

The **Limitation of Actions Ordinance 2021** (“*the Ordinance*”) came into effect on Tuesday 12th October 2021.¹

The Ordinance introduces statutory time limits for causes of action with effect from the date of commencement of the Ordinance, with discretionary powers of the Court² to extend or disapply statutory time limits in specific cases.

The provisions of the Ordinance will have the effect of extinguishing stale and historic claims in particular, with provision for exceptions. However, the Ordinance shall not apply to “*generational land*”³ which is “*land in which several persons hold undivided interest, such interest being derived from claims of inheritance from an ancestor, without having followed the legally prescribed procedures for administering the estate of the deceased ancestor.*”⁴

Further, the Ordinance does not apply to:

- (a) any right, title or interest to or in land or immovable property of the Crown;
- (b) any proceedings by the Crown for the recovery of any tax or duty or interest or such tax or duty;
- (c) any forfeiture proceedings under any Ordinance relating to customs or to duties of excise;
- (d) any proceedings for the forfeiture of a ship or aircraft; or
- (e) any action or arbitration for which a limitation period is prescribed by or under any other enactment, whether enacted before or after the enactment of this Ordinance, or to any action or arbitration to which the Crown is a party and for which, if it were between persons, a limitation period would be prescribed by or under any such other enactment.⁵

The Ordinance neither creates any new causes of action, nor does it enable any cause of action to be brought which was barred before the commencement of the Ordinance.⁶

Causes of Action in Existence at the time of Commencement of the Ordinance

A person who had a cause of action prior to the commencement of the Ordinance (that is, prior to 12th October 2021) which, because of the limitation period provided by the Ordinance, will expire on the commencement of the Ordinance, or within one year of the commencement of the Ordinance, may still bring that action within 12 months of the commencement of the Ordinance.⁷ This provision provides a ‘grace’ period of 12 months’ extension of the limitation period introduced by the Ordinance where the effect of the introduction would otherwise have been for the time limit to expire on or within 12 months of commencement of the Ordinance. This provision does not give a

¹ Limitation of Actions 2021 Notice of Commencement dated 5th October 2021, Legal Notice 121 of 2021 which was published in the *Gazette* on 8th October 2021.

² Pursuant to Section 2(1), “*court*” means any court in the Islands where an action is brought unless specified otherwise in the Ordinance.

³ Section 4(3).

⁴ Section 4(4).

⁵ Section 4(2).

⁶ Section 49(1)(a).

⁷ Section 49(2).

general extension of the relevant limitation period introduced by the Ordinance for all existing causes of action.

Statutory Time Limits: Ordinary Time Limits under Parts II to V of the Ordinance

Parts II to V of the Ordinance include “*ordinary time limits for bringing actions of various classes*”.⁸ These “*ordinary time limits*” are “*subject to extension or exclusion in accordance with Part VI*” of the Ordinance.⁹

The ordinary time limits are summarised in the table below:

<i>Class of Action:</i>	<i>Cause of Action:</i>	<i>Reference:</i>	<i>Ordinary Time Limit:</i>
Defamation or Malicious Falsehood	Libel or Slander.	Section 6(a)	2 years from the date the cause of action accrued. ¹⁰
	Slander of Title.	Section 6(b)	
	Slander of Goods.	Section 6(c)	
	Any other malicious falsehood.	Section 6(d)	
Simple Contract, Tort and Others	An action founded on simple contract or on tort including an action under Section 10(4) (except an action for the theft of a chattel ¹¹ and an action on a contract of loan to which Section 10 applies ¹²).	Section 7(1)(a)	6 years from the date the action accrued. ¹³ This shall not apply to an action to which Sections 13 and 16 apply. ¹⁴
	An action to enforce an award, where the submission is not by an instrument under seal.	Section 7(1)(b)	
	An action to recover a sum recoverable through any enactment (except an action to which Section 12 applies).	Section 7(1)(c)	
	An action to enforce a recognisance.	Section 7(1)(d)	
Successive Conversions and Extinction of Title of Owner of Converted Goods	A cause of action for a conversion of a chattel has accrued to a person and, before the person recovers possession of the chattel, a further conversion takes place.	Section 8(1)	6 years from the accrual of the cause of action of the original conversion. ¹⁵

⁸ Section 5(1).

⁹ Section 5(2).

¹⁰ Section 6.

¹¹ Section 9(1).

¹² Section 10(1).

¹³ Section 7(1).

¹⁴ Section 7(3).

¹⁵ Section 8(1).

	An action under Section 8(1) has accrued to a person and (a) the period prescribed for bringing that action has expired and (b) the person has not recovered possession of the chattel during that period.	Section 8(2)	Title to a chattel extinguished.
Theft of Chattel	An action for the theft of a chattel.	Section 9	Not subject to the limitation period in sections 7(1)(a) and 8(1). ¹⁶ However, if title to the chattel is extinguished under Section 8(2), the person may not bring an action concerning the theft which occurred before the loss of his title, unless the theft occurred before the conversion from which time began to run for the purposes of Section 8(2). ¹⁷
	Conversion related to the theft of a chattel.	Section 9(3)	Same rules apply as those in relation to an action for the theft of a chattel above.
Certain Loans	Action on a 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 make the obligation to repay the debt conditional on a demand for repayment.	Section 10	Time bar prescribed by Section 7(1)(a) is not applicable ¹⁸ (except where a demand in writing for repayment of a debt under a contract of loan to which Section 10 applies is made – (a) by or on behalf of the creditor, or (b) where there are joint creditors, by or on behalf of any one of them). ¹⁹ Section 10 does not apply, where in connection with taking the loan, the debtor enters into a collateral obligation to pay the amount of the debt or a part of it on terms which would exclude the application of this section to the contract of loan if they applied directly to repayment of the debt.
Action on specialty	An action upon specialty.	Section 11(1)	12 years from the date when the cause of action accrued (except where a shorter limitation period is provided under the Ordinance) ²⁰ .
Claiming Contribution ²¹	An action to recover contribution for any damage from another	Section 12(1); Part VI does not apply ²²	2 years from the date the right accrued, such date to be ascertained in terms of

¹⁶ Section 9(1).

¹⁷ Section 9(2).

¹⁸ Section 10(1).

¹⁹ Section 10(4).

²⁰ Section 11(2).

²¹ For the purposes of Section 12 “*contribution*” means a claim of a contribution by a tortfeasor or a person who has already paid damages to a plaintiff, from another tortfeasor or person whom it is asserted shares the liability in damages, for part of his liability to the plaintiff (Section 12(6)). Importantly, there is no legislative provision in Turks and Caicos for the recovery of contributions between joint tortfeasors in respect of the same damage equivalent to the Civil Liability (Contribution) Act 1978 in England.

²² Section 12(8).

	person.	except for Sections 39, 44 and 47. ²³	Sections 12(3), 12(4) and 12(5). ²⁴
Action for Personal Injury (includes any disease or impairment of a person's physical or mental condition ²⁵)	An action for damages for negligence, nuisance or breach of duty, whether the duty exists (a) because of a contract or of a provision made by or under any enactment or (b) independently of the contract or provision stated in (a) above, where the damages claimed by the plaintiff consist of or include damages for a personal injury to the plaintiff or another person. ²⁶	Section 13(2) subject to Section 13(3)	3 years from: (a) the date the cause of action accrued; or (b) the date of knowledge, if later than the date in paragraph (a), of the person injured ²⁷ , subject to Section 13(3). If an injured person dies before the end of the period specified in Section 13(2), the applicable period regarding the cause of action surviving for the benefit of the deceased's estate shall be 3 years from: (a) the date of death; or (b) the date of the personal representative's knowledge ²⁸ , whichever is later. ²⁹
Action under Fatal Accidents Ordinance	Fatal accident claim.	Section 14 (Part VI of the Ordinance inapplicable except Sections 39, 46 and 47 ³⁰)	Generally, time limits under the Ordinance shall not apply to an action under the Fatal Accidents Ordinance but such action shall not be brought after the expiration of 1 year from the date of death. ³¹ An action under the Fatal Accidents Ordinance shall not be brought if the death occurred when the injured person could no longer maintain an action to receive damages for the injury, whether because of a time limit under the Ordinance or any other enactment, or for any reason. ³² Where an action by an injured person would have been barred under Section 13, that time limit would not be overridden by Section 46 (discretionary exclusion of time limit for personal injury

²³ Section 12(7).

²⁴ Section 12(2).

²⁵ Section 2(1).

²⁶ Section 13(1).

²⁷ Section 13(2).

²⁸ Pursuant to Section 13(4), consideration shall be given to knowledge acquired by a personal representative while he was a personal representative or previously. Under Section 10(5), if there is more than one personal representative and their dates of knowledge are different, Section 13(3)(b) shall be read as referring to the earliest of those dates.

²⁹ Section 13(3).

³⁰ Sections 14(4) and 14(5).

³¹ Section 14(3).

³² Section 14(1).

			or death). ³³
Negligence action where facts relevant to cause of action are not known at date of accrual	An action for damages for negligence (except actions to which Section 13 applies) where the starting date of calculating the limitation period falls after the date the cause of action accrued. ³⁴	Section 16	6 years from the date the cause of action accrued ³⁵ or 3 years from the starting date ³⁶ if that period expires later that under Section 16(2)(a) ³⁷ , but can be extended under Section 40.
Negligence action not involving personal injury	An action for damages of negligence, not being an action to which Section 13 applies (negligence, nuisance or breach of duty where the damages claimed consist or include damages for a personal injury to the plaintiff or another person). ³⁸	Section 17	15 years from the date an act or omission occurred (a) which is alleged to constitute negligence, and (b) which is alleged to be attributed to the damages claimed, in whole or in part. ³⁹ If there is more than one date, the date applicable is the last of the dates. ⁴⁰ The time bar applies notwithstanding that (a) the cause of action has not yet accrued or (b) the starting date under Section 16 has not yet occurred before the end of the limitation period prescribed under Section 17. ⁴¹
Actions to Recover Land and Rent	An action to recover land (except an action to recover land by prescription under the Registered Land Ordinance). ⁴²	Part III, Section 18	12 years from the date the right of action accrued, or if it accrued first to some other person through whom the person seeking to recover land claims, to that person. ⁴³ Where: (a) the estate or interest claimed was an interest in reversion or remainder or other future estate or interest, and the right of action to recover the land accrued on the date the estate or interest fell into possession by the determination of the preceding estate or interest; and (b) the person entitled to the preceding estate or interest, not being a term of

³³ Section 14(2).

³⁴ Section 16(1).

³⁵ Section 16(2)(a).

³⁶ Pursuant to Section 16(3), the starting date for calculating the limitation period prescribed under Section 16(2)(b) is the earliest date 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 for the relevant damage and a right to bring such an action. The requisite knowledge for the purposes of Section 16 is defined under Sections 16(4) – 16(8).

³⁷ Section 16(2)(b).

³⁸ Section 13(1).

³⁹ Section 17(1).

⁴⁰ Section 17(2).

⁴¹ Section 17(3).

⁴² Section 18(1).

⁴³ *Ibid.*

			years absolute, was not in possession of the land on that date – 12 years from the date the right of action accrued to the person entitled to the person entitled to the preceding estate or interest, or 6 years from the date the right of action accrued to the person entitled to the succeeding estate or interest, whichever expires last ⁴⁴ (inapplicable to an estate or interest which falls into possession on the determination of an entailed estate and might have been barred by the person entitled to the entailed interest ⁴⁵).
	An action to recover foreshore. ⁴⁶	Section 19	Time bars prescribed under Section 18 applicable with the necessary modifications. ⁴⁷
	An action to recover rent or damages for arrears of rent.	Section 31	6 years from the date the arrears became due.
	An action to recover money secured by charge.	Section 32	An action to recover a principal sum of money secured by a charge on real or personal property or proceeds of land – 12 years from the date the right to receive the money accrued; ⁴⁸ An action for the enforcement of a charge – 12 years from the date the right to enforce a charge accrued; ⁴⁹ An action to recover arrears of interest payable to a sum of money secured by a charge or to proceeds of the sale of land, or damages for such arrears – 6 years from the date the interest became due. ⁵⁰
Actions for trust property or the personal estate of deceased persons	An action for trust property (except actions brought by a beneficiary under a trust for fraud or fraudulent breach of trust to which the trustee was a party or privy to ⁵¹ or actions to recover trust property or the proceeds of the trust property in the possession	Section 33	6 years from the date the right of action accrued. ⁵³

⁴⁴ Section 18(2).

⁴⁵ Section 18(3).

⁴⁶ Pursuant to Section 19(2), “foreshore” for the purposes of Section 19 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.

⁴⁷ Section 19(1).

⁴⁸ Section 32(1).

⁴⁹ Section 32(2).

⁵⁰ Section 32(4).

⁵¹ Section 33(1)(a).

⁵³ Section 33(4).

	of the trustee or previously received by the trustee and converted to his use). ⁵²		
	An action to claim personal estate of deceased person.	Section 34	An action for a claim to the personal estate of a deceased person or to a share or interest in the estate, whether under a will or on intestacy – 12 years from the date the right to receive the share or interest accrued; ⁵⁴ An action to recover arrears of interest for a legacy or damages of the arrears – 6 years from the date the interest became due. ⁵⁵
Miscellaneous actions	An action for an account.	Section 35	Limitation period applicable to the claim which is the basis of the duty to account.
	An action to enforce judgment.	Section 36	6 years from the date on which the judgment became enforceable ⁵⁶ , and in the case of arrears of interest for a judgment debt – 6 years from the date the interest became due. ⁵⁷
	An action to recover overpayment or claim underpayment on remuneration.	Section 37	An action to recover money paid by way of remuneration or purported remuneration under a mistake where it results in overpayment – 3 years from the date of discovery of that payment; ⁵⁸ An action to claim money from an employer, for money not paid in forms of remuneration – 3 years from the date of discovery of that underpayment. ⁵⁹
	An action to recover property obtained through unlawful conduct	Section 38	Time limits prescribed under the Ordinance not applicable to any proceedings for the recovery of proceeds of crime under the Proceeds of Crime Ordinance. ⁶⁰ Section 102 of the Proceeds of crime Ordinance applies to actions for a recovery order for recoverable property, including an external order under that Ordinance. ⁶¹

Date of Knowledge for Limitation Periods in Actions for Personal Injury

Section 15 of the Ordinance concerns reference in Section 13 (actions for damages for negligence,

⁵² Section 32(1)(b).

⁵⁴ Section 34(a).

⁵⁵ Section 34(b).

⁵⁶ Section 36(1).

⁵⁷ Section 36(2).

⁵⁸ Section 37(1).

⁵⁹ Section 37(2).

⁶⁰ Section 38(2).

⁶¹ Section 38(1).

nuisance or breach of duty) to a person's date of knowledge. This is a reference to the date the person first had knowledge:⁶²

- (a) that the injury in question was significant;
- (b) that the injury was attributable in whole or in part to the act or omission which is alleged to constitute negligence, nuisance or breach of duty;
- (c) of the identity of the defendant; and
- (d) if it is alleged that the act or omission was that of a person other than the defendant, of the identity of that person and the additional facts, supporting the bringing of an action against the defendant,

and knowledge that an act or omission did or did not, as a matter of law, involve negligence, nuisance or breach of duty is irrelevant.

In the context of a person's date of knowledge as provided by Section 15, an injury is "*significant*" if the person whose date of knowledge is in question would reasonably have considered it sufficiently serious to justify his instituting proceedings for damages against a defendant who did not dispute liability and was able to satisfy a judgment.⁶³ This provision seems to have in mind disregarding any disincentive or discouragement from the vagaries of litigation in determining whether the injured person regarded their claim significant enough to bring a court action.

There is also a degree of constructive knowledge in terms of the definition of a person's date of knowledge in relation to limitation periods. Section 15(3) provides that, for the purposes of the date of knowledge provisions in Section 15, a person's knowledge includes knowledge which he might reasonably have been expected to acquire-

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

However, "*a person shall not be fixed under subsection (3) with knowledge of a fact ascertainable only with the help of expert advice, as long as the person has taken all reasonable steps to obtain and where appropriate, act on that advice.*"⁶⁴

Actions to Recover Land and Rent: Accrual of Right of Action

Sections 20 to 26 of the Ordinance set out the rules applicable to the determination of the date, on which the right of action accrues to the person in actions to recover land and rate.

Present interest in land (Section 20)

Where a person bringing an action to recover land or another person through whom he claims has been in possession of land, and has while entitled to land been dispossessed or discontinued of his

⁶² Section 15(1).

⁶³ Section 15(2).

⁶⁴ Section 15(4).

possession, the person's right of action accrues on the date of the dispossession or discontinuance.⁶⁵

Where an action is brought to recover land of a deceased person under a will or on intestacy, and the deceased person was on the date of his death in possession of the land or was the last person entitled to the land to be in possession of it, the right of action accrues on the date of his death.⁶⁶

In the circumstances where an action is brought to recover land, by other means than by a will, which is an estate or interest in possession assured to the person bringing the claim or to someone through whom such person claims and (a) the person making the assurance was on the date of the assurance in possession of the land or (b) the person claiming has not been in possession of the land by virtue of the assurance, the right of action accrues on the date of the assurance.⁶⁷

Future interest in land (Section 21)

A right of action to recover land where the estate or interest claimed was one in reversion or remainder or any other future share or interest, and a person has not taken possession of the land by virtue of the estate or interest claimed is treated as having accrued on the date the estate or interest fell into possession by the determination of the preceding estate or interest.⁶⁸

Land subject to tenancy without lease (Section 22)

The right of action for a person entitled to land subject to tenancy accrues on the date the tenancy is determined.⁶⁹

For the purposes of Section 22, a periodic tenancy without a lease in writing is treated as being determined at the expiration of the first period.⁷⁰

Where rent has subsequently been received on the tenancy, the right of action is treated as having accrued on the date of the last receipt of the rent.⁷¹

Land subject to tenancy with lease (Section 23)

A right of action to recover land by a person rightfully entitled to it is treated as having accrued on the date when the rent was first received by the person wrongfully claiming to be entitled to that land (and not on the date of determination of the lease).⁷²

For this provision to apply, the following conditions have to be satisfied:

- (a) a person is in possession of land by virtue of a lease in writing for a rent of not less than \$12

⁶⁵ Section 20(1).

⁶⁶ Section 20(2).

⁶⁷ Section 20(3).

⁶⁸ Section 21.

⁶⁹ Section 22(1).

⁷⁰ Section 22(2).

⁷¹ Section 22(3).

⁷² Section 23(1).

per annum;

- (b) the rent is received by a person wrongfully claiming to be entitled to such land in reversion immediately expectant on the determination of the lease; and
- (c) the person rightfully entitled to the land does not receive the rent.⁷³

Section 23 is inapplicable to leases granted by the Crown, to which special rules regarding the accrual of action apply.⁷⁴

Forfeiture or breach of condition (Section 24)

A right of action to recover land because of a forfeiture or breach of condition is treated as having accrued on the date the forfeiture was incurred or the breach to the condition occurred.⁷⁵

However, if a right of action because of a forfeiture or breach of condition (a) has accrued to a person entitled to an estate or interest in reversion or remainder, and (b) the land was not recovered because of that right, the right of action is only treated as having accrued to such person at the time his estate or interest fell into possession, as if the forfeiture or breach of condition had not occurred.⁷⁶

Actions to Recover Land and Rent: Circumstances under which the Right of Action is not to Accrue or Continue

Sections 25 and 26 of the Ordinance set out the circumstances under which the right of action to recover land is not treated as having accrued.

Unless a person is in adverse possession

A right of action to recover land shall not be treated as having accrued unless a person is in adverse possession of the land.⁷⁷ Where a right of action is treated as accruing on a certain date on which there is no adverse possession, the right of action shall not be treated as accruing until adverse possession is taken of the land.⁷⁸

Where a right of action to recover land has accrued, and before such right is barred the land ceases to be in adverse possession, the right of action shall no longer be treated as having accrued. No fresh right of action shall be treated as accruing until the land is again taken in adverse possession.⁷⁹

Pursuant to Section 25(4), “*adverse possession*” for the purposes of Section 25 means acquiring possession of land by prescription pursuant to Section 135 of the Registered Land Ordinance.

In determining whether a person occupying land is in adverse possession thereof, an assumption

⁷³ Section 23(2).

⁷⁴ Section 23(3).

⁷⁵ Section 24(1).

⁷⁶ Section 24(2).

⁷⁷ Section 25(1).

⁷⁸ Section 25(2).

⁷⁹ Section 25(3).

should not be made by implication merely because a person's occupation is not inconsistent with the owner's present or future enjoyment of the land that the occupation is by permission of the person entitled to the land.⁸⁰ The court shall take into account the actual knowledge of the owner of the land regarding the adverse possession thereof.⁸¹

Possession by beneficiary

A right of action is not treated as accruing to a person in whom the land which is subject to a trust is vested as a trustee or beneficiary during possession of such land by a person entitled to beneficial interest therein.⁸²

Extinction of Title to the Land

Generally, the title to land is extinguished at the expiration of the limitation period prescribed by the Ordinance, and with respect to the land acquired by prescription pursuant to the provisions of the Registered Land Ordinance – at the completion of registration of the land.⁸³

Application of the Ordinance to Land Held in Trust

The Ordinance applies to equitable interests in land in the same way it does to legal estates, save for the exclusion of the limitation period for the following actions:

- (a) actions by a beneficiary for fraud or fraudulent breach of trust to which the trustee was a party or privy to; and
- (b) actions to recover from the trustee trust property or the proceeds thereof in possession of the trustee or previously received by the trustee and converted to his use.⁸⁴

A right of action is treated as having accrued to a person entitled in possession to an equitable interest on the same date and in the same manner as it would if the person's interest were a legal estate in the land.⁸⁵

Where land is held upon trust and the limitation period prescribed by the Ordinance for the bringing of an action by a trustee to recover the land has expired, the trustee's estate is not extinguished if the right of action has not accrued to the beneficiary or has not been barred by the Ordinance.⁸⁶ However, where a right of action has been barred by the Ordinance, the estate of the trustee is extinguished.⁸⁷

An action to recover the land held upon trust may also be brought by the trustee on behalf of a person entitled to beneficial interest in possession in the land whose right of action has not been

⁸⁰ Section 25(6)

⁸¹ Section 25(7)

⁸² Section 26

⁸³ Section 27

⁸⁴ Section 28(1)

⁸⁵ Section 28(2)

⁸⁶ Section 28(3)

⁸⁷ Section 28(4)

barred by the Ordinance, notwithstanding that the trustee's right of action would have been barred otherwise.⁸⁸

Administration: Dating Back to Death

In actions for the recovery of land, an administrator of the estate is treated as claiming as if there has been no interval of time between the death of the deceased and the grant of the letters of administration.⁸⁹

Cure of Defective Disentailing Assurance

Where a person entitled in remainder to an entailed interest in land either (i) makes an assurance of his interest which fails to bar the issue in tail, or the estate and interest taking effect on the determination of the entailed interest, or (ii) fails to bar the estate and interest only, and a person takes possession of the land because of the assurance; and where such person or another person is in possession of the land for 12 years from the commencement of the time when the assurance could have operated as an effective bar – the assurance operates immediately and is treated as having always operated to bar the issue in tail and the estate and interest taking effect on the determination of the entailed interest.⁹⁰

The time when the assurance could have operated is considered to be the time at which the assurance, had it been executed by the person entitled to entailed interest, would have operated without the consent of any other person to bar the issue in tail and the estate and interest taking effect in the determination of the entailed interest.⁹¹

Extension or Exclusion of Ordinary Time Limits

Part VI of the Ordinance sets out the rules that either extend the ordinary time limits provided for in Parts II to V of the Ordinance, or exclude their application to particular actions under particular circumstances.

Time Limits for Children and a Person under Disability

Section 39 modifies the statutory limitation periods in relation to those under disability, which by virtue of Section 2(2) includes children⁹² and persons with a mental disability.

For the purposes of the Ordinance a person has mental disability if he (a) suffers a disability the effect of which is that the person is unable to make reasonable judgment for any matter relating to the person or the person's property, including an intellectual disability, a psychiatric condition, an acquired brain injury or dementia; or (b) is incapable of managing and administering his property and affairs by reason of a mental disorder within the meaning of the Mental Health Ordinance or

⁸⁸ Section 28(5).

⁸⁹ Section 29.

⁹⁰ Sections 30(1) and 30(2).

⁹¹ Section 30(3).

⁹² A "child", pursuant to Section 2(1), is any person who is under the age of eighteen years.

any other enactment.⁹³

The general limitation period for persons who were under disability at the time the right of action accrued is 6 years from the date the person ceases to be under disability or from his death, whichever occurs first. In the case of an action for libel or slander, the limitation period is reduced to 1 year from the date the person ceases to be under disability⁹⁴, and with respect to an action for slander of title, slander of goods or other malicious falsehood – 1 year from the date the person ceases to be under disability or from his death.⁹⁵ With respect to actions upon specialty and actions for personal injury brought by those under disability the limitation periods are 2 years⁹⁶ and 3 years⁹⁷ respectively from the date the person ceases to be under disability or from his death.⁹⁸

If a right of action which has accrued to a person under a disability accrues to another person under disability on the death of the first person under disability, no further extension of time is afforded by reason of the disability of the second person.⁹⁹

The modification of limitation period under Section 39 does not apply where the right of action first accrued to a person who is not under a disability, through whom the person under a disability claims.¹⁰⁰

Notwithstanding the modification of limitation periods as set out above, there is an absolute bar to an action brought by a person under disability to recover land or money charged on land after the expiration of thirty years from the date on which the right of action accrued.¹⁰¹

Extension for Cases with a Limitation Period under Section 16

With respect to negligence actions, the ordinary time limit prescribed under Section 16 is extended to 3 years from the date when the person ceased to be under a disability or died, whichever occurred first where: (1) the applicable time limit is determined pursuant to Section 16(2)(b)¹⁰²; (b) on the starting date the person by reference to whose knowledge that date fell to be determined was under a disability; and (c) the modified time limits applicable to those under disability pursuant to Section 39 so not apply.¹⁰³

This is subject to an absolute time bar of 12 years from the date of accrual of the right of action prescribed under Section 18.¹⁰⁴

⁹³ Section 2(3).

⁹⁴ Section 39(5)(a).

⁹⁵ Section 39(5)(b).

⁹⁶ Section 39(6).

⁹⁷ Section 39(7).

⁹⁸ Section 39(6).

⁹⁹ Section 39(3).

¹⁰⁰ Section 39(2).

¹⁰¹ Section 39(4).

¹⁰² See the table above for the ordinary time limits.

¹⁰³ Section 40(1).

¹⁰⁴ Section 40 (2).

Fresh Accrual of Action: Acknowledgment or Part Payment

The provisions of Section 41 create a legal fiction providing for a modification of the date of accrual of action in cases of acknowledgment of title or claim or part payment where any right of action, including a right of action to enforce a charge to recover land or any right of a chargee of personal property to bring an action for the property has accrued.¹⁰⁵

An acknowledgment or payment may be made through an agent and shall be made to the person, or to an agent of the person, whose title or claim is being acknowledged or, for whose claim the payment is being made.¹⁰⁶

Acknowledgment:

If the person in possession of the land, or personal property in question acknowledges the title of the person to whom the right of action has accrued, the right is treated as having accrued on the date of such acknowledgment.¹⁰⁷

The Ordinance sets out the requirements as to the form of the acknowledgment for the purposes of Section 41: it shall be in writing and signed by the person making it.¹⁰⁸

Part Payment:

With respect to an action to enforce a charge by a chargee, if the personal property in question or the person liable for the charge makes any payment for the debt, whether of principal or interest, the right is treated as having accrued on the date of the payment.¹⁰⁹

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 in any such estate, and the person liable or accountable for the claim acknowledges the claim or makes any payment in respect of it, the right shall be treated as having accrued on the date of the acknowledgment or payment.¹¹⁰

However, a payment of a part of the rent or interest due at any time shall not extend the period for claiming the remainder then due, but any payment of interest shall be treated as a payment for the principal debt.¹¹¹

The limitation period may be repeatedly extended by further acknowledgments or payments (save by payment of a part of the rent or interest due), but a right of action, once barred under this Ordinance, shall not be revived by any subsequent acknowledgment or payment.¹¹²

¹⁰⁵ Section 41(1).

¹⁰⁶ Section 42(2).

¹⁰⁷ Section 41(2).

¹⁰⁸ Section 42(1).

¹⁰⁹ Section 41(3).

¹¹⁰ Section 41(4).

¹¹¹ Section 41(5).

¹¹² Section 41(6).

Effect of Acknowledgment or Part Payment on Persons other than maker or recipient

An acknowledgement of the title to any land or land subject to a charge by any person in possession of it shall bind all other persons in possession during the ensuing limitation period.¹¹³

An acknowledgment of any debt or other liquidated pecuniary claim is not binding upon any person except the acknowledger and his successor.¹¹⁴ “*Successor*”, in relation to any chargee or person liable for any debt or claim, means his personal representative and any other person on whom the rights under the charge or the liability for 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.¹¹⁵

A payment made in respect of any debt or other liquidated pecuniary claim shall bind all persons liable in respect of the debt or claim.¹¹⁶

An acknowledgement by one of several personal representatives of any claim to the personal estate of a deceased person or to any share or interest in the same, or a payment by one of several personal representatives in respect of that claim, shall bind the estate of the deceased person.¹¹⁷

Fraud, Concealment or Mistake: Postponement of Ordinary Limitation Period

Where (a) the action is based upon the fraud of the defendant, his agent or any person through whom the defendant claims and his agent; (b) any fact relevant to the plaintiff’s right of action has been deliberately concealed from him by the defendant, his agent or any person through whom the defendant claims and his agent; or (c) the action is for relief from the consequences of a mistake, the limitation period does not start to run until the fraud, concealment or mistake have been discovered by the plaintiff, or until those could have been discovered with reasonable diligence.¹¹⁸

Pursuant to Section 44(3), for the purposes of postponement of ordinary limitation period under Section 44(1), deliberate commission of a breach of duty in circumstances in which it is unlikely to be discovered for some time, amounts to deliberate concealment of the facts involved in that breach of duty.

However, the application of Section 44(1) is excluded where any action to recovery any property or the value thereof or to enforce any charge or to set aside any transaction affecting any property is brought against the innocent purchaser for valuable consideration.¹¹⁹

The ordinary time limits applicable to negligence actions under Sections 16 and 17 are excluded in cases of deliberate concealment by the defendant of the facts relevant to the plaintiff’s right of

¹¹³ Section 43(1).

¹¹⁴ Section 43(2).

¹¹⁵ Section 43(5).

¹¹⁶ Section 43(3).

¹¹⁷ Section 43(4).

¹¹⁸ Section 44(1).

¹¹⁹ Section 44(4).

action, to which the special provisions set out in Section 44(1) apply.¹²⁰

Actions for Defamation or Malicious Falsehood: Discretionary Exclusion of Time Limit

The court is given a discretionary power under Section 45(1) to exclude the time limit with respect to actions for defamation and malicious falsehood having regard to any potential prejudice that might be caused to the plaintiff by the application of the time limits under Section 6 or to the defendant by the exclusion of such time limits.¹²¹

When exercising its discretion, the court shall consider all the circumstances, and in particular:

- (a) the length of, and the reasons for, the plaintiff's delay;¹²²
- (b) where the reason or one of the reasons for the delay was that all or any of the facts relevant to the cause of action did not become known to the plaintiff until after the end of the period stated in Section 6 - the date on which any such facts did become known to him and the extent to which he acted promptly and reasonably thereafter; and
- (c) the extent to which relevant evidence is likely to be unavailable or less cogent than if the action had been brought within the period stated in Section 6.¹²³

Actions for Personal Injury or Death: Discretionary Exclusion of Time Limit

The court is given a discretionary power under Section 46(1) to disapply the ordinary time limit prescribed by Section 13 with respect to actions for personal injury having regard to any potential prejudice that might be caused to the plaintiff by the application of the time limits under Section 6 or to the defendant by the exclusion of such time limits.

When exercising its discretion, the court shall consider all the circumstances, and in particular:

- (a) the length of, and the reasons for, the plaintiff's delay;
- (b) the extent to which relevant evidence is likely to be unavailable or less cogent than if the action had been brought within the period provided for in Section 13;
- (c) the conduct of the defendant including the extent, if any, to which the defendant responded to the plaintiff's reasonable requests for information or inspection for the purpose of ascertaining any facts relevant to the plaintiff's cause of action against the defendant;
- (d) the duration of any disability of the plaintiff arising after the date of the accrual of the cause of action;
- (e) the extent to which the plaintiff acted promptly and reasonably once he knew whether

¹²⁰ Section 44(6).

¹²¹ Section 45(1).

¹²² Henceforth for the purposes of Section 45(2), with respect to actions for slander of title, slander of goods or other malicious falsehood where those are brought by a personal representative, the references to the plaintiff are construed as including the deceased person to whom the cause of action accrued and any previous personal representative of such person pursuant to Section 45(3)(a).

¹²³ Section 45(2).

- or not the act or omission of the defendant, to which the injury was attributable, might be capable at that time of giving rise to an action for damages; or
- (f) the steps, if any, taken by the plaintiff to obtain medical, legal or other expert advice and the nature of any such advice.¹²⁴

Where the injured person dies, and at the time of his death the time limit prescribed by Section 13 has passed, the court in exercising its discretion to disapply the time limit shall have regard to the length of, and the reasons for, the deceased's delay.¹²⁵

New Claims in Pending Actions

Section 47 provides that any new claim made in the course of any action for the purposes of the Ordinance is deemed to be a separate action and to have been commenced –

- (a) in the case of a new claim made in or by way of third-party proceedings - on the date on which those proceedings were commenced; and
- (b) in the case of any other new claim - on the same date as the original action.¹²⁶

A “*new claim*” for the purposes of Section 47 is any claim by way of set-off or counterclaim, and any claim involving either the addition or substitution of a new cause of action, or the addition or substitution of a new party.¹²⁷

“*Third party proceedings*” under section 47 means any proceedings brought in the course of any action by any party to the action against a person not previously a party to the action, other than proceedings brought by joining any such person as defendant to any claim already made in the original action by the party bringing the proceedings.¹²⁸

A new claim made otherwise than in or by way of third party proceedings (except for an original set-off or counterclaim)¹²⁹ shall be allowed by the court to be made in the course of any action after the expiration of any time limit under the Ordinance which would affect a new action to enforce that claim, save where provided otherwise by Section 46 of the Ordinance or by rules of court.¹³⁰ Rules of court in those circumstances may provide for allowing a new claim, but only if the following conditions are satisfied:

- (a) in the case of a claim involving a new cause of action, if it arises out of the same or substantially the same facts as are already in issue on any claim previously made in the original action; and
- (b) in the case of a claim involving a new party, if the addition or substitution thereof is

¹²⁴ Section 46(2).

¹²⁵ Section 46(3).

¹²⁶ Section 47(1).

¹²⁷ Section 47(2).

¹²⁸ Section 47(2).

¹²⁹ For the purposes of Section 47, a claim is an original set-off or an original counterclaim if it is a claim made by way of set-off or by way of counterclaim by a party who has not previously made any claim in the action.

¹³⁰ Section 47(3).

necessary for the determination of the original action.¹³¹

However, the addition or substitution of a new party is not regarded as necessary unless either—

- (a) the new party is substituted for a party whose name was given in any claim made in the original action in mistake for the new party's name; or
- (b) any claim already made in the original action cannot be maintained by or against an existing party unless the new party is joined or substituted as plaintiff or defendant.¹³²

Subject to the satisfaction of conditions in Section 47(6) and any further restrictions that the rules may impose, rules of court may provide for allowing a party to any action 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 date of the commencement of the action.¹³³ This provision, however, does not limit the power of rules of court to provide for allowing a party to seek relief in a new capacity without adding or substituting a new cause of action.¹³⁴

The above provisions apply with respect to a new claim made in the course of third-party proceedings as if those proceedings were the original action, and subject to any other modifications as may be prescribed by rules of court in any case or class of case.¹³⁵

Application of the Ordinance to Arbitration

The provisions of the Ordinance setting out the time limits apply to arbitrations in the same way they apply to the actions in the Supreme Court.¹³⁶

Section 48 applies to arbitration under any Ordinance as well as arbitration under an arbitration agreement.¹³⁷ Further, Section 48(2) makes ineffective any term in an arbitration agreement purporting to postpone the accrual of cause of action in respect of any matter required by the agreement to be referred until an award is made. Such cause of action is deemed to have accrued in respect of any such matter at the time when it would have accrued but for that term.

The point at which an arbitration is treated as being commenced is determined pursuant to Section 48(3) and would be either (a) when one party to the arbitration serves on the other a notice requiring the other to appoint an arbitrator or to agree to the appointment of an arbitrator; or (b) where the arbitration agreement provides that the reference shall be to a person named or designated in the agreement, when one party to the arbitration serves on the other party a notice requiring him to submit the dispute to the person so named or designated.

¹³¹ Section 47(6).

¹³² Section 47(7).

¹³³ Section 47(8).

¹³⁴ Section 47(9).

¹³⁵ Section 47(10).

¹³⁶ Section 48(1).

¹³⁷ Section 48(6).

Pursuant to Section 48(5), where the Supreme Court orders that an award be set aside; or orders, after the commencement of an arbitration, that the arbitration agreement shall cease to have effect with respect to the dispute referred, the court may 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 Ordinance or by any other enactment for the commencement of proceedings, including arbitration, with respect to the dispute referred.

Application of the Ordinance to the Proceedings against the Crown

As a general proposition, the Ordinance applies to proceedings by or against the Crown in the same manner as it applies to proceedings between persons.¹³⁸ However, there are statutory exceptions, namely:

- (a) any right, title or interest to or in land or immovable property of the Crown;¹³⁹
- (b) any proceedings by the Crown for the recovery of any tax or duty or interest or such tax or duty;¹⁴⁰
- (c) any forfeiture proceedings under any Ordinance relating to customs or to duties of excise;¹⁴¹
- (d) any proceedings for the forfeiture of a ship or aircraft;¹⁴² or
- (e) any action or arbitration for which a limitation period is prescribed by or under any other enactment, whether enacted before or after the enactment of the Ordinance, or to any action or arbitration to which the Crown is a party and for which, if it were between persons, a limitation period would be prescribed by or under any such other enactment.¹⁴³

Transitional and Consequential Provisions

The Ordinance is not afforded retrospective application: the provisions of the Ordinance are not applicable to any action or arbitration commenced prior to its commencement date, nor do they affect the title to any property which is the subject of any such action or arbitration.¹⁴⁴ Further, the Ordinance does not enable any action to be brought that was time-barred prior to its commencement.¹⁴⁵

All limitation provisions that were in effect in the Islands prior to the commencement of the Ordinance cease to have effect pursuant to Section 50, save where another enactment is referred to in the Ordinance itself with the intention of supplementing or modifying the general rules set out in the Ordinance.

¹³⁸ Section 4(1).

¹³⁹ Section 4(2)(a).

¹⁴⁰ Section 4(2)(b).

¹⁴¹ Section 4(2)(c).

¹⁴² Section 4(2)(d).

¹⁴³ Section 4(2)(e).

¹⁴⁴ Section 49(1)(b).

¹⁴⁵ Section 49(1)(a).

However, the Ordinance, as mentioned previously, provides for a grace period of 12 months starting from the commencement date allowing those, who had a right of action which expired on the commencement date or is due to expire on or before one year from the commencement date, to bring that action within twelve months of the commencement of the Ordinance.¹⁴⁶

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¹⁴⁶ Section 49(2).