

Lectures of Limitation

LECTURE 1

PAHUJA LAW ACADEMY

The Limitation Act, 1963

MAINS QUESTIONS

1. What is the difference between the followings?
 - (a) Limitation and prescription
 - (b) Limitation and estoppels
 - (c) Limitation and laches
2. Critically Justify the statement "limitation bars the remedy but does not destroy the right."
3. How you will explain the term "lapse of time will not extinguish the right?"
4. Discuss the applicability of Indian Limitation Act upon suits, applications and appeals. Whether it is applicable upon writs or not?
5. What do you understand by "interest republican ut sit finish litum" And whether it is applicable upon Indian Limitation Act or not?

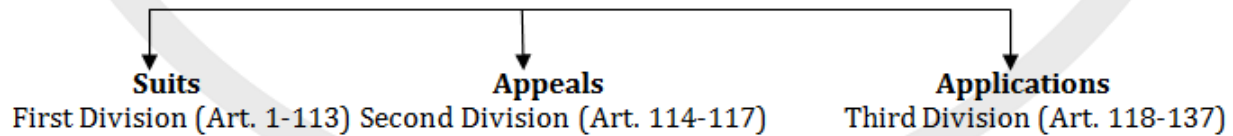
PAHUJA LAW ACADEMY

The Limitation Act, 1963

- Lex fori
- Procedural law
- **SCHEME OF THE ACT**
- The Act contains 32 Sections and one schedule containing 137 Articles. These sections deal with general principles applicable to extension of time whether by reason of disability or by acknowledgement and part payment. The Indian Limitation Act is divided into five parts.

- **Part I:** Sections 1 and 2 deals with Preliminary and Definitions.
- **Part II:** Sections 3 to 11 deals with **principles and Rules regarding limitation of Suits, Appeals and Applications.**
- **Part III:** Sections 12 to 24 lays down the rules and procedure for computation of period of limitation.
- **Part IV:** Sections 25, 26 and 27 deals with **acquisition of ownership by possession.**
- **Part V:** Sections 28 to 32 are **miscellaneous provisions.**
- The Act prescribes the period of limitation in Articles contained in schedule to the Act. Schedule to the Limitation Act contains three divisions. Suits are concerned by Articles 1 to 113. Appeals are concerned by Articles 114 to 117. Applications are concerned by Articles 118 to 137. In the Articles of the Schedule to the Limitation Act, Column 1, 2 and 3 must be read together to give harmonious meaning and construction. Each Article specifies the description of the suit, period of limitation and the time from which period of limitation begins to run. (Column 3)

- **Schedule (3 divisions)**



- **Object**

1. Rajender Singh v Santa Singh
2. Motichand v Munshi
3. Chiranjilal (Dr.) v Hari Das

(Halsbury's Laws of England),

- (i) that long dormant claim have often more of cruelty than justice in them (it is unfair that a defendant should have a claim hanging over him for an indefinite period),
- (ii) that a defendant might have lost the evidence to dispute the stale claim (e.g. loss or destruction of documents, fading of memory, death of parties and witnesses),
- (iii) that persons with good causes of action should pursue them with reasonable diligence (it relates to the conduct of plaintiff, a person who does not promptly act to enforce his rights should lose them).

LIMITATION BARS REMEDY BUT NOT THE RIGHT

The rule of limitation is a rule of procedure. It does not either create or extinguish rights, except in the case of acquisition of title to immovable property by prescription under Sec. 25 of the Limitation Act. The law of limitation bars the remedy in a Court of law only when the period of limitation has expired, but it does not extinguish the right which cannot be enforced by judicial process. Thus if a claim, is satisfied outside the Court of law after the expiry of period of limitation, that is not illegal.

Bombay Dyeing & Manufacturing Co. v State of Bombay

The supreme court held that Lapse of time does not extinguish the right of a person.

Babu Ram v State of U.P.

The rules for limitation are not meant to destroy the rights of the parties. They are meant to see that the plaintiff does not take a dilatory (delaying) tactics to seeks remedy within the period stipulated by the legislature. The right continues to exist even though the remedy is barred by limitation. It is only the remedy 'by way of a suit' which is barred, but the right itself continues to exist; and if there is some other remedy or lawful means by which that right can be enforced, the Limitation Act cannot come in that way. The concept 'time-barred' cannot be extended to proceedings outside the law courts.

EXAMPLE

A' from time to time advances money to B and each time he 'advances money', he enters the item advanced in his account book. Suppose A has advanced six items of money on six different dates, each succeeding item being separated from the previous one by a period of six months. Four years after the first advance was made, the period of three years fixed for the filing of the suit for the recovery of the first item of advance has expired and the remedy of A for filing a suit is barred by limitation. Here although the remedy is barred, the right of A to recover the amount of the first advance is not extinguished, but still survives although his right to file the suit for the recovery thereof is barred by limitation. Therefore, if B, the debtor, pays the amount of the first advance after it has become barred, or if he pays an amount without specifying towards which of the six advances it might be credited and the creditor applies it in the payment of the first item of advance, the creditor will be fully justified in law in doing so and the payment would not be allowed to be recalled on the ground of failure of consideration. A barred debt is a good consideration for a written promise to pay it.

SECTION 27 EXTINGUISHMENT OF RIGHT TO PROPERTY of the Limitation Act is, however, an exception to the general rule that the Act bars only the remedy and does not extinguish the right. In a suit for possession of any property on the determination of the

period of limitation not only the remedy but the right also is extinguished under Section 27 because it cannot be recovered after the expiration of the period of limitation provided for instituting a suit for its recovery.

Whether the Limitation Act, 1963 is an Exhaustive Code

– A.S.K. Krishnappa Chettiar v. K.S.V.V. Somiah SC 1964

The Limitation Act is an exhaustive code governing law of limitation in India in respect of all matters specifically dealt with by it. **Indian Courts are not permitted to travel beyond its provisions and to add or to supplement them.**

Constitutional Validity of the Limitation Act, 1963

Tilokchand Motichand v. H.P. Munshi

– Supreme Court held that the Statute of Limitation is not unconstitutional. It is applicable on suits, appeals, applications but not upon writs, because a writ petition filed before the Supreme Court is neither a suit and nor petition or application to which the Limitation Act applies, Hence Limitation Act does not apply upon writs.

– The limitation act does not place any hindrance by prescribing a period of limitation on writs. An aggrieved person can seek to approach the Supreme Court of India any time without any period of limitation under Article 32 of the Constitution.

Vijai Raje Scindia v State of U.P.

– The Supreme Court held improper the dismissal of writ petition by High Court on the ground that it was not filed within 90 days of the date on which impugned order was passed by the executive authority, as no limitation is prescribed for the purpose of filing a writ petition against an executive action.

The Limitation Act, 1963

PRELIMINARY QUESTIONS

1. Recently in which case it was held that Indian limitation act, 1963 is applicable to Mizoram?

(a) A.Sunder v. S.N.Jaiswal

(b) Babulal v. Chandabhai

(c) J. Thansiamma v. State.

(d) None of the above.

2. As defined under sec. 2(C) the term "Bill of Exchange" include?

(a) Cheque

(b) Hundi

(c) Both of Above

(d) None of Above

3. Indian Limitation Act contains how many parts?

(a) Three

(b) Four

(c) Five

(d) Six

4. What is barred by law of limitation?

(a) Right

(b) Remedy

(c) Both a and b

(d) None of above

5. Indian limitation Act is?

(a) Lex Loci

(b) Lex Fori

(c) Law of the land

(d) None of the above

6. Indian limitation act is?

- (a) Procedural
- (b) Substantive
- (c) Both
- (d) none of above

7. Indian Limitation Act is not applicable upon?

- (a) Appeal
- (b) Suits
- (c) Application
- (d) writs

8. Schedule one of ILA,1963 contains how many articles?

- (a) 132
- (b) 135
- (c) 137
- (d) 139

9. What will be the period of limitation if no period is prescribed in ILA,1963.

- (a) 2 years
- (b) 3years
- (c) 5years
- (d) 7 years

10. Whether limitation act is not applicable upon?

- (a) Industrial tribunal

- (b) Labour court
- (c) both (a) & (b)
- (d) None of the above
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LECTURE-2

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LIMITATIONS

MAINS QUESTIONS

1. Every suit instituted, appeal preferred and application made after the period of limitation prescribed therefore shall be dismissed. Explain the statement with reference to its exceptions if any.
2. Explain what is bar of Limitation? Discuss with reference to leading case laws.
3. In a case, an assessment of agricultural income tax upon estate of Raja Narayan was made by: The agricultural income tax officer for the period of 1-11-1956 to 31-3-1958. Payment in part was made in discharge of liability. On 1-1-1968 the High Court made order regarding assessment and liability. A civil suit was filled in 1974 for the recovery of amount paid by the successor. Discuss whether it was barred by limitation or not?
4. What will be the effect when prescribed period for any suit or appeal or application expires on the day when court is closed?
5. When prescribed period of limitation expires on Sunday, then what will be the procedure of filling suit, appeal or applications under sec 4 Indian Limitation Act?

PAHUJA LAW ACADEMY

LIMITATIONS

• Bar of limitation

• Section 3

- Suit , Appeal and Application
- Dismissed after the prescribed period.
- Period of limitation cannot be claimed as defence.
- Section 3 is not an independent section but subject to sections 4 to 24.
- Liberal construction
- It only bars the remedy but does not destroy the right.
- In **Punjab National Bank v. Surendra Prasad Sinha** – the SC held that even if the debt is barred by the limitation, adjustment of securities deposited by guarantor towards debt thereafter is permissible.
- This section is mandatory in its terms and privy council in **General Accident Fire and Life Assurance Corporation v. Padmanabhar Nadar Pramu Nadar** – held that a judge cannot on equitable grounds , enlarge the time allowed by law, postpone its operation, or introduce exceptions not recognized by it.
- Similar observations have been made by the supreme court in **Boota Mal v. Union of India and Rajendra Singh v. Santa Singh.**
- The provision in section 3 is absolute and mandatory.
- *S. 3 is pre-emptory, and the duty of the court is to take notice of limitation period even though limitation is not referred to in the pleadings.*
- When the question of limitation is purely one of law capable of determination on the facts admitted or proved before the court, the court is bound to raise the question *suo motu*.
- In **Pandurang v Maruti ,**
- The Supreme Court observed that when **the question of limitation depends upon facts not disclosed in the plaint, the defendant is bound to raise such question.**
- In **Narne Rama Murthy v Ravula Somasundaram**

The Supreme Court held that when limitation is the pure question of law and from the pleadings itself it becomes apparent that the suit is barred by limitation, then it is the duty

of the court to decide limitation at the outset even in the absence of a plea. But, in cases where the question of limitation is a mixed question of law and fact and the suit does not appear to be barred by limitation on the face of it, then the facts necessary to prove limitation must be pleaded, an issue raised and then proved.

• **In V.M. Salgaocar & Bros. v Board of Trustees of Port of Mormugao**

• The Supreme Court held that even if the defendant intentionally does not raise the plea of limitation, if the suit is ex facie barred by law of limitation, the court has no choice but to dismiss the same. Sec. 3 of the Limitation Act does not allow for waiver of limitation by a party.

• **Noharlal Verma v. Distt Co-operative Central Bank Ltd.**

• **Gannamani Ansuya v. Parvathi Amrendra Chaudhary**

The question whether a suit is barred by limitation should be decided on the facts as they stood on the date of presentation of the plaint. It is a vital section upon which the whole Limitation Act depends for its efficacy.

• **Burden of proof**

Initial burden= plaintiff or appellant (within time)

Subsequent burden = defendant or respondent (barred by limitation)

- At what stage plea of limitation can be raised?
- Sec. 3 equally operates for or against a private individual as also government.
- Where the question involved is the honour and integrity of the legal profession, even if the claim for money by the client against his lawyer is barred by limitation, the Limitation Act will not apply to such cases. **Similarly when there is no possibility of ascertaining the starting point of limitation, there is no scope for operation of Sec. 3.**

Exception to section 3

• By Section 29(2) of the Act, Section 3 has been made applicable to special or local laws. Therefore, every suit, appeal or application, for which a period of limitation is prescribed by special law or local law, must be dismissed if it is made or filed after the prescribed period even though limitation is not set up as a defence.

SECTION 4

• Expiry of prescribed period when court is closed-

Where the prescribed period for any suit, appeal or application expires on a day when the court is closed, the suit, appeal or application may be instituted, preferred or made on the day when the court reopens.

• **Explanation**– A court shall be deemed to be closed on any day within the meaning of this section if during any part of its normal working hours it remains closed on that day.

• Sec. 4 deals with extension of time over that period during which a person is delayed by the court's action and not by any act on his own. Sec. 4 gives expression to the maxims:

• **(i) *lex non cogit ad impossibilia*** i.e. the law does not compel a man to do that which he cannot possibly perform.

(ii) *actus curiae neminem gravabit* i.e. an act of the court shall not prejudice any party.

• The word "Court" means the proper court in which the application ought to have been made. Thus if an application is filed in a wrong court, no benefit under Sec. 4 will be available if the proper court where one ought to have filed the suit was, CLOSED at the time of filing.

• Amar Chand v Union of India

• For the application of the provisions of section 4, following things are required:—

(i) that there should be a prescribed period, and

(ii) that period should expire on a holiday

• When no period of limitation is prescribed for filing of an application for certified copy of judgment and decree by a party and the party can do it any time, then Sec. 4 is not attracted to the filing of such application. Sec. 4 applies where a certain period has been prescribed by a statute, and has no application to a case where a certain date has been fixed for payment by agreement of parties.

• Sec. 4 provides an exception to the general rule in Sec. 3. Further, there is a difference between Sec. 4 and Sec. 14; while section 14 provides for the exclusion of certain periods in computing limitation and section 4 has nothing to do with computing, its effect is merely to relieve the hardship.

- The privy council in **Maqbul Ahmed v Onkar Pratap Singh** held that Sec. 4 has nothing to do with period of limitation. It does not add to the period of limitation. It merely permits the filing of the suit, etc. on a date beyond the period of limitation i.e. it signifies is that where the period of limitation expires on a day when the court is closed, notwithstanding that fact, application may be made on the day when the court reopens.

- It is immaterial that Whether the court is closed due to authorized holiday or on a working day. it is sufficient that the court is closed and it is a qus. Of fact. A court is said to be closed even though the judge holds court on a gazetted holiday. Further, where the court remained open on a particular day, it does not matter in the least whether any court work was transacted or not.

- Though the court offices may be actually open during the vacation for other work, if there is no one lawfully required to be present for the purpose of receiving a plaint or application, the court will be held to be closed. But if the offices of the court are open during the holidays and there is also a judge or an officer or clerk of the court at hand for the purpose of attending to plaints, appeals and applications, the court cannot be said to be closed.

- Mere absence of Presiding Officer on leave is not tantamount to the court being closed, when office is open.

- Explanation to Sec. 4 takes note of circumstances in which the court is not officially declared closed but when during any part of its normal working day, it remains closed. According to the Explanation, if a court remains closed only for a few hours (e.g. due to strike), it will be treated as closed on that day. When due to picketing neither the Presiding Officer of the court nor any other officer authorized to receive plaint was present in the court on the specified day the court would be deemed to be closed.

- **Gopal v Ranu Bala Supreme court**

- It has been held by the Supreme Court that considering the Saturday to be a "half-working day", the delay in not filing the suit on that day is covered by the Explanation to Sec. 4.

(It should be noted that Saturday is a Court working day although the Judges are not sitting on that day.)

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LIMITATIONS

PRELIMINARY QUESTIONS

1. Which sec. talks about dismissal of suits, appeal, application after prescribed period?

- (a) Sec. 3
- (b) Sec. 4
- (c) Sec.5
- (d) Sec.7

2. For the purpose of limitation act, which suit shall be deemed as separate suit?

- (a) Set off
- (b) Counter Claim
- (c) Both a and b
- (d) None of the above.

3. Expiry of period of limitation?

- (a) Extinguish the debt
- (b) Renders the debt unenforceable
- (c) Extinguish the debt and render it unenforceable
- (d) None of the above

4. An order made on an application filled after the prescribed period is?

- (a) Illegal
- (b) Without jurisdiction
- (c) Irregular
- (d) None of the above

5. Which section of ILA,1963 deals with the expiry of period of limitation when the court is closed?

- (a) Section 3
- (b) Section 4
- (c) Section 5
- (d) Section 6

6. When the prescribed period for suit, appeal, and application is expires on the date when court is closed, Suit, Appeal, or Application is instituted, made, preferred ?

- (a) On the date when court reopens
- (b) In a vacation court
- (c) On closing day
- (d) None of the above

7. Section 4 is not applicable upon?

- (a) Suit
- (b) Appeal
- (c) Application
- (d) None of the above

8. Initial Burdon of proof regarding period of limitation lies upon?

- (a) Plaintiff/ applicant
- (b) Defendant/Respondent
- (c) Both of the above
- (d) None of the above

9. Section 4 provides which two maxims?

- (a) *lex non cogit ad impossibilia*
- (b) *actus curiae neminem gravabit*
- (c) both of the above
- (d) None of the above.

10. Exceptions of general rule u/sec. 3 are given in?

- (a) Sec. 4-24
 - (b) Sec. 5-24
 - (c) Sec. 4-25
 - (d) Sec. 5-25
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LECTURE-3

PAHUJA LAW ACADEMY

THE LIMITATION ACT

MAINS QUESTIONS

1. What are the conditions to be satisfied under section 5 for extension of period of limitation?
2. What do you mean by sufficient cause? Whether mistake of counsel and ignorance of law can be claim as sufficient cause or not?
3. There was a suit between Ram And Rakesh. It was decided against Rakesh. Rakesh preferred an Appeal against the said order with one day delay. Rakesh made an application under section 5 on the ground that he could not filled application on last day as his son was implicated in false case requiring his attendance in criminal court on the last day of prescribed period. Decide?
4. Whether sec 5 of Indian Limitation Act is absolute or not?

5. What are the areas where sec. 5 is applicable. State the reasons why it is not applicable upon suits?

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THE LIMITATION ACT

lecture notes

SECTION 5- EXTENTION OF PRESCRIBED PERIOD IN CERTAIN CASES.

- Sec. 5 is an exception to the general rule contained in Sec. 3.
- Sec. 5 does not apply to suits i.e. to the original cause of action.
- Sec. 5 also does not apply to execution applications (Order 21,C.P.C.).
- Sec.5 is applicable on appeals and all applications except application under order XXI i.e (execution application).

• In Kaushalya Rani v Gopal Singh

• In Ajit v State

The Apex Court held that Under the Criminal Procedure Code, the delay in filing appeal against acquittal can be condoned by invoking Sec. 5.

• In Mahabir Singh v Chief, Army Staff.

The Supreme Court has accepted oral prayer of the counsel for condonation of delay. However, the petitioner has to satisfy the court as regards the sufficient cause. it is desirable that he would file a formal application. But only on the ground that written application has not been filed, the prayer for condoning the delay should not be refused.

- Sec. 5 does not provide that an application in writing must be filed before relief under the said provision can be granted. Delay can be condoned even when no written application is filed.

• PRINCIPLES FOR THE CONDONATION OF DELAY

1. In order to bring a case under the purview of section 5, the application for the filing of which condonation of delay should not relate to the execution of decrees.

2. An application cannot be made under section 5 for the extension of the prescribed period unless the prescribed period is over.

3. The party applying for condonation of delay under the section should satisfy the court that he had sufficient cause for not preferring the appeal or making an application within the prescribed period. 'Sufficient cause' has not been defined in the Act.

4. What constitutes sufficient cause cannot be laid down by hard and fast rules. The discretion given by section 5 should not be defined and crystallised so as to convert a discretionary matter into a rigid rule of law.

5. The following principles are required to be kept in mind while considering an application for condonation of delay on sufficient cause:

(i) Refusal to condone may result in throwing out a meritorious matter.

(ii) Substantial Justice is to be preferred to technical laws.

(iii) Every day's delay must be explained. It does not mean that a pedantic approach should be made and not necessary to explain the delay of every hour, every second.

The doctrine must be applied in a rational common sense pragmatic manner. Mathematical accuracy is not justified. Injustice is to be removed by giving liberal interpretation to the words 'sufficient cause'.

(iv) There should not be presumption that delay is always deliberate.

6. The proof of sufficient cause is a condition precedent for the exercise of the discretionary jurisdiction vested in the court under Sec. 5. The court has discretion to admit or refuse the proceeding, even if sufficient cause is shown, as is made clear by the words "may be admitted" used in the section.

7. The discretion conferred on the court is a judicial and not arbitrary discretion, and must be exercised to advance substantial justice. The court must carefully weight the claims of the two parties. The scope of enquiry must be limited to the facts which are relevant.

8. The true guide for a court in the exercise of the discretion under Sec. 5 is whether the appellant acted with reasonable diligence in prosecuting the appeal.

9. Liberal construction

• Sufficient cause

– The term ‘sufficient cause’ has not been defined in the Act, but it has been held that it must mean a cause which is beyond the control of the party invoking the aid of the section.

– The extension of the time under this section is at the ***discretion of the Court***. The discretion is judicial, and not arbitrary. No hard and fast rule can be laid down to govern the matter or to control the exercise of such discretion. Each case must depend on its own facts. A cause for delay, which by due care and attention, the party could have avoided, cannot be a sufficient cause.

– The test is to see whether it is a bona fide cause, and nothing is bona fide unless it is done with due care and attention. The question of the existence of sufficient cause is one to be decided from the facts and circumstances of the particular case. In exercising discretion under section 5, the court should adopt a pragmatic approach. The court has to exercise the discretion on the facts of each case keeping in mind that in construing the expression ‘sufficient cause’ the principle of advancing substantial justice is of prime importance. The proof of sufficient cause is the condition precedent for the court to exercise its discretion.

• whether recording of reasons is necessary for condoning delay.

– In case where the delay is only of a few days, say three or four days, having regard to the liberal approach in the matter of condonation of delay, the appellate authority may not consider it necessary to record reasons. However, in case of inordinate delay, particularly, when the matter regarding condonation of delay is strongly contested, it is expected that in the exercise of judicial discretion, the appellate authority even if briefly, must record its reasons.

• In Collector, Land Acquisition, Anantnag v. Katiji

The Supreme Court Issued following principles with regard to condonation of delay under section 5.

(a) Ordinarily, a litigant does not stand to benefit by lodging an appeal.

(b) The cause would be decided on merits after hearing the parties.

(c) The doctrine of ‘every day’s delay must be explained. Discretion of court should be applied in a rational, common sense, and pragmatic manner not arbitrarily.

(d) When substantial justice and technical consideration are against each other, cause of substantial justice deserved to be preferred.

(e) There is no presumption that delay is occasioned deliberately, or on account of culpable negligence, or on account of mala fides.

(f) It must be remembered that Judicial powers must be used for removing injustice and legalize injustice on technical grounds.

- The section gives a **double discretion** to the court i.e. the court has first to satisfy itself regarding the sufficiency of the cause and secondly even if the sufficient cause is proved the word may in section 5 means that the court still has a discretion to condone the delay or not.

- It has been held by Supreme Court in Collector, Land Acquisition, **Anantnag & Ors. v. Mst. Katiji & Ors.**

- **Ram Lal v. Rewa Coalfields Ltd.**

- **State of Haryana v. Chandra Mani**

- **N. Balakrishnan v. M. Krishnamurthy**

- **Ram Nath Sao v. Gobardhan Sao**

- **State of Nagaland v. Lipok**

PAHUJA LAW ACADEMY

LIMITATION

PRELIMINARY

1. Which section provides provisions of extension of period of limitation?

a) Section 3

b) Section 4

c) Section 5

d) Section 6

2. Provisions of sec 5 of ILA,1963 applies upon?

- a) Suit
- b) Execution application
- c) Both (a) and (b)
- d) None of the above

3. Whether sec. 5 applicable upon arbitration proceedings or not?

- a) yes
- b) No
- c) Depends
- d) None of the above

4. Provisions of section 5 are?

- a) Mandatory
- b) Discretionary
- c) Prohibitory
- d) None of the above

5. Indian Limitation Act applies to

- a) Proceedings before court
- b) Proceedings before executive authorities
- c) Proceedings before tribunal
- d) All the above

6. In the matters of condonation of delay u/sec 5 relating to the govt.

- a) Strict proof of everyday's delay by govt. should not be insisted upon.

- b) Strict proof of everyday's delay by govt. should be insisted upon.
- c) Strict proof of everyday's delay by govt. may not be insisted upon.
- d) Strict proof of everyday's delay by govt. may be insisted upon.

7. Period of limitation for suits relating to torts is

- a) One year
- b) One to 3 years
- c) Three years
- d) Twelve years

8. Period of limitation for arrears of rent is

- a) One year
- b) One year
- c) Three years
- d) Twelve years

9. How many explanations are given under sec. 5

- a) One
- b) Two
- c) Three
- d) None of above

10. Whether limitation act applies upon special or local laws?

- a) Yes
- b) No
- c) Depends

d) None of above

LECTURE-4

PAHUJA LAW ACADEMY

LIMITATION

MAINS QUESTIONS

1. Write a short note on legal disability?
2. What is the relationship between sec. 6, 7, 8, and 9, Explain with reference of case laws?
3. Ramkumar's car was stolen by some unknown person on 6-4-1980. Which was found in possession of Kalu with a new registration number on 6-4-1987. On enquiry, kalu was found to be third purchaser in series. Ramkumar filed a suit for recovery of car on 5-4- 1990. He assumed that prescribed period of filling the suit is 3 years from the date of causation of action. Decide Whether suit is instituted within time or not?
4. "Where once a time begun to run, no subsequent disability can stops it". Explain with reference to cases.
5. What are the circumstances under which certain period of time is excluded while computing the limitation period? Explain.

PAHUJA LAW ACADEMY

LIMITATION

LECTURE NOTES

SECTION 6

Legal disability

• Legal disability is inability to sue owing to minority, insanity or idiocy. The law recognizes no other ground as sufficient for extending the period of limitation. The effect of legal

disability is that it extends the period of limitation, but it does not prevent the period from running.

- The main provisions regarding legal disability are contained in sections 6, 7, 8 and 9 of the Limitation Act.

Essential ingredients of section 6

- (i) Legal disabilities under Section 6 of the Act, are minority, insanity and idiocy only.
- (ii) When any person is affected by any of these disabilities, he is entitled to institute the suit after the cessation of his disability within the same period as provided for the institution of such suit.
- (iii) When any person is affected by more than one disabilities, he is entitled to institute the suit after the cessation of those disabilities within the same period as provided for the institution of such suit.
- (iv) When any person is affected by more than one disability and before the cessation of that disability he is affected by another disability mentioned in the section, he is entitled to institute the suit after the cessation of both the disabilities.
- (v) When any person affected by any of the disabilities mentioned in the section, dies before the cessation of such disability, his legal representative is entitled to institute the suit within the same period as provided for the same.
- (vi) Where any person dies during his disability, and his legal representatives are also affected by any such disability, in that case his legal representatives are entitled to institute such suit after the cessation of their disability.
- (vii) The provisions of this section apply also to the execution of decrees,
- (viii) 'Minor' for the purposes of this section also includes a child in the womb.

Application and scope

- Section 6 is an enabling provision to enable persons under disability to exercise their rights within a certain time.
- This section refers to periods of limitation prescribed by the Act itself.

- This section is limited only to suits and applications for execution of decrees. It does not operate in favour of an appellant under disability. This section does not apply to appeals and pre-emptory suits. The privilege which this section grants is entirely personal and can be claimed only by a person under disability or his legal representative after his death. But neither purchasers nor the assignees can take the benefit thereof.

- Disability must be continuous. The section applies only where the person is already under a disability when the right to sue accrues. If a disability supervenes subsequently, then the benefit of this section cannot be taken. This is made clear by section 9 which says that where once time has begun to run no subsequent disability or inability to sue stops it.

- **In computing the prescribed period for a minor, the date on which he attains majority must be excluded from calculation.**

• SECTION 7 –DISABILITY OF ONE OF SEVERAL PERSONS

1. This section deals with cases where there are several persons, jointly entitled to institute a suit or make an application for the execution of a decree, and some only or such one of them is under a legal disability, while the rest are not.

2. Where a valid discharge can be given by the persons not under disability without the concurrence of other person, time will commence to run against them all.

3. Where no valid discharge can be given without the concurrence of others, time will not commence to run against any of them until the disability ceases or until the person under disability loses his interest in the subject-matter of the suit or in the decree.

• RELATIONSHIP BETWEEN SECTIONS 6, 7 AND 8

1. Section 8 is in nature of a proviso to sections 6 and section 7.

2. In Bailochan Karan v. Basant Kumari Naik,

Supreme Court observed that sections 6, 7 and 8 of the Limitation Act, 1963, have to be read together and that section 6 is controlled by section 8 which serves as an exception to sections 6 & 7.

3. If the period of limitation for the suit or application is three years or less, and it expires before the minor attains majority, the minor will get the same period from the date of attaining majority. In such a case, there is no occasion for section 8 to apply.

4. If the period of limitation is more than three years and it expires before the minor attains majority, the minor will get only three years from the date of attaining majority, under section 8.

5. If the period of limitation is three years or less, and it expires at some date after the minor attains majority (e.g., if the suit is one for which the period of limitation is two years and the minor attains majority one and half years after the accrual of the cause of action), the minor will get the full period of limitation for the suit (i.e., 2 years) from the date of attaining majority.

6. If the period of limitation for the suit is more than three years, and it ordinarily expires within three years (or less) after the minor attains majority, he will get 3 years from the date of majority.

7. If the period of limitation for the suit is more than three years (e.g., 12 years), and the period ordinarily expires on the date which is more than three years from the date of attainment of majority (e.g., if the right to sue accrues in 1900, and the minor attains majority in 1907, so that ordinarily the period will expire 5 years after the attainment of majority by the minor), the minor will get the remaining period (i.e., 5 years) from the date of majority, but no further extension of time (viz. 12 years from the date of majority) will be allowed under section 6 because in the ordinary course he is getting more than three years.

• **CONTINUOUS RUNNING OF TIME (Section 9)**

- The section applies to suits as well as applications. The section contemplates a case of subsequent and not of initial disability.

- The law of limitation aims at promoting diligence and discouraging laches or delay or indolence of any sort.

- Disability is want of legal qualification to act, inability is want of physical power to act. This disability is the state of being a minor, insane or an idiot as have been mentioned in section 6, whereas illness, poverty etc. are instances of inability.

- Where letters of administration to the estate of a debtor have been granted to his creditor, the running of time in favour of such debtor is suspended for so long as the administration continues. This is in order to prevent an administrator from taking advantage of his office in delaying the payment of a debt he himself owes to the estate, till the prescribed period has expired.

PAHUJA LAW ACADEMY

LIMITATION

PRELIMINARY

1. Section 6 includes which types of disability?
 - a) Minority
 - b) Insanity
 - c) Idiocy
 - d) All the above
2. For a person with disability the starting point of limitation is?
 - a) One year after removal of disability
 - b) Removal of disability
 - c) Three years after removal of disability
 - d) None of the above
3. What are the provisions regarding disability under ILA, 1963?
 - a) Section 6
 - b) Section 7,8
 - c) Section 9
 - d) All the above.
4. One of Several persons are entitle to institute suit is under disability and no such discharge can be given, time will run against?
 - a) The one who instituted suit
 - b) Against all joint persons

c) Not against anyone

d) Run against all

5. Special Exceptions u/sec. 8 are applicable upon which sections?

a) Section 6

b) Section 7

c) Both

d) None

6. The provisions related to sec 6,7 of Limitation Act are not applicable to?

a) Pre Emption suits

b) More then 3 years from the date of cessation of disability

c) Both of above

d) None of the above.

7. Once time begun to run, subsequent disability?

a) Stops that running

b) Does not stop

c) Depends on facts of case

d) None of the above

8. Under sec. 9 includes?

a) Disability

b) Inability

c) Either of them

d) Both of them

9. Which section talks about Once time begun to run, subsequent disability?

- a) Sec 7
- b) Sec 8
- c) Sec 9
- d) Sec 10

10. Period of limitation for restoration of suit

- a) 90 days
- b) 60 days
- c) 30 days
- d) 10 days

LECTURE 5

PAHUJA LAW ACADEMY

LIMITATION

MAINS QUESTIONS

1. What is the effect of fraud and mistake on period of limitation? Decide with
2. Whether period of limitation will apply upon the suit for refund of money paid under mistake of law? Decide with ceses.
3. What is the law of limitation as to the acknowledgement made by one of several persons or against the others who are interested in same property?
4. X and Y were two friends. They started a business which was running in loss. X took over the business on 1-5-1985. X borrows one lakh rs. From Y on 1-5-1985 and executed a promissory note on the same day. X made two payments to Y on 16-5-

86 or 21-2-87 and no payment was made thereafter. Y filed suit for recovery of balance on 20-1-1990. X filled written statement admitting that the above payments made on 16-5-1986 or 21-2-1987 to Y. He (X) takes plea that mere part payment does not extend the period of limitation and prays to dismiss the suit as it is barred by limitation. Decide.

5. Whether transposition of parties affects the period of limitation?

PAHUJA LAW ACADEMY

LIMITATION

LECTURE NOTES

EFFECT OF FRAUD on MISTAKE (Section 17)

– Section 17 of the Act deals with the effect of 'fraud' or 'mistake' on period of limitation.

– As per this section, the limitation shall be computed from the time when the fraud became known to the person defrauded. Therefore, if any person by the exercise of fraud has kept away other person from the knowledge that he has a right to file a suit, limitation will be computed from the time when such fraud became known to the person so defrauded.

– Where any document necessary to establish such right which has been fraudulently concealed from him or where the suit or application is for the relief from the consequences of a mistake, limitation shall be computed from the time when he first has the means of producing the document or compelling its production and in latter case, when the plaintiff or the applicant has discovered the mistake.

– **The principle behind Sec. 17 is that the right of a party defrauded cannot be affected by lapse of time so long as he remains in ignorance of the fraud which has been committed.** But as soon as the circumstances constituting the fraud become known to him, subsequent lapse of time will operate as a bar. Those who fraudulently appropriate the property of others should be assured that no time will secure to them the fruits of their dishonesty, but that their children's children will be compelled to restore the property.

– The main object of this section is to keep the right of a person to sue suspended so long as he is not made aware of the fraud committed against him. Such a period is excluded

from the period of limitation. Section 17 of the Limitation Act is an enabling section which postpones the starting point of limitation for suit and application.

– This section applies to suits and applications(including execution applications) but does not apply to appeals. It is an enabling section as it postpones the starting point of limitation for suits and applications.

– It also does not apply on criminal cases.

– The section applies to the following classes of suits and applications:

i. Where they are based upon the fraud of the defendant or respondent or his agent.

ii. Where the knowledge of the right or title is concealed.

iii. Where they are for relief from consequences of mistake.

iv. Where any document necessary to establish such right has been fraudulently concealed.

– In the first three cases, the period of limitation begins to run from the time the fraud or mistake is discovered or could have been discovered with reasonable diligence.

– In the cases of fourth class i.e., concealment of documents, the time begins to run when the plaintiff or the applicant first had the means of producing the concealed document or compelling its production.

– However, the rights of a bona fide purchaser for value without notice of fraud, mistake or concealment are protected.

– Fraud as is essential ingredient of the cause of action. FRAUD Mean active deceit in defrauding or endeavouring to defraud a person of his right. Mere silence is not fraud. The mere withholding of information which ought to be communicated to the party entitled is not a fraud, unless it is withheld with the direct purpose of throwing the plaintiff over the period of limitation.

– To constitute fraud, it is not enough that the right to sue shall be merely unknown to the plaintiff but there must have been some intention, imposition or some deliberate concealment of facts by which the ignorance of the plaintiff was brought about.

– Thus, in order to constitute “fraud” there must be some abuse of a confidential position, some intentional imposition or some deliberate concealment of facts. It has been held

that if the plaintiff could've discovered the fraud or mistake with due diligence that will be sufficient to start the limitation running against him.

– The fraud mentioned in this section must be committed by the party against whom a right is sought to be enforced i.e. the defendant or his agent.

– If the fraud has been committed by a third person, this section will not apply, unless he is the agent of the party.

– 'Mistake' means doing of an act under an erroneous conviction. Mistake is not mere forgetfulness, it is neither intentional nor by design but, by mischance. The term mistake comprises within its scope a mistake of law as well as a mistake of fact. A mistake of fact is a mistake which takes place when some fact which really exists is unknown, or some fact is supposed to exist which really does not exist.

The date of knowledge of fraud or mistake is to be excluded from computation of limitation period.

– Section 17(2) of Limitation Act provides that where the execution of a decree or order within the period of limitation has been prevented by fraud or force of the judgment-debtor, the Court may, on the application of the judgment-creditor made after the expiry of the period of limitation, extend the period for the execution of the decree or order. But, such an application must be made by the judgment-creditor within one year from the date of the discovery of the fraud or the cessation of force, as the case may be.

EFFECT OF ACKNOWLEDGEMENT IN WRITING (Section 18)

– Acknowledgement means a definite, clear admission of existing liability. It is not necessary that there should be a promise to pay; the simple admission of a debt is sufficient.

– An acknowledgement does not create any new right of action, but only enlarges the time and has the effect of making a new period run from the date of the acknowledgement.

– An acknowledgement of a barred debt cannot give fresh period of limitation in favour of creditors. Under this section, an acknowledgement is not limited in respect of a debt only, it may be in respect of "any property or right" which is the subject-matter of the suit, e.g., the taking of account of a dissolved partnership.

– An acknowledgement of a conditioned liability will not give a fresh start so long as the condition remains unfulfilled. There must be an unqualified admission, or an admission qualified by a condition which is fulfilled. An unqualified admission and an admission qualified by a condition which is fulfilled stand precisely upon the same footing, and both are within Section 18.

– An acknowledgement is not limited in respect of a debt only, it may be in respect of 'any property or right which is the subject-matter of the suit.

To constitute a valid acknowledgement and thus to give a fresh period of limitation under this section, the following conditions must be satisfied:

– (1) The acknowledgement must have been made before the expiration of the prescribed period.

– (2) The acknowledgement must have been made by the party against whom the right is then claimed or by any person through whom he derives his title or liability. An acknowledgement by a person not liable at the time of acknowledgement does not amount to acknowledgement in law.

– (3) The acknowledgement must be in writing; however, if the acknowledgement is undated, oral evidence may be given of the time when it was signed.

– But Section 18(2) clearly prohibits, subject to the provisions of the Evidence Act, receiving of oral evidence of contents of the acknowledgement.

– (4) Such acknowledgement must have been signed by the party, his agent or the party against whom the right is then claimed or by any person through whom he derives his title or liability.

– (5) The acknowledgement must be an acknowledgement of liability. Under the English law, under which an acknowledgement to be effective must also contain or import a promise to pay. Under the Indian law, it is not necessary that the writing containing the acknowledgement of same right or property should specify exactly what the right is or the exact nature of the property (e.g., exact sum due).

– An acknowledgement will be sufficient for the purposes of the section, even though it is coupled with a refusal to pay, or with a claim to set-off, or with a statement that time for payment has not yet arrived. But all the same it must be an admission of liability;

– a statement by the debtor implying that there is no liability does not amount to an acknowledgement.

– An acknowledgement or liability need not be express; it may be by implication. The acknowledgement must distinctly and definitely relate to the liability in respect of the right claimed.

– (6) The acknowledgement is not required to be made to the creditor or the person entitled to the right or the property. It may be made to any person, even to one who has no connection with the creditor.

– In Explanation (b) to section 18 of the Act, it is further said that the word 'signed' means signed either personally or by an agent duly authorised in this behalf.

– An acknowledgement by the guardian, committee or manager of a person under disability, by an agent duly authorised by such guardian, etc., is within this section.

– The manager of a joint Hindu family has the same authority to make an acknowledgement as he has to create debts on behalf of the joint Hindu family.

– An acknowledgement by a legal practitioner will be valid acknowledgement to bind his clients. An attorney is a duly authorised agent and an admission made by him in a letter to the attorney of the opposite party is a sufficient acknowledgement.

– The Official Assignee is not the agent of the insolvent. Therefore, an acknowledgement made by him does not save limitation under this section. An Official Receiver is an officer appointed to administer the estate of an insolvent, under the Provincial Insolvency Act, 1920. He is not technically an agent of the insolvent.

– The distinction between an 'acknowledgement' under section 18 of the Limitation Act and a 'promise' under section 25 of the Contract Act, 1872 is of great importance.

Both must be in writing signed by the party or his agent duly authorised in that behalf, and both create a fresh starting point of Limitation.

But while an acknowledgement under the Limitation Act is required to be made before the expiration of the prescribed period. A promise under section 25 of the Contract Act, 1872 may be made after the prescribed period.

If a debt is time-barred, there can be no acknowledgement of the debt; there can only be a promise to pay that sum. Such a promise would amount to a new contract.

It is open to the borrower to make a promise in writing, signed by himself, to pay a debt of which his creditor might have enforced payment but for the law of limitation of the suit. This is recognized by section 25(3) of the Contract Act, 1872.

– A new period of limitation is to be computed from the time of the acknowledgement, i.e., from the time when it was signed. It is the true date of acknowledgement from which a new period starts. Oral evidence is permissible to show that the writing bears a wrong date by mistake. The date of delivery of the acknowledgement is not the starting point. The date of acknowledgement is to be excluded in computing the new period (vide section 12 and General Clauses Act).

– State of Kerala v. T.M. Chacko,

Supreme Court held that the effect of an acknowledgement is that a fresh period of limitation has to be computed from the time when the acknowledgement was so signed. Section 18(2) permits giving of oral evidence at the trial of the suit where the acknowledgement is undated but it prohibits, subject to the provisions of the Evidence Act, 1872 receiving of oral evidence of contents of the acknowledgement. Clause (a) of the Explanation to section 18 says that an acknowledgement may be sufficient for purposes of section 18 even though–

- (i) it omits to specify the exact nature of the property or right;
- (ii) it avers that the time for payment, delivery, performance or enjoyment has not yet come;
- (iii) it is accompanied by refusal to pay, deliver, perform or permit to enjoy;
- (iv) it is coupled with a claim to set off, or
- (v) it is addressed to a person other than a person entitled to the property or right.

Clause (b) of the Explanation defines the word 'signed' to mean signed either personally or by an agent duly authorised in that behalf. It may be noted that for treating a writing signed by the party as an acknowledgement, the person acknowledging must be conscious of his liability and the commitment should be made towards that liability. It need not be specific but if necessary facts, which constitute the liability, are admitted an acknowledgement may be inferred from such an admission.

– Tilak Ram v. Nathu,

– Supreme Court observed that the statement on which a plea of acknowledgment is based must relate to a subsisting liability. The words used in acknowledgment must indicate the jural relationship between the parties and it must appear that such a statement is made with the intention of admitting the jural relationship. Such an intention can be inferred by implication from the nature of the admission and need not be in express words.

– The Supreme Court also referred Green v. Humpheys while dealing with an admission of a debt observed that an acknowledgement would be an admission by the writer that there was a debt owing by him either to the receiver of a letter or some other person on whose behalf the letter was received but it was not enough that he referred to a debt as being due from somebody.

Court then pointed out that section 18 requires the following:

(i) an admission or acknowledgement.

(ii) such acknowledgement must be in respect of a liability in respect of property or right.

(iii) it must be made before the expiry of period of limitation.

(iv) it should be in writing and signed by the party against whom such property or right is claimed.

SECTION 19

– This section provides that fresh period of limitation will be computed when a payment is made on account of a debt or of interest on a legacy provided that—

(a) it is paid before the expiry of the prescribed period.

(b) it is paid by the person liable to pay the debt or interest on legacy, or by his agent duly authorized in this behalf.

(c) an acknowledgement of the payment appears in the handwriting of, or in a writing signed by, the person making the same.

– The section does not require that the acknowledgement should also be made within the period of limitation but it is essential that such acknowledgement whether made before or after the period of limitation must be in existence prior to the institution of the suit.

– Just as where an acknowledgement of liability is made under section 18 of the Act, all the period that has run up to then is cancelled and a fresh period commences so also, where payment is made on account of a debt or legacy on interest under section 19 of the Act, a fresh starting point of limitation is afforded to the creditor.

– Section 19 is a special provision which enables a creditor to get a fresh period of limitation when there is an acknowledgement in writing by the debtor or his authorized agent. Further under this section, a payment maybe made not only in cash but in any other medium that the creditor may choose to accept.

– To constitute payment it is not necessary that it should be in cash or currency. Payment may be made in any form. It is necessary that there must be something which is tantamount to payment. Section 19 saves limitation from the date of payment and if the payment is made by a post-dated cheque, unless the cheque is accepted as payment it could not be regarded as a payment before due date.

– A payment is not a good payment unless it is made to the person entitled. Mere payment by the debtor would not attract section 19 unless this shows that there was an acknowledgement of the payment in the handwriting of the debtor or under a writing signed by him.

– Where a payment saves limitation, the fresh period is to be computed from the date of payment. In computing the period of limitation, the date on which the payment was made must be excluded by virtue of section 12(1).

– In order to be covered by the limitation under this section payment should be made by a person liable to pay it. The expression “person liable to pay” is of wide connotation. It is not restricted to personal liability only. It will cover the property liability also.

– DISTINCTION BETWEEN SECTIONS 18 AND 19

1. Sections 18 and 19 are not mutually exclusive. A payment which, owing to some defect, does not fulfill the requirements of section 19 may nevertheless operate as acknowledgement of liability and as such save limitation under section 18, if the conditions of that Section are fulfilled.

2. Section 18 applies to suits and applications in respect of any property or right, while section 19 applies only to suits on debts and legacies.

3. An acknowledgement of liability under section 18 operates only against the person against whom such property or right, in respect of which the acknowledgement is made, is claimed.

A payment of interest as such or a part payment of principal, on the other hand, operates against all persons liable to pay of the debt in respect of which the payment made and not merely against the person making the payment or those deriving title under him subsequent to such payment.

4. An acknowledgement, under section 18 need not be addressed to the person entitled to the property or right, but a payment under section 19 must be made to the person entitled to payment.

5. Under section 18, a mere writing containing an admission of liability in respect of the property or right claimed is enough. But under section 19, two things are necessary, viz., (a) a payment, and (b) a writing recording such payment.

EFFECT OF ACKNOWLEDGEMENT OR PAYMENT BY ANOTHER PERSON (Section 20)

– Section 20 is an explanatory as well as supplementary of sections 18 and 19 dealing with acknowledgement and payment respectively. It is not an exception to any one of these sections.

– A mere acknowledgement by one joint-debtor cannot bind the other debtor merely because he is a partner of the former. The provisions in this section are in the nature of the Explanation to sections 18 and 19. This section explains the meaning of the words 'agent duly authorised' as used in sections 18 and 19.

– Section 20(1) provides that the expression 'agent duly authorised in this behalf' in sections 18 and 19, in respect of a person under disability includes the following:-

(a) his lawful guardian, committee or manager, or

(b) an agent duly authorised by such guardian, committee or a manager, to sign the acknowledgement or make the payment.

– The expression 'lawful guardian' is not limited to a guardian appointed by the Court. It means any person who is entitled to act as guardian under the personal law of the minor.

– So, section 20(1) is meant to protect those creditors who accept an acknowledgement from a guardian and refrain from a suit; it would be unfair for the minor afterwards to turn round and say that the creditor's remedy is barred.

– Section 20(2) provides the effect of acknowledgement or payment by person under joint liability (e.g., joint contractor, joint partner, joint mortgagees, co-contractors, co-debtors). Section 20(2) provides that mere writing or signing of an acknowledgement by one partner does not necessarily of itself bind his co-partners, but it must also be shown that he had authority, express or implied to make the acknowledgement on behalf of himself and his partners.

Limited owner [Section 20(3)(a)]

– It says that acknowledgement or payment made by the widow or limited owner is a valid acknowledgement or payment as against a reversioner.

Manager of a joint family [Section 20(3)(b)]

– This sub-section lays down two conditions in order that the act of a member of a joint Hindu family specified in sections 18, and 19 may extend the period of limitation against all the members. These conditions are:

(i) that the loan must have been incurred by or on behalf of the joint family, and

(ii) that specified acts must be the acts not of any member of the family but must be the act of the karta.

– It is not, however, necessary that the document evidencing the loan must on the face of it show that the loan has been incurred on behalf of the joint family.

– Chandradhar Goswarni v. Gnuhati Bank Ltd., [SC]

– SantLal v. Kamla Prasad

– *The Supreme Court held that to claim exemption under section 20 of Limitation Act, 1908, the plaintiff must be in a position to allege and prove not only that there was payment of interest on a debt or part payment of the principal, but that such payment had been acknowledged in writing in the manner contemplated by that section. The ground of exception is not complete without this second element and unless both these elements are proved to exist on the date of filing of the plaint, the suit would be held to be time barred. In the original plaint, the prayer was only for a mortgage decree in the usual form which*

was an amendment allowed by the Court. In plaint, the cause of action was stated to arise from the different payments made on different dates. These amendments must be deemed in the eye of law to be a part of the original plaint and obviously there is neither any averment nor proof that any of these payments was acknowledged in writing prior to the institution of suit. Thus the suit was held to be time barred by Limitation. Thus, the judgment and decrees of both the Courts were set aside and the plaintiff's suit was dismissed.

PAHUJA LAW ACADEMY

LIMITATION

PRELIMINARY

1. Which section talks about fraud or mistakes?
 - a) 17
 - b) 18
 - c) 19
 - d) 20
2. Section 17 applicable upon?
 - a) Suits or Application
 - b) Appeal or Criminal proceedings
 - c) Both of the above
 - d) None of the above
3. In which cases period of limitation shall not begun to run?
 - a) If suit or application is based on fraud of defendant & his agent.
 - b) If relief made from the consequences of mistake
 - c) If document necessary to establish right has been fraudulently concealed.
 - d) All the above.

4. What is the period of limitation in which judgment debtor may apply after discovery of fraud or mistake?

- a) One year
- b) Two years
- c) Three years
- d) Five years

5. Which Section deals with effect of acknowledgement in writing?

- a) 17
- b) 18
- c) 19
- d) 20

6. What is the subject matter of acknowledgement?

- a) debt
- b) any property
- c) right
- d) all the above

7. Who can make acknowledge?

- a) by the party against whom the right is then claimed
- b) by any person through whom he derives his title or liability
- c) Both a & b
- d) None of the above

8. When acknowledgement can be made?

- a) May be made after the subsistence of period of limitation
- b) Must be within the subsistence of period of limitation
- c) May be during or after the period of Limitation
- d) None of the above

9. Which section provides that fresh period of limitation will be computed when a payment is made on account of a debt or of interest on a legacy?

- a) 17
- b) 18
- c) 19
- d) 20

10. In which of the following cases apex court held that when a debt becomes time barred, it does not become extinguished but only becomes unenforceable?

- a) Siathalavi v. state
- b) Balkrishna v. Krishnmurti
- c) Bombay Dying manufacturing comp.v. state of Bombay
- d) None of the above

LECTURE-6

PAHUJA LAW ACADEMY

LIMITATION

MAINS QUESTIONS

1. What do you mean by adverse possession? Decide the essential elements of acquisition of ownership by possession.

2. How ownership can be acquired under Indian limitation act? Decide with reference to article 64, 65.
3. What will be the limitation where no period is prescribed?
4. Whether tenant can claim adverse possession in respect of land which is not the part of his premises but he encroached that land?
5. What is the substantive rule laid down in section 27. Explain its policy and object.

PAHUJA LAW ACADEMY

LIMITATION

LECTURE NOTES

ACQUISITION OF EASEMENTS BY PRESCRIPTION (SECTION 25)

– Section 25 of the Limitation Act, 1963 deals with the law regarding mode of acquisition of prescriptive right as well as the procedure of the computation of the period of limitation under which the right could be matured.

– The period for acquisition of ownership under this mode has been prescribed 20 years of uninterrupted possession over the land of any person but in the case of land belonging to Government the period is 30 years.

– According to Sec. 2(f), Limitation Act, "Easement" includes a right not arising from contract, by which one person is entitled to remove and appropriate for his own profit any part of the soil belonging to another or anything growing in, or attached to, or subsisting upon, the land of another.

nbsp;

– Ingredients of section 25

– Section 25(1) provides that where the access and use of light or air to and for any building have been—

(i) peaceably enjoyed,

(ii) as an easement,

(iii) and as of right,

(iv) without interruption, and

(v) for 20 years (30 years in the case of property belonging to the Government), then such right to such access and use of light or air becomes absolute and indefeasible.

– Section 25(1) further provides that where any way or watercourse or the use of any water or any other easement (whether affirmative or negative), has been-

(i) peaceably and openly enjoyed,

(ii) by any person claiming title thereto,

(iii) as an easement,

(iv) and as of right,

(v) without interruption, and

(vi) for 20 years (30 years in the case of property belonging to the government), then the right to use such way, water-course, use of water or other easement becomes absolute and indefeasible.

– The period of 20 (or 30, as the case may be) years is to be **taken to be a period ending within two years before the institution of the suit** wherein the claim to which such period relates is contested[Sec. 25(2)].

– “Interruption” for the purpose of Sec. 25, means actual discontinuance of the possession or enjoyment by reason of an obstruction by the act of some person other than the Claimant, and such obstruction is submitted to or acquiesced in for one year after the claimant has notice thereof and the person making or authorizing the same to be made [Explanation Sec. 25].

– **Illustration-** A suit is brought in 1911 for obstructing a right of way. The defendant admits the obstruction, but denies the right of way. The plaintiff proves that the right was peaceably and openly enjoyed by him, claiming title thereto as an easement and as of right, without interruption from 1st January, 1890 to 1st January, 1910. The plaintiff is entitled to the easement.

– The word ‘peaceably’ means that the dominant owner has neither been obliged to resort to physical force himself at any time during the period of enjoyment nor had he been prevented by the use of physical force by the defendant in his enjoyment of such right.

– ***In Dwarka v Patna City Municipality***

– Patna H.C held that an interruption within the meaning of the Explanation to Sec.25 for more than a year will operate to prevent the claimant from adding the period of his previous enjoyment of the right to any period of enjoyment after such interruption so as together to make up the requisite total of 20 years, but will not, by itself, suffice to nullify any right that may have been already acquired by 20 years’ uninterrupted enjoyment, for the section entitled the claimant to sue within two years.

EXCLUSION IN FAVOUR OF REVERSIONER OF SERVIENT TENEMENT (SECTION 26)

– Section 26 provides that where any land or water upon, over or from, which any easement has been enjoyed or derived has been held under or by virtue of any interest for life or in terms of years exceeding three years from the granting thereof, the time of the enjoyment of such easement during the continuance of such interest or term shall be excluded in the computation of the period of twenty years in case the claim is, within three years next after the determination of such interest or terms, resisted by the person entitled to such determination to the said land or water.

– This Section is to be read with section 25. This section is entirely for the benefit of reversioners.

– The object of the section is the prevention of easement being acquired under the Act against interested person who are incapable of resistance.

– The section does not apply to a donee or transferee from a Hindu widow by virtue of her powers as representing the estate, since in such a case, the transferee succeeds the widow in her capacity as full owner and not as upon the determination of her life interest.

– When during the period of prescription the servient tenement has been held by:

1. a tenant for life, or

2. a lessee under a lease for a term, the term of which exceeded three years,

and the claim is contested within three years from the determination of the interest of the life-tenant or the term of the lease, the period during which the servient tenement was held by the life-tenant or lessee is excluded in computing the period for 20 years.

– E.g; A sues for a declaration that he is entitled to a right of way over B's land. A proves that he had enjoyed the right for twenty-five years; but B shows that during ten of these years C, a Hindu widow, had a life interest in the land, and on C's death B became entitled to the land, and that within two years after C's death he contested A's claim to the right. The suit must be dismissed, as A with reference to the provisions of this section, has only proved enjoyment for fifteen years.

SECTION 27: Extinguishment of Right to Property

– The Limitation Act lays down a rule of substantive law in Sec. 27.

– The principle underlying Sec. 27 is one founded on public policy and expediency.

– The principle is of general application and is not confined to suits or applications to which the period of limitation is prescribed under the Limitation Act (Din Dayal v Rajaram 1970 SC).

– Sec. 27 only applies to persons who are out of possession and seeks to recover possession, but not to the case of a person who is still in possession of the property.

Sec. 27 applies **to both movable and immovable property.**

– Where no period of limitation is provided, then Sec. 27 does not apply.

– It may be noted that Sec.27 is not actually related to the law of limitation but to a law of prescription which has to be distinguished from the law of limitation.

– Under Sec. 27, not only the ownership to one person is extinguished but an absolute ownership is also acquired by the other person in adverse possession.

– Twelve years' adverse possession of land by a wrongdoer not only bars the remedy and extinguishes the title of the rightful owner, but confers a good title upon the wrongdoer.

– The title which is acquired by adverse possession is a new title in strictness of law, it is not old title which is transferred to the new owner, but only a title corresponding in quantity and quality to the old title.

- Therefore, if the property of which there has been adverse possession is a lease-hold subject to a rent and to covenants, the new owner is not liable as an assignee of the lessee to the rent or those covenants, but he is liable on the ground that the lessor's right to the rent and his right also to re-enter under the proviso for re-entry are not prejudiced by the adverse possession which has only been between the lessee and the adverse possessor.
- Sec. 27 is an exception to this principle. Thus, this section is confined to suits for possession and does not apply to a suit by a mortgagee for recovery of the money due to him by sale of the mortgaged property. The mortgagee's remedy may be barred if he omits to sue within the statutory period, but his right is not extinguished.

Essentials of Adverse Possession

- The following are the essentials of adverse possession:

- (1) The defendant must be in actual possession, mere entries in the record of right of the defendant's name are not sufficient.
- (2) It is not necessary for the plaintiff to prove affirmatively physical possession of every bit of land.
- (3) The possession must be adequate in continuity, in publicity and in extent to show that it is adverse on the owner. It is not sufficient that some act of ownership have been done. The possession must be open, notorious, actual, exclusive and adverse.
- (4) There must be an intention to hold the property. If the defendant believes that he is entitled only to a life estate, and remains in possession with that belief, his possession is not adverse to that of the plaintiff who shared his belief.
- (5) Possession cannot be adverse if it's commencement can be referred to a lawful title.
- (6) The possession does not become adverse to the plaintiff when there was no notice or knowledge, or circumstances that could have given notice or knowledge to the plaintiff that the defendant's possession was in displacement of his right. But the knowledge may be presumed from an open and notorious act of possession.
- (7) Possession does not become adverse to the plaintiff until the plaintiff is entitled to immediate possession.
- (8) Possession of a portion of the land cannot be held to constitute constructive possession of the whole, so as to enable the possessor to obtain thereby title to the whole

by limitation. A wrongdoer gains title only to that portion of land which is actually held by him.

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PAHUJA LAW ACADEMY

LIMITATION

PRELIMINARY

1. Under sec. 25, the easement rights over the property belonging to the government are acquired by continuous and uninterrupted user for
 - a) 12 years
 - b) 20 years
 - c) 30 years
 - d) 50 years
2. Period of limitation for filing a suit by or on behalf of government is
 - a) One year
 - b) Three years
 - c) Twelve years
 - d) thirty years.
3. Which section talks about extinguishment of right?
 - a) 25
 - b) 26
 - c) 27
 - d) None of the above
4. In England law of limitation can be

- a) Waived by the entitled party
- b) Is indefinite and flexible
- c) Is variable
- d) All the above

5. Sec 27 of ILA does not extinguish the right contained in

- a) Suit
- b) Appeal
- c) Execution Application
- d) Both b & c

6. Time requisite under sec. 12(2) of Indian limitation act means

- a) Minimum time
- b) Maximum time
- c) Actual time taken
- d) Necessary time

7. Period of filing special leave petition in supreme court.

- a) 30 days
- b) 60 days
- c) 90 days
- d) one year

8. The jurisdiction to grant exemption u/sec. 14 of ILA is given exclusive to

- a) Civil court
- b) High court

- c) Supreme court
- d) None of the above

9. When debt become time barred debt?

- a) When it becomes extinguish
- b) When it becomes unenforceable
- c) Both of the above
- d) None of the above

10. Which section deals with Gregorian Calender?

- a) 21
- b) 22
- c) 23
- d) 24