise.

### **Clause 9**

This clause ensures that the long-stop limitation period does not apply to any personal injuries claim, including claims brought under the Law Reform (Miscellaneous Provisions) Act 1934 in respect of personal injuries to the deceased, and claims under the Fatal Accidents Act 1976. This exception only applies to claims for damages for personal injuries. Where the claimant brings a claim for another remedy (such as damages for property damage), the long-stop limitation period will apply to that claim. See paragraphs 3.102 to 3.107.

### **Clause 10**

This clause modifies the core limitation regime in its application to claims brought by virtue of the Law Reform (Miscellaneous Provisions) Act 1934. See paragraphs 4.10 to 4.15 of the Report.

Subsection (2) ensures that the defendant will not lose the benefit of a limitations defence which would have been available if a claim had been brought by the deceased before his or her death.

Subsection (3) ensures that the primary limitation period will not start to run against the personal representatives before the death of the deceased, even if they had the relevant knowledge before that date. It starts from the later of the date of the death and the date on which the personal representatives themselves had the relevant knowledge.

### **Clause 11**

This clause modifies the core limitation regime in its application to claims under the Fatal Accidents Act 1976. See paragraphs 4.16 to 4.22 of the Report.

Subsection (1) provides a defence where the deceased would not have been able to bring a claim at his or her death.

Subsection (2) provides that the start of the primary limitation period is determined by reference to the knowledge of the dependant for whose benefit the claim is made. Where there is more than one dependant, each will be treated as though he or she has a separate claim.

Subsection (3) provides, in consequence, that the primary limitation period may have expired against one dependant, but not the others. As a result, that dependant will not be able to recover anything in respect of his or her claim, but this will not prevent the other dependants receiving their full entitlement.

Subsection (4) defines the circumstances in which the deceased would be considered to be unable to bring a claim at his death (as, for example, where the deceased had entered into a compromise with the defendants in "full and final settlement" of his claims). Under subsection (5) the deceased will not be considered to have been capable of bringing a claim if the primary limitation period had expired, even though a defence to that claim might be disapplied under clause 12 of this Act.

## EXPLANATORY NOTES

### **Clause 12**

This clause gives the court a discretion to disapply the three year primary limitation period applying to claims in respect of personal injuries claims and claims under the Fatal Accidents Act 1976 (under clause 9, no long-stop limitation period applies to these claims). See paragraphs 3.160 to 3.169 of the Report.

Subsection (2) sets out the test for the exercise of the discretion. The court may not exercise its discretion in favour of the claimant unless it is satisfied that it would be unjust not to allow the claim to proceed, and this will in practice only apply if the hardship which would be suffered by the claimant (if the claim were rejected) would exceed the hardship suffered by the defendant (if the claim were to be allowed to proceed).

Subsection (3) sets out the factors which the court must take into account in exercising its discretion.

These factors are modified by subsections (4) to (6) in respect of claims under the Law Reform (Miscellaneous Provisions) Act 1934 and the Fatal Accidents Act 1976 to take account not only of the actions and knowledge of the claimant, but of the deceased and (in the case of a Fatal Accidents Act claim) any person for whose benefit the claim is made.

## EXPLANATORY NOTES

No claim exists under the Fatal Accidents Act 1976 where the deceased is not able to maintain a claim at the date of death. Subsection (7) preserves the Fatal Accidents Act claim where, though a defence would have existed against a claim by the deceased, the court has exercised its discretion under this clause in favour of the claimant.

Subsection (8) defines 'personal injury claim' for the purpose of this clause.

### **Clause 13**

This clause defines the starting date for the long-stop limitation period in relation to claims for a contribution under section 1 of the Civil Liability (Contribution) Act 1978. (See paragraphs 4.80 to 4.83 of the Report). It re-enacts the provisions of section 10(2) to (4) of the 1980 Act.

Under subsection (2), where there has been a judgment or arbitration award against the claimant the long-stop limitation period will start on the date of that judgement or award.

Subsection (3) ensures that a judgment on appeal which merely raises or lowers the amount of the damages awarded will be irrelevant to the starting date.

Subsection (4) defines the starting date where the claimant claims a contribution in relation to a claim which has been settled by reference to the date on which the claimant agreed the amount to be paid under the settlement.

### **Clause 14**

This clause modifies the core limitation regime in relation to claims for conversion. See paragraphs 4.47 to 4.67 of the Report.

Subsection (1) only applies where there has not been a theft from the claimant. It provides that where there has been any further conversion of the same goods, the starting date for the long-stop limitation period shall be the date of the first conversion - the long-stop limitation period will not start to run again each time there is a fresh conversion. This preserves the rule in section 3(1) of the Limitation Act 1980.

Subsection (2) applies where the goods which are the subject of the claim have been stolen from the claimant. It modifies the definition of the date of knowledge by providing that the primary limitation period will not start to run until the claimant knows (or ought to know) of the location of the goods, in addition to the other relevant facts. It also provides that the long-stop limitation period under clause 1(2) will not apply.

## EXPLANATORY NOTES

However, subsection (3) provides for an exception where stolen goods have been purchased for value by a purchaser acting in good faith. In this case, the long-stop limitation period will run from the date on which the goods were purchased in good faith.

Subsection (4) provides that the claimant's title to the goods which are the subject of the claim will be extinguished if the long-stop limitation period under clause 1(2) expires before he or she has either brought a claim or recovered possession of the goods. This prevents the anomaly of the claimant being regarded as the owner of the goods in question even though he or she is unable to bring any claim to recover them, and ensures that the claimant cannot, for example, exercise any self-help remedies.

Subsection (5) defines the circumstances in which a conversion will be considered to be 'related to a theft' for the purposes of this clause.

### **Clause 15**

This clause provides for the application of the core limitation regime to claims related to mortgages. It also provides mortgagees with protection equivalent to that given by the Limitation Act 1980. See paragraphs 4.158 to 4.196 of the Report.

Subsection (1) provides that the Act does not apply to a civil claim to redeem a mortgage. No limitation period will apply to such a claim (in contrast to section 16 of the Limitation Act 1980 which subjects claims to redeem land to a limitation period of 12 years).

Subsection (2) provides that the primary limitation period will not apply to mortgage related claims where the mortgaged property is land (just as claims to recover land are not subject to the primary limitation period, but only to an equivalent of the long-stop limitation period). 'Mortgage related claims' for this purpose means claims for a remedy under the mortgage or secured by the mortgage (that is, claims for payment of moneys secured by the mortgage, including claims on the mortgagor's covenant to repay the mortgagee, claims for sale of the mortgaged property, foreclosure, possession of the property or its reconveyance). The only limitation period applying to such claims will be the long-stop limitation period of ten years.

Subsection (3) provides a mortgagee who holds a second (or subsequent) mortgage with protection equivalent to that now given under section 20(6) of the Limitation Act 1980. Where the prior mortgagee is in possession of the mortgaged property at the date on which the limitation period applying to a claim by the second mortgagee expires (or at any time during the year before the expiry of the limitation period), that limitation period will be extended so that it cannot end earlier than the date one year after the prior mortgagee ceased to be in possession of the property.

## EXPLANATORY NOTES

Subsection (4) ensures that the limitation period will not run against the mortgagee where the property which has been mortgaged is not a present interest. It re-enacts section 20(3) of the Limitation Act 1980.

Subsection (5) suspends the limitation period for foreclosure claims where the mortgagee is in possession of the property concerned, providing equivalent protection to section 20(2) of the 1980 Act.

Subsection (6) extinguishes the rights of the mortgagee in the property once the long-stop limitation period applying to his claim has ended.

### **Clause 16**

This clause, with clauses 17 and 18, makes provision for claims to recover land (see paragraphs 4.126 to 4.150 of the Report). In practice, if the recommendations in Land Registration for the Twenty-First Century: A Consultative Document, Law Com No 254 (1998) are enacted this provision will only apply to claims to recover unregistered land, and in respect of unregistrable interests in registered land.

Subsection (1) provides that the primary and long-stop limitation periods do not apply to claims to recover land.

Subsection (2) subjects claims to recover land to a limitation period of ten years, and defines the date on which that limitation period will start to run. In contrast to other claims, where, under clause 1, a defence will arise after the end of the limitation period, subsection (2) provides that no claim shall be brought after the end of the limitation period. This reflects the fact that the expiry of the limitation period will extinguish the claimant's title to the land.

Subsection (3) extends the limitation period applying by the Crown to claims to recover foreshore to sixty years. Subsection (4) ensures that the Crown benefits from this protection for claims to recover land which was once, but is no longer, foreshore for ten years from the date on which the land ceased to be foreshore.

## EXPLANATORY NOTES

Subsection (5) re-enacts section 15(4) of the 1980 Act, ensuring that a transfer of the land which is made after a cause of action to recover the land has accrued to the transferor (or anyone previously entitled to the land) will not extend the limitation period applying to a claim to that land by the person to whom it is transferred.

Subsection (6) re-enacts section 15(5) of the 1980 Act. It ensures that the claimant entitled to both a present and a future interest in land who has allowed the limitation period to expire without bringing a claim cannot benefit from the extended protection given to future interests unless someone else holds an intermediate estate in the land before the claimant's future interest falls into possession.

### **Clause 17**

This clause contains a number of supplementary provisions relating to claims to recover land.

Subsection (2) re-enacts the first part of subsection 18(1) of the 1980 Act. It provides that claims in relation to equitable interests in land should be treated in the same way as claims to a legal estate in land.

Subsection (3) re-enacts the second part of subsection 18(1). It provides that the rules which determine when the cause of action accrues in relation to a legal estate in land should therefore apply similarly to equitable estates in land.

Subsection (4) re-enacts section 26 of the 1980 Act. It ensures that where a claim to recover land which forms part of a deceased's estate accrues on or after the date of death, the limitation period will start to run against the administrator from the date of accrual, whether or not letters of administration have been granted at that date.

Subsection (5) is a new provision. It ensures that the priest in charge or sequestrators of a benefice have the capacity to bring a claim to recover land on behalf of a spiritual corporation sole when no-one else is able to act because the freehold is in abeyance.

### **Clause 18**

This clause provides for the consequences of the expiry of the limitation period in relation to a claim to recover land.

Subsection (1) provides for the extinction of the claimant's title to the land after the expiry of the limitation period.

## EXPLANATORY NOTES

Subsections (2) and (3) re-enact section 18(2) and (3) of the 1980 Act. They ensure that the estate of a tenant for life or statutory owner of settled land (in subsection (2)) or of trustees (in subsection (3)) will not be extinguished until there is no-one entitled to a beneficial interest in that land with a right of action which has not accrued or has not been barred by the expiry of the limitation period, even if the limitation period for a claim by the tenant for life or statutory owner or trustees themselves has expired.

Subsection (4) re-enacts section 18(4) of the 1980 Act. It ensures that, even if the limitation period applying to a claim made by a trustee or statutory owner of land on their own behalf has expired, the trustee or statutory owner may bring a claim to recover land on behalf of anyone entitled to a beneficial interest in the land where the limitation period applying to a claim by that person has not expired.

### **Clause 19**

This clause provides that the primary limitation period will not apply to a claim to recover the proceeds of a sale of land (see paragraph 4.151 of the Report). Such claims are treated as being equivalent to a claim to recover the land in question, and in consequence, only the long-stop limitation period will apply.

### **Clause 20**

The Acts listed in subsection (1) apply a separate limitation period to claims under the appropriate provisions, running in each case from the date on which claimants should have had notice of certain facts (see paragraph 4.286 of the Report). To ensure that these claims are brought under the core limitation regime (and in particular the 'knowledge' provisions of that regime, which are set out in Part I of the Bill) these limitation provisions are repealed in Schedule 3 to this Bill (see paragraphs 3, 9, and 16). Subsection (1) ensures that the long-stop limitation period does not apply to any of the claims.

Subsection (2) ensures that the claimant seeking compensation under section 10 of the Local Land Charges Act will not be regarded as having sufficient knowledge to trigger the primary limitation period only because he or she would be regarded as having notice of any of the facts relevant to the date of knowledge under section 198 of the Law of Property Act 1925.

# EXPLANATORY NOTES

## **Clause 21**

This clause provides for the consequences of making a defective disentailing assurance - that is, an assurance which attempts, but fails, to bar an entailed interest. It re-enacts section 27 and 29(2)(b) of the 1980 Act.

## **Clause 22**

This clause modifies the core limitation regime in its application to certain trusts and charities-related claims. See paragraphs 4.94 to 4.119 of the Report.

Subsection (1) protects the beneficiary who only has a future interest in trust property by ensuring that no limitation period can run until his or her interest becomes an interest in possession.

Subsection (2) protects the beneficiary under a bare trust. In the absence of this provision, the cause of action for a claim to recover the trust property would accrue once the trustee holds the property on trust for the beneficiary absolutely, which may be when the trust was set up, since the beneficiary may claim the property as from that date. This sub-clause postpones the accrual of the cause of action until there has been a breach of trust (where for example the trustee refuses the transfer the property to the beneficiary on request).

Subsection (3) ensures that no limitation period will apply to a claim made by the Attorney General or the Charity Commissioners of England and Wales in relation to a charity.

Subsection (4) ensures that where the limitation period for a claim by one beneficiary has expired, he or she will not be able to benefit from a successful claim made by another beneficiary of the trust.

## EXPLANATORY NOTES

### **Clause 24**

This clause modifies the core regime in its application to derivative claims where a member of a company, for example, claims a remedy on behalf of the company. See paragraphs 4.205 to 4.210 of the Report.

Subsection (1) ensures that only the knowledge of the member bringing the claim is considered in order to determine when the primary limitation period started to run in respect of that claim. No account will be taken of the date on which the company itself or any other member acquired knowledge of the relevant facts.

Subsection (2) and (3) ensure that where two or more members bring a claim together on behalf of the company or trade union, each is to be considered to have a separate claim for the purpose of the limitations Bill. Therefore, if the primary limitation period has expired, but only against one, no defence may be raised against the other member.

### **Clause 25**

This clause modifies the core limitation regime in its application to some 'new claims': that is claims made after the start of proceedings by one of the parties to those proceedings. It also preserves the court's power to make rules in relation to those claims. See paragraphs 5.5 to 5.19 of the Report.

Subsection (1) applies to the first claim made by the defendant (or a third party) to the original proceedings (whether the claim is made by counter claim or by set off). It ensures that if the claim would have been made in time if it had been made at the start of the proceedings, no limitation defence may be raised against it even if either the primary limitation period or the long-stop limitation period has since expired.

Subsection (2) applies to new claims which seek to change the cause of action in issue in existing proceedings. Provided that the existing claim was made in time (that is before the end of any relevant limitation period), and that the new claim arises out of the same conduct, transaction or events as the existing claim, no limitation defence may be raised against the new claim.

Subsection (3) applies to new claims which add or substitute a party to the existing proceedings. Provided that the existing claim was made in time and the change to the existing parties is necessary to decide the existing claim, no limitation defence may be raised against the new claim.

## EXPLANATORY NOTES

Subsection (4) explains when such a change to the existing parties is necessary to decide the existing claim.

Subsections (5) and (6) re-enact section 35(7) of the 1980 Act. Subsection (5) gives the court the power to provide that a party may claim relief in a new capacity in a new cause of action even though that party had no title to make that claim at the start of the proceedings.

Subsection (6) preserves the power of the court to allow a party to claim relief in a new capacity in other circumstances.

### Clause 26

This clause extends the limitation period where facts relevant to the cause of action have been dishonestly concealed from the person with a right to bring a claim founded on that cause of action. See paragraphs 3.134 to 3.145 of the Report.

Subsection (1) defines the circumstances in which the clause applies: the facts must be concealed from a person who at the time of the concealment had the right to bring the claim (whether the claimant or a predecessor in title of the claimant) or from their agent. Similarly, the facts must be concealed by a person who was liable to the claim at the time of the concealment. The clause will not apply unless the concealment was dishonest. This is a far more stringent test than applies under section 32 of the 1980 Act. It is intended to overturn the interpretation of 'deliberate concealment' given in *Brocklesby v Armitage & Guest*.<sup>1</sup>

Subsection (2) provides that dishonest concealment will suspend the long-stop limitation period and the limitation period applying to claims to recover land from the date on which the fact was concealed until the date on which it comes to the notice of the claimant. This suspension will apply to any claim made by the person from whom the facts were concealed, or by any person whose right to make a claim against the defendant derives from him. This clarifies the position which applied under section 32 of the Limitation Act 1980, which did not expressly extend this protection to any claimant claiming through the person from whom the facts were originally concealed. In contrast, section 32 of the 1980 Act did provide that concealment by any person through whom the defendant claims is sufficient to extend time as against the defendant. Subclause (2) retains this provision. This may be relevant where the defendant asserts a competing claim to property claimed by the claimant, and the person from whom the defendant derived the claim has been guilty of dishonest concealment from the claimant or his predecessor (as in *Eddis v Chicester Constable*).<sup>2</sup>

The primary limitation period will not be affected, since this will only run from the date of knowledge.

Subsection (3) ensures that a purchaser of property which has a latent defect can rely on any concealment by the defendant from the seller of that property to extend the long-stop limitation period which would apply to the purchaser's own claim against that defendant.

Subsection (4) ensures that our provisions on dishonest concealment are effective to suspend the long-stop limitation period where the concealment takes place between the starting date and the accrual of the cause of action if the starting date occurs before the accrual of the cause of action.

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<sup>1</sup> [2001] 1 All ER 172.

<sup>2</sup> [1969] 2 Ch 345.

## EXPLANATORY NOTES

Subsection (5) re-enacts subsection 32(3) of the 1980 Act, ensuring that the long-stop limitation period applying to a claim against an innocent purchaser (that is, one who has not therefore contributed to the concealment of the facts in any way, or been aware that any facts have been concealed) will not be extended by virtue of clause 26.

Subsection (6) defines 'concealment' for the purpose of this clause.

Subsection (7) provides that the date on which the claimant discovers the concealed fact is to be determined by the same rules which apply to the 'date of knowledge' which starts the primary limitation period.

Subsection (8) ensures that the suspension of the limitation period will only end if a person has the right to bring a claim at the same time as he or she acquires the relevant knowledge. If someone only acquires the relevant knowledge after the cause of action ceased to be vested in him or her, that person's knowledge will not be sufficient to start time running again in respect of the claim.

### **Clause 27**

This clause extends the limitation period where a defendant to the claim has acknowledged the claimant's rights by a written acknowledgment or a part payment. See paragraphs 3.146 to 3.155 of the Report.

Subsection (1) sets out the conditions which must be satisfied if an acknowledgment is to be effective to extend the limitation period. First the acknowledgment or payment must be made by a person liable to the claim at the time the acknowledgment or payment is made. Secondly, it must be made to a person with a right to bring the claim. Thirdly, it must be made when a limitation period is running against the potential claimant. If these conditions are met, the limitation period concerned (which may be either the primary limitation period or the long-stop limitation period or both) will start again from the date on which the acknowledgment or part payment is made.

Subsection (2) applies where there are two or more joint, or joint and several, defendants to the claim. It provides that an acknowledgment or part-payment made by one of them will only extend the limitation period against the acknowledgor and his or her successors, and not the other defendants. However, although the other defendants will be able to raise a defence against a claim by the claimant, if the claimant succeeds against the defendant acknowledging the claim, that defendant may claim a contribution from his or her co-defendants.

## EXPLANATORY NOTES

Subsection (3) applies where there are two or more joint, or joint and several, claimants. It provides that where an acknowledgment or part-payment is made to one (but not all) of them, the limitation period is only extended as regards the person to whom the acknowledgment or payment is made and his or her successors, rather than the other claimants. However, should the claimant to whom an acknowledgment is made be successful as against the defendants, his or her co-claimants may be able to recover their share from that claimant by a claim in restitution.

Subsection (4) provides for an exception to the rule set out in subsections (2) and (3) where the joint claimants (or defendants) are trustees or personal representatives. In this case, an acknowledgment or part payment made by (or to) one will extend the limitation period against (or for the benefit of, as the case may be) all the trustees or personal representatives.

Subsection (5) provides for a further exception to the rule set out in subsection (2) where an acknowledgment or payment is made by one of a number of people in possession of land or mortgaged property. This will serve to extend the limitation period against everyone who is in possession of the property during the ensuing limitation period.

Subsection (6) ensures that a purchaser of defective property who has a new cause of action under section 3 of the Latent Damage Act 1986 may rely on any acknowledgment or part-payment given by the defendant to the previous owner of that property to extend the long-stop limitation period applying to his or her own claim against the defendant.

Subsection (7) ensures that if an acknowledgment or part payment is given after the starting date of the long-stop limitation period but before the cause of action has accrued (in relation to a claim where the starting date for the long-stop limitation period is the date of the act or omission giving rise to the cause of action rather than the date of accrual), that acknowledgment or part-payment will be effective to restart the long-stop limitation period.

Subsection (8) imposes a requirement that the acknowledgment be made in writing, to minimise the uncertainty as to whether an acknowledgment has been given. The requirement in the 1980 Act, that any acknowledgment should be signed by the person giving it, is not being re-enacted, as this unnecessarily limits those documents which may serve as acknowledgments.

Subsection (9) ensures that an acknowledgment made by or to an agent is treated as made by or to the principal.

Subsection (10) provides that a limitation period may be extended more than once under this clause.

Subsection (11) defines an 'acknowledgment' for the purposes of the clause.

Subsection (12) defines a 'payment in respect of a cause of action' for the purposes of the clause.

## EXPLANATORY NOTES

Subsections (13) and (14) explain the effect of a payment of rent or interest due on the limitation period. They re-enact section 29(6) of the 1980 Act.

### **Clause 28**

This clause extends any limitation period which applies to a claim by a child, by ensuring that the limitation period cannot end before the date on which the claimant reaches the age of 21. See paragraphs 3.115 to 3.121 of the Report.

### **Clause 29**

This clause extends the limitation period when the claimant is under a disability. See paragraphs 3.122 to 3.133 of the Report.

Subsection (1) ensures that the protection given to the disabled claimant applies not only when the disability existed on the date of accrual of the cause of action, but also (in contrast to the current law), where the disability only develops after that date.

Subsection (2) suspends the primary limitation period while the claimant is under a disability. The long-stop limitation period is not affected.

Subsections (3) defines the circumstances in which the protection given to the claimant in a personal injury claim (which is not subject to a long stop limitation period) will come to an end. This will be ten years after the later of the accrual of the cause of action or the onset of the disability if three conditions are satisfied on that date. First, the claimant must still be under a disability; secondly, the primary limitation period must not have expired at that date, and thirdly, there must be an adult who is responsible for the claimant at that date, who is not the defendant to the claim. If these conditions are not met, the protection given to the claimant will continue.

## EXPLANATORY NOTES

Subsection (4) ensures that the protection given to the claimant under subsection (2) will come to an end after ten years if the conditions in subsection (3) are satisfied.

Subsection (5) defines the time at which the primary limitation period will start running against the claimant under a disability when the conditions in subsection (3) are satisfied. It provides that the knowledge of the responsible adult may be taken into account to decide whether the primary limitation period has started running.

Subsection (6) defines 'disability' for the purpose of this clause. The test is whether the claimant's ability to make decisions is impaired by mental disability, or his or her ability to communicate is impaired by mental disability or physical impairment. It is intended to include both those cases where the claimant lacks the capacity to know or understand the relevant facts, and where the claimant is unable to act on his or her knowledge of the facts.

Subsection (7) defines 'mental disability' for the purpose of this clause.

Subsection (8) defines the circumstances in which a person will be considered to be a 'responsible adult' for the purposes of this clause.

### **Clause 30**

This clause protects the claimant where he or she is unable to bring proceedings in respect of the claim. See paragraphs 5.24 to 5.28 of the Report.

Subsection (1) suspends all limitation periods under the Bill where, after the cause of action has accrued, the claimant is subject to a legal restriction which means that he or she cannot bring a claim (such as the requirement that a solicitor may not bring a claim on a bill of costs until the expiry of one month after the delivery of the bill, although the cause of action accrues on completion of the work).

Subsection (2) defines three situations where the claimant will not be considered to be under such a restriction, so that subsection (1) will not apply. These are where the claimant is under a disability (whether minority or adult disability) so that he or she has to act through a litigation friend; where the claimant would be in breach of contract if he or she issued proceedings; and where the claimant requires the leave of the court to issue proceedings (unless, in this last case, the claimant has taken all reasonable measures to obtain the leave required).

## EXPLANATORY NOTES

### Clause 31

This clause gives parties the power to contract out of the core limitation regime by disapplying any of the provisions of the Act (with certain limited exceptions) and to agree that an alternative limitation period should govern their disputes. See paragraphs 3.170 to 3.175 of the Report.

Subsection (1) allows parties to make agreements which disapply or change provisions of the Bill in relation to limitation periods.

Subsection (2) ensures that, as an exception to this general rule, no change may be made to the provisions of the Bill in relation to claims under the Consumer Protection Act (clause 8), dishonest concealment (clause 26), minority (clause 28) or other disability (clause 29).

Subsection (3) provides that no agreement within subsection (1) will be valid unless it is 'reasonable' as defined by section 11 of the Unfair Contract Terms Act 1978. Agreements which are made in settlement of litigation between the parties do not have to satisfy this requirement.

Subsections (4), (5), (6) and (7) explain how the provisions of the Bill apply to limitation periods which have been modified between the parties. Subsection (4) ensures that all the provisions of the Bill which apply to the primary limitation period under clause 1(1) will apply to any agreed limitation period which runs from a date dependant on someone's knowledge. So if the parties have agreed that a limitation period of five years running from the date on which the claimant knows the relevant facts should apply to any disputes between them, all the provisions of the Bill relating to knowledge (including for example constructive knowledge, organisational knowledge, agency and disability) will apply to that limitation period unless they have been specifically excluded by the parties.

Similarly, subsection (5) ensures that where the parties have agreed that their disputes should be subject to a limitation period running from a date determined in any other way (for example, by reference to a set date or the happening of a particular event such as accrual) that limitation period will be subject to all of the provisions of the Bill which apply to the long-stop limitation period. The agreed limitation period will, for example, be subject to the provisions on acknowledgments and part payments, restrictions on making claims and burden of proof, unless those provisions are expressly excluded by the parties.

Subsection (6) and (7) explain how the provisions of the Bill in relation to disability are to apply to an agreed limitation period. Subsection (6) ensures that (subject to subsection (7)), even an agreed limitation period which runs from some date other than the date of knowledge (such as the accrual of the cause of action) will also be suspended while the claimant is under a disability. The equivalent effect is achieved in relation to agreed limitation periods which run from the date of a person's knowledge by subsection (4).

## **EXPLANATORY NOTES**

Subsection (7) ensures that this suspension does not extend the agreed limitation period more than ten years after the starting date. Under the standard limitation provisions of the Bill, the long-stop limitation period overrides the protection given to the claimant under a disability. An agreed limitation period is treated analogously, so that the claimant under a disability is assured ten years, but no more than ten years, of protection.

### **Clause 32**

This clause changes the date on which the cause of action accrues in respect of a claim to recover a debt in relation to certain loans. It adopts the same policy as section 6 of the 1980 Act (See paragraphs 4.4 to 4.6 of the Report) .

Subsection (1) provides that the cause of action shall accrue on the date on which a demand is made for repayment of the loan.

Subsection (2) defines the loans to which this applies. It is limited to those cases where the debtor is not under an obligation to repay the loan on a fixed or determinable date, or on demand.

### **Clause 33**

This clause ensures that the primary and long-stop limitation periods do not apply to any family-related proceedings. This includes, for example, any matrimonial proceedings, non-contentious probate applications or proceedings under the Children Act 1989 (among others).

### **Clause 34**

Subsection (1) ensures that no limitation period will apply to a claim for specific performance of a contract to grant or transfer an interest in property, so that the Bill does not interfere with the rule that a contract to transfer a legal interest in property is as good as a transfer of that interest when a party has taken possession of the property in reliance on that interest (See paragraphs 4.269 to 4.273 of the Report). In consequence the court will remain free to make an award of damages in lieu of specific performance in the event that the claimant's application for specific performance is rejected however long after the events giving rise to the claim the claimant's application is made.

Subsection (2) preserves the court's equitable jurisdiction to deny the claimant the relief claimed because of his or her delay, even if the limitation period applicable to the claim under this Bill has not expired.

### **Clause 35**

Subsection (1) provides for the application of the Bill to the Crown.

Subsection (2) ensures that claims by the Crown to recover tax or duty (or interest on either) are not subject to any limitation period. This exemption is limited to claims to recover tax which has been assessed. The Crown remains bound by the limitation periods in, for example the Taxes Management Act 1970, with regard to the assessment of tax.

## **EXPLANATORY NOTES**

Subsection (3) defines the point at which proceedings are commenced when a claim is made by petition of right.

### **Clause 36**

This clause ensures that the provisions of the Bill do not affect any claim which is subject to a limitation period under any other Act or statutory instrument. See paragraphs 4.279 to 4.293 of the Report.

### **Clause 37**

This clause lays down the burden of proof applying to a claim that a limitation period under the Bill has expired. See paragraphs 5.29 to 5.32 of the Report.

Subsection (1) provides that the burden of proof in relation to the primary limitation period lies on the claimant. The same applies both where the primary limitation period applies directly to a claimant, and in those cases where it is applied indirectly.

Subsection (2) provides that the burden of proof in relation to the long-stop limitation period lies on the defendant.

## **EXPLANATORY NOTES**

### **Clause 40**

This clause provides for the commencement of the Bill. See paragraphs 5.33 to 5.40 of the Report.

Subsection (1) provides that all provisions of the Bill will come into force twelve months after it receives Royal Assent.

## **EXPLANATORY NOTES**

Subsection (2) provides that the provisions of the Bill apply to all causes of action whether or not they have already accrued on the date on which the Bill comes into force.

Subsection (3) ensures that the Bill will not enable a claim which has become barred under the provisions of an earlier enactment to be revived, and that it will not apply to claims where the claimant has issued proceedings before the Bill came into force.

It also provides that the Bill will not apply to a claim on a contract made before it comes into force which is treated as a 'specialty' under section 8 of the 1980 Act. The claimant will in such a case therefore continue to benefit from a limitation period of twelve years running from the date on which the cause of action accrued.

Subsection (4) ensures that a claimant whose claim was not subject to any limitation period (whether under statute or in equity) before the Bill comes into force will have at least six years from that date within which to issue proceedings.

Subsection (5) ensures that a claimant whose claim accrued before the Bill comes into force will not be subject to a shorter limitation period in those cases where the Bill reduces the limitation period applying to his or her claim, but where the limitation period under the Bill is longer than that applying under the previous law, the claimant will have the benefit of the longer period.

Subsection (6) ensures that, in deciding whether the claimant's claim would be subject to a longer limitation period under the previous law, no account is to be taken of the provisions in section 32(1)(b) of the 1980 Act which extend the limitation period where the defendant is considered to have deliberately concealed any relevant facts from the claimant. Such a limitation period would only be extended by concealment which satisfies the definition of dishonest concealment under clause 26 of the Bill.

In addition subsection (6) ensures that in deciding whether the claimant's claim would be subject to a longer limitation period under the previous law, section 32(1)(a) and (c) of the 1980 Act shall be treated as extending the limitation period for no longer than six years from the date on which the Bill comes into force.

Subsection (7) ensures that a civil claim may be considered to be barred for the purposes of subsection (3) even if court has a discretion under any enactment to disapply the limitation period applying to the claim in question.

Subsection (8) ensures that the commencement provisions work properly for the amendments to the Vaccine Damage Payments Act 1979 made in Schedule 3 of the Bill.

# EXPLANATORY NOTES

## SCHEDULE 1

This Schedule lays down the rules which determine when a right of action to recover land accrues to the claimant, and thus the date on which the limitation period under clause 16 starts to run against the claimant. It re-enacts the provisions contained in Part I of Schedule 1 to the 1980 Act.

Paragraphs 1(1) and (2) re-enact paragraph 8(1) of Schedule 1 to the 1980 Act.

Paragraph 1(3) re-enacts paragraph 8(2) of the Schedule to the 1980 Act.

Paragraph 1(4),(5) and (6) are new provisions, which explain the consequences of a change in the identity of the person (or persons) in adverse possession. The general rule, given in paragraph 1(4), is that if the person in adverse possession changes, the adverse possession of the land is considered to have ended. The claimant is considered to have a new cause of action, and a new limitation period will therefore start running against him or her from the date on which the next person took adverse possession of the land.

Paragraph 1(5) provides for an exception to this rule in two situations: first, where more than one person was in adverse possession of the land and not all of them leave, so that, though there could be said to have been a 'change of person in adverse possession', at least one person remains in adverse possession before and after the 'change'; secondly, where the second adverse possessor claims possession in succession to the first adverse possession (because, for example, he has 'bought' the land from the first adverse possessor)

Paragraph 1(6) provides another exception to the rule where an adverse possessor who has himself been displaced returns to resume adverse possession of the land in question.

Paragraph 1(7) re-enacts paragraph 8(3) of Schedule 1 to the 1980 Act.

Paragraphs 1(8) and 1(9) re-enact paragraph 8(4) of Schedule 1 to the 1980 Act.

## **EXPLANATORY NOTES**

Paragraph 2 re-enacts paragraph 1 of Schedule 1 to the 1980 Act.

Paragraph 3 re-enacts paragraph 2 of Schedule 1 to the 1980 Act.

Paragraph 4 re-enacts paragraph 3 of Schedule 1 to the 1980 Act.

Paragraph 5 re-enacts paragraph 4 of Schedule 1 to the 1980 Act.

Paragraph 6 re-enacts paragraph 5 of Schedule 1 to the 1980 Act.

# EXPLANATORY NOTES

Paragraph 7 re-enacts paragraph 6 of Schedule 1 to the 1980 Act.

Paragraph 8 re-enacts paragraph 7 of Schedule 1 to the 1980 Act.

Paragraph 9 re-enacts paragraph 9 of Schedule 1 to the 1980 Act.

## **SCHEDULE 2**

This Schedule modifies the application of the primary limitation period where the claimant is subject to insolvency or bankruptcy proceedings.

Part I of the Schedule applies to corporate insolvency proceedings. Paragraph 1 applies to a company or an insolvent partnership in administration. It suspends the running of the primary limitation period against a company or partnership whilst it is in administration, and ensures that the primary limitation period is not started by the administrator attaining the relevant knowledge about the claim.

## **EXPLANATORY NOTES**

Paragraph 1(4) ensures that the same protection applies to a foreign company or partnership or an English company or partnership which is subject to foreign insolvency proceedings equivalent to administration if it seeks to bring a claim in this jurisdiction.

Paragraph 2 applies to a company or insolvent partnership in administrative receivership. It suspends the running of the primary limitation period while the administrative receiver is in office and ensures that the primary limitation period is not started by the administrative receiver attaining the relevant knowledge about the claim. Paragraph 2(2) provides that this rule does not apply where the claim is one by the company or partnership against the administrative receiver. Paragraph 2(5) ensures that this also applies to a foreign company or partnership or an English company or partnership which is subject to foreign insolvency proceedings equivalent to administrative receivership.

Paragraph 3 applies when a company or insolvent partnership is being wound up. Paragraph 3(2) suspends the primary limitation period for one year after the appointment of a liquidator if the primary limitation period is already running when the liquidator is appointed. Paragraph 3(3) ensures that, if the primary limitation period has yet not started when the liquidator is appointed, it will not start for at least one year after that date. The same protection applies, under paragraph 3(5) to a foreign company or partnership or an English company or partnership which is subject to foreign insolvency proceedings equivalent to liquidation.

Paragraph 4 ensures that the primary limitation period for claims by liquidators under sections 213 and 214, and claims by administrators or liquidators under sections 238, 239 and 423 of the Insolvency Act 1986, will not start for at least one year after an administrator or liquidator is appointed.

## **EXPLANATORY NOTES**

Part II of the Schedule applies to bankruptcy proceedings. Paragraph 6 explains how the limitations regime will apply to claims which have become vested in a trustee in bankruptcy as a consequence of the individual's bankruptcy.

Paragraph 6(2) protects defendants from claims which were already time-barred at the date of bankruptcy being revived at a later date by the trustee in bankruptcy.

Paragraphs 6(3) suspends the primary limitation period for one year from the date on which the bankruptcy order is made if it is running at that date. Paragraph 6(4) ensures that, if the primary limitation period has yet not started on the date of the bankruptcy order, it will not start for at least one year after that date.

## **EXPLANATORY NOTES**

Paragraph 6(5) ensures that the same protection applies for an individual subject to foreign insolvency laws in relation to a claim in this jurisdiction.

Paragraph 7 ensures that the primary limitation period for claims by the trustee in bankruptcy under sections 339, 340, 342A, 343 and 423 of the Insolvency Act 1986 to recover assets for distribution to the bankrupt's creditors will not start for at least one year after the bankruptcy order is made.

### **SCHEDULE 3**

Schedule 3 makes minor amendments to previous statutes to ensure that references to past Limitation Acts are read as references to the Bill, and to ensure that references which have become obsolete are deleted. In addition:

Paragraph 3 deletes section 83(12) of the Land Registration Act 1925. This subsection provided that a claim under section 83 of the 1925 Act for an indemnity for loss resulting from an error or omission on the Land Register was to be treated, for limitation purposes, as a simple contract debt (and subject therefore to a limitation period of six years), and that the cause of action was to be treated as accruing on the date on which the claimant should know of the claim. Instead, such claims will be subject to the primary limitation period of three years.

## **EXPLANATORY NOTES**

Paragraph 5 ensures that the protection given to claimants by section 1 of the Limitation (Enemies and War Prisoners) Act 1945 applies not only to limitation periods set down in statute but also to limitation periods which have been agreed between the parties.

Paragraph 6 ensures that section 1(5) of the Law Reform (Contributory Negligence) Act 1945 applies both to defendants relying on the expiry of a limitation period set down in statute and defendants who rely on the expiry of a limitation period agreed between the parties.

Paragraph 9 deletes section 25(5) of the Law of Property Act 1969. This subsection provided that a claim by a purchaser under section 25 of the 1969 Act for compensation for loss caused by undisclosed land charges, was to be treated, for limitation purposes, as accruing when the charge came to the notice of the purchaser. Instead these claims will be subject to the primary limitation period.

## **EXPLANATORY NOTES**

Paragraph 11 amends section 1(5) of the Defective Premises Act 1972 so that reference is made to the Bill. The amended provision preserves the date of accrual provided for in that section for the purposes of determining the start of the long-stop limitation period under the Bill.

Paragraph 14 deletes section 36(7) of the Land Compensation Act 1973, a transitional provision relating to farm loss payments, and makes amendments consequent upon that deletion. This paragraph also clarifies that the cause of action to recover such a payment is deemed for the purposes of the Bill to accrue on the date on which the right to receive the payment arises. Such claims will be subject to the core limitations regime.

Paragraph 16 deletes section 10(7) of the Local Land Charges Act 1975. This section provided that a claim for compensation for non-registration of a land charge (or the production of a defective official certificate) should be subject to a limitation period of 6 years running from the date on which the claimant should have notice of the facts. Instead the claim will be subject to the primary limitation period under the core limitations regime.

Paragraphs 18 and 19 replace the time limits laid down in sections 57 and 94 of the Rent Act 1977, with the limitation periods provided for under the Bill, to ensure that the core limitations regime applies to claims under these sections.

## **EXPLANATORY NOTES**

Paragraph 20 applies the core regime, with some modifications, to claims under the Vaccine Damage Payments Act 1979. A claim under the 1979 Act will be treated as a personal injury claim and therefore subject to the primary limitation period (but not the long-stop limitation period).

Paragraph 23 re-enacts the present provisions of the Latent Damage Act 1986 in relation to the accrual of a cause of action to a successive owner of property with latent damage. This will ensure that a new cause of action accrues to the owner of property which has latent damage which occurred before he or she acquired the property, but only became known after that date. The claim by the successive owner is then subject to the core regime, although the 'starting date' for the long-stop limitation period remains the same as in the original owner's action. This paragraph also deletes the provisions relating to knowledge in sections 3(5) and (6) of the Latent Damage Act so that the general rules as to knowledge in the Bill apply.

## **EXPLANATORY NOTES**

Paragraph 24 amends subsections 5(5) to 5(7) of the Consumer Protection Act 1987 so that the time when loss or damage to property giving rise to liability under the Act occurred is determined in accordance with the time the person with an interest in that property would be considered to know that the loss or damage is significant in accordance with the tests laid down in the Bill. It also ensures that the provisions of the Bill in relation to constructive and corporate knowledge apply in such a case.

Paragraphs 25 to 29 remove the six year time limits imposed in sections 113, 203 and 230 of the Copyright, Designs and Patents Act 1988 to claims for delivery up under the 1988 Act, so bringing these claims within the core regime. In addition, paragraphs 26, 28 and 29 also ensure that the date on which the cause of action is deemed to accrue for these claims is the same as the date on which the old time limits started to run.

## **EXPLANATORY NOTES**

Paragraph 35 removes the six year time limit in section 18 of the Trade Marks Act 1994, so bringing claims for the delivery up under section 16 of the 1994 Act within the core regime, and ensures that the date on which the cause of action is deemed to accrue for these claims is the same as the date on which the old time limits started to run.