

Limitation Act 1950

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This Act is administered in the Ministry of Justice

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An Act to consolidate and amend certain enactments relating to the limitation of actions and arbitrations

1 Short Title and commencement

This Act may be cited as the Limitation Act 1950, and shall come into force on the 1st day of January 1952.

2 Interpretation

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

Action means any proceeding in a Court of law other than a criminal proceeding

Arbitration, award, and submission*[Repealed]*

Arbitration, award, and submission: this definition was repealed, as from 1 July 1997, by section 17 Arbitration Act 1996 (1996 No 99).

[Repealed]

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

Parent has the same meaning as in the Deaths by Accidents Compensation Act 1952 as for the time being extended by any other enactment

The reference to the Deaths by Accidents Compensation Act 1952 in the definition of parent was substituted, as from 1 January 1953, for a reference to the Deaths by Accident Compensation Act 1908 pursuant to section 23 Deaths by Accidents Compensation Act 1952 (1952 No 35).

Personal estate and personal property do not include chattels real

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

Ship includes every description of vessel used in navigation not propelled by oars

Trust and trustee have the same meanings respectively as in the Trustee Act 1956 as for the time being extended by any other enactment.

The reference to the Trustee Act 1956 in the definition of Trust was substituted, as from 1 January 1957, for a reference to the Trustee Act 1908 pursuant to section 89(1) Trustee Act 1956 (1956 No 61).

- (2) For the purposes of this Act, a person shall be deemed to be under a disability while he is an infant or of unsound mind.
- (3) For the purposes of the last preceding subsection but without prejudice to the generality thereof, a person shall be conclusively presumed to be of unsound mind while he is detained or kept in custody (otherwise than as a voluntary boarder) under any provision of the Mental Health (Compulsory Assessment and Treatment) Act 1992.
- (4) 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, and any person whose estate or interest might have been barred by a person entitled to an entailed interest in possession shall be deemed to claim through the person so entitled:

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

- (5) References in this Act to a right of action to recover land shall include references to a right to enter into possession of the land or, in the case of rentcharges, to distrain for arrears of rent; and references to the bringing of such an action shall include references to the making of such an entry or distress.
- (6) References in this Act to the possession of land shall, in the case of rentcharges, be construed as references to the receipt of rent; and references to the date of dispossession or discontinuance of possession of land shall, in the case of rentcharges, be construed as references to the date of the last receipt of rent.
- (7) In Part 2 of this Act 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.
- (8) For the purposes of this Act a period of limitation which is prescribed by any of the enactments mentioned in Schedule 2 to this Act (as amended by this Act) shall not be deemed to be prescribed by this Act.

Compare: Limitation Act 1939, s 31 (UK)

A reference to the Mental Health Act 1969 in subsection (3) was substituted, as from 1 April 1970, for a reference to the Mental Health Act 1911 pursuant to section 129(1) Mental Health Act 1969 (1969 No 16). That reference was in turn substituted, as from 1 November 1992, for a reference to the Mental Health (Compulsory Assessment and Treatment) Act 1992 pursuant to section 137(1) Mental Health (Compulsory Assessment and Treatment) Act 1992 (1992 No 46).

Part 1
**Periods of limitation for different classes
of action**

**3 Part 1 to be subject to provisions of Part 2 relating to
disability, acknowledgment, fraud, etc**

The provisions of this Part of this Act shall have effect subject to the provisions of Part 2 of this Act, which provide for the extension of the periods of limitation in the case of disability, acknowledgment, part payment, fraud, and mistake.

Compare: Limitation Act 1939, s 1 (UK)

*Actions of contract and tort and certain other
actions*

**4 Limitation of actions of contract and tort, and certain
other actions**

- (1) Except as otherwise provided in this Act or in subpart 3 of Part 2 of the Prisoners' and Victims' Claims Act 2005, the following actions shall not be brought after the expiration of 6 years from the date on which the cause of action accrued, that is to say,—
- (a) Actions founded on simple contract or on tort:
 - (b) Actions to enforce a recognisance:
 - (c) Actions to enforce an award, where the submission is not by a deed:
 - (d) Actions to recover any sum recoverable by virtue of any enactment, other than a penalty or forfeiture or sum by way of penalty or forfeiture.
- (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 a deed shall not be brought after the expiration of 12 years from the date on which the cause of action accrued: Provided that this subsection shall not affect any action for which a shorter period of limitation is prescribed by any other provision of this Act.
- (4) An action shall not be brought upon any judgment which has been obtained subsequent to the commencement of this Act after the expiration of 12 years from the date on which the

judgment became enforceable or on any judgment which has been obtained before the commencement of this Act after the expiration of 20 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.

- (5) An action to recover any penalty or forfeiture, or sum by way of penalty or forfeiture, recoverable by virtue of any enactment shall not be brought after the expiration of 2 years from the date on which the cause of action accrued:

Provided that for the purposes of this subsection the expression **penalty** shall not include a fine to which any person is liable on conviction of a criminal offence.

- (6) An action to have any will of which probate has been granted, or in respect of which letters of administration with the will annexed have been granted, declared or adjudicated to be invalid on the ground of want of testamentary capacity in the testator or on the ground of undue influence shall not be brought after the expiration of 12 years from the date of the granting of the probate or letters of administration.
- (6A) Subject to subsection (6B) of this section, a defamation action shall not be brought after the expiration of 2 years from the date on which the cause of action accrued.
- (6B) Notwithstanding anything in subsection (6A) of this section, any person may apply to the Court, after notice to the intended defendant, for leave to bring a defamation action at any time within 6 years from the date on which the cause of action accrued; and the Court may, if it thinks it just to do so, grant leave accordingly, subject to such conditions (if any) as it thinks it just to impose, where it considers that the delay in bringing the action was occasioned by mistake of fact or mistake of any matter of law (other than the provisions of subsection (6A) of this section), or by any other reasonable cause.
- (7) An action in respect of the bodily injury to any person shall not be brought after the expiration of 2 years from the date on which the cause of action accrued unless the action is brought

with the consent of the intended defendant before the expiration of 6 years from that date:

Provided that if the intended defendant does not consent, application may be made to the Court, after notice to the intended defendant, for leave to bring such an action at any time within 6 years from the date on which the cause of action accrued; and the Court may, if it thinks it is just to do so, grant leave accordingly, subject to such conditions (if any) as it thinks it is just to impose, where it considers that the delay in bringing the action was occasioned by mistake of fact or mistake of any matter of law other than the provisions of this subsection or by any other reasonable cause or that the intended defendant was not materially prejudiced in his defence or otherwise by the delay.

- (8) Subject to the provisions of section 76 of the Shipping and Seamen Act 1952, subsection (1) of this section shall apply to an action to recover seamen's wages, but save as aforesaid this section shall not apply to any cause of action within the Admiralty jurisdiction of the High Court which is enforceable *in rem*.
- (9) This section shall not apply to any claim for specific performance of a contract or for an injunction or for other equitable relief, except in so far as any provision thereof may be applied by the Court by analogy in like manner as the corresponding enactment repealed or amended by this Act, or ceasing to have effect by virtue of this Act, has heretofore been applied.

Compare: Limitation Act 1939, s 2 (UK); 1908 No 89 s 95

Subsection (1) was amended, as from 4 June 2005, by section 73 Prisoners' and Victims' Claims Act 2005 (2005 No 74) by inserting the words "or in subpart 3 of Part 2 of the Prisoners' and Victims' Claims Act 2005" after the word "Act".

Subsections (6A) and (6B) were inserted, as from 1 February 1993 by section 55 Defamation Act 1992 (1992 No 105).

Subsection (7) was amended, as from 6 December 1962, by section 2(1) Limitation Amendment Act 1962 (1962 No 112).

Subsection (7) was substituted, as from 27 November 1970, by section 2(1) Limitation Amendment Act 1970 (1970 No 78).

The reference to section 76 Shipping and Seamen Act 1952 in subsection (8), was substituted, as from 19 November 1953, for a reference to section 4 Shipping and Seamen Amendment Act 1948 pursuant to section 515(1) Shipping and Seamen Act 1952 (1952 No 49). The Shipping and Seamen Act 1952 was

repealed, as from 1 February 1995, by section 202(1) Maritime Transport Act 1994 (1994 No 104).

5 Limitation in case of successive conversions, and extinction of title of owner of converted goods

- (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 as aforesaid expires without his having commenced action to recover possession of the chattel, the title of that person to the chattel shall be extinguished.
- (3) Nothing in this section shall affect the provisions of subsection (1) of section 26 of the Sale of Goods Act 1908.

Compare: Limitation Act 1939, s 3 (UK)

Actions to recover land and rent, and accrual of rights and causes of action

6 Application of Act to land of the Crown, Maori customary land, and land subject to the Land Transfer Act

- (1) Subject to subsections (1A) and (2) of this section, nothing in this Act shall apply to any land that is Maori customary land within the meaning of Te Ture Whenua Maori Act 1993.
- (1A) Notwithstanding anything in subsection (1) of this section, but subject to section 7A of this Act,—
 - (a) Where any action to recover land that is Maori customary land within the meaning of Te Ture Whenua Maori Act 1993 is brought against the Crown or any person claiming through the Crown, this Act shall apply to that action; and
 - (b) Where any action for damages or an injunction in respect of any trespass or injury to Maori customary land

is brought against the Crown, or any person claiming through the Crown, this Act shall apply to that action.

- (2) This Act shall be subject to the Land Transfer Act 1952, the Land Act 1948, section 344 of Te Ture Whenua Maori Act 1993, and section 51 of the Public Works Act 1981, so far as it is inconsistent with anything contained in those enactments.
- (3) Nothing in this Act shall affect the right of Her Majesty to any minerals (including uranium, petroleum, and coal).

Subsection (1) was substituted, and subsection (1A) was inserted, as from 1 July 1993, by section 360 Te Ture Whenua Maori Act/ Maori Land Act 1993 (1993 No 4).

Subsection (2) was substituted, as from 1 July 1993, by section 360 Te Ture Whenua Maori Act / Maori Land Act 1993 (1993 No 4).

7 Limitation of actions to recover land

- (1) No action shall be brought by the Crown to recover any land after the expiration of 60 years from the date on which the right of action accrued to the Crown or to some person through whom the Crown claims.
- (2) No action shall be brought by any other person to recover any land after the expiration of 12 years from the date on which the right of action accrued to him or to some person through whom he claims:

Provided that, if the right of action first accrued to the Crown, the action may be brought at any time before the expiration of the period during which the action could have been brought by the Crown, or of 12 years from the date on which the right of action accrued to some person other than the Crown, whichever period first expires.

Compare: Limitation Act 1939, s 4 (UK)

7A Limitation of actions in relation to Maori customary land

- (1) No action to which this Act applies by virtue of subsection (1A)(a) of section 6 of this Act shall be brought after the expiration of 12 years from the date on which the right of action accrued to the person bringing the action or to some other person through whom the person bringing the action claims.
- (2) No action to which this Act applies by virtue of subsection (1A)(b) of section 6 of this Act shall be brought after the ex-

piration of 6 years from the date on which the cause of action accrued.

- (3) For the avoidance of doubt, it is hereby declared that, in relation to an action to which this Act applies by virtue of subsection (1A) of section 6 of this Act, the date on which the right of action or cause of action accrued shall be the date on which the wrong occurred, whether before or after the commencement of this section, and not the date of the repeal of section 155 of the Maori Affairs Act 1953 or of any other provision of that Act.
- (4) In relation to any action to which this Act applies by virtue of subsection (1A)(a) of section 6 of this Act, subsections (1) and (3) of this section have effect in the place of section 7 (2) of this Act.
- (5) In relation to an action to which this Act applies by virtue of subsection (1A)(b) of section 6 of this Act, subsections (2) and (3) of this section have effect in the place of section 4(1)(a) of this Act to the extent that section 4(1)(a) of this Act applies to actions founded on tort.
- (6) Where any provision of Te Ture Whenua Maori Act 1993 or of any other Act confers on the Maori Land Court or the Maori Appellate Court jurisdiction to investigate and ascertain title to Maori customary land or to determine whether any parcel of land has the status of Maori customary land, nothing in section 6(1A) of this Act or in subsections (1) to (5) of this section shall limit or otherwise affect the jurisdiction so conferred.

Section 7A was inserted, as from 1 July 1993, by section 361 Te Ture Whenua Maori Act/ Maori Land Act 1993 (1993 No 4).

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

- (1) Where the person bringing an action to recover land, or some person through whom he claims, has been in possession thereof, and has while 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 on intestacy, and 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 was the last person entitled to the land to be in possession thereof, the right of action shall be deemed to have accrued on the date of 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.

Compare: Limitation Act 1939, s 5 (UK)

9 Accrual of right of action in case of future interests

- (1) Subject as hereafter in this section provided, the right of action to recover any land shall, in a case where the estate or interest claimed was an estate or interest in reversion or remainder or any other future estate or interest and no person has taken possession of the land by virtue of the estate or interest claimed, be deemed to have accrued on the date on which the estate or interest fell into possession by the determination of the preceding estate or interest or otherwise.
- (2) If the person entitled to the preceding estate or interest 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—
- (a) After the expiration of 60 years from the date on which the right of action accrued to the Crown where the Crown is entitled to the succeeding estate or interest; or
- (b) In any other case, 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) The foregoing provisions of this section shall not apply where the preceding estate or interest is a leasehold interest other than one which is determinable with life or lives or with the cesser of a determinable life interest.
- (4) The foregoing provisions of this section shall not apply to any estate or interest which falls into possession on the determination of an entailed interest and which might have been barred by the person entitled to the entailed interest.
- (5) 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.
- (6) 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.

Compare: Limitation Act 1939, s 6 (UK)

10 Provisions in case of settled land and land held on trust

- (1) Subject to the provisions of subsection (1) of section 21 of this Act, the provisions of this Act shall apply to equitable interests in land, including interests in the proceeds of the sale of land held upon trust for sale, in like manner as they apply to legal estates, and accordingly a right of action to recover the land shall, for the purposes of this Act but not otherwise, be deemed to accrue to a person entitled in possession to such an equitable interest in the like manner and circumstances and on the same date as it would accrue if his interest were a legal estate in the land.
- (2) Where any land is held by any trustee (including a trustee who is also tenant for life . . .) upon trust, including a trust for sale,

and the period prescribed by this Act for the bringing of an action to recover the land by the trustee has expired, the estate of the trustee 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 trustee shall be extinguished.

- (3) Where any settled land is vested in a tenant for life or a person having the statutory powers of a tenant for life or any land is held upon trust, including a trust for sale, an action to recover the land may be brought by the tenant for life or person having the powers of a tenant for life or trustees on behalf of any person entitled to a beneficial interest in possession in the land or in the proceeds of sale whose right of action has not been barred by this Act, notwithstanding that the right of action of the tenant for life or person having the powers of a tenant for life or trustees would, apart from this provision, have been barred by this Act.
- (4) Where any settled land or 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 tenant for life, person having the powers of a tenant for life, or trustee, or to any person entitled to a beneficial interest in the land or the proceeds of sale.

Compare: Limitation Act 1939, s 7 (UK)

Subsection (2) was amended, as from 1 January 1957, by section 89(2) Trustee Act 1956 (1956 No 61), by omitting the words "or who, by virtue of the Settled Land Act 1908, has also the powers of a tenant for life".

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

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:

Provided that, if such a right 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.

Compare: Limitation Act 1939, s 8 (UK)

12 Accrual of right of action in case of certain tenancies

- (1) A tenancy at will or a tenancy determinable at the will of either of the parties by one month's notice in writing shall, for the purposes of this Act, be deemed to be determined at the expiration of a period of one year from the commencement thereof, unless it has previously been determined, and accordingly the right of action of the person entitled to the land subject to the tenancy shall be deemed to have accrued on the date on which it is determined or deemed to be determined as aforesaid:

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

- (2) A tenancy from year to year or other period without a lease in writing (but not a tenancy to which the last preceding subsection applies) shall, for the purposes of this Act, be deemed to be determined at the expiration of the first year or other period, and accordingly the right of action of the person entitled to the land subject to the tenancy shall be deemed to have accrued at the date of such determination:

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

- (3) Where any person is in possession of land by virtue of a lease in writing by which a rent at a rate of not less than \$2 a year is reserved, and the rent is received by some person wrongfully claiming to be entitled to the land in reversion immediately expectant on the determination of the lease, and no rent is subsequently received by the person rightfully so entitled, the right of action of the last-mentioned 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.

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

Compare: Limitation Act 1939, s 9 (UK)

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

- (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 (hereafter in this section referred to as adverse possession), and, where under the foregoing provisions of 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 and until adverse possession is taken of the land.
- (2) 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 and until the land is again taken into adverse possession.
- (3) 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, as mentioned in subsection (3) of the last preceding section, the land in reversion shall be deemed to be adverse possession of the land.
- (4) For the purposes of this section, 1 or more joint tenants or tenants in common of any land can take (and shall be deemed at all times before the commencement of the Land Transfer Amendment Act 1995 to have been able to take) adverse possession of the land as against the other tenant or tenants.

Compare: Limitation Act 1939, s 10 (UK)

Subsection (4) was inserted, as from 30 March 1995, by section 2(2) Land Transfer Amendment Act 1995 (1995 No 11). Section 2(3) of that Act states that the enactment of that Act does not impose on any person any liability for any action, or failure or refusal to act, occurring before 30 March 1995.

14 Accrual of cause of action on claim for contribution or indemnity

For the purposes of any claim for a sum of money by way of contribution or indemnity, however the right to contribution or indemnity arises, the cause of action in respect of the claim shall be deemed to have accrued at the first point of time when everything has happened which would have to be proved to enable judgment to be obtained for a sum of money in respect of the claim.

15 Cure of defective disentailing assurance

Where a person entitled in remainder to an entailed interest in any land has made an assurance thereof which fails to bar the issue in tail or the estates and interests taking effect on the determination of the entailed interest, or fails to bar the last-mentioned estates and interests only, and any person takes possession of the land by virtue of the assurance, and that person or any other person whatsoever (other than a person entitled to possession by virtue of the settlement) is in possession of the land for a period of 12 years from the commencement of the time at which the assurance, if it had then been executed by the person entitled to the entailed interest, would have operated, without the consent of any other person, to bar the issue in tail and such estates and interests as aforesaid, then, at the expiration of that period, the assurance shall operate, and be deemed always to have operated, to bar the issue in tail and those estates and interests.

Compare: Limitation Act 1939, s 11 (UK)

16 Limitation of redemption actions

- (1) Notwithstanding anything contained in section 81 of the Property Law Act 1952, or in any other enactment, when a mortgagee of land has been in possession of any of the mortgaged land for a period of 12 years, no action to redeem the land of which the mortgagee has been so in possession

shall thereafter be brought by the mortgagor or any person claiming through him.

- (2) This section shall not apply in respect of any land that is subject to the Land Transfer Act 1952.

Compare: Limitation Act 1939, s 12 (UK)

The reference to section 81 Property Law Act 1952 in subsection (1) was substituted, as from 1 January 1953, for a reference to the repealed section 70 Property Law Act 1908 pursuant to section 155(2) Property Law Act 1952 (1952 No 51).

The reference to the Land Transfer Act 1952 was substituted, as from 1 January 1953, for a reference to the Land Transfer Act 1915 pursuant to section 245(1) Land Transfer Act 1952 (1952 No 52).

17 No right of action to be preserved by formal entry or continual claim

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.

Compare: Limitation Act 1939, s 13 (UK)

18 Extinction of title after expiration of period

Subject to the provisions of section 10 of this Act, at the expiration of the period prescribed by this Act for any person to bring an action to recover land (including a redemption action) the title of that person to the land shall be extinguished.

Compare: Limitation Act 1939, s 16 (UK)

19 Limitation of actions to recover rent

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.

Compare: Limitation Act 1939, s 17

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

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

- (1) No action shall be brought to recover any principal sum of money secured by a mortgage or other charge on property, whether real or personal, or to recover proceeds of the sale of land (not being the proceeds of the sale of land held upon trust for sale), 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:
Provided that, if after that date the mortgagee was in possession of the mortgaged property, the right to foreclose on the property which was in his possession shall not, for the purposes of this subsection, be deemed to have accrued until the date on which his possession discontinued.
- (3) The right to receive any principal sum of money secured by a mortgage or other charge and the right to foreclose on any personal property subject to the mortgage or charge shall not be deemed to accrue so long as the property subject to the mortgage or charge comprises any future interest or any life insurance policy which has not matured or been determined.
- (4) 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:
Provided that—
 - (a) Where a prior mortgagee or other encumbrancer has been in possession of the property charged, and an action is brought within one year of the discontinuance of that possession by the subsequent encumbrancer, he may recover by that ac-

tion all the arrears of interest which fell due during the period of possession by the prior encumbrancer or damages in respect thereof, notwithstanding that the period exceeded 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.

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

Compare: Limitation Act 1939, s 18 (UK)

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

21 Limitation of actions in respect of trust property

- (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 as aforesaid, 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: Provided that the right of action 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.
- (3) 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.

Compare: Limitation Act 1939, s 19 (UK); 1908 No 200 s 94

22 Limitation of actions claiming personal estate of a deceased person

Subject to the provisions of subsection (1) of the last preceding section, no action in respect of any claim to the personal estate of a deceased person or to any share or interest in such estate, whether under a will or on intestacy, shall be brought after the expiration of 12 years from the date when the right to receive the share or interest accrued, and no action to recover arrears of interest in respect of any legacy, or damages in respect of such arrears, shall be brought after the expiration of 6 years from the date on which the interest became due.

Compare: Limitation Act 1939, s 20 (UK)

23

Section 23 was repealed, as from 6 December 1962, by section 3(1) Limitation Amendment Act 1962 (1962 No 112). See also section 3(2) and (3) of that Act.

Part 2

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

Disability

24 Extension of limitation period in case of disability

If, on the date when any right of action accrued for which a period of limitation is prescribed by or may be prescribed under this Act the person to whom it accrued was under a disability,—

- (a) In the case of any action . . . in respect of the death of or bodily injury to any person, or of any action to recover a penalty or forfeiture or sum by way thereof by virtue of any enactment where the action is brought by an aggrieved party, the right of action shall be deemed to have accrued on the date when the person ceased to be under a disability or died, whichever event first occurred; or

- (b) In any other case the action may be brought before the expiration of 6 years from the date when the person ceased to be under a disability or died, whichever event first occurred,—

notwithstanding that, in any case to which either of the foregoing paragraphs of this section applies, the period of limitation has expired:

Provided that—

- (c) This section shall not affect any case where the right of action first accrued to some person (not under a disability) through whom the person under a disability claims;
- (d) 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;
- (e) No action to recover land or money charged on land shall be brought by virtue of this section by any person after the expiration of 30 years from the date on which the right of action accrued to that person or some person through whom he claims; and
- (f)
- (g) This section shall not apply to any action to recover a penalty or forfeiture, or sum by way thereof, by virtue of any enactment, except where the action is brought by an aggrieved party.

Compare: Limitation Act 1939, s 22 (UK)

Paragraph (a) was amended, as from 23 October 1963, by section 2(a) Limitation Amendment Act 1963 (1963 No 96) by omitting the words “to which section twenty-three of this Act applies, or of any other action”.

Paragraph (e) was amended, as from 23 October 1963, by section 2(b) Limitation Amendment Act 1963 (1963 No 96) by inserting the word “and”.

Paragraph (f) was repealed, as from 23 October 1963, by section 2(c) Limitation Amendment Act 1963.

Acknowledgment and part payment

25 Fresh accrual of action on acknowledgment or part payment

- (1) Where there has accrued any right of action to recover land or any right of a mortgagee of personal property to bring a foreclosure action in respect of the property, and—
 - (a) The person in possession of the land or personal property acknowledges the title of the person to whom the right of action has accrued; or
 - (b) In the case of a foreclosure or other action by a mortgagee, the person in possession as aforesaid or the person liable for the mortgage debt makes any payment in respect thereof, whether of principal or interest,—
the right shall be deemed to have accrued on and not before the date of the acknowledgment or the last payment.
- (2) The last preceding subsection shall apply to a right of action to recover land accrued to a person entitled to an estate or interest taking effect on the determination of an entailed interest against whom time is running under section 15 of this Act, and on the making of the acknowledgment that section shall cease to apply to the land.
- (3) Where a mortgagee is by virtue of the mortgage in possession of any mortgaged land which is not subject to the Land Transfer Act 1952, and either receives any sum in respect of the principal or interest of the mortgage debt or acknowledges the title of the mortgagor, or his equity of redemption, an action to redeem the land in his possession may be brought at any time before the expiration of 12 years from the date of the payment or acknowledgment.
- (4) Where any right of action has accrued to recover any debt or other liquidated pecuniary claim, or any claim to the personal estate of a deceased person or to any share or interest therein, and the person liable or accountable therefor acknowledges the claim or makes any payment in respect thereof, the right shall be deemed to have accrued on and not before the date of the acknowledgment or the last payment:
Provided that a payment of a part of the rent or interest due at any time shall not extend the period for claiming the remain-

der then due, but any payment of interest shall be treated as a payment in respect of the principal debt.

Compare: Limitation Act 1939, s 23 (UK)

The reference to the Land Transfer Act 1952 in subsection (3) was substituted, as from 1 January 1953, for a reference to the repealed Land Transfer Act 1915 pursuant to section 245(1) Land Transfer Act 1952 (1952 No 52).

26 Formal provisions as to acknowledgments and part payments

- (1) Every such acknowledgment as aforesaid shall be in writing and signed by the person making the acknowledgment.
- (2) Any such acknowledgment or payment as aforesaid may be made by the agent of the person by whom it is required to be made under the last preceding 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.

Compare: Limitation Act 1939, s 24 (UK)

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

- (1) An acknowledgment of the title to any land or mortgaged personality by any person in possession thereof shall bind all other persons in possession during the ensuing period of limitation.
- (2) A payment in respect of a mortgage debt by the mortgagor or any person in possession of the mortgaged property shall, so far as any right of the mortgagee to foreclose or otherwise to recover the property is concerned, bind all other persons in possession of the mortgaged property during the ensuing period of limitation.
- (3) Where 2 or more mortgagees are by virtue of the mortgage in possession of the mortgaged land, an acknowledgment of the mortgagor's title or of his equity of redemption by one of the mortgagees shall bind only him and his successors and shall not bind any other mortgagee or his successors, and, where the mortgagee by whom the acknowledgment is given is entitled to a part of the mortgaged land and not to any ascertained part of the mortgage debt, the mortgagor shall be entitled to redeem that part of the land on payment, with interest, of the part of the

mortgage debt which bears the same proportion to the whole of the debt as the value of the part of the land bears to the whole of the mortgaged land.

- (4) Where there are 2 or more mortgagors, and the title or right to redemption of one of the mortgagors is acknowledged as aforesaid, the acknowledgment shall be deemed to have been made to all the mortgagors.
- (5) An acknowledgment of any debt or other liquidated pecuniary claim shall bind the acknowledgor and his successors but not any other person:
Provided that 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:
Provided that 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.
- (7) An acknowledgment by one of several personal representatives of any claim to the personal estate of a deceased person, or to any share or interest therein, or a payment by one of several personal representatives in respect of any such claim shall bind the estate of the deceased person.
- (8) In this section the expression **successor** in relation to any mortgagee or person liable in respect of any debt or claim means 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.

Compare: Limitation Act 1939, s 25 (UK)

*Fraud and mistake***28 Postponement of limitation period in case of fraud or mistake**

Where, in the case of any action for which a period of limitation is prescribed by this Act, either—

- (a) The action is based upon the fraud of the defendant or his agent or of any person through whom he claims or his agent; or
- (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:

Provided that 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—

- (d) 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
- (e) 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.

Compare: Limitation Act 1939, s 26 (UK)

Part 2A
Application of limitation law of overseas
countries

Part 2A (comprising sections 28A to 28C) was inserted, as from 2 September 1996, by section 2 Limitation Amendment Act 1996 (1996 No 131).

28A Interpretation

In this Part of this Act,—

Country includes a State, territory, province, or other part of a country

Limitation law in relation to any matter, means a law that limits or excludes liability or bars a right to bring proceedings or to have the matter determined by arbitration by reference to the time when proceedings or an arbitration in respect of the matter are commenced; and includes a law that provides that proceedings in respect of the matter may be commenced within an indefinite period.

Compare: Foreign Limitation Periods Act 1984 (UK), s 4; Choice of Law (Limitation Periods) Act 1993 (NSW), s 3

Part 2A (comprising sections 28A to 28C) was inserted, as from 2 September 1996, by section 2 Limitation Amendment Act 1996 (1996 No 131).

28B Application of this Part of this Act

- (1) This Part of this Act applies to the Commonwealth of Australia or any State or Territory of Australia, the United Kingdom, and to any country to which this Part of this Act is declared to apply by an Order in Council made under subsection (2) of this section.
- (2) The Governor-General may from time to time, by Order in Council, declare that this Part of this Act applies to a country specified in the order.
- (3) In the case of a country that is responsible for the international relations of a territory, an Order in Council under subsection (2) of this section may apply to the country and all or some of those territories.

Part 2A (comprising sections 28A to 28C) was inserted, as from 2 September 1996, by section 2 Limitation Amendment Act 1996 (1996 No 131).

28C Characterisation of limitation law

- (1) Where the substantive law of a country to which this Part of this Act applies is to be applied in proceedings before a New Zealand Court or in an arbitration, the limitation law of that country is part of the substantive law of that country and must be applied accordingly.
- (2) If, in any case to which subsection (1) of this section applies, a New Zealand Court or an arbitrator exercises a discretion under the limitation law of another country, that discretion, so

far as practicable, must be exercised in the manner in which it is exercised in that other country.

Compare: Foreign Limitation Periods Act 1984 (UK), s 1; Choice of Law (Limitation Periods) Act 1993 (NSW), ss 5 and 6.

Part 2A (comprising sections 28A to 28C) was inserted, as from 2 September 1996, by section 2 Limitation Amendment Act 1996 (1996 No 131).

Part 3

General

29 Application of Act and other limitation enactments to arbitrations

- (1) This Act and any other enactment relating to the limitation of actions shall apply to arbitrations as they apply to actions.
- (2) For the purposes of this Act and of any such enactment, an arbitration shall be treated as being commenced in the same manner as provided in Article 21 of Schedule 1 to the Arbitration Act 1996.
- (3) Where the High Court orders that an award be set aside, the Court may further order that the period between the commencement of the arbitration and the date of the order of the Court shall be excluded in computing the time prescribed by this Act or any such enactment for the commencement of proceedings (including arbitration) with respect to the dispute referred.
- (4) This section applies to an arbitration under an Act as well as to an arbitration under an arbitration agreement.

Compare: Limitation Act 1939, s 27 (UK); 1938 No 6 s 18

Section 29 was substituted, as from 1 July 1997, by section 17 Arbitration Act 1996 (1996 No 99).

30 Provisions as to set-off or counterclaim

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.

Compare: Limitation Act 1939, s 28 (UK)

31 Acquiescence

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

Compare: Limitation Act 1939, s 29 (UK)

32 Application to the Crown

Save as in this Act otherwise expressly provided and without prejudice to the provisions of section 33 thereof, this Act shall apply to proceedings by or against the Crown in like manner as it applies to proceedings between subjects:

Provided that this Act shall not apply to any proceedings by the Crown for the recovery of any tax or duty or interest thereon or to any forfeiture proceedings under the Customs and Excise Act 1996, as from time to time extended by any other enactment, or to any proceedings in respect of the forfeiture of a ship.

Compare: Limitation Act 1939, s 30 (UK)

The reference to section 3 Customs Act 1966 was substituted, as from 1 January 1967, for a reference to section 3 Customs Act 1913 pursuant to section 311(1) Customs Act 1966 (1966 No 19).

The proviso was amended, as from 1 October 1996, by section 289(1) Customs and Excise Act 1996 (1996 No 27) by substituting the words “Customs and Excise Act 1996” for the words “Customs Acts within the meaning of [section 3 of the Customs Act 1966]”.

33 Savings for other limitation enactments

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

(2) Any reference in any enactment to any of the enactments specified in Schedule 1 to this Act or to any provision of any such enactment shall be construed as a reference to the corresponding provision of this Act.

Compare: Limitation Act 1939, s 32 (UK)

34 Provisions as to actions already barred and pending actions

Nothing in this Act shall—

- (a) Enable any action to be brought which was barred before the commencement of this Act by an enactment repealed or amended by this Act or ceasing to have effect by virtue of this Act, except in so far as the cause of action or right of action may be revived by an acknowledgment or part payment made in accordance with the provisions of this Act; or
- (b) Affect any action or arbitration commenced before the commencement of this Act or the title to any property which is the subject of any such action or arbitration.

Compare: Limitation Act 1939, s 33 (UK)

35 Repeals and amendments

- (1) The enactments specified in Schedule 1 to this Act shall at the commencement of this Act cease to have effect in New Zealand.
- (2) The enactments specified in Schedule 2 to this Act are hereby amended in the manner indicated in that Schedule.

Compare: Limitation Act 1939, s 34(4) (UK)

Schedule 1

Section 35(1)

United Kingdom enactments ceasing to have effect in New Zealand

- 31 Eliz, c 5 - An Act Concerning Informers.
 - 21 Jas I, c 16 - The Limitation Act 1623
 - 4 and 5 Anne, c 3 - An Act for the amendment of the Law and the better Advancement of Justice: Sections 17 to 19
 - 9 Geo III, c 16 - The Crown Suits Act 1769
 - 9 Geo IV, c 14 - The Statute of Frauds Amendment Act 1828: Sections 1 to 4
 - 3 and 4 Will IV, c 27 - The Real Property Limitation Act 1833
 - 3 and 4 Will IV, c 42 - The Civil Procedure Act 1833: Sections 3 to 7
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Schedule 2
New Zealand enactments amended

Section 35(2)

Title of Act	Number of Sections Affected	Nature of Amendment
1902 (Local), No 15—The Dunedin District Drainage and Sewerage Act 1900 Amendment Act 1902	Sections 30 and 31	By repealing these sections.
1907 (Local), No 30—The Christchurch District Drainage Act 1907	Sections 75 and 76	By repealing these sections.
1914, No 32—The Local Railways Act 1914 (1931 Reprint, Vol VII, p 967)	Section 99	By repealing this section.
1920 (Local), No 15—The Christchurch Tramway District Act 1920	Section 51	By repealing paragraphs (b) and (c).
1928, No 44—The Auckland Transport Board Act 1928	Section 74	By repealing this section.

Title of Act	Number of Sections Affected	Nature of Amendment
1941 (Local), No 7—The Auckland Centennial Memorial Park Act 1941	Section 51	By repealing this section.
1944 (Local), No 7—The Hawke's Bay Crematorium Act 1944	Section 37	By repealing this section.
1944 (Local), No 8—The Auckland Metropolitan Drainage Act 1944	Section 67	By repealing this section.

Parts of this Schedule were repealed by the following enactments:

Section 155(2) Property Law Act 1952 (1952 No 51).

Section 89(1) Trustee Act 1956 (1956 No 61).

Section 245 Land Transfer Act 1952 (1952 No 52).

Section 413(1) Municipal Corporations Act 1954 (1954 No 76).

Section 214(1) Summary Proceedings Act 1957 (1957 No 87).

Section 38(1) State Insurance Act 1963 (1963 No 38).

Section 71(1) Milk Act 1967 (1967 No 53).

Section 142(1) Gaming and Lotteries Act 1977 (1977 No 84).

Parts of this Schedule relating to the Crown Suits Act 1908, the Auckland Electric Power Board Act 1921-22, the Counties Amendment Act 1927, the Post and Telegraph Act 1928, the Hospitals Amendment Act 1936, and the Hutt Valley Drainage Act 1948 have been omitted, as those Acts were repealed by section 34(1) Crown Proceedings Act 1950 (1950 No 54), section 111 Auckland Electric Power Board Act 1978 (1978 No 11)(L), section 453(1) Counties Act 1956 (1956 No 64), section 250(1) Post Office Act 1959 (1959 No 30), section 158(1) Hospitals Act 1957 (1957 No 40), and section 88(1)(a) Hutt Valley Drainage Act 1967 (1967 No 13)(L) respectively.