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CHAPTER 212

LIMITATION

Act 4 of 1991

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LIMITATION

An Act to provide for limitation periods for certain court proceedings and arbitration and for matters connected therewith.

PART 1 – PRELIMINARY PROVISIONS

1. Interpretation

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

"action" includes any proceedings in a court of law, but does not include any proceeding brought or instituted in an Island Court established in accordance with the Island Courts Act [Cap. 167];

"court" in relation to an action, means the court in which the action has been, or is intended to be, brought, but does not include an Island Court established in accordance with the Island Courts Act [Cap. 167];

"foreshore" means the shore and the 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;

"interest" in relation to land includes a lease, sublease, easement, restrictive agreement, profit, alienator's rights, logging rights, geothermal rights, periodic tenancies and any unregistrable interest;

"land" includes any estate, any interest in or benefit to land, all things growing on land, houses, buildings, improvements and all other things on land, land beneath water, the seabed extending to the sea side of any offshore reef but no further and the subsoil thereof;

"parent" includes father and mother, and grandfather and grandmother, and stepfather and stepmother, whether any such relationship is legitimate, illegitimate or in consequence of adoption;

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

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

"ship" includes every description of vessel used in navigation not propelled solely by oars;

"trust" does not include the duties incidental to an estate conveyed by way of mortgage, but with that exception "trust" extends to implied and constructive trusts and to cases where the trustee has a beneficial interest in the trust property and to the duties incidental to the office of a personal representative; and "trustee" has a corresponding meaning and includes a trustee corporation and every other corporation in which property subject to a trust is vested and every person who was a trustee immediately before the commencement of this Act and, where the context so admits, includes a personal representative; and "new trustee" includes an additional trustee;

(2) 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:

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

(3) 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 and references to the bringing of such an action shall include references to the making of such an entry.

(4) In Part 3, 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 transfer of any interest in 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 accrual of a right of action shall –

(a) in the case of 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 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.

PART 2 – PERIODS OF LIMITATION FOR DIFFERENT CLASSES OF ACTION

2. Time limits under Part 2 subject to extension or exclusion under Part 3

The provisions of this Part shall have effect subject to the provisions of Part 3 which provide for the extension of the periods of limitation in case of disability, acknowledgment, part payment, fraud and mistake, and in the case of certain actions in respect of personal injuries.

3. Limitation of actions of contract and tort and certain actions

(1) The following actions shall not be brought after the expiration of six years from the date on which the cause of action accrued, that is to say –

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

(b) actions to enforce a recognizance;

(c) actions to enforce an award, where the submissions is not by an instrument under seal;

(d) actions to recover any sum recoverable by virtue of any Act, other than a penalty or forfeiture or sum by way of penalty or forfeiture:

Provided that –

(i) in case of actions for damages for negligence, nuisance or breach of duty (whether the duty exists by virtue of a contract or of provision made by or under any Act or independently of any contact or such provision) where the damages claimed by the plaintiff for the negligence, nuisance or breach of duty consist of or include damages in respect of personal injuries to any person, this subsection shall have effect as if for the reference to six years there were substituted a reference to three years; and

(ii) nothing in this subsection shall be taken to refer to any action to which section 5 applies.

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

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

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 after the expiration of twelve 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 six 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 Act shall not be brought after the expiration of two 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) Subsection (1) 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 jurisdiction of the Supreme Court which is enforceable *in rem*.

(7) This section shall not apply to any claim for specific performance of a contract or for any 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 has, prior to the commencement of this Act, been applied.

4. 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 six 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 has expired and he has not during that period recovered possession of the chattel, the title of that person to the chattel shall be extinguished.

5. Time limit for claiming contribution between tortfeasors

(1) Where under the provisions of any Act or in pursuance of a judgment, a tortfeasor (in this section referred to as the first tortfeasor) becomes entitled after the commencement of this Act to a right to recover contribution in respect of any damage from another tortfeasor, no action to recover contribution by virtue of that right shall, subject to subsection (2), be brought after the end of the period of two years from the date on which that right accrued to the first tortfeasor.

(2) For the purposes of this section, the date on which a right to recover contribution in respect of any damage accrues to a tortfeasor (in this subsection referred to as the relevant date) shall be ascertained as follows –

(a) if the tortfeasor is held liable in respect of that damage by a judgment given in any civil proceedings, or an award made on any arbitration, the relevant date shall be the date on which the judgment is given or the date of the award, as the case may be;

(b) if, in any case not falling within the provisions of paragraph (a), the tortfeasor admits liability in favour of one or more persons in respect of that damage, the relevant date shall be the earliest date on which the amount to be paid by him in discharge of that liability is agreed by or on behalf of the tortfeasor and that person or each of those persons, as the case may be, and, for the purposes of

this subsection, no account shall be taken of any judgment or award given or made on appeal in so far as it varies the amount of damages awarded against the tortfeasor.

6. Limitations 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 six years from the date on which the arrears became due.

7. Limitation of actions to recover money secured by a mortgage or charge or to recover proceeds of the transfer of any interest in land

(1) No action shall be brought to recover any principal sum of money secured by a mortgage or other charge on property, or to recover proceeds of the transfer of any interest in land, after the expiration of twenty 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 twenty years from the date on which the right to receive the money 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 purpose 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 the property subject to the mortgage or charge shall not be deemed to accrue so long as that property comprises any future interest or any life assurance policy which has not matured or been determined.

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

(5) 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 the proceeds of the transfer of any interest in land, or to recover damages in respect of the proceeds of the transfer of any interest in land, or to recover damages in respect of such arrears, shall be brought after the expiration of six years from the date on which the interest became due:

Provided that –

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

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

8. Limitation of actions in respect of trust property

(1) No period of limitation prescribed by the provisions of 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 and to the provisions of any other Act, an action by a beneficiary to recover trust property or in respect of any breach of trust, not being an action for which a period of limitation is prescribed by any other provision of this Act, shall not be brought after the expiration of six years from the date on which the right of action accrued:

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 the provisions of 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.

9. Limitation of actions claiming personal estate of a deceased person

Subject to the provisions of subsection (1) of section 8, 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 twelve 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 six years from the date on which the interest became due.

PART 3 – EXTENSION OF LIMITATION PERIODS IN CERTAIN CASES

10. Extension of limitation period in case of disability

(1) If on the date when any right of action accrued for which a period of limitation is prescribed by this Act, the person to whom such right accrued was under a disability, the action may be brought at anytime before the expiration of six years from the date when the person ceased to be under a disability or dies, whichever event first occurred, notwithstanding that the period of limitation had expired:

Provided that –

(a) 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;

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

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

(d) this section shall not apply to any action to recover a penalty or forfeiture, or sum by way thereof, by virtue of any Act, except where the action is brought by an aggrieved party.

(2) In the case of actions for damages for negligence, nuisance or breach of duty (whether the duty exists by virtue of a contract or of provision made by or under any Act or independently of any contract or any such provision) where the damages claimed by the plaintiff for the negligence, nuisance or breach of duty consist of or include damages in respect of personal injuries to any person and in the case of actions to which section 5 applies –

(a) subsection (1) shall have effect as if for the words "six years" there were substituted –

(i) as regards any action to which section 5 applied, the words "two years";

(ii) as regards any other action to which this subsection refers, the words "three years"; and

(b) this section shall not apply unless the plaintiff proves that the person under the disability was not, at the time when the right of action, or (as regards an action to which section 5 applies) the right to recover contribution, accrued to him, in the custody of a parent.

(3) For the purposes of this section, a person shall be deemed to be under a disability while he is an infant or of unsound mind, and, without prejudice to the generality of the foregoing provisions of this subsection, a person shall be conclusively presumed to be of unsound mind while he is detained in pursuance of any Act authorizing the detention of persons of unsound mind, including persons convicted of offences or awaiting trial, or while he is receiving treatment voluntarily under the provisions of any other Act.

11. Fresh accrual of action on acknowledgement or part payment

(1) Where there has accrued any right of action (including a foreclosure 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 acknowledgement or the last payment.

(2) Where a mortgagee is by virtue of the mortgage in possession of any mortgaged land 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 twelve years from the date of the payment or acknowledgement.

(3) 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 interest therein, and the person liable or accountable therefore 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 remainder then due, but any payment of interest shall be treated as a payment in respect of the principal debt.

12. Formal provisions as to acknowledgments and part payments

(1) Every acknowledgment referred to in section 11 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 provisions of section 11, 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.

13. 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 personally by any person in possession thereof shall bind all other persons in possession during the ensuring 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 two 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 two 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 liquidate pecuniary claim shall bind all persons liable in respect thereof:

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.

14. 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; 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 –

(i) 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 has been committed; or

(ii) 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.

15. Extension of time limit for actions in respect of personal injuries

(1) The provisions of subsection (1) of section 3 shall not afford any defence to an action to which this section applies, in so far as the action relates to any cause of action in respect of which –

(a) the court has, whether before or after the commencement of the action, granted leave for the purposes of this section; and

(b) the requirements of subsection (3) are fulfilled.

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

(3) The requirements of this subsection shall be fulfilled in relation to a cause of action if it is proved that the material facts relating to that cause of action were or included facts of a decisive character which were at all times outside the knowledge (actual or constructive) of the plaintiff until a date which –

(a) either was after the end of the three-year period relating to that cause of action or was not earlier than twelve months before the end of that period; and

(b) in either case was a date not earlier than twelve months before the date on which the action was brought.

(4) For the purpose of subsection (3), reference to the three-year period relating to a cause of action means a reference to the period of three years from the date on which that cause of action accrued:

Provided that –

(a) in relation to any cause of action in respect of which, by virtue of section 10, action could have been brought after the end of the period of three years from the date on which that cause of action accrued, any such reference to the three-year period relating to that cause of action shall be construed as a reference to the period up to the end of which an action could, by virtue of that section, have been brought in respect thereof;

(b) in relation to a cause of action in respect of which, by virtue of section 14, the period of limitation did not begin to run until a date after the cause of action accrued, any such reference to the three-year period relating to that cause of action shall be construed as a reference to the period of three years from the date on which, by virtue of that section, the period of limitation began to run.

(5) Nothing in this section shall be construed as excluding or otherwise affecting –

(a) any defence which, in any action to which this section applies, may be available by virtue of any provisions of any Act other than those contained in subsection (1) of section 3 (whether it is an Act imposing a period of limitation or not) or by virtue of any rule of law or equity; or

(b) the operation of any Act or of any rule of law or equity which, apart from this section would enable such an action to be brought after the end of the period of three years from the date on which the cause of action accrued.

16. Application for leave of court

(1) Any application for the leave of the court for the purposes of section 15 shall be made *ex parte*, except in so far as rules of court may otherwise provide in relation to applications which are made after the commencement of a relevant action.

(2) Where such an application is made before the commencement of any relevant action, the court may grant leave in respect of any cause of action to which the application relates if, but only if, on evidence adduced by or on behalf of the plaintiff, it appears to the court that, if such an action were brought forthwith and like evidence were adduced in that action, that evidence would, in the absence of any evidence to the contrary, be sufficient –

(a) to establish that cause of action, apart from any defence under subsection (1) of section 3; and

(b) to fulfil the requirements of subsection (3) of section 15 in relation to that cause of action.

(3) Where such an application is made after the commencement of a relevant action, the court may grant leave in respect of any cause of action to which the application relates if, but only if, on evidence adduced by or on behalf of the plaintiff, it appears to the court that, if the like evidence were adduced in that action, that evidence would, in the absence of any evidence to the contrary, be sufficient –

(a) to establish that cause of action, apart from any defence under subsection (1) of section 3; and

(b) to fulfil the requirements of subsection (3) of section 15 in relation to that cause of action,

and it also appears to the court that, until after the commencement of that action, it was outside the knowledge (actual or constructive) of the plaintiff that the matters

constituting that cause of action had occurred on such a date as, apart from the last preceding section, to afford a defence under subsection (1) of section 3.

(4) In this section, "relevant action", in relation to an application for the leave of the court, means any action in connection with which the leave sought by the application is required.

17. Application of sections 15 and 16 to actions after death of injured person

(1) In relation to any action to which section 15 applies being in respect of one or more causes of action surviving for the benefit of the estate of a deceased person by virtue of any Act, subsections (1), (3) and (5) of section 15, and section 16, shall have effect subject to the provisions of subsections (4) and (5).

(2) Subsections (1), (3) and (5) of section 15, and section 16, shall have effect subject to the provisions of subsections (4) to (6), in relation to any action brought by virtue of any other Act for damages in respect of a person's death, as they have effect in relation to an action to which section 15 applies.

(3) In subsection (4), (5) and (6), and in sections 15, and section 16 as modified by those provisions, "the deceased" means the person referred to in subsection (1) or (2), as the case may be.

(4) Subsection (1) of section 15 shall not have effect in relation to any action falling within subsection (1) or (2) unless the action is brought before the end of the period of twelve months from the date on which the deceased died.

(5) For the purpose of the application of subsection (3) of section 15 to an action falling within subsection (1) or (2) –

(a) any reference in the said subsection (3) to the plaintiff shall be construed as a reference to the deceased; and

(b) the requirements of that subsection shall be taken to be fulfilled in relation to a cause of action if either the matters specified in that subsection (as modified by paragraph (a)) are proved or it is proved that the material facts relating to that cause of action were or included facts of a decisive character which at all times until his death were outside the knowledge (actual or constructive) of the deceased and any reference to the requirements of the said subsection (3) shall, in relation to an action falling within subsection (1) or (2), be construed as a reference to the requirements to the said subsection (3) as modified by this subsection.

(6) In the application of sections 15 to 21 to an action brought by virtue of any other Act –

(a) any reference to a cause of action which an action relates shall be construed as a reference to a cause of action in respect of which it is claimed that the deceased could, but for his death, have maintained an action and recovered damages; and

(b) any reference to establishing a cause of action shall be construed as a reference to establishing that the deceased could, but for his death, have maintained an action and recovered damages in respect thereof.

18. Meaning of "material facts relating to a cause of action"

In sections 15 and 17 any reference to material facts relating to a cause of action means a reference to any one or more of the following –

(a) the fact that personal injuries resulted from the negligence, nuisance or breach of duty constituting that cause of action;

(b) the nature or extent of the personal injuries resulting from that negligence, nuisance or breach of duty;

(c) the fact that the personal injuries so resulting were attributable to that negligence, nuisance or breach of duty, or the extent to which any of those personal injuries were so attributable.

19. Meaning of "facts of a decisive character"

For the purposes of sections 15 and 17, any of the material facts relating to a cause of action shall be taken, at any particular time, to have been facts of a decisive character if they were facts which a reasonable person, knowing those facts and having obtained appropriate advice within the meaning of section 21 with respect to them, would have regarded at that time as determining, in relation to that cause of action, that, apart from any defence under subsection (1) of section 3, an action would have a reasonable prospect of succeeding and resulting in the award of damages sufficient to justify the bringing of the action.

20. When facts will be taken as outside the knowledge of a person

(1) Subject to the provisions of subsection (2), for the purposes of sections 15 to 17 a fact shall, at any time, be taken to have been outside the knowledge, actual or constructive, of a person if, but only if –

(a) he did not then know that fact;

(b) in so far as that fact was capable of being ascertained by him, he had taken all such action, if any, as it was reasonable for him to have taken before that time for the purpose of obtaining appropriate advice as aforesaid with respect to those circumstances.

(2) In the application of subsection (1) to a person at a time when he was under a disability and was in the custody of a parent, any reference to that person in paragraph (a) or (b) of that subsection shall be construed as a reference to that parent.

21. Meaning of "appropriate advice"

In sections 19 and 20 "appropriate advice", in relation to any fact or circumstances, means the advice of competent persons qualified, in their respective spheres, to advise on the medical, legal or other aspects of that fact or those circumstances, as the case may be.

22. Power of court to order joinder of parties

Where an action has been commenced within any period of limitation prescribed by this or any other Act and, after the expiry of such period, it transpires that there has been misjoinder or non-joinder of any party to that action, the court may order that any other party may be joined in the action notwithstanding that the period of limitation has expired against that other party.

PART 4 – MISCELLANEOUS PROVISIONS

23. Application of Act and other limitation enactments to arbitrations

(1) This Act and any other Act relating to the limitation of actions shall apply to arbitration as they apply to actions in the Supreme Court.

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

(3) For the purpose of this Act and of any other such Act as aforesaid, an arbitration shall be deemed to be commenced when one party to the arbitration serves on the other party or parties a notice requiring him or them to appoint an arbitrator or to agree to the appointment of an arbitrator, or, where the arbitration agreement provides that the reference shall be to a person named or designated in the agreement, requiring him or them to submit the dispute to the person so named or designated.

(4) Any such notice as aforesaid may be served either –

(a) by delivering it to be served; or

(b) by leaving it at the usual or last known place of abode of that person; or

(c) by sending it by post in a registered letter addressed to that person at his usual or last known place of abode,

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

(5) Where the court orders that an award be set aside or orders, after the commencement of an arbitration, that the arbitration shall cease to have effect with respect to the dispute referred, the court may further order that the period between the commencement of an arbitration, and the date of the order of the court shall be excluded in computing the time prescribed by this Act or any such other Act as aforesaid for the commencement of proceedings, including arbitration, with respect to the dispute referred.

(6) This section shall apply to an arbitration under an Act as well as to an arbitration pursuant to an arbitration agreement, and subsections (3) and (4) shall have effect, in relation to an arbitration under an Act, as if for the references to the arbitration agreement there were substituted references to such of the provisions of the Act or of any subsidiary legislation made thereunder as relate to the arbitration.

24. 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.

25. Acquiescence

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

26. Application to the Government

Save as in this or in any other Act otherwise expressly provided and without prejudice to the provisions of section 27, this Act shall apply to proceedings by or against the Government in like manner as it applies to proceedings between any other persons:

Provided that this Act shall not apply to any proceedings by the Government for the recovery of any tax, fee or duty or interest thereon or to any forfeiture proceedings under any written law relating to the customs or excise or to any proceedings in respect of the forfeiture of a ship or to any proceedings by the Government in pursuance of the provisions of the Proceeds of Crime Act [Cap. 284].

27. Saving

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

28. Transitional provisions and provisions as to actions already barred

(1) Subject to the provisions of subsections (2) and (3), the provisions of section 15 to 21 shall have effect in relation to causes of action which accrued before the commencement of this Act (whether the action relating to any such cause of action was then already barred or not) as well as to causes of action which accrue after the commencement of this Act, and shall have effect in relation to any cause of action which accrued before the commencement of this Act notwithstanding that an action in respect thereof has been commenced and is pending at the commencement of this Act.

(2) In the application of section 16 to an action which is pending at the commencement of this Act, subsection (3) of that section shall have effect with the exception of the last six lines of that subsection.

(3) For the purposes of subsection (1), an action shall not be taken to be pending at any time after a final order or judgment has been made or given therein, notwithstanding that an appeal is pending or that the time for appealing has not expired; and accordingly section 14 shall not have effect in relation to a cause of action in respect of which a final order or judgment has been made or given before the commencement of this Act.

(4) Save as aforesaid, nothing in this Act shall –

(a) 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; or

(b) enable any action to be brought which, immediately before the commencement of this Act, was then barred by the provisions of any 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.

(5) Subject to the provisions of section 5 and subsection (4), the time for bringing proceedings in respect of a cause of action which accrued before the commencement of this Act shall, if it has not then already expired, expire at a time when it would have expired apart from the provisions of this Act or at any time when it would have expired if the provisions of this Act had at all material times been in force, whichever is the later:

Provided that where a cause of action, for which a period of limitation is prescribed by this Act, has accrued before the commencement of this Act in any case in which, but for the provisions of this Act, no time for bringing proceedings in respect thereof is limited, the time for bringing such proceedings, as limited by the provisions of this Act, shall commence to run from the commencement of this Act.