

REPUBLIC OF KIRIBATI
(No. 1 of 2004)

I assent,

Beretitenti,
09/09/2004

AN ACT RELATING TO THE LIMITATION OF ACTIONS

Commencement:
2004

MADE by the Maneaba ni Maungatabu and assented to by the Beretitenti.

PART I
PRELIMINARY

Short title

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

Interpretation

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

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

“court”, in relation to an action, means the court in which the action has been, or is intended to be, brought;

“foreshore” means the shore of the sea or of channels, that is alternatively covered and uncovered by the sea at the highest and lowest tides;

“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;

“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;

“trust for sale” in relation to land, means an immediate binding trust for sale, whether or not exercisable at the request or with the consent of any person and with or without power at discretion to postpone the sale; and “trustee for sale” means the person (including a personal representative) holding land on trust for sale.

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

- (a) in the case of an action for an account, be construed as references to the date on which the matter arose in respect of which an account is claimed;
- (b) in the case of an action upon a judgment, be construed as references to the date on which the judgment became enforceable;
- (c) in the case of an action to recover arrears of rent or interest, or damages in respect thereof, be construed as references to the date on which the rent or interest became due.

PART II

PERIODS OF LIMITATION FOR DIFFERENT CLASSES OF ACTION

Part II to be subject to provisions of Part III

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

A – ACTIONS OF CONTRACT AND TORT AND CERTAIN ACTIONS

Limitation of actions of contracts and tort, and certain other actions

4.(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 submission 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:

(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 law 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.

(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.

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

5.(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.

Time limit for claiming contribution between tortfeasors

6.(1) A tortfeasor (in the 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 the 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 purpose 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.

B - ACTIONS TO RECOVER LAND AND RENT, AND ACCRUAL OF RIGHTS AND CAUSES OF ACTION

Application of Act to land of the Republic

7.(1) This Act shall be read subject to the Native Lands Ordinance as amended, and to any enactment for the time being in force relating to the registration of title to any land, so far as this Act is inconsistent with any provision of such Ordinance or enactment.

(2) Nothing in this Act shall affect the right of the Republic to any minerals including petroleum.

Limitation of actions to recover land

8.(1) No action shall be brought by the Republic to recover any land after the expiration of 60 years from the date on which the right of action accrued to the Republic or to some person through whom the Republic 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 Republic, the action may be brought at any time before the expiration of the period during which the action could have been brought by the Republic, or of 12 years from the date on which the right of action accrued to some person other than the Republic, whichever period first expires.

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

9.(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 rent-charge 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 rent-charge created by the assurance, in possession of the land charged, and no person has been in possession of the land by virtue of the assurance, the right of action shall be deemed to have accrued on the date when the assurance took effect.

Accrual of right of action in case of future interest

10.(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 Republic where the Government 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 lesser of a determinable life interest.

Provisions in case of land held on trust

11.(1) 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.

Accrual of right of action in case of certain tenancies

12.(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 subsection (1) 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.

Accrual of cause of action on claim for contribution or indemnity

13. 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.

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

14. 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.

Limitations of actions to recover rent

15. 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.

C – ACTIONS TO RECOVER MONEY SECURED BY A MORTGAGE OR CHARGE OR TO RECOVER PROCEEDS OF SALE OF LAND

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

16.(1) No action shall be brought to recover any principal sum of money secured by a mortgage or other charge or property, or to recover proceeds of the sale of 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 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 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 sale of land, or to recover damages in respect of such arrears, shall be brought after the expiration of six years from the date on which the interest became due:

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.

D – ACTIONS IN RESPECT OF TRUST PROPERTY OR THE PERSONAL ESTATE OF DECEASED PERSONS

Limitation of actions in respect of trust property

17.(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) 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.

Limitation of actions claiming personal estate of a deceased person

18. Subject to the provisions of subsection (1) of section 9, no action in respect of any claim to the personal estate of a deceased person or to any charge 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 III

EXTENSION OF LIMITATION PERIODS IN CERTAIN CASES

A – DISABILITY

Extension of limitation period in case of disability

19.(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 any time before the expiration of six years from the date when the person ceased to be under a disability or died, 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 6 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 6 applies, 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 6 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 which 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 authorising the detention of persons of unsound mind, including persons convicted of offences or awaiting trial, or while he is receiving mental treatment voluntarily.

B – ACKNOWLEDGMENT AND PART PAYMENT

Fresh accrual of action on acknowledgment or part payment

20.(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 acknowledgment or the last payment.

(2) Where the 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 acknowledgment.

(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 or 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.

Formal provisions as to acknowledgments and part payments

21.(1) Every acknowledgment referred to in section 12 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 12, and shall be made to the person, or to an agent of the person, whose title or claim is being acknowledged, or, as the case may be, in respect of whose claim the payment is being made.

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

22.(1) An acknowledgment of the title to any land or mortgaged personalty 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 in concerned, bind all other persons in possession of the mortgaged property during the ensuing period of limitation.

(3) Where two or more mortgages are by virtue of the mortgage in possession of the mortgaged land, and acknowledgment of the mortgagor's title or of this equity of redemption by one of the mortgages shall bind only him and his successors and shall not bind any other mortgagee or his successors, and where the mortgagee by whom the acknowledgement is given is entitled to a part of the mortgaged land and not to any ascertained part of the mortgage debt, the mortgagor shall be entitled to redeem that part of the land on payment, with interest, of the part of the mortgage debt which bears the same proportion to the whole of the debt as the value of the part of the land bears to the 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 liquidated pecuniary claim shall bind the acknowledged 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 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 the claim devolves, whether on death or bankruptcy or the disposition of property or the determination of a limited estate or interest in settled property or otherwise.

C – FRAUD AND MISTAKE

Postponement of limitation period in case of fraud or mistake

23. 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 had 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.

D – SPECIAL PROVISIONS APPLICABLE TO CERTAIN ACTIONS IN RESPECT OF PERSONAL INJURIES

Extension of time limit for actions in respect of personal injuries

24.(1) The provisions of subsection (1) of section 4 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 contract or any such provision) where the damages claimed by the plaintiff for the negligence nuisance or breach of duty consist of or include damages in respect of personal injuries to the plaintiff or any other person.

(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 purposes 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 11, an 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 4 (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.

Application for leave of court

25.(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 4; and
- (b) to fulfil the requirements of subsection (3) of section 24 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 4; and
- (b) to fulfil the requirements of subsection (3) of section 24 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 4.

(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.

Application of sections 24 and 25 to actions after death of injured person

26.(1) In relation to any action to which section 24 applies being an action in respect of one more causes of action surviving for the benefit of the estate of a deceased person, subsections (1), (3) and (5) of section 24, and section 25, shall have effect subject to the provisions of subsections (4) and (5).

(2) Subsections (1), (3) and (5) of section 24, and section 25, shall have effect subject to the provisions of subsections (4) to (6), in relation to an action brought by virtue of the Workmen's Compensation Ordinance for damages in respect of a person's death, as they have effect in relation to an action to which section 24 applies.

(3) In subsections (4), (5) and (6), and in sections 24 and 25 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 24 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 24 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 of the said subsection (3) as modified by this subsection.

(6) In the application of sections 24 to 30 to an action brought by virtue of the Workmen's Compensation Ordinance -

- (a) any reference to a cause of action to 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.

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

27. In sections 24 and 26 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; or the extent to which any of those personal injuries were so attributable.

Meaning of “facts of a decisive character”

28. For the purposes of sections 24 and 26, 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 30 with respect to them, would have regarded at the time as determining, in relation to that cause of action, that, apart from any defence under subsection (1) of section 4, an action would have a reasonable prospect of succeeding and of resulting in the award of damages sufficient to justify the bringing of the action.

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

29.(1) Subject to the provisions of subsection (2), for the purposes of sections 24 to 26 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 ascertaining it; and
- (c) in so far as there existed, and were known to him circumstances from which with appropriate advice within the meaning of section 30 that fact might have been ascertained or inferred, 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), (b) or (c) of that subsection shall be construed as a reference to that parent.

Meaning of “appropriate advice”

30. In sections 28 and 29 “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.

Power of court to order joinder of parties

31. When 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 the other party.

PART IV - GENERAL

Application of Act and other limitation enactments to arbitrations

32.(1) This Act and any other Act relating to the limitation of actions shall apply to arbitrations.

(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 a notice requiring him or them to appoint an arbitrator or to agree to the appointment of an 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 named or designated.

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

- (a) by delivering it to the person on whom it is to be served; or
- (b) 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 the arbitration and the date 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 subsection (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.

Provisions as to set-off or counterclaim

33. For the purposes of this Act, any claim by way of set-off or counterclaim shall be deemed to be a separate action and to have been commenced on the same date as the action in which the set-off or counterclaim is pleaded.

Acquiescence

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

Application to the Republic

35. Save as in this or in any other Act otherwise expressly provided and without prejudice to the provisions of section 36, this Act shall apply to proceedings by or against the Republic in like manner as it applies to proceedings between subjects:

Provided that this Act shall not apply to any proceedings by the Republic for the recovery of any tax 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.

Saving

36. 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 Republic is a party and for which, if it were between subjects, a period of limitation would be prescribed by any other enactment.

Transitional provisions and provisions as to actions already barred

37.(1) Subject to the provisions of subsections (2) and (3), the provisions of sections 24 to 30 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 25 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 23 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 which ceases to apply in Kiribati by virtue of section 29, 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 6 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.

THE LIMITATION ACT 2004

EXPLANATORY MEMORANDUM

The principal object of the Act is to provide our own law to cover the limitation period in any action. The Act has four main parts.

Part II provides generally for the periods of limitation for the different classes of action that may arise and is divided into 4 main chapters, A, B, C and D respectively which cover such various classes.

Chapter A is basically for actions founded on simple contract, tort, actions to enforce a recognizance, actions to enforce an award where the submission is not by an instrument under seal, and actions to recover any sum recoverable by virtue of any Act, other than a penalty or forfeiture, the time limitation is six years.

However, other types of actions may have a time limitation of twelve years as in the case of an action upon a specialty or for two years regarding an action to recover any penalty or forfeiture.

Chapter B provides for the limitation period for actions concerning land and has two different time limitations that of 60 years for actions by the Republic to recover any land and 12 years for actions by any other persons to recover any land.

Chapter C provides for the limitation of actions to recover money secured by a mortgage or charge or to recover proceeds of sale of land which is that of 20 years.

Chapter D provides for the limitation for actions in respect of trust property which is that of 6 years. Section 18 provides for the limitation of actions claiming the personal estate of a deceased person which is generally that of 12 years.

Part III provides for the extension of the limitation periods in certain cases such as in the case of disability, acknowledgment, part payment, fraud and mistake and in the case of certain actions in respect of personal injuries.

Part IV provides for other general matters such as the Act applying to arbitrations, making provisions as to set off or counterclaim, the application of the Act to the Republic, a savings provisions and a section regarding transitional provisions and provisions as to actions already barred.

Titabu Tabane
Attorney General
10 October 2003