



Limitation



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THE LIMITATION ACT, 1963

(Act No. 36 of 1963)

Dear aspirant,

In India, there was no uniform law of limitation before 1859. Different rules were made applicable in different Courts. English Law of Limitation was made applicable in Supreme Court of India but in provinces, the various regulations passed, from time to time.

The definite recognition of the law of limitation was deferred till 1859, when for the first time it was enacted in the form of a code. Prior to that there prevailed a good deal of confusion and uncertainty, it was replaced by another Act of 1871 in which the law of limitation was made more comprehensive. It was again repealed by the Act of 1877 and finally the Act of 1908 got a definite shape after undergoing considerable amendments.

The old law (the Limitation Act, 1908) had become the subject matter of controversy in the Bench and the Bar, and the Government of India was anxious since long to enact a new Act in order to end the various controversies in the old Act.

The Bill was passed and the Limitation Act, 1963 received the assent of the President of India on 5th October, 1963 and published in the Gazette of India, Extraordinary Part II, dated 05-10-1963. The Act came into force with effect from January 1, 1964.

1. Statement of objects and Reasons: Preamble

The preamble of the Act indicates that the Limitation Act was passed to consolidate and amend the law for the limitation of suits and other proceedings and for purposes connected therewith.

2. The object of the Limitation Act, 1963:

The object of the Act is to quiet long possession and to extinguish state demands. The object of the Act is not to create or define causes of action, but simply to prescribe the period within which existing rights can be enforced in courts of law. The principle of the Act is not to enable suits to be brought within certain periods, but to forbid them being brought after certain periods.

The laws of limitation prescription are based upon the principle that law aids the diligent and not the indolent. A man who has negligently slept over his rights for an undue length of time will not be allowed to litigate in respect of them. A person who (without any fraud or breach of trust) has been in the enjoyment of property, or of a right, or of an immunity from a demand by another, for a period of time which the law has prescribed, will be allowed to enjoy that property, right or immunity in peace and quiet even thereafter, and will not be harassed by unexpected litigation cropping up at distant dates, or exposed to state demands, perhaps when witnesses of the facts are dead or the evidences of the title lost.

Mangu v. Kandhai, 1 LR 8 All. 475

Mahmood, J. remarked that the statutes of limitations are statutes of repose, intended to check the tendency of dilatoriness and they should be administered as strictly as possible in order to strengthen the repose at which they aim. Law of Limitation enjoins alertness upon the citizen by making a citizen who delays too long to lose his right altogether. In other words, laws assist the vigilant and not those who sleep over their rights. It can very safely be added that statutes of limitation rest upon sound policy and tend to the peace and welfare of the society.

The limitation act is based on the sound principle "interest republicae ut sit finis litium" (it is in the interest of the state that there should be an end to a litigation).

The Law of Limitation limits or prescribes a time, after the lapse of which suit or other proceedings cannot be maintained in a Court of law or the persons liable to suit shall become exempt from answering therein. It does not postpone or suspend the right of claimant, it merely prescribes a period for the institution of a suit and forbids them from being brought after periods, which starts from some definite event. It only restrains the holder of a right from enforcing his right by recourse to law after the prescribed period of limitation. Thus it becomes an imperfect right which cannot be enforced in the Court of law.

Sakuram Tanaji, AIR 1987 SC 1279

The Supreme Court held that the provisions of the Limitation Act, 1963 apply only to proceedings in "Courts" and not to appeals or applications before bodies other than Courts such as quasi-judicial Tribunals or executive authorities notwithstanding the fact that such bodies or authorities may be vested with certain specified powers conferred on Courts under CPC or Cr. P. C.

Basically the laws of limitation are based on the public policy that on unlimited and perpetual threat of litigation leads to disorder and confusion. It brings insecurity and uncertainty. It is possible that in some cases the provisions limiting the rights of the holder cause great hardship and sometimes injustice also but for the general good of the greater number it is an essential restraint.

3. The Nature of the law of Limitation:

Richard Couch has observed, "The rule of limitation is a rule of procedure, a branch of adjective law. The intention of the law of Limitation is not to create a right where there is none, nor to extinguish a right where there is one, but to interpose a bar after a certain period to enforce an existing right."

Kin v. Buckman, 35 I.C. 741

The law of Limitation is a procedural law and not personal law, they not move with and follow the person. Being procedural law, it should have reference to *lex fori* (the law applicable to forum which passed the decree)

Trilok Singh v. Supdt. of Police, AIR 1959 Pun

When the recovery-debt is barred by lapse of time, the right to debt is not extinguished, and if the debtor, without being aware of the bar of time, pays

up, he cannot sue the creditor to refund the money to him on the ground that his claim for recovery of the debt had become time-barred.

Bombay Dyeing and Manufacturing Co. v. State of Bombay, AIR 1958 SC

It was held that limitation as distinguished from prescription merely bars the remedy but does not destroy the right which remains, continued in other ways.

- The law of limitation cannot be evaded by private agreements by the parties, inter se. Thus, every agreement which shortens or extends the period of limitation prescribed by law, is void and not enforceable.

Smt. Tarawanti v. State of Haryana, AIR 1995 P & H

It was held that while interpreting the provisions of the Limitation Act, must be kept in mind that the Act is based on consideration of Public Policy and the laws of limitation are to be interpreted to advance public policy.

- The plea of Limitation can be raised only as against the plaintiff and not against the defendant. The object of the act is to prevent a person from seeking to enforce a claim, and not to prevent a person from raising any defence.

4. Retrospective operation of the Act.

The general rule is that a statute of limitation, being a law of procedure, is retrospective in its operation and governs all proceeding from the moment of its enactment even though the cause of action might have accrued before the Act came into existence. Therefore, the law of limitation applicable to a suit or proceeding is the law in force at the date of the institution of the suit or proceeding, unless there is a distinct provision to the contrary. But it must be kept in mind that if the retrospective operation of the Act disturbs as impairs vested rights or inflicts such hardship or injustice as could not have been within the contemplation of legislature, the Act should not be construed retrospectively.

Limitation bars remedy but does not destroy right:

The rule of limitation is a rule of procedure, a branch of the adjective law. It does not either create or extinguish right, except in the case acquisition of title to immovable property by prescription under section 27. of the Limitation Act. It is only the remedy by way of a suit that is barred, but the right itself continues to exist; and if there is some other remedy by which that right can be enforced, the Limitation Act can not come in the way. The where the recovery of a debt is barred by lapse of time, the right to the debt is not extinguished, and if the debtor, without being aware of the bar of time, pays the amount due he cannot sue the creditor to refund the money to him on the ground that his claim for recovery of the debt had become time-barred.

The Limitation Act is a procedural law. It bars a suit for an enforcement of a right, but does not extinguish the right itself. It has been observed by the

Supreme Court in **Bombay Dyeing and Manufacturing Co. v. State of Bombay** as follows:

"The statute of limitation bars the remedy but does not extinguish the right. Lapse of time does not extinguish the right of a person." Since limitation bars a suit for the enforcement of a right, but does not destroy the right itself, a defence though he could not have enforced the right by a suit. There is no limitation against a defence. However, section 27 of the Act provides that the termination of the period limited by the Act to by person for instituting a suit for possession of any property, his right to such property gets extinguished. In such circumstances, he cannot also set up such an extinguished right by way of a defence.

6. Limitation Period in Criminal Cases:

The Limitation Act, 1963 is a civil law and it has no application in Criminal Law but it provides periods of limitation within which appeals and revision applications should be filed (Article 114, 115 and 131 of Limitation Act, 1963).

In general, there is no limitation of time in filing complaints. They can be filed at any time. But it is to be remembered that delay in the filing of complaints is attended with two evils:

- i) the memory of witness is likely to fade by passage of time;
- ii) valuable links of evidence may disappear e.g. death of witnesses, destruction of property, etc.

To avoid the above mentioned two evils; A specific Chapter, viz. Chapter XXXVI (Sections 467 to 473) in the Code of Criminal Procedure, 1973 prescribing limitations for taking cognizance of Certain offences, has been introduced in the Cr. P. C.

7. The Law of Limitation is a Rule of Domestic Policy

It is said that the law of limitation is *lex fori*. *Lex fori* means the law of the forum or court. Whether an obligation is to be enforced or not, depends exclusively upon the law of limitations of the country in which the suit is brought. The statute of limitation being a rule of "domestic policy" it is unanimously agreed that the Courts are justified in declining to enforce an obligation which is barred by the statute although it may be still enforceable according to some foreign law of limitation. It is a rule of international jurisprudence that all suits must be brought within the period prescribed by the local law of the country where the suit is brought (*lex fori*) or the suit will be barred.

8. The Limitation Act is a complete code:

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

[Vide: **A. S. K. Krishnappa v. S. V. Somias, AIR 1964 SC**]

~~Justinian v. Antonio, AIR 1979 SC~~

The Supreme Court has observed that now there is only one general law of limitation and it is the Limitation Act, 1963. All other laws prescribing periods of limitation are either special or local laws.

9. Statutes of limitation are statutes of repose, peace & justice:

Statutes of limitation are statutes of repose (to give rest to), to quiet title, to suppress frauds, and to supply the deficiencies of proofs arising from the ambiguity and obscurity or the antiquity of transaction. They proceed upon the presumption that claims are extinguished whenever they are not litigated within the prescribed period.

It has been said by *John Voct* that controversies are limited to a fixed period of time, lest they should be immortal, while men are mortal.

For the above mentioned reasons the statute of limitation has been rightly termed as statute of repose peace and justice. The Romans had the maxim, "*interest reipublicae ut sit finis litum*" (The interest of State requires that a period should be put to litigation). "*Vigilantibus non dormientibus jura suaveniunt*" (the law assist the vigilant and not those who sleep over their rights).

Luchmee v. Ranjeet, 20 W. R. 375 (PC)

The Privy Council observed:

"To secure the quiet and repose of the community, it is necessary that the title to property, and matters of rights in general should not be in a state of constant uncertainty, doubt and suspense. A constant dread of judicial process and a feeling of uncertainty hang like Damocles sward and retard the growth and prosperity of a state and labour is paralysed when the enjoyment of its fruits are uncertain.

The law of limitation prevents such uncertainty because the object of the Limitation Act is to quiet long possession and to extinguish state demands".

The statute of limitation is not only a statute of repose and public peace but it is at the same time a means of ensuring "*private justice*".

Lord St. Leonards has correctly remarked –

"All statutes of limitation have, for their object, the prevention of the rearing up of claims at great distance of time when evidence are lost".

It is again the principle of justice that a person who has negligently slept over his rights for length of time disproportionately long be allowed to litigate in respect of those rights.

10. Limitation and Prescription Distinguished

i) Meaning. The statutory specification of a period, or the period specified by statutes, within which an action must be brought.	i) Meaning. The definition of prescription "is a title acquired by use and time and allowed by law". Three things are necessary to establish a right by prescription: a) use and occupation or enjoyment;
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	b) the identity of the thing enjoyed; and c) that it should be adverse to the right of some other person. Acquisition of title by use and time as allowed by law [Section 15 Indian Easement Act, 1882].
ii) The law of limitation bars the filing of any suit, appeal or other proceeding after the lapse of a definite period in a Court of justice. iii) Limitation only bars the remedy, it becomes an imperfect right. iv) Limitation is concerned only with the judicial remedy of one whose right have been infringed and hence it is the nature of adjective law. v) Limitation is negative in its operation depriving a person of power which he possessed before.	ii) The law of prescription lays down a period, at the expiry of which a substantive or primary right is under certain circumstances acquired or extinguished. iii) The prescription extinguishes the right [Vide: Gauri Shanker v. Sheo Nanda, AIR 1924 All.] iv) Whereas prescription effects the substances of the conflicting rights between the rival claimants and as such comes under the category of substantive law. v) Whereas prescription is positive conferring on a person's right which he hitherto enjoyed in fact but not in right.

11. A comparison: Limitation and Laches

Laches means, "laches or negligence", or not doing and willful delay in asserting one's own right. The doctrine of laches is based on equity "delay defeats equity". In the case of equitable reliefs, Courts of Equity in England refused to grant such reliefs to an applicant who has willfully slept on his rights. The principle is applicable in this country also in so far as specific performance, temporary injunction, appointment of receiver etc.

i) The period of limitation is fixed and a suit brought after the period will be dismissed. ii) The law of limitation is based on the public policy. iii) It depends upon the express provision of law. iv) The limitation can be generally pleaded only against the plaintiff. v) There is no question of laches.	i) Whereas in laches, there is no fixed period of time. ii) While laches is based on equity alone. iii) It depends upon equity, justice and fair play. iv) Whereas laches being based on the equitable doctrine, delay defeats equity, may be pleaded.
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affecting the plaintiff's rights provided the suit is instituted within the limited time permitted by the law. vi) The period of limitation is provided by the limitation Act, 1963, for civil cases and by Chapter XXXVI (Sections 467 to 473) of Cr. P. C. for Criminal Cases.	either against the plaintiff or defendant v) It is not with laches. vi) The period is not provided by any Act, in each and every case it is a question of fact.
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12. Doctrine of Limitation distinguished from the Doctrine of Acquiescence:

If a party having a right stands by and sees another acting in a manner inconsistent with that right and makes no objection while that act is in progress, he cannot afterwards complain. This is the proper sense of the word "acquiescence". Acquiescence may be direct or indirect.

Acquiescence is an instance of the law of estoppel by conduct. It differs from laches:

- i) The laches is merely passive without any implication of assent, and
- ii) The laches like limitation affects the party's remedy while acquiescence like prescription practically destroys the party's rights.
- iii) Acquiescence like laches depends upon the general principles and is a conclusion drawn from the facts of each particular case while limitation like prescription is a matter of express and inflexible rules of law and applies independently of the existence of laches or acquiescence.
- iv) Acquiescence and laches may be pleaded either against plaintiff or the defendant, whereas limitation can be pleaded generally, against the plaintiff only.

13. Burden of proof as to plea of limitation:

The onus of proof is upon the plaintiff; and he must show either that the suit is prima facie within time, or that be reason of minority, concealed fraud, acknowledgment, part-payment or other facts (which he must prove) the period of limitation has not really expired and that he is still within time. The onus is then shifted to the defendant, who may either show that the case is governed by some special article which allows a shorter period of limitation than the plaintiff claims, or that particular circumstances exist which make the period of limitation expire before the date on which the suit was instituted.

14. The Plea of Limitation can be raised against Plaintiff only:

The general rule is that the plea of limitation can be raised as against plaintiff and not as against defendant. The main object of the law of limitation is to prevent a person from seeking to enforce a statutory demand and not prevent a person from raising any defence he likes. The defendant will not be precluded from setting up a right by way of defence, if he could not have done so as plaintiff by way of substantial claim. [*Deo Datta v. Dayanand*, 35 IC 61 (Cal.)]

Exceptions: The following are the exceptions to the above-mentioned rule:

- i) Under order VIII, rule 6 of CPC, a defendant cannot claim to set off a time-barred claim in a suit against himself.
- ii) When the suit by the defendant would have been barred under sections 25 or 27 of Limitation Act, the defendant cannot set up his right by way of defence. [Vide: **Mahadeo v. Sadariva, 45 Bom. 45**]
- iii) When the defendant raises a plea of some inchoate or imperfect right, the establishment of which would depend upon a suit within particular time he should not be allowed to urge that in defence of the suit which has not been brought would, at the time when urged in defence have been time-barred. [Vide: **Krishna v. Subba (1939) MLJ**]

15. Plea of Limitation:

The plea of limitation can be raised at any stage of the suit. The defendant can raise the plea of limitation either:

- a) at the hearing of the suit before the issues are framed and also after the issues are framed provided, it can be decided on the existing issue, or
- b) in an appeal, or
- c) in the second appeal

But when the plea of limitation has been raised at a later stage when –

- i) the issues in case have been fixed,
- ii) the case has proceeded to some length,
- iii) fresh issues of the fact have to be gone into, and
- iv) additional evidence is taken

The Court has the power of option of refusing to entertain the plea on the grounds of raising such plea at a later stage.

16. Waiver of Plea of Limitation:

It is not competent to a party to waive a plea of Limitation so as to absolve the Court from duty. [Vide: **Burge v. Improvement Trust, Lucknow, AIR 1932 All (FB)**]

An agreement to extend the period of Limitation would come within the provisions of Section 23 of the Contract Act as tending to defeat the provisions of the Limitation Act and would, therefore be void. [**Panchayti Akhara v. Jitnarain, AIR 1932 All.**]

Chandoo v. Murlidhar, AIR 1926 Oudh (DB)

An agreement not to plea limitation would be void.

The Limitation Act, 1963 is divided into five parts:

- i) Preliminary (Sections 1 – 2)
- ii) Limitation of Suits, Appeals and Applications (Sections 3 – 11)
- iii) Computation of Period of Limitation (Sections 12 – 24)
- iv) Acquisition of ownership by Possession (Sections 25 – 27)
- v) Miscellaneous (Sections 28 – 31)

The First part deals with the definitions of different words which are used in the Act. The definitions of bill of exchange [Section 2(c)], easement [Section 2(f)], good faith [Section 2(h)], period of limitation [Section 2(j)], promissory note [Section 2(k)] and tort [Section 2(m)] are most important.

Part II, III and IV of the Limitation Act are most important parts.

In Rajasthan, UP, MP, Chhattisgarh, Uttaranchal, Haryana, etc. objective type question are asked in preliminary judicial services Examination and in DJS the Main examination is based not at pattern of multiple choice questions, so extensive and exclusive study of each and every part of syllabus is indispensable.

Wishing you all the best,

Yours Sincerely,

RAHUL

THE LIMITATION ACT, 1963

(Act No. 36 of 1963)

SYNOPSIS

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(Section 1 – 2)

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Computation of Period of Limitation

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(Section 25 – 27)

- I. Acquisition of easements by prescription: Section 25**
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PART VI

- I. Questions based on case laws**
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THE SCHEDULE (Period of Limitation)

THE LIMITATION ACT, 1963

(Act No. 36 of 1963)

PART I

PRELIMINARY

(Section 1 – 2)

The Limitation Act, 1963 is objected to consolidate and amend the law for the Limitation of suits and other proceedings and for purpose connected therewith. Part I of the Limitation Act has two sections. Section one gives title to the Act, defines its territorial applicability and enforceability. Section 2 defines certain words as has been used in the Limitation Act.

The Act is an implementation of the third report of the Law Commission. The Act came into force from January 1, 1964.

In the case of **Smt. Tarawati v. State of Haryana** through the collector, Kurukshetra, AIR 1995 P and H 32 it has been ruled that while interpreting provisions of the Limitation Act it must be kept in mind that the Act is founded on consideration of public policy and the laws of limitation are to be interpreted to advance public policy. The Supreme Court has made it clear that the Limitation Act applies upon Hindus and Muslims equally in **Syndicate Bank v. Pragna D. Nalk** AIR 2001.

The plea of limitation can not be raised against the defendant. It can be raised against the plaintiff only. This is because the object of the Act being to prevent a person from seeking to enforce a claim.

Following are the definition of certain words as used in the Limitation Act 1963:-

1. Applicant [Section 2(a)]

- i) **Definition:** In this act, unless the context otherwise requires – “applicant” includes:
 - a) a petitioner;
 - b) any person from or through whom an applicant derives his right to apply;
 - c) any person whose estate is represented by the application as executor, administrator or other representative.
- ii) **Meaning:** applicant means a person who makes an application to Court. It means one who applies.
- iii) **Comment:** “Applicant” is distinguished from the term “plaintiff”. A plaintiff means and denotes only the person who actually institutes the suit and not any party through whom such claim is made; whereas “applicant” includes person from whom or through whom an applicant, plaintiff or defendant derives his title to apply or sue or his liability to be sued. The word “from” probably refers to cases of alienation and transfer and the word “through” to cases of inheritance and succession.

The definition of the term “applicant” as used under the present Act is wide and more comprehensive than the term “applicant” used under the Act of 1908. The object of the insertion of the new definition of the term “applicant” is to see that persons governed by special laws should be governed by the provisions of the Limitation Act.

2. Application [Section 2(b)]

- i) **Definition:** “Application” includes a petition;
- ii) **Meaning:** Burrill has defined application as “A petition to Court; a request to a judicial officer; the act of making or referring a request”.

If an application could be understood in a generic sense as a prayer made to an authority for some relief to set aside an order of another authority and such an application is under the Statute, it would amount to an appeal.

- iii) **Comment:** In clause (b) of Section 2 of the Limitation Act, 1963 a new definition of the word application has been inserted thus enlarging the scope of the Limitation Act, by making it applicable to applications and to petitions under special enactments as was

laid down in **Ram Kumar Kajaria v. M/s Chandra Engineering (India) Ltd, AIR 1972 Cal. 381.**

Now petition of all sorts whether governed by general law or special law, whether original or otherwise would be governed by the provisions of Limitation Act. Applying above principle even an election petition is an application within the meaning of section 2 (b) of the Limitation Act. (Bhakti Bh. Mandal v. Khgendra K. Bandhopadhyay)

3. Bill-of-Exchange [Section 2(c)]

- i) **Definition:** "Bill of Exchange" includes a *hundi* and a cheque.
- ii) **Meaning:** "Bill of Exchange" is a form of negotiable instrument. A "bill of exchange" is an instrument in writing containing an unconditional order, signed by the maker, directing a certain person to pay a certain sum of money only to, or to the order of, a certain person or to the bearer of the instrument.

A person who makes the bill is called the drawer; he to whom it is addressed, the drawee; and when he undertakes to pay the amount, he is then called the acceptor. The person to whom it is ordered to be paid is called the payee; and if he appoints another to receive the money, that other is called the indorsee; as the payee is with respect to him, the indorser any one who happens, for the time, to be in possession of the bill, is called the holder of it." (Tomlin's Laws Dictionary)

4. Bond [Section 2(d)]

- i) **Definition:** "Bond" includes any instrument whereby a person obliges himself to pay money to another, on condition that the obligation shall be void if a specified act is performed, or is not performed, as the case may be.
- ii) **Meaning:** Bond is an agreement of engagement, a covenant between two or more persons. Technically a bond is a deed or obligatory instrument, in writing whereby one binds himself to another, to pay a sum of money or to do some other act; but in popular language any instrument in writing that legally binds a party to do a certain thing may be called a bond. [Burnell]
- iii) **Comment:** "Bond" as defined in the Indian Stamp Act includes –
 - a) any instrument whereby a person obliges himself to pay money to another, on conditions that the obligation shall be void if a specified act is performed, or is not performed, as the case may be;
 - b) any instrument attested by a witness and not payable to order or bearer, whereby a person obliges himself to pay money to another; and
 - c) any instrument so attested, whereby a person obliges himself to deliver grain or other agricultural produce to another [Section 2(5), Indian Stamp Act, 1899].

5. Defendant [Section 2(e)]

- i) **Definition:** "Defendant" includes –
 - a) any person from or through whom a defendant derives his liability to be sued;
 - b) any person whose estate is represented by the defendant as executor, administrator or other representative.
- ii) **Meaning:** A person sued in a Court of law is called defendant one who defends.

6. Good Faith [Section 2(h)]

- i) **Definition:** Nothing shall be deemed to be done in good faith which is not done with due care and attention;
- ii) **Meaning:** A thing shall be deemed to be done in "good faith" where it is in fact done honestly whether it is done negligently or not. [Vide: General Clauses Act, 1897 Section 3 (22)]

Good faith requires care and caution and prudence in the background of context and circumstances [Vide: **Chaman Lal v. State of Punjab, AIR 1970 SC**]

Good faith imports the exercise of due care and attention. The standard of care required is that of reasonably prudent man acting with care and caution.

When the question is whether the period of limitation should be extended or not and whether the delay in making good the deficiency in court-fee should be condoned or not, it would be more appropriate to apply the definition of good faith given in the Limitation Act. (**Amar Kaur v. Iqbal Singh AIR 1971 Punjab 461**)

Where a plaintiff resisted the objection merely raised by the defendant regarding non joinder of parties at the initial stage and also at the revisional stage and ran the risk of proceeding with the suit without impleading the necessary parties, he can not be said to act in good faith because he can not be said to have acted with the care and attention. (**Rabindra Nath Samuel Dawson v. Sivakami AIR 1972 S.C.**)

- iii) **Comment:** The definition is almost the same that given in Section 52 IPC. This definition of "good faith" is different from one given in section 3, clause 22 of the General Clauses Act which enacts that a thing shall be deemed to be done in good faith, where it is in fact done honestly whether it is done negligently or not. However the stricter definition herein given in this Act would alone be applicable in all cases where the provisions of this act are sought to be applied.

With new definition of the word application the scope of limitation Act has been enlarged by making it applicable to applications and to petitions under special enactments (**Ram Kumar Kajaria v. M/s Chandra Engineering (India) Ltd. AIR 1972 Cal 381**)

7. Period of Limitation [Section 2(j)]

- i) **Definition:** "Period of Limitation" means the period of limitation prescribed for any suit, appeal or application by the schedule and "prescribed period" means the period of limitation computed in accordance with the provisions of this act;
- ii) **Meaning:** The time laid down by law within which an action can be brought and after the expiry of which recourse to Courts cannot be had for any remedy.

8. Promissory Note [Section 2(k)]

- i) **Definition:** "Promissory note" means any instrument whereby the maker engages absolutely to pay a specified sum of money to another at a time therein limited, or on demand or at sight;
- ii) **Meaning:** "Promissory note" is an instrument in writing (not being a bank-note or a currency-note) containing an unconditional undertaking signed by the maker, to pay a certain sum of money only or to the order of, a certain person or to the bearer of the instrument. [Section 4, Negotiable Instrument Act, 1881]

A "promissory note" is defined to be a plain and direct acknowledgment, in writing, to pay a sum specified, at the time therein limited, to the person therein named or sufficiently indicated, or to his order or to bearer.

9. Tort [Section 2(m)]

- i) **Definition:** "Tort" means a civil wrong which is not exclusively the breach of a contract or the breach of a trust;

Meaning: The term "tort" is the French equivalent of the English word "wrong" and Roman term "delict". Tort is derived from the Latin word "Tortum" means "Twisted" or crooked act, i.e. a deviation from straight or right conduct.

Salmond says that, "A tort is a civil wrong for which the remedy is an action for unliquidated damages and which is not exclusively the breach of a contract, or the breach of a trust, or the breach of other merely equitable obligation".

PART II

LIMITATION OF SUITS, APPEALS AND APPLICATIONS

(Section 3 – 11)

I. BAR OF LIMITATION: SECTION 3-

Section 3 to 11 of the Limitation Act deals with the Limitation of suits, appeals and applications.

Questions:-

1. A suit or an appeal or an application is filed beyond the time prescribed therefore, shall be dismissed although limitation is not set-up as defence. Discuss.
2. What is bar of limitation? Discuss with case laws.
3. What is the general bar placed by section 3 of the Limitation Act? Comment.
4. It is the mandatory duty upon the court to dismiss the time barred suits as imposed by section 3 of the Limitation Act. Discuss.

Section 3 (1) of the Limitation Act read as follows:

"Subject to the provisions contained in sections 24, every suit instituted appeal preferred and application made after the prescribed period shall be dismissed, although limitation has not been set up as a defence."

"_____ every suit instituted, appeal preferred and application made after the prescribed period shall be dismissed, although Limitation has not been set up as a defence."

_____ Section 3(1)

Section 3 of the Limitation Act is not an independent section. Sections 4-24 of the Act control it. Section 3 only bars the remedy. It does not destroy the right to which the remedy relates to. Under this section it is the duty of the plaintiff to convince the court that his suit is within time.

In Anantram Veeraju V. Vauuri AIR-1960 Andhra Pradesh it was held that a suit or an appeal or an application filed beyond the time prescribed shall be dismissed although Limitation is not set-up as defence by the opposite party.

The court has no power to relieve the suitor from the bar of Limitation on the ground of hardship, mistake or injustice even if natural justice is violated. No principle can be resorted to for adding or supplementing the provisions of the Act, apart from the provisions of the Act.

The question of Limitation 'once decided' can not be re-opened at a later stage of the same proceeding. It can not be re-agitated in any subsequent proceedings.

In Premaranda v. Syndicate Bank AIR 1999 Karnataka 23 it was held that if the trial court without deciding the question of Limitation decrees the suit, the High Court in appeal is justified in setting aside the decree and to decide the question of Limitation before taking up the appeal on merits.

Where prescribed period has begun to run but has not expired and an acknowledgment in writing of such right has been made then a fresh period of Limitation should be computed from the time when the acknowledgment was so signed. It is the effect of section 18 of the Act. Section 18 is based on the principle that the bar of Limitation should not be allowed to operate in cases in which the existence of a claim is acknowledged by persons who are under the liability.

Law of Limitation is not meant to be an aid to unconscionable conduct where two views of construction are possible the court must lean in favour of the right to sue on the basis of acknowledgment and must lean against Limitation. The benefit of doubt on the question of Limitation can not be extended to a person who wants to misguide the court by relying on a wrong year of acknowledgment.

The following question is from a case *Craft Centre v. The Koncherry Coir Factories*, AIR 1999 decided by Karnataka High Court in which suit of the plaintiff was held to be time barred:-

A sum of Rs.13,000/- was due from the defendant to the plaintiff (both trading firms) on account of credit transactions upto 17-10-1976. A suit for its recovery was filed on 20-08-1981. It is barred by time. The plaintiff pleaded in plaint and proved defendants letter dated 30-10-1978. Ex-A/1, an acknowledgment, which if accepted will save the Limitation. The defendant says that this letter was written on 30-10-1976 and the year 1978 mentioned, is only a typographical error. The plaintiff argued that even if there was such an error section 18(2) of the Limitation Act, 1963 is a bar in proving it, that managing partner of defendant, DWI, has admitted in cross examination that there was an acknowledgement of this debt in the Balance Sheet of the defendant made and signed on 07/07/1978, that if there was any doubt in the date of the letter Ex-A/1 the benefit should be given to it. The documentary evidence produced by the parties suggested that letter Ex-A/1 must have been written in 1976. Is there force in the arguments of the plaintiff? Decide the issue of bar of Limitation. Note: Section 18(2) Limitation Act, 1963 permits proof of evidence regarding time of signing the acknowledgment in writing when it is undated.

Thus section 3 makes the question of Limitation a material one for determination in every case irrespective of whether the question is raised by the parties or not. The following points are important in this regard.

1. General Comment

A suit is taken as instituted on the date on which the plaint is presented and not when it is accepted. The plaint presented must be valid one. The presentation of a plaint to a Court having jurisdiction is not sufficient to save limitation where a suit is first instituted in a Court and on its being found that the Court has no jurisdiction the suit is filed in another Court which has jurisdiction, the suit must be deemed as instituted only when it is filed in the latter Court. [Vide: *Ramdutta v. H. D. Sasson*, AIR 1929 PC]

When a plaint is returned and ordered to be amended within a time fixed by the Court it is the date of the original presentation of the plaint and not the date of the subsequent presentation after amendment which is taken to be the date of institution of the suit, though the date allowed by the Court fell after the expiry of the period of limitation.

***Jai Jai Ram Manohar Lal v. National Building Supply*, AIR 1969 SC**

It was held by the Supreme Court that no question of limitation arises, where the plaintiff is allowed to amend the plaint.

***Durgadir v. Kallu*, I. C. 731**

It is settled rule of the law that the date of amendment is immaterial, unless indeed the time expressly allowed by the Court has been exceeded.

***P. K. Kutty Aniya Raja v. State of Kerala*, AIR 1996 SC**

A suit to recover tax paid in excess was filed 3 years after date of assessment was quashed. The suit was rejected for being barred by limitation and the apex Court pointed out that in such cases period of limitation starts running from date of assessment.

2. Plea of Limitation: Duty of Court

The question of limitation is purely the question of law on the facts admitted or proved. The Court is bound under the provisions of Section 3 to raise the question suo motu and decide it. But if an issue of fact is thereby raised and the defendant has failed to take his plea in the written statements, it becomes discretionary with the Court to allow it or not.

Section 3 is peremptory and the duty of the court is to take notice of the Act the court is under a duty to raise the point itself and to dismiss the suit, appeal or application if it is time barred. If the court fails to do so, it makes merely an error of law which can be corrected only in the manner bid down in code of civil procedure. The erroneous decree cannot be challenged as nullity.

3. Agreement of Parties

Jawahar Lal v. Mathura Prasad, AIR 1935 All

The parties cannot by consent or agreement, extend or alter the period of limitation. Parties cannot by contract, alter the statutory period of limitation, nor can they alter the statutory starting point of limitation.

Chandoo v. Murlidhar, AIR 1926 Oudh (DB)

An agreement to extend the period of limitation would come within the provisions of Section 23, contract Act, as tending to defeat the provisions of the Limitation Act and would, therefore, be void.

4. Can Plea of Limitation be raised in Appellate Court?

Yes, The Appellate Court is generally bound to listen to the plea of limitation if it can be decided without further enquiry even though the plea was not raised in the "written statement" or in the Trial Court and no issue on this point, was raised.

Shah Mohd. v. Piara:13 (IC)792

The Appellate or Second Appellate Court is justified in refusing to entertain a plea of limitation which was not taken in the first Court nor in the Appellate Court but is urged for the first time in the arguments in the later Court, where the plea for its proper decision involves further enquiry into its facts.

5. A party having recurring or successive causes of action

Each Court of acting will give a fresh start to the period of limitation. Party is not prevented from availing later cause of action even if he does avail of the previous one. [Vide: ***Muck Deo Singh v. Harabh Narayan Singh, AIR 1931 Patna***]

Jagmohan Garnaik v. Sankar Samal, AIR 1990 Orissa

The Orissa High Court held that when a plaintiff files a suit for declaration of title and possess in basing his claim on his title and admits dispossession, then he is not to be required to prove that his dispossession was within 12 years, of filing of the suit and he can succeed on establishing his title and will fail only when the defendant proves that he has perfected his title by way of adverse possession and Section 3 or Section 27 of the limitation Act does not change the legal position in any manner.

6. Principle of Res-judicata

The provisions of sections of the Limitation Act are subject to the principle that where a question of limitation has been expressly adjudicated upon and there is no appeal against it, the decision is binding on the parties and on the Appellate Court. The principle of res judicata will prevail and prevent the Appellate Court from reversing the decision of the Trial Court on the question of limitation. [Vide: ***Deaki Nanda v. Makhan Lal, AIR 1961 All.***]

7. Set-off and counter-claim

It is provided that a claim by way of set-off or counter-claim shall be treated as a separate suit and that in the case of a set off time should cease to run from the date of the suit in which it is pleaded, as the set-off arises out of the same transaction and should relate back to the date of the suit; and that in the case of counter-claim, time should cease to run only from the date on which such counter-claim is made, as it is really in the nature of a separate suit.

I. EXPIRY OF PRESCRIBED PERIOD WHEN COURT IS CLOSED: SECTION 4

The question is – does the Limitation Act provide any remedy if the period of Limitation prescribed for a suit expires on a day when the court is closed?

The answer is yes. Section 4 of the Limitation Act has such provision. Section 4 deals with extension of time over that period during which a person is delayed by the court's action.

Section 4 of the Act may be read as follows:

"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".

If during any part of normal working hour on a given day the court remains closed, it shall be deemed to be closed on that day for the purpose of this section.

This section provides an exception to the general rule in section 3. Moreover there lies difference between section 4 and section 14. Section 4 has nothing to do with computing. Its effect is merely to relieve the hardship. On the other the hand exclusion of certain periods in computing Limitation.

A court is not open merely because it is physically open. A judge in a court may for certain purpose proceed with the matter where parties could be heard, but when it comes to the practical and execution side of the court, it must include not only the Judge who may be available, but also the Nazir and the other officers and clerks of the court who normally receive the applicants and particularly the money which are required to be deposited in the course of an application like the one order 21, rule 89 of CPC.

Further Question:- A and B were partners in a firm C borrowed a sum of Rs.20,000 on 15-1-1985 from the firm repayable by 15-06-1985 with interest. The amount along with interest could not be repaid by C to the firm, till the due date fixed for payment. The firm filed a suit for the recovery of the principal amount along with interest against C on 01-07-1988. The court were closed for summer vacation for the month of June 1988. C contests that the suit is liable to be dismissed as it is time barred. Decide if Limitation for filing the suit is 3 years.

Court:-For the purpose of this section court means the proper court in which the application ought to have been made. When a party is entitled to file a suit or make application in two courts of concurrent jurisdiction one of the courts closed on last day of Limitation, party can have benefit of this section, notwithstanding that the other court is open on that day.

Whether in any particular case the court is closed is a question of fact which must depend upon the practice which prevails in the particular court. (**Gurbux Singh v. Sohanlal AIR 1952 Calcutta 542**).

Section 4 is based on the following two Latin *maxim*:

- i) *Lex non cogit ad impossibilia* i.e. The law does not compel the doing of impossibilities.
- ii) *Actus curiae neminem gravabit*, i.e. an act of Court shall prejudice no man.

Amar Chand Irani v. U.O.I, AIR 1973 SC 313

Section provides for the contingency when the prescribed period expires on a holiday and the only contingency contemplated is "when the court is closed" which refers to the court in which the suit or application ought to have been made and not the court in which it was wrongly presented.

Latulal v. Keshavdas, AIR 1969 Raj.

The principle underlying this section is that when a party has to do something before a certain day, and if on that day or before that day he cannot do that thing by reason of the act of the Court then he is entitled to an extension of time over that period during which he is delayed by the act of the Court.

Pattan Swami v. Amrita Joshi, AIR 1997 Mad.

Section 4 does not extend the period of limitation provided by the act but it deals with the exceptional condition when limitation expires on holiday and the Court is closed. Here Court means the Court where matter is to be instituted.

- Section 3 of the Act subject to section 4 to 24. Therefore section 4 of Act is not controlled by section 3. Section 4 of the Act is one of the exception to the general rule of section 3.

III. EXTENSION OF PERIOD IN CERTAIN CASES: SECTION 5

Any appeal or any application, other than an application under any of the provisions of Order XXI of the Code of Civil Procedure, 1908 (5 of 1908), may be admitted after the prescribed period, if the appellant or the applicant satisfies the Court that he had sufficient cause for not preferring the appeal or making the application within such period.

Explanation: The fact that the appellant or the applicant was misled by any order, practice or judgment of the High Court in ascertaining or computing the prescribed period may be sufficient cause within the meaning of this Section.

1. Comment

Section 5 is an exception of the general rule that every suit instituted, appeal preferred or application made after the period prescribed shall be dismissed and provides for the extension of time in the case of appeals and applications other than execution applications under any of the provisions of order XXI, CPC when the appellant or applicant, as the case may be, satisfies the court that he had "sufficient cause" for not filing the proceeding within the period prescribed. But, mere proof of the existence of sufficient cause for not filing the proceeding within prescribed period does not under the section ipso facto compel the court to extend the time. The court has a discretion to admit or refuse to admit the proceeding, even if discretion, which is of course, a judicial and not arbitrary discretion, admit the appeal. The section can be invoked only in relation to proceeding before courts. It has no application to bodies other than courts, such as quasi Judicial, tribunals, Labour courts bodies functioning as persona designate or even executive authorities. Section is meant to condone the default of the party on the ground of sufficient cause.

Applicability of Section: -The section apply only to:

- (a) Appeals
- (b) Applications, other than execution applications under any of the provisions of order 21 CPC

Principles for extention of time under section 5: The principles for extension of time under section 5 may be summed up as follows:

- (a) The party seeking relief has to satisfy the court that he had sufficient cause for not performing the appeals, etc. within the prescribed time.
- (b) The explanation has to cover the entire period of delay
- (c) A litigant should not be easily permitted to take away a right which has accrued to his adversary by lapse of time.
- (d) The proof of sufficient cause is a condition precedent for the exercise of the discretionary jurisdiction vested in the Court by section 5. After sufficient cause is shown, then the Court has to enquire, whether in its discretion it should condone the delay;
- (e) The discretion conferred in the Court is a judicial discretion and must be exercised to advance substantial justice;
- (f) No liberal view should be taken merely because the defaulting party is Government;
- (g) Even sheer indifference of the Advocate cannot stand in the way of condoning the delay when there is no laches on the part of litigant.
- (h) When there is remiss on the part of the Advocate, the question comes up for consideration whether the mistake was bona fide or was merely a device to cover ulterior purpose such as laches on the part of the litigant or an attempt to save limitation in an underhand way.

In case of condonation of delay, two important matters are relevant namely-

- a. The right to the respondent accused to him by lapse of time should not be disturbed light heartedly, and

- b. Theft if sufficient cause is proved by the appellant or the application he does not acquire automatically the right to have the delay condoned but section 5 of the Act vests in the court with the discretion to condone the delay.

Rikhab Dass v. Smt. Chandra, AIR 1971 All.

Section 5 does not apply to suits; it applies only in Appeals and Applications.

Warlu v. Gangotribal, AIR 1994 SC

A special leave petition was filed after a delay of about 11 years. No sufficient ground or explanation for delay was tendered, therefore, the delay was treated to be a valid ground for the rejection of the petition.

State of West Bengal v. Administrator, AIR 1972 SC

The extension of time is a matter of concession and cannot be claimed by him as a matter of right.

It is difficult and undesirable to attempt to define precisely the meaning of sufficient cause. It must be determined by the circumstances of each particular case. However, a sufficient cause should fulfill the following essentials:

- b) It must be a cause which was beyond the control of the party invoking it.
- c) He must not be guilty of negligence. His diligence and case must be shown.
- d) His intention must be bona fide.

State of MP v. S. S. Akalkar, AIR 1996 SC

Whenever relief is claimed under Section 5 of the Act, the delay is required to be explained. When the explanation is sufficient and reasonable delay is condoned. The discretion has to be exercised not in arbitrary vague or fanciful manner.

General Manager, DCCL V. Minotti Engineering works, 2002 (1) CHN 549

It is held that in the matter of condonation of delay, the approach that should be adopted by the court must be pragmatic and justice oriented in order to render justice between the parties. The court has, however, to assess the diligence of the parties craving for condonation.

Mittho Lal v. Jamuna Prasad ILR (1993) 9

In determining sufficient cause, the circumstances that the appellant's case is strong and the appeal is likely to succeed on the merits cannot be taken into consideration. If the appellant has a good case on the merits but is out of time and has no valid excuse for the delay, the court must guard itself against the danger of being led away by sympathy, and the appeal should be dismissed as time barred, even at the risk of injustice and hardship to the appellant.

QUESTIONS FOR THE ASPIRANT:-

The fact that the appellant was illiterate was not a sufficient reason to condone the delay. (Bakrath v. Hari Bhagat)

Merely because summons were served on defendants and the defendant had knowledge of ex-parte decree after expiry of Limitation period, it could be no ground to reject the application for condoning delay. (Laxmi Prasad Dubey v. Gulam Ali AIR 2008)

It is well settled that in order to avail of the benefits of section 5, the party at default must satisfy the court that he had sufficient cause for not making the requisite application right up to the date on which the application is presented. Each day's delay must be explained. (Soorajmull Nagarmal v. Golden Fiber and Products, AIR 1969 Calcutta 381)

1. Comment

Legal Disability is inability to sue owing to minority, lunacy or idiocy. Law recognises no other ground as sufficient for extending that period of limitation. The effect of legal disability is that it extends the period of limitation, it does not prevent the period from

running. Once the period limitation has started no subsequent disability stops it. For the purpose of this section, disability must be continuous if a person entitled to sue is minor and becomes insane before he attains majority, time would be extended i.e. disability must overlap each other. Again if he died during his insanity and his legal representative is minor, the extension of time would be allowed both to the minor and his legal representative. The disability must be of a person entitled to sue as apply for execution. In other words, this privilege is extended only to the plaintiffs and not the defendants. The person must already be under a disability when the right to sue accrues or at the time from which the period of Limitation is to be reckoned.

Section 6 is one of the provisions which extends the period of limitation laid down by the schedule. The section does not prevent running of limitation but only extends the period of limitation. Sections 6, 7 and 8 constitute one unit and are supplementary to each other. Section 6 lays down the general rule in case of persons under disability and section 7 provides a special rule for some of these cases and consequently, if a case falls within the provisions of section 7, the question of limitation must be determined in accordance with them.

Section 6 excuses in insane person, minor and idiot to file a suit other than pre-emption suits or make an application for the execution of decree within the time prescribed by law and enables him to file the suit or make an application after the disability has ceased, counting the period of time from the date on which the disability ceased. If one disability supervenes on another disability or one disability is followed by another without leaving a gap, the suit or application for execution may be filed after both disability or disabilities continue till the person's death then the representative of the deceased on whom the titles devolves is allowed to file a suit or make an application for execution within the time allowed by law counting it from the death of the person entitled.

The conditions for the applicability of this section are:

(a) The person entitled to sue or apply for execution of decree must be under a disability. The disability is confined only to minor, insanity and idiocy.

(b) The disability must be of a person entitled to sue or apply for execution. A plaintiff himself under no disability is not entitled to the benefit of the section merely because the defendant is under a disability. This section only applies to suits etc. brought by and not against persons under disability.

(c) The disability must exist at the time from which the period of limitation is to be reckoned. Therefore, disability which supervenes after the commencement of limitation is no ground for extension of limitation under this section.

(d) The proceeding in question must be a suit or an application for the execution of a decree.

(e) The period of limitation for the proceeding must be specified in the third column of the schedule.

2. Suit - An Understanding

The Limitation Act does not define the word 'suit' but section 2(a) states that suit does not include an appeal or an application. The word 'suit' as contemplated by Limitation Act has a wider meaning and includes any legal proceedings commenced by one person against another in order to enforce any civil right.

3. Proceeding to which Section does not apply

Section 6 only applies to suits and execution proceedings. Section does not apply to the following proceedings:

- i) Application for final decree in mortgage suits
- ii) Application for personal decree against mortgagor under order XXXIV, Rule 6, CPC
- iii) Application for restoration of suits or appeals dismissed for default,

- iv) Application to set aside ex parte decree;
- v) Application to set aside execution sale;
- vi) Application for substitution of legal representative.
- vii) Application for presumption.
- viii) Application for leave to appeal.
- ix) Proceedings by or to an idol or a muth

4. Essential of Legal Disability

- i) Disability must be continuous.
- ii) The disability must be of a person entitled to sue or apply for execution.
- iii) The person must already be under a disability when the right to sue accrues or at the time from which the period of limitation is to be reckoned.

4. Child in mother's womb

The starting point is the date of birth for the computation of age, but the law nowhere provides that the period spent by a child in the womb is not to be regarded as a period of minority. A child in the womb of his mother is a person in existence and minority for purposes of section 6 of the Act.

5. Burden of proof

To prove that a suit or application for execution is saved from the bar of limitation by virtue of the provisions of this section, the burden lies on the person who relies on such provisions. It is for the person who claims benefit under this section to establish affirmatively and clearly that he is entitled to claim benefit at the time of institution of the suit.

V. DISABILITY OF ONE OF SEVERAL PERSONS: SECTION 7

1. Ingredients

- i) When one of several persons jointly entitled to institute a suit or make an application is under any disability and discharge can be given without the concurrence of such disabled person, time will run against them all.
- ii) If discharge cannot be given without the concurrence of disabled person, time will not run as against any of them.
- iii) The time will run in the following two circumstances:
 - a) when one of them becomes capable of giving such discharge without the concurrence of the others, or
 - b) when disability has ceased.

2. Comment

This section like the preceding section 6 is confined to suits and applications for execution of decrees by persons under disability. It does not apply to appeals. It does not apply to pre-emption suits as well.

Section 7 is supplemental to section 6. The principle underlying this section is that, if there are some persons in existence who are adults and who could have safeguarded the common rights of themselves and of others similarly situated, the failure of the persons who are sui juris to litigate the right will start the cause of action not only against themselves but also against persons in similar circumstances.

The words "any such disability" in section 7 includes only minority, idiocy or insanity but do not include the disability of the group to give a discharge.

The new explanation to the section has removed doubts as to the word discharge created by the old Act of 1908 that the section applied only to money claims.

3. Who may give a valid discharge

- (a) Co-partners
- (b) Joint-executors
- (c) Co-heirs with concurrence of the other co-heirs in respect of a debt due to the ancestor
- (d) Co-trustees without concurrence of others
- (e) Manager of a joint Hindu Mitakshara family being in management without concurrence of others.

Section 7 provides for the circumstance if more than one individual possesses the same identical substantive right. Persons whose right distinct and different but who are permitted to enforce such separate rights by one judicial process to which all are parties, or by a process instituted by one on behalf of all are not contemplated by this section. Thus, if the father of A and B alienated certain joint family property. And, A was major on the date of alienation while B was minor. A's claim to set aside alienation fails because it being barred by limitation. A later wants to take benefit of the coming of the majority of B and to file a suit with him. A will not succeed.

VI. SPECIAL EXCEPTIONS: SECTION 8

Section 8 bars the application of section 6 and 7 to pre-emption suits. The section starts with reading "Nothing in Section 6 or in Section 7

1. Ingredients

The section incorporates the rule as to the continuous running of time. The rule is one of the fundamental principles of the law of Limitation. The section applies to suits as well as applications.

2. Comment

The first part of section 8 lays down that suits for pre-emption are not governed by section 6 and 7 of the Act and in spite of the disability, they must be proceeded with and no extension of time will be given on account of the disability of the plaintiff. The reason for the inapplicability of the provisions of Section 6 to pre-emption suits is that a pre-emption right should be immediately asserted, and that minority would not excuse laches in the assertion of the claim.

Pre-emption is a right to purchase property before or in preference to other person.
[Code: Order 20 Rule 14 CPC]

The latter part of the section says that a person under disability may sue after the cessation of the disability within the same period as he would otherwise have been allowed under the schedule but in no case can the period be extended to anything beyond 3 years from the cessation of the disability. This means if period provided by the schedule exceeds 3 years one is not entitled to the full period but only three years from the date of the cessation of the disability.

According to this section period of three years has to be counted, in the case of minor from the date of cessation of minority and not from the date of attainment of majority. But in computing Limitation, the date from which such period has to be reckoned shall be excluded under section 12 of the Act. This if cessation of minority occurred on 9th November 1940, the three years period would begin to run on 10th November 1940

VII. CONTINUOUS RUNNING OF TIME: SECTION 9

1. Ingredients

- i) Time when once it has commenced to run in any case will not cease to do so by reason of any subsequent event.
- ii) The following exceptions have been allowed by this statute:
 - a) When letters of administration to the estate of creditor have been granted to his debtor, the running of time in favour of such debtor is suspended for so long as the administration continues (Section 9, Proviso).
 - b) In computing the period of limitation prescribed for appeal or review, the time requisite for obtaining a copy of the decree or order appealed from shall be excluded (Section 12).
 - c) Exclusion of time in cases where leave to sue or appeal as a pauper applied for (Section 13).
 - d) When the plaintiff has been prosecuting another civil proceeding (*bona fide* in Court without jurisdiction) [*Vide: Section 14*].
 - e) When notice has been given before the institution of suit in accordance with law, the limitation will be suspended during the period of notice [Section 15].
 - f) When an injunction order has been obtained to stay the institution of a suit. [Section 15].
 - g) When the person dies on or before the accrual of the right to sue [Section 16].

2. Comment

English Law is the basis for the rule incorporated by this section. The section is applicable if disability occurs after the period of limitation has started, but it has no application in cases of initial disability. It is not applicable to cases where the cause of action is cancelled by subsequent events. The section contemplates cases where the cause of action, continues to exist. The time begins to run when the cause of action accrues.

Though not expressly provided by the section it applies to suits as well as applications. 'Disability' means want of capacity of the legal qualification whereas 'Inability' means want of physical power or facility to act.

3. Exception

Though the proviso to section 9 contains the only exception to the general rule incorporated by this section, the sections 12, 13, 14, 15 and 16 is also read as exceptions.

4. Questions

1. What is the effect of section 8 on the provision of section 6 and 7 of the Limitation Act?
2. What is the effect of one or more legal disability on the continuous running of time?
3. "Where once time has begun to run, no subsequent disability or inability to institute a suit or make an application stops it." Discuss this statement with reference to case law.
4. A, owner of the property, died leaving behind wife, son and daughter. His widow executed a will in favour of daughter bequeathing entire property to her. The daughter sold the property to B on 06-02-1953. B filed suit against C alleging that he was illegitimate son of A's son and had forcibly trespassed in the property in 1971. The trial court held that C was legitimate and was borne in 1945 and that sale deed in favour of B was void. But dismissed the suit on the ground that the suit has been filed before expiry of 12 years from the date C attained majority and, therefore B had not yet perfected title to the property by virtue of section 27 of the Limitation Act. Appeal

has been filed on the ground that C attained majority in 1966 on completion of 21 years and he could have instituted suit for recovery of possession within three years there from i.e. 1969 but the present suit was filed in 1971 which was beyond said period of and, therefore, B had perfected title to the property. The appeal is contested on the ground that period of Limitation to institute suit for recovery of possession is 12 years from the date of his attaining majority and consequently when B filed suit in 1971, he could not have acquired title under section 27 of the Limitation Act. Decide the appeal giving reasons for your decision.

VIII. SUIT AGAINST TRUSTEES AND THEIR REPRESENTATIVES: SECTION 10

This section makes it clear that where a trust has been created expressly for some specific purpose or object and property has become vested in a trustee upon such trust, the beneficiary may bring a suit against such trustee or his legal representatives to enforce that trust at any length of time without being barred by the law of limitation. In **Moosabhooy v. Yakubhooy 1905 Bombay** it was held that if express trusts are created by deed or will and some third party takes upon himself the administration of the trust property, he becomes a trustee on tort and as such is bound to account as if he were the rightful trustee and limitation will not run in his favour under section 10.

1. Ingredients

- i) There must be a trust, i.e. express trust to create an express trust, it must be clear in the express words that the owner of the property has entrusted the property to the person alleged to be a trustee for the discharge of the obligation. It will not apply to implied or constructive trusts.
- ii) The trust must be for a specific purpose i.e. the purpose should be actually and specifically, and clearly described in the terms of the will or settlement itself.
- iii) The property must be vested in (a) the trustee, or (b) his legal representatives, or (c) assigns (without valuable consideration). Vesting implies ownership and not merely power of controlling or directing it.
- iv) This Section applies against the trustee or his legal representative or an assign without valuable consideration. It does not apply against:
 - b) An executor, a partner, an agent or a director of a company because they are not trustees.
 - c) Assigns for value, suits against such persons is liable to be barred.
- v) The suit must be for:
 - a) follow trust property or its proceeds or for
 - b) accounts of such property in the hands of the trustee or his representative or assignees.

"Following" means recovering the trust property when it is used for some purpose other than the purpose of the trust. Thus, if a trustee transfers the bank balance of trust money into his own account, it will be recoverable from the trustee at any time.

2. Comment

'Vested in trust' implies that ownership in the property has been conveyed to the person referred to the section with power to dispose it in accordance with the terms of the trust. Such vesting may be either from such person having been originally named as trustee or having become so by operation of law.

Only cases of express trusts is covered by section 10 of the Limitation Act. Trust must be subsisting. The section has no application to cases where a trust has been created but had been duly revoked.

When trust property finds its way into the hands of an assignee for valuable consideration, the ordinary law of Limitation shall apply. The expression "Valuable

consideration" is not synonymous with the expression "adequate consideration". Even if the consideration is not adequate it may be valuable consideration.

Under section 10 a plaintiff can not bring a suit against benamidar.

IX. SUIT ON CONTRACTS ENTERED INTO OUTSIDE THE TERRITORIES TO WHICH THE ACT EXTENDS: SECTION 11

Section 11 speaks of suits on contract only, yet the principle of this section applies to all suits and proceedings. It applies to execution petition as well. In **Rajendra Singh v. Santa Singh 1973** the supreme court held that the injured party must approach the court within the period of limitation. Otherwise, section 52 of the Transfer of Property Act will be of no help. Section 52 of the said Act is not meant to serve, indirectly, as a provision or a substitute for a provision of the Limitation Act to exclude time.

In **Ramlal v. Rewa coal Fields Ltd. AIR 1962** the supreme court held that if the Limitation Act prescribes different periods of Limitation for appeals or applications that normally means that the liberty is given to the party to act within either of the periods prescribed.

In **Ganga Prasad and others v. Ganesh Lal and others AIR 1924 Allahabad** high court observed that in case where the plaintiff obtains judgment in a foreign court on a claim which though not barred under the foreign law, would be barred under the Indian Limitation Act, and brings a suit on that judgment in an Indian court it would be no defence to rely on the plea of Limitation as the foreign judgment is valid according to the lex fori and is conclusive. It can be challenged only on any of the grounds enumerated in section 13 of the civil procedure code.

1. Ingredients

The principle contained in Section 11 of the limitation Act, runs as follows:

- i) Suit instituted in India on contracts entered into a foreign country are subject to the rule of limitation contained in this Act.
- ii) No foreign rule of limitation shall be defence to a suit instituted in India on contract entered into a foreign country unless –
 - a) the rule has extinguished the contract, and
 - b) the parties were domiciled in such foreign country during the period prescribed by such rule.

2. Comment

Lex Loci contractus (The law of the place where contract is made) govern a contract with reference to its form, validity, interpretation and the rights and liabilities of the parties to it.

As a general rule of international law following rules apply in the case of contract:-

- (a) Law of the country where the contract was made govern the interpretation of the contract.
- (b) Law of the country where action is brought govern the mode of suing and the time within which the action must be brought.

Thus, the mere fact that a suit on a foreign contract is not barred under the foreign law will not enable the plaintiff to bring the suit on the claim barred in this country, as a person suing in the country should in matter so procedure "take the law as he finds it" here. Even where a suit has been dismissed in a foreign country (solely on the ground of limitation) a fresh suit can be brought in this country within the period prescribed by the Limitation Act. But if the foreign law of limitation has not only extinguished the right of action, i.e. the remedy but also the right itself, foreign rule of limitation shall be good defence to a suit instituted in India

provided the parties were also domiciled in the said foreign country during the period prescribed by the rule of that country. The section is, in terms applicable only to suits.

PART III
COMPUTATION OF PERIOD OF LIMITATION
(Section 12 – 24)

I. EXCLUSION OF TIME IN LEGAL PROCEEDING: SECTION 12

Section 12 to 18 of the Limitation Act deals with the computation of periods of Limitation. These sections point out what days or periods have to be excluded from calculation of period of limitation.

- (a) In computing the period of limitation prescribed for any suit, the date shown in the III column of the schedule as the day from which the period of limitation begins to run shall be excluded.
- (b) In computing the period of limitation prescribed for an appeal, the following periods shall be excluded:- (i) the day on which the period begins to run; (ii) the day on which the judgment was pronounced; (iii) the time requisite for obtaining a copy of the decree, sentence or order; (iv) the time requisite for obtaining a copy of the judgment.

The question whether the appeal preferred was in time or not should be considered on the basis of information available from the copy of the judgment and decree filed along with the memorandum of appeal and not from other copies the party might have got and used for other purposes with which the court has nothing to do.

It is only when an application is made for certified copies of the judgment and decree for the purpose of filing an appeal, the appellant is entitled to the time occupied by the office for preparing copies.

- (c) In computing the period of limitation prescribed for an application for revision or for review, the following period shall be excluded: (i) the day on which the time begins to run; (ii) the day on which the judgment was pronounced; (iii) the time requisite for obtaining a copy of the decree; (d) the time requisite for obtaining a copy of the judgment.
- (d) In computing the period of limitation prescribed for an application for leave to appeal, the following periods shall be excluded: (i) the day on which the time begins to run; (ii) the day on which the judgment was pronounced; (iii) the time requisite for obtaining a copy of the decree; (iv) the time requisite for obtaining a copy of the judgment.
- (e) In computing the period of limitation prescribed for an application to set aside an award, the following periods shall be excluded: (i) the day on which time begins to run; (ii) the time requisite for obtaining a copy of the award.
- (f) In computing the period of limitation prescribed for any other application, only the day on which the time begins to run shall be excluded.

In Durg v. Panch Pancham AIR 1939 All 183 it was held that the rules as to computation of period of Limitation laid down in the Act are not intended by the legislature to apply only to periods of limitations prescribed by the schedule, but apply also to periods of limitation provided for by other enactment.

This section does not require any prayer or application on the part of the party for the exclusion of time as such exclusion is made imperative by the section itself.

In Commr. Of Sales Tax v. Madañlal AIR 1977 S.C. it applicability of this section was considered. According to Supreme Court it is not at all necessary that the filing of the certified copies should be mandatory.

In Binay Kant Mani Tripathi v. Union of India AIR 1994 the Apex court held that in case of Arbitral award, for the computation of Limitation of 30 days, the day on which the parties were informed of the nature of award will be excluded.

2. COMMENT

The word requisite as used in the section means something more than the word required. It means properly required. Time requisite means only the interval between the time when the copy is applied for and the time when it is ready for delivery. Due diligence on the part of the litigant is required by law during that interval. Unless otherwise suggested by circumstances, no delay can form part of the time requisite.

Section 5 and Section 12

It has been held by a full bench of the Allahabad High Court that section 5 of the Limitation Act cannot be applied in making the computation of time provided for under section 12, and does not become applicable until after such computation has been made. In computing the time requisite for obtaining copies, no allowance can be made for delay caused by inability by reason of poverty, to pay the estimated cost of copies. But if the stamps are not procurable, or the office is not open to receive payment of the estimated cost, allowance may be made for the delay so caused. These are similar causes of delay may be considered under section 5 after computation has been made under the other sections.

Case Laws:-

Akhtari Bibi v. Rajlakshmi Devi:- It was held in this case that even if the office of the court was open but the court was not exercising its judicial power on a certain day, the appellant could apply for the certified copy of the order after the gap of long vacation.

Municipal Board, Lucknow v. Bhagwandas AIR 1959:- Even there are no rules requiring a copy of the order or judgment to be filed along with the appeal still, a copy is required for the party to enable him to present the appeal, and take proper grounds. Consequently, period taken by the appellant to obtain copy of judgment and order, will be excluded from the period of Limitation, even if there are no rules requiring such copies to be filed along with the appeal.

II. EXCLUSION OF TIME IN CASES WHERE LEAVE TO SUE OR APPEAL AS PAUPER IS APPLIED FOR: SECTION 13

This is a new section. The section applies only to the application for leave to sue or appeal as a pauper. Following are the essentials of this section:-

1. That the applicant as a pauper has made an application for leave to sue or appeal
2. That the application for leave has been rejected by a court

That the applicant had good faith to prosecute his application for such leave

In a case where an application for leave to sue or appeal as a pauper has been made and rejected, the time taken in prosecuting in good faith such application should be excluded in computing the period of limitation prescribed. Whether a court can allow the payment of court fee under section 149 CPC with retrospective effect is a question resolved by the new Act. Now section 13, of the new Act, expressly provides that where leave to sue or appeal as a pauper is applied for but is not granted, the time during which the applicant has been prosecuting in good faith, his application for such leave shall be excluded in computing the period of limitation prescribed for such suit or appeal and the court may, on payment of the court-fee, treat the suit or appeal as having the same force and effect as if the court fees had been paid in the first instance.

In V.P. Singh v. D.H.N. Singh AIR 1962 S.C. it was held that the new Act would not apply to pending proceedings for permission to sue as pauper.

According to Kerala High Court the expression 'subject matter of the suit' has to be excluded while considering the means of the indigent person.

III. EXCLUSION OF TIME OF PROCEEDING *BONA FIDE* IN COURT WITHOUT JURISDICTION: SECTION 14

Section 14 provides for circumstances for computing the period of limitation for a suit, where the plaintiff has been prosecuting with due diligence civil proceeding, whether in a court of first instance or of appeal or revision, against the same party for the same relief, has to be excluded. However, such proceeding must have been prosecuted in good faith in a court which cannot entertain it due to defect in jurisdiction or any other cause of a like nature. A person who seeks exclusion of time under this section must prove the following:-

- (a) That the former proceeding was prosecuted by him in good faith and with due diligence.
- (b) That the former proceeding was between the same parties
- (c) That the matter in issue was the same
- (d) That the former was unable to entertain it from the defect of jurisdiction or other cause of a like nature

In Lal Chand v. Balaram 1957 M.P.C it has been held that the burden of proving all the above conditions is on the plaintiff.

Comment:- The principle of this section protects against the bar of limitation for a person honestly doing his best to get his case tried on the merits, but failing through the court being unable to give him such a trial. The section does not give discretion to the court. Section 14(2) applies to execution applications as well.

The word 'other cause' in the section has been given liberal interpretation so as to include cases where the suit failed for want of a prior notice under section 80 CPC.

Court:- Any Tribunal or Authority deciding the civil rights of the parties will be deemed to be a court for the purpose of this section.

Good Faith:- In **Vijay Kumar Rampal and others v. Diwan Devi and others AIR 1985 S.C.** it was held that the High Court was in error in holding that defective valuation and improper computation of court fees disclosed lack of good faith on the part of the plaintiff.

Execution application:- Section 14(2) applies to execution application as well. Therefore, if a decree-holder has been bona fide prosecuting his execution application in a court having no jurisdiction, he is entitled under section 14(2) to deduction of time spent by him in that court.

Civil proceeding:- This section is in terms restricted to civil proceedings which has been used in this section as opposed to criminal proceedings. In other words, provisions of this section are applicable only to civil proceedings and are not applicable to criminal proceedings. The section requires that the proceedings must be "Civil Proceedings", and also that they are the proceedings of "Court". Thus, the period spent in purely administrative proceedings before the collector (when not acting as a "Court"), cannot be excluded under this section. The expression 'Court' refers to judicial courts and not domestic forums of Tribunals. The words 'Court of Appeal' are wide enough to include a court of revision.

The word Court signifies a Court in the strict sense and does not include an authority who acts as a court in the wider sense of the form.

The Court contemplated under section 14 does not necessarily mean the Civil Court under the CPC. Any Tribunal or Authority deciding the civil right of the parties will be deemed to be a court for that purpose.

Applicability to Appeals:- Though section 14 in terms applies to suits and applications only and not to appeals, the circumstances contemplated in the section can justifiably be taken to constitute a "sufficient cause" within the meaning assigned to that phrase in section 5 of the Limitation Act for purposes of appeals also. The remedy based on the principles of that provision under section 5 of the Act in the case of an appeal is discretionary, and the court may condone the delay in filing an appeal in the correct court if the requirement of section

14 appeal to have been satisfied and on the facts and in the circumstances of the given case they are held to constitute a sufficient cause in the sense in which that expression is used in section 5 of the Act.

It is settled principle now that though section 14 does not apply on its terms to an appeal, the same can be invoked in aid of sufficient cause contemplated by section 5 of the Limitation Act.

Distinction between section 5 and 14

Section 5	Section 14
1. Court's power under this section is discretionary.	1. Exclusion of time under this section is mandatory.
2. This section requires only sufficient cause to be explained.	2. 'Due diligence' 'Good faith' is required under this section as these are sheet anchor of section 14 of the Limitation Act.
3. Mistake of law is no excuse under this section	3. A person prosecuting under a mistake of law is entitled to the benefit of under this section.

IV. EXCLUSION OF TIME IN CERTAIN CASES: SECTION 15

This section corresponds to section 15, 16 and 18 of the repealed Act of 1908. The section is intended to prevent the accrual of any injury to the person who is interdicted by an injunction or order from exercising his right of suit or of execution of the decree obtained by him.

The section excludes following type of time computing the period of limitation—

Continuance of injunction order, period of notice, time required for obtaining sanction, time required in appointment of a receiver, the time taken to set aside the sale, the time during which the defendant has been absent from the territories outside India as the case may be.

In Muthukanni v. Andappa AIR 1955 Madras it was held that in a suit against partners, where one of the partners is out of India, the fact of his absence entitled the plaintiff to deduct the time against the absentee defendant only and not against all the defendants. The defendant includes any person from or through any person from or through whom the defendant derives his liability to be sued.

Comment: -Mr. Justice K.N. Srivastav in the case of Sahu Deoki Nandan v. Narendra Kumar AIR 1974, Allahabad, held that where an auction-purchaser had been restrained by an order of temporary injunction from taking delivery of possession of the property purchased, the period during which he was so restrained must be excluded while computing the period under article 34.

If for a particular period the execution of the decree has been stayed, then that period is to be excluded in determining whether or not an application is barred under section 48 CPC.

The principle of this section applies to restitution proceedings even though an application for restitution under section 144 CPC is not an application for execution.

The Bombay High Court has upheld that the provisions of section 15 are not available in computing the period of limitation in case of an application for possession by auction purchaser under order XXI Rule 95 CPC until such application is proved to be an application for execution of decree.

Where a title suit under order XXI, rule 63 CPC is decreed against an objection under order XXI rule 58 CPC, the entire period of suit is excluded for execution.

V. EFFECT OF DEATH ON OR BEFORE THE ACCRUAL OF THE RIGHT TO SUE: SECTION 16

“_____ when there is a legal representative of the deceased capable of instituting such suit or making such application.”

Section 16(1)

The section adopts the general principle that unless there is a complete cause of action, Limitation can not run and that unless there is a person who can sue and a person who can be sued, there cannot run unless there be a person who can sue or who can be sued.

Comment:-The expression capable of suing as used in the section is equivalent of not being under legal disability to sue. The section corresponds with section 17 of the repealed Act 1908.

If there is a person capable to sue and a person who can be sued, then it is a fact giving rise to a cause of action. The section contemplates that limitation can not run unless there is a completed cause of action. It means limitation can not run unless there be a person who can sue or who can be sued.

Applicability:-The section applies to suits and also to applications.

Non Applicability:- The section does not apply in following cases—

- (g) To appeals
- (h) Where death occurs after the right to sue accrues
- (i) To enforce right of pre-emption
- (j) For possession of immovable property
- (k) For possession of hereditary office.

VI. EFFECT OF FRAUD OR MISTAKE: SECTION 17

“_____ the period of limitation shall not begin to run until the plaintiff or applicant has discovered the fraud or the mistake or could, with reasonable diligence have discovered it, _____”

_____ section 17(1)

1. Comment

The Principle underlying this Section is that when on account of fraud, mistake or concealment the other side has remained in dark from the knowledge of such right or of the title, the time limited for instituting such suit or making such application against the person who is guilty of fraud, or mistake shall be computed for the time when the fraud, mistake, or concealment, has first become known to the person injuriously affected thereby. [Vide: *Minish v. State*, AIR 1985 Guj.]

➤ Exemption from the bar of limitation on the ground of fraud cannot be claimed apart from statutory provisions.

➤ A person desiring to invoke the aid of this section must show that his right to sue or to apply has been kept away from his knowledge by means of fraud.

2. Fraud

“Fraud” or “mistake” is nowhere defined in the Act. In order to plead the fraud there must be existence of the following ingredients:

- i) the suggestion, as a fact, of that which is not true, by one who does not believe it to be true;
- ii) the active concealment of a fact by one having knowledge or belief of the fact;
- iii) a promise made without any intention of performing it;
- iv) any other act fitted to deceive; and
- v) any such act or omission as the law specifically declares to be fraudulent.

3. What must be proved by the Plaintiff?

For taking the benefit of section 17 the plaintiff must prove:

- i) that his cause of action has been concealed from him by fraud;
- ii) that the fraud is of the defendant or of a person through whom he claims;

iii) that the plaint is in time since the discovery of the fraud.

- 4 Case Law:-In Krishna Kumar Khemka v. Jagdish Narayan Bhan AIR 1971 Calcutta 322,** it was held that different valuers may give different opinions with regard to the value of any commodity, and such difference in opinion of valuers can no means be said to furnish grounds of mistake to enable a litigant to invoke the benefit of section 17 (1)C.

In Mahabir Kishore and others v. State of M.P. AIR 1990 S.C. it was held that period of limitation will start running from the date of knowledge of the courts decision declaring the law under which money was paid to be void.

VII. EFFECT OF ACKNOWLEDGMENT IN WRITING: SECTION 18

What is an acknowledgment and what is its effect on limitation. What kind of admissions of liability extend the fresh period of limitation. The answer lies with section 18 of the limitation Act.

1. Comment

Section 18 provides that an acknowledgment of the existence of a liability will give fresh term and it may be presumed that the object of the law of limitation has been attained. Section 18 is based on the theory that the defendant waives the benefit of the period of time that has run in his favour.

The intention of law is manifestly to make an admission in writing of an existing jural relation of the kind specified, equivalent for the purposes of limitation to a new contract.

An acknowledgment does not confer any right or title on the person whose right is an acknowledged but merely extends the limitation.

2. Illustrations of sufficient Acknowledgment of liability

- i) "I am ashamed that the account has stood so long."
- ii) "The promissory note which I gave is unstamped I will not pay it."
- iii) "I cannot afford to pay new debts much less the old debt I owe".
- iv) "Please send in the account made up to March."

3. Illustrations of Insufficient Acknowledgment

- i) "A letter enclosing a remitting of Rs 100/- to old amount" does not show that a further sum is due.
- ii) "I wish to look your accounts; in my own account I do not see any amount due to you. Please, therefore send the account."
- iii) "I admit the loan but I have since repaid the amount".

4. Ingredients of Acknowledgment

The acknowledgment must satisfy the following conditions:

- i) Acknowledgment must be made before the expiration of the prescribed period of limitation.
- ii) The acknowledgment must be in writing.
- iii) It must be duly signed.
- iv) It must be an acknowledgment of an existing liability.

- 5. Notes:-**An acknowledgment, no doubt, implies a promise to pay, but under section 25 of the Contract Act the promise must be distinctly expressed and a mere acknowledgment is insufficient to create a new contract as is contemplated under section 25 to revive a barred liability. Under this section an acknowledgment must be made before the expiry of the period of limitation, whereas under section 25(3) of the Contract Act a promise in writing to pay give a fresh period of limitation.

Case Law:- Words used in the acknowledgment must indicate the existence of jural relationship between the parties such as that of debtor and creditor and it must appear that the statement is made with the intention to admit such jural relationship. **In this context in Tilak Ram v. Nathu AIR 1967**, the supreme court held that the right of redemption no doubt is of the essence of and inherent in a transaction of mortgage. But the statement in question must relate to the subsisting liability or the right claimed. Where the statement is relied on as expressing jural relationship, it must show that it was made with the intention of admitting such jural relationship subsisting at the time when it was made. It follows that where a statement setting out jural relationship made clearly without intending to admit its existence, an intention to admit can not be imposed on its maker by an involved or a forced process of reasoning.

Questions

1. "An acknowledgement may be sufficient though it is addressed to a person other than the person entitled to the property or right". Discuss
2. What is the effect of fraud or mistake on the Limitation?
3. When and under what circumstances is the period spent on legal proceedings excluded under the Limitation Act?
4. Explain the expression "time requisite for obtaining a copy of the decree" as contemplated in section 12(2) of the limitation Act, for taking the benefit of exclusion of time in legal proceedings.

VIII. EFFECT OF PAYMENT ON ACCOUNT OF DEBT OR OF INTEREST ON LEGACY: SECTION 19

This section provides for the computation of the period of Limitation when a payment on account of debt or of interest on legacy is made. Two conditions must be complied with to attract the provisions of this section. They are

- (a) The payment must be made within the prescribed period of limitation
- (b) The debt must be acknowledged by some form of writing either in the handwriting of a payer himself or signed by him.

"... provided that save in the case of payment of interest made before the 1st day of January, 1928, an acknowledgment of the payment appears in the handwriting of, or in a writing signed by, the person making the payment."

proviso to section 19

The opening words of the proviso make it clear that the payment of interest made before the dates specified therein need not be either in writing or signed by the party making it. The word used is "appears". It suggests that the fact should appear to the court to the establishment by the evidence in the case.

In A.K. Srinivas Naidu v. S. Jayarama Reddiar, Firm AIR 1977 Madras, it was held that if a person sends money through his servant or by post, it is not the servant or the postman who makes the payment, but the person himself who sends it.

The words 'prescribed period' as used in the section refer to the period prescribed by the Limitation Act and not to the period fixed by other enactments such as section 48 of the CPC.

In Order to constitute 'payment' under this section it can be made in any form. It is not necessary that it should be made in cash or currency.

In Ramchandra v. P.S. Patil AIR 1973 Bombay it was held that if a part payment is made within the period of limitation, the mere fact that the writing evidencing the payment was made after the expiry of limitation period, would not render such hand-writing useless for the purpose of saving a claim for the limitation bar.

The section makes no difference as to whether the payment was made towards principal or towards interest. Admission of the debtor as to making endorsement of payment of Interest on the sufficiently stamped promissory note executed by him amounts to acknowledgment of debt contained in such promissory note and shows existing jural relationship between the parties on the date of such endorsement even though the promissory note was altered and form off subsequent to making of such endorsement. What is in order that a payment of interest may give a fresh period of limitation, the payment must be for interest as such. The debtor at the time of making the payment must have intended that the payment should be for interest.

Distinction between section 18 and 19

Section 18	Section 19
1. This section applies to suits and applications in respect of any property or right.	1. This section applies only to suits on debts and legacies.
2. Under this section an acknowledgment need not be addressed to the person entitled to the property or right.	2. Payment under this section must be made to the person entitled to payment.
3. A mere writing containing an admission of liability in respect of the property or right claimed is enough under this section.	3. Both a payment and a writing recording such payment are necessary under this section.

1. Ingredients

The essential ingredients of Section 19 are akin to Section 18 and may be stated as such –

- i) As in the case of acknowledgment (Section 18), the payment under Section 19 must have been made before the period of limitation has fully run out.
- ii) As in the case of acknowledgment, the payment must be evidenced in writing.
- iii) Signature is essential in the case of acknowledgment under Section 18. In the case of payment (Section 19) it must be either (a) the writing must have been signed by the person making the payment, if the writing itself is in the handwriting of a different person; or (b) the writing must have been in the handwriting of the very person making the payment in which case he need not have signed it.
- iv) Under section 18, the acknowledgment may be made to the creditor or any other person but under section 19 the payment must have been made to the person entitled to payment.
- v) Payment must be made by the person liable to pay the debt or legacy or by the agent duly authorised in this behalf.

IX. EFFECT OF ACKNOWLEDGEMENT OR PAYMENT BY ANOTHER PERSON: SECTION 20.

This section is explanatory one. It is a supplementary section to sections 18 and 19. Who can keep alive a right which is not time-barred, is answered in this section. It does not deal with the question as to who can revive a time-barred debt. Clause (1) of the section states that the expression "agent duly authorized in this behalf" used in the two foregoing section viz., section 18 and 19 in the case of a person under disability includes the guardian, the committee or manager of such a person as well as the agent of such guardian, committee or manager duly authorized to make such an acknowledgement under section 18 or to make such payment under section 19.

Lawful Guardian:-A mere guardian of the person of a minor is not his lawful guardian within the meaning of this section. Natural guardian is included in the phrase 'lawful guardian'.

In Venkatachalam v. Venkateswara AIR 1994 Mad it was held that any acknowledgment of debt made by the karta after the disruption of the joint family can not save the creditor's claim from becoming time-barred against the other members.

In Ehsan Ullah v. Dukhi Din it was held that payment by one of the co-mortgagors will not save limitation against the other co-mortgagors.

X. EFFECT OF SUBSTITUTING OR ADDING A NEW PLAINTIFF OR DEFENDANT: SECTION 21

What is the effect of law of Limitation when a new party is substituted or added as a plaintiff or defendant after the suit has been instituted. Section 21 of the Limitation Act provides answer to this question. Clause (1) of section 21 lays down that a suit in which a party is subsequently joined shall be deemed to be instituted as regards him (new party) on the date of his joinder. Whether the suit becomes barred as regards him alone or as regards other parties also is a matter which will have to be ascertained with reference to the substantive law relating to the subject of necessary parties.

In Kisan Co-operative sugar Factory Ltd. V. M/s Rajendra Paper Mills and others AIR 1984 Allahabad it was held that it was the burden of plaintiff to establish the omission to include the proposed respondent amongst the defendants in the plaint was due to a mistake made in good faith. If it is not established the benefit of the proviso to section 21 can not be given to the plaintiff.

In Karuppaswamy v. C. Rama Murthy AIR 1993 S.C. it was observed that the proviso to section 21 (1) is in line with the spirit and thought of the provisions of section 14 and 17(1). The court held that due to effect of the proviso correction of errors is permitted, which have been committed due to a mistake made in good faith. But this correction of mistake is possible only if the court permits correction of such mistake. If the court permits its effect is to begin from the date of the suit.

The proviso to section 21(1) read as follows: "Provided that where the court is satisfied that the omission to include a new plaintiff or defendant was due to mistake made in good faith it may direct that the suit as regards such plaintiff or defendant shall be deemed to have been instituted on any earlier date".

XI. CONTINUING BREACHES AND TORTS: SECTION 22

In the case of a continuing breach of contract or in the case of a continuing tort, a fresh period of limitation begins to run at every moment of the time during which the breach or the tort, as the case may be, continues.

1. Comment

The object of Section 22 is to prevent multiplicity of suits and to enable one action to be brought for all losses suffered during the whole period, the breach continued

Where rights and duties are created by the terms of a contract, a breach of such duty is a wrong arising out of a contract when such a breach is capable of being corrected and is not corrected, it is a breach of contract which continues.

The criterion of the applicability of this section, both in cases of contracts as well as torts is not whether the right or its corresponding obligation is a continuing one, but whether the wrong is a continuing one.

Following are the instances of continuing Tort:

- a) Trespass
- b) Draining water on plaintiff's land without acquiring easement.
- c) An infringement of Trade-mark or copyright.
- d) Interference with the right of irrigation.
- e) False imprisonment.
- f) Refusal of a wife to live with her husband.
- g) If right of worship of a community is distributed

Case Law:-In Hukum Chand v. Mahraj Bahadur Singh AIR 1933 P.C, the facts were as follows:-

On the Parasnath hill, the Digambar Jains had been worshipping footprints of their Teithakars. Swatambri Jains removed those footprints replacing them by a different footprints obnoxious to the Digambar Jains held that the action of the Swatambri Jains was a continuing wrong.

XII. SUITS FOR COMPENSATION FOR ACTS NOT ACTIONABLE WITHOUT SPECIAL DAMAGES: SECTION 23

In the case of a suit for compensation for an act which does not give rise to a cause of action unless some specific injury actually results therefrom, the period of limitation shall be computed from the time when the injury results.

Comment:-Section 23 deals with cases based upon the injury ensuing from it. The section does not extend or restrict any period of limitation but alters the date or time from which limitation has to be computed according to the third column of the first schedule.

For example A, the owner of the land leases the subsoil to B to extract coal there from. The condition was that B will work the mine leased to him in such a way as is sufficient to support to the surface land. The surface land subsides due to too much digging by B. Time will run from the date of the subsidence.

Case Law:-In Dwarka Nath v. Corporation of Calcutta, 18 Cal 91 when a Municipality caused subsidence of the plaintiff's house by carrying on certain excavations in the sub soil and the plaintiff claimed damages, it was held that the right to sue accrued to the plaintiff not from the date of excavation or subsidence but from the happening of the damage caused by the subsidence which followed the excavation.

XIII. COMPUTATION OF TIME MENTIONED IN INSTRUMENTS: SECTION 24

All instruments shall for the purposes of this Act be deemed to be made with reference to the Gregorian calendar.

1. Comment

The Gregorian Calendar was introduced in 1582 by Pope Gregory XIII, as a correction of the Julian Calendar.

If the starting point is otherwise fixed by the stipulation itself, as for instance. Where the intention was that the interest should be payable at the expiry of six months according to the Hindi Calendar and the cause of action should arise on default, this Section is not applicable.

PART IV

ACQUISITION OF OWNERSHIP BY POSSESSION

(Section 25 – 27)

I. ACQUISITION OF EASEMENTS BY PRESCRIPTION: SECTION 25

- (1) Where the access and use of light or air to and for any building have been peaceably enjoyed therewith as an easement, and as of right, without interruption and for twenty years, and where any way or watercourse or the use of any water or any other easement (whether affirmative or negative) has been peaceably and openly enjoyed by any person claiming title thereto as an easement and as of right without interruption and for twenty years, the right to such access and use of light or air, way, watercourse, use of water or other easement shall be absolute and indefeasible.
- (2) Each of the said periods of twenty years shall be taken to be period ending within two years next before the institution of the suit wherein the claim to which such period relates is contested.

- (3) Where the property over which a right is claimed under sub-section (1) belongs to the Government that sub-Section shall be read as if for the words "twenty years" the words "thirty years" were substituted.

Explanation: Nothing is an interruption within the meaning of this section, unless where there is an actual discontinuance of the possession or enjoyment by reason of a obstruction by the act of some person other than the claimant, and unless such obstruction is submitted to or acquiesced in for one year after the claimant has notice thereof and of the person making or authorizing the same to be made.

II. EXCLUSION IN FAVOUR OF REVERSIONER OF SERVIENT TENEMENT: SECTION 26

Where any land 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 interests or term, resisted by the person entitled on such determination to the said land or water. Under the provision, two period of valid enjoyment, separated by a period of invalid enjoyment, may be tacked together to make up the period of valid enjoyment for 20 years must end within 2 years next of the institution of the suit.

III. EXTINGUISHMENT OF RIGHT TO PROPERTY: SECTION 27

At the determination of the period hereby limited to any person for instituting a suit for possession of any property his right to such property shall be extinguished.

1. Comment

Section 27 is an exception to the general principle that limitation bars only the remedy and does not extinguish the right so far as suits for possession of property are concerned.

The Law of Limitation only bars the remedy of a person by means of a suit. It does not deprive him of his right if it can be exercised in any other manner than by means of a suit.

Section 27 does not apply to suits for possession for which no limitation is provided in Limitation Act, 1963. Section 27 does not apply to application for possession.

2. Limitation Bars the Remedy but does not extinguish the title

It is a well established rule of law that in cases which are not governed by Section 27, limitation act merely bars the remedy but does not extinguish the title.

Ordinarily if the proceeding is not instituted within the specified period, the only result is (except Section 27) that the remedy is barred while, the right remains intact, so much so that if a payment of time barred debt is made by the debtor in ignorance, he cannot recall that on the plea that the debt was barred by limitation and creditor had not right to appropriated his debtor's payment made in ignorance of the bar. Similarly, a barred debt can be set-off by a liquidator in winding-up proceedings against debts by the company to the debtor.

There is only one case where the general rule viz. limitation bars the remedy only and does not destroy the right, does not apply and the right is also extinguished – this exception comes under Section 27 of Limitation Act.

Section 27 relates to the suits for possession of any property. Where the remedy by way of a suit for the possession of any property is gone, the right to that property is also gone.

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

3. When is the Right Extinguished?

As said above, a right under Section 27 is extinguished if the following essentials are there:

- i) It must be a suit for the possession of property.

- ii) The property must be held adversely by the defendants. A proof that owner was not in possession for 12 years is not enough, it must be proved that it was adversely possessed by the other person.
- iii) The suit for the possession must have been barred by the Limitation Act.

When the title of a person is extinguished in favour of the wrong-doer it is not revived by that person against getting into possession.

4. Property

The property must be one recognized by law. A right to redeem a usufructory mortgage is not property for the purposes of this section.

The following have been regarded as property for which a title can be acquired by the operation of Section 27.

- i) An exclusive right of fishery
- ii) A right to maintain a protection over the neighbour's land. The right is a right to the occupation of space belonging to the neighbour and therefore of property.
- iii) A right to a Buddhist monastery.
- iv) A right to Birt Jajmani.
- v) A right to an office of profit.
- vi) A right to cut, appropriate and sell timber in a forest.
- vii) A *Jagir* (right to collect rent). Section 27 applies to all property-movable or immovable.

5. Essentials of adverse possession

The following are the essentials of adverse possession-

- i) The defendant must be in actual possession; mere entry in the record-of-rights of the defendant's name is not sufficient. The doctrine of constructive possession cannot be applied in the case of wrong-doer.
- ii) The possession be adequate in continuity, in publicity and in extent to show that it is adverse to the owner. It is not sufficient that some acts of ownership have been done. The possession must be open, notorious, actual, exclusive and adverse.
- iii) There must be an intention to hold the property.
- iv) Possession cannot be adverse if its commencement can be referred to a lawful title.
- v) A proof that owner was not in possession for 12 years is not enough, it must be proved that it was adversely possessed by the other person.

PART V MISCELLANEOUS (Section 29 – 32)

I. SAVINGS. SECTION 29

- (1) Nothing in this Act shall effect Section 25 of the Indian Contract Act, 1872. (9 of 1872)
- (2) Where any special or local law prescribes for any suit, appeal or application a period of limitation deferent from the period prescribed by the Schedule, the provisions of Section 3 shall apply as if such period were the period prescribed by the Schedule and for the purpose of determining any period of limitation prescribed for any suit, appeal or application by any special or local law, the provisions contained in Sections 4 to 24 (inclusive) shall apply only in so far as, and to the extent to which they are not expressly excluded by such special or local law.
- (3) Save as otherwise provided in any law for the time being in force with respect to marriage and divorce, nothing in this Act shall apply to any suit or other proceeding under any such law.
- (4) Section 25 and 26 and the definition of "easement" in Section 2 shall not apply to cases arising in the territories to which the Indian Easements Act, 1882 (5 of 1889) may for the time being extend.

II. PROVISIONS FOR SUITS ETC. FOR WHICH THE PRESCRIBED PERIOD IS SHORTER THAN THE PERIOD PRESCRIBED BY THE INDIAN LIMITATION ACT, 1908: SECTION 30

Notwithstanding anything contained in this Act:

- a) any suit for which the period of limitation is shorter than the period of limitation prescribed by the Indian Limitation Act, 1908, (9 of 1908) may be instituted within a period of seven years next after the commencement of this Act or within the period prescribed for such suit by the Indian Limitation Act, 1908, whichever period expires earlier:

Provided that if in respect of any such suit, the said period of seven years expires earlier than the period of limitation prescribed therefore under the Indian Limitation Act, 1908 and the said period of seven years together with so much of the period of limitation in respect of such suit under the Indian Limitation Act, 1908 (9 of 1908) as has already expired before the commencement of this Act is shorter than the period prescribed for such suit under this Act, then, the suit may be instituted within the period of limitation prescribed therefore under this Act;

- b) any appeal or application for which the period of limitation is shorter than the period of limitation prescribed by the Indian Limitation Act, 1908, may be preferred or made within a period of ninety days next after the commencement of this Act or within the period prescribed for such appeal or application by the Indian Limitation Act, 1908, (9 of 1908) whichever period expires earlier.

Comment:-Where the period of limitation prescribed by this Act for a suit is shorter than that prescribed under the Act of 1908, section 30 of this Act has to be applied.

III. PREVISIONS AS TO BARRED OR PENDING SUITS ETC.: SECTION 31

Nothing in this Act shall –

- a) enable any suit, appeal or application to be preferred or made, for which the period of limitation prescribed by the Indian Limitation Act, 1908, (9 of 1908) expired before the commencement of this Act, or
- b) affect any suit, appeal or application instituted, preferred or made before, and pending at, such commencement.

IV. REPEAL: SECTION 32

Rep. by this Repealing and Amending Act, 1974 (56 of 1974), Section 2 and First Schedule.

PART VI

I. QUESTIONS BASED ON CASE LAWS

1. Can any party to the suit waive the plea of Limitation so as to absolve the Court from its duty? Give reasons. [50 Words]
2. A and B are two parties to the suit. A agreed to extend the period of limitation for lawful consideration. Can B get the agreement enforced? Give reasons. [50 Words]
3. A suit was instituted misdescribing the plaintiff. Amendment was sought for substituting these real plaintiffs after the expiry of the date of the limitation of the institution of the suit. The defendant contended that the amended plaint was filed after the period of limitation so the suit was time barred. Do you justify the contention of the defendant? Cite case laws and give reasons. [50 Words]
4. Whether the following acknowledgement are sufficient acknowledgment of liability? Give reasons and cite case-laws.
 - a) "I am ashamed that the account has stood so long?"
 - b) "I admit the loan but I have since repaid the amount."
 - c) "I wish to look your accounts; in my own account I do not see any amount due to you. Please, therefore, send the account."
 - d) "The promissory note which I gave is unstamped I will not pay it."

5. On 1st January, 1996 A advanced Rs. 5000/- to B on 20th December, 1998 when A demanded the money, B wrote to him as follows:

"It is true that you gave me Rs. 5000/- but you owe Rs. 3000/- in respect of your loss in our cotton transitions with me and, therefore, I owe your Rs. 2000/- only".

On 1st March, 2000/- A files a suit against B to recover Rs. 5000/- and relies on B's aforesaid letter as an acknowledgment. B contends that the suit is barred by limitation except in respect of the sum of Rs. 2000/-, which he acknowledged on 20th December, 1998.

Decide the case. Give reasons. What options are open to B? [100 Words]

6. "In the cases of Fraud or Mistake the period of limitation starts from the date when the fraud or mistake is known". What are the exceptions of this rule. [100 Words]
7. A lent B Rs. 10000/- on 25-05-1999. B returned A Rs. 3000/- on 30-10-2001 but B refused to return Rs. 7000/-. A wants to file a suit against B for the recovery of debt amount. From which date does the period of limitation start? [50 Words]
8. 'A' has to file a suit on 10-12-2002. The Court was open on that day. A reached the Court at 5:30 p.m. so he found the Court closed. Can he file the suit on 11-12-2002? [50 Words]
9. A had to produce his appeal on 05-10-2002. A reached the Court at 2 p.m. He found that the Court has closed due to untimely demise of the Judge by heartache. The Court was open for half day on 05-10-2002.

Can he file the appeal on 06-10-2002. [50 Words]

10. A files a suit against B owing to *bona fide* mistake, he does not make C the second defendant, notwithstanding that C was a necessary party to the suit. A requests the Court to give him permission of amendment of the plaint. The permission is granted. The original suit was filed on 15-03-2003 and the amended plaint was filed on 30-03-2003.

From which date will the suit be presumed to be filed against C? [15 Words]

II. QUESTION OF PREVIOUS YEAR'S EXAMINATIONS [DJS, RJS, UPPCS (J)]

1. Discuss the essential characteristics of an acknowledgement which gives rise to a fresh period of limitation for any suit in respect of a debt. [200 Words]
2. What period of time can be excluded while computing the period of limitation for any suit, appeal or application? [200 Words]
3. "Limitation merely bars remedy but does not extinguish the title" – Discuss. [100 Words]
4. A owes Rs. 100/- to B. A makes a payment of Rs. 20/- before the period of limitation expires. An acknowledgement of the payment appears in writing signed by A after the said period has expired. Can B bring a suit for the recovery of the balance? [30 Words]
5. What are the essential requisites of a valid acknowledgement? [100 Words]
6. A makes part payment to B towards the promissory note within two years and eleven months from the date of its execution. A, however, records the part payment in writing after the expiry of three years. Is the part payment recorded after the expiry of three years is sufficient to extend the period of Limitation? Give reasons for your answer. [50 Words]
7. What are essential ingredients of principle of adverse possession? [50 Words]
8. A made a gift to B of immoveable property which being not in accordance with law, is invalid. B remains in possession of the property under the invalid gift for fifteen years. A files a suit against B for recovery of possession. [50 Words]
9. What is the period prescribed for perfecting title to property by adverse possession? [10 Words]
10. What is the period of limitation for the mortgagor to file a suit to recover possession of immovable property mortgage and later transferred by the mortgagee for valuable consideration? [50 Words]
11. Can plea of limitation be waived by a party or ignored by a Court? [50 Words]

12. On the last day for depositing security or cost, the Court is closed. Can on this account benefit be claimed under Section 4, Limitation Act for depositing cost or furnishing security on the next opening day of the Court? **[50 Words]**
13. Can a suit be filed beyond limitation? If so, under what circumstances? **[50 Words]**
14. On what grounds the period of limitation may be extended under the Limitation Act? **[200 Words]**

Ranvir's IAS

Limitation Act, 1963

THE SCHEDULE

PERIODS OF LIMITATION

[See Section 2 (J) and 3]

FIRST DIVISION - SUITS

Description of Suit	Period of limitation	Time for which period beings to run
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PART I - SUITS RELATING TO ACCOUNTS

- | | | |
|---|-------------|---|
| 1. For the balance due on a mutual, open and current account, where there have been reciprocal demands between the parties. | Three years | The close of the year in which the last item admitted or proved is entered in the account; such year to be computed as in the account. |
| 2. Against a factor for an account | Three years | When the account is, during the continuance of the agency, demanded and refused or, where no such demand is made, when the agency terminates. |
| 3. By a principal against his agent for movable property received by the latter and not accounted for. | Three years | When the account is, during the continuance of the agency, demanded and refused or, where no such demand is made, when the agency terminates. |
| 4. Other suits by principals against agents for neglect or misconduct. | Three years | When the neglect or misconduct becomes known to the plaintiff. |
| 5. For an account and a share of the profits of a dissolved partnership. | Three years | The date of the dissolution. |

PART II - SUITS RELATING TO CONTRACTS

- | | | |
|--|-------------|--|
| 6. For a Seaman's wages | Three years | The end of the voyage during which the wages are earned. |
| 7. For wages in the case of any other person | Three years | When the wages accrue due. |
| 8. For the price of food or drink sold by the keeper of a hotel, tavern or lodging house. | Three years | When the food or drink is delivered. |
| 9. For the price of lodging | Three years | When the price becomes payable. |
| 10. Against a carrier for compensation for losing or injuring goods. | Three years | When the loss or injury occurs. |
| 11. Against a carrier for compensation for non-delivery of, or delay in delivering, goods. | Three years | When the goods ought to be delivered. |
| 12. For the hire of animals, vehicles, boats or household furniture. | Three years | When the hire becomes payable. |
| 13. For the balance of money advanced in payment of goods to be delivered. | Three years | When the goods ought to be delivered. |
| 14. For the price of goods sold and delivered where no fixed period of | Three years | The date of the delivery of the goods. |

- credit is agreed upon.
15. For the price of goods sold and delivered to be paid for after the expiry of a fixed period of credit. **Three years** When the period of credit expires.
 16. For the price of goods sold and delivered to be paid for by a bill of exchange, no such bill being given. **Three years** When the period of the proposed bill elapses.
 17. For the price of trees of growing crops sold by the plaintiff to the defendant where no fixed period of credit is agreed upon. **Three years** The date of the sale.
 18. For the price of work done by the plaintiff for the defendant at his request, where no time has been fixed for payment. **Three years** When the work is done.
 19. For money payable for money lent. **Three years** When the loan is made.
 20. Like suit when the lender has given a cheque for the money. **Three years** When the cheque is paid.
 21. For money lent under an agreement that it shall be payable on demand. **Three years** When the loan is made.
 22. For money deposited under an agreement that it shall be payable on demand, including money of a customer in the hands of his banker so payable. **Three years** When the demand is made.
 23. For money payable to the plaintiff for money paid for the defendant. **Three years** When the money is paid.
 24. For money payable by the defendant to the plaintiff for money received by the defendant, for the plaintiff's use. **Three years** When the money is received.
 25. For money payable for interest upon money due for the defendant to the plaintiff. **Three years** When the interest becomes due.
 26. For money payable to the plaintiff for money found to be due from the defendant to the plaintiff on accounts stated between them. **Three years** When the accounts are stated in writing signed by the defendant or his agent duly authorised in this behalf, unless where the debt is, by a simultaneous agreement in writing signed as afore said, made payable at a future time, and then when that time arrives.
 27. For compensation for breach of a promise to do anything at a specified time, or upon the happening of specified contingency. **Three years** When the time specified arrives or the contingency happens.
 28. On a single, where a day is specified for payment. **Three years** The day so specified.
 29. On a single bond, where no such day is specified. **Three years** The date of executing the bond.
 30. On a bond subject to a condition. **Three years** When the condition is broken.
 31. On a bill of exchange or promissory **Three** When the bill or note falls due.

	note payable at a fixed time after date.	years	
32.	On a bill of exchange payable at sight, or after sight, but not at a fixed time.	Three years	When the bill is presented.
33.	On a bill exchange accepted payable at a particular place.	Three years	When the bill is presented at that place.
34.	On a bill of exchange or promissory note payable at a fixed time after sight or after demand.	Three years	When the fixed time expires
35.	On a bill exchange or promissory note payable on demand and not accompanied by any writing restraining or postponing the right to sue.	Three years	The date of the bill or note.
36.	On a promissory note or bond payable by installments.	Three years	The expiration of the first term of payment as to the part then payable; and for the other parts, the expiration of the respective terms of payment.
37.	On a promissory note or bond payable by installments, which provides that, if default be made in payment of one or more installments, the whole shall be due.	Three years	When the default is made, unless where the payee or obligee waives the benefit of the provision and then when fresh default is made in respect of which there is not such waiver.
38.	On a promissory note given by the maker to a third person to be delivered to be payee after a certain event should happen.	Three years	The date of the delivery to the payee.
39.	On a dis-honoured foreign bill where protest has been made and notice given.	Three years	When the notice is given.
40.	By the payee against the drawer of a bill of exchange which has been dis-honoured by non-acceptance.	Three years	The date of the refusal to accept.
41.	By the acceptor of an accommodation bill against the drawer.	Three years	When the acceptor pays the amount of the bill.
42.	By a surety against the principal debtor.	Three years	When the surety pays the creditor.
43.	By a surety against a co-surety.	Three years	When the surety pays anything in excess of his own share.
44.	On a policy of insurance when the sum insured is payable after proof of the death has been given to or received by the insurers.	Three years	a) The date of the death of the deceased, or where the claim on the policy is denied, either partly or wholly, the date of such denial.
	c) On a policy of insurance when the sum insured is payable after proof of the loss has been given to or received by the insurers.		b) The date of the occurrence causing the loss, or where the claim on the policy is denied, either partly or wholly, the date of such denial.
45.	By the assured to recover premia paid under a policy voidable at the election of the insurers.	Three years	When the insurers elect to avoid the policy.
46.	Under the Indian Succession Act, 1925 (39 of 1925), Section 360 or Section 361, to compel a refund by a	Three years	The date of the payment or distribution.

person to whom an executor or administrator has paid a legacy or distributed assets.

- | | | | |
|-----|---|-------------|--|
| 47. | For money paid upon a existing consideration which afterwards fails. | Three years | The date of the failure. |
| 48. | For contribution by a party who has paid the whole or more than his share of the amount due under a joint decree, or by a sharer in a joint estate who has paid the whole or more than his share of the amount of revenue due from himself and his cosharers. | Three years | The date of the payment in excess of the plaintiff's over share. |
| 49. | By a co-trustee to enforce against the estate of a deceased trustee a claim for contribution. | Three years | When the right to contribution accrues. |
| 50. | By the manager of a joint estate of an undivided family for contribution, in respect of a payment made by him on account of the estate. | Three years | The date of the payment. |
| 51. | For the profits of immovable property belonging to the plaintiff which have been wrongfully received by the defendant. | Three years | When the profits are received. |
| 52. | For arrears of rent. | Three years | When the arrears become due. |
| 53. | By a vendor of immovable property for personal payment of unpaid purchase-money. | Three years | The time fixed for completing the sale, or (where the title is accepted after the time fixed for completion) the date of the acceptance. |
| 54. | For specific performance of a contract. | Three years | The date fixed for the performance, or, if no such date is fixed, when the plaintiff has notice that performance is refused. |
| 55. | For compensation for the breach of any contract, express or implied not herein specially provided for. | Three years | When the contract is broken or (where there are successive breaches) when the breach in respect of which the suit is instituted occurs or (where the breach is continuing) when it ceases. |

PART III – SUITS RELATING TO DECLARATIONS

- | | | | |
|-----|---|-------------|--|
| 56. | To declare the forgery of an instrument issued or registered. | Three years | When the issue or registration becomes known to the plaintiff. |
| 57. | To obtain a declaration that an alleged adoption is invalid, or never, in fact, took place. | Three years | When the alleged adoption becomes known to the plaintiff. |
| 58. | To obtain any other declaration | Three years | When the right to sue first accrues. |

PART IV – SUITS RELATING TO DECREES AND INSTRUMENTS

- | | | | |
|-----|---|-------------|---|
| 59. | To cancel or set aside an instrument or decree or for the rescission of a contract. | Three years | When the facts entitling the plaintiff to have the instrument or decree cancelled or set aside or the contract rescinded first become known to him. |
|-----|---|-------------|---|

60. To set aside a transfer of property made by the guardian of a ward –
- | | | |
|---|--------------------|--------------------------------|
| a) by the ward who has attained majority. | Three years | When the ward attains majority |
| b) by the ward's legal representative – | | |
| i) when the ward dies within three years from the date of attaining majority; | Three years | When the ward attains majority |
| ii) When the ward dies before attaining majority. | Three years | When the ward dies |

PART V – SUITS RELATING TO IMMOVABLE PROPERTY

61. By a mortgagor –
- | | | |
|---|---------------------|---|
| a) to redeem or recover possession of immovable property mortgaged; | Thirty years | a) When the right to redeem or to recover possession accrues. |
| b) to recover possession of immovable property mortgage and afterwards transferred by the mortgagee for a valuable consideration; | Twelve years | b) When the transfer becomes known to the plaintiff. |
| c) to recover surplus collection received by the mortgagee after the mortgage have been satisfied | Three years | c) When the mortgagor re-enters on the mortgaged property. |
62. To enforce payment of money secured by a mortgage or other wise charged upon immovable property. **Twelve years** When the money sued for becomes due.
63. By a mortgagee –
- | | | |
|---|---------------------|--|
| a) for foreclosure | Thirty years | a) When the money secured by the mortgage becomes due. |
| b) for possession of immovable property mortgaged | Twelve years | b) When the mortgagee becomes entitled to possession. |
64. For possession of immovable property based on previous possession and not on title, when the plaintiff while in possession of the property has been dispossessed. **Twelve years** The date of dispossession.
65. For possession of immovable property or any interest therein based on title. **Twelve years** When the possession of the defendant becomes adverse to the plaintiff.

Explanation – For the purpose of this Article –

- a) Where the suit is by a remainderman, a reversioner (other than a landlord) or a devisee, the possession of the defendant shall be deemed to become adverse only when the estate of the remainderman, reversioner or devisee, as the

case may be, falls into possession;

b) Where the suit is by a Hindu or Muslim entitled to the possession of immovable property on the death of a Hindu or Muslim female, the possession of the defendant shall be deemed to become adverse only when the female dies;

c) Where the suit is by a purchaser at a sale in execution of a decree when the judgment-debtor was out of possession at the date of the sale, the purchaser shall be deemed to be a representative of the judgment-debtor who was out of possession.

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| 66. | For possession of immovable property when the plaintiff has become entitled to possession by reason of any forfeiture or breach of condition. | Twelve years | When the forfeiture is incurred or the condition is broken. |
| 67. | By a landlord to recover possession from a tenant. | Twelve years | When the tenancy is determined. |

PART VI – SUITS RELATING TO MOVABLE PROPERTY

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| 68. | For specific movable property lost, or acquired by theft, or dishonest misappropriation or conversion | Three years | When the person having the right to the possession of the property first learns in whose possession it is. |
| 69. | For other specific movable property. | Three years | When the property is wrongfully taken. |
| 70. | To recover movable property deposited or pawned from a depositary or pawnee | Three years | The date of refusal after demand. |
| 71. | To recover movable property deposited or pawned, and afterwards bought from the depositary or pawnee for a valuable consideration. | Three years | When the sale becomes known to the plaintiff. |

PART VII – SUITS RELATING TO TORT

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| 72. | For compensation for doing or for omitting to do an act alleged to be in pursuance of any enactment in force for the time being in the territories to which this Act extends. | One year | When the act or omission takes place. |
| 73. | For compensation for false imprisonment. | One year | When the imprisonment ends. |
| 74. | For compensation for a malicious prosecution. | One year | When the plaintiff is acquitted or the prosecution is otherwise terminated. |
| 75. | For compensation for libel. | One year | When the libel is published. |

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| 76. | For compensation for slander. | One year | When the words are spoken or, if the words are not actionable in themselves, when the special damage complained of results. |
| 77. | For compensation for loss service occasioned by the seduction of the plaintiff's servant or daughter. | One year | When the loss occurs. |
| 78. | For compensation for inducing a person to break a contract with the plaintiff. | One year | The date of the breach. |
| 79. | For compensation for an illegal, irregular or excessive distress. | One year | The date of the distress. |
| 80. | For compensation for wrongful seizure of movable property under legal process. | One year | The date of the seizure. |
| 81. | By executors, administrators or representatives under the Legal Representatives' Suits Act, 1855 (12 of 1855) | One year | The date of the death of the person wronged. |
| 82. | By executors, administrators or representatives under the Indian Fatal Accidents Act, 1855 (12 of 1855) | Two years | The date of the death of the person killed. |
| 83. | Under the Legal Representatives' Suits Act, 1855 (12 of 1855) against an executor, an administrator or any other representative. | Two years | When the wrong complained of is done. |
| 84. | Against one who, having a right to use property for specific purposes perverts it to other purpose. | Two years | When the perversion first becomes known to the person injured thereby. |
| 85. | For compensation for obstruction a way or a watercourse. | Three years | The date of the obstruction. |
| 86. | For compensation for diverting a watercourse | Three years | The date of the diversion. |
| 87. | For compensation for trespass upon immovable property. | Three years | The date of the trespass. |
| 88. | For compensation for infringing copyright or any other exclusive privilege. | Three years | The date of the infringement. |
| 89. | To restrain waste. | Three years | When the waste begins. |
| 90. | For compensation for injury caused by an injunction wrongfully obtained. | Three years | When the injunction ceases. |
| 91. | For compensations – | | |
| | a) for wrongfully taking or detaining any specific movable property lost, or acquired by theft, or dishonest misappropriation or conversion; | Three years | When the person having the right to the possession of the property first learns in whose possession it is. |
| | b) for wrongfully taking or injuring or wrongfully detaining any other specific movable property. | Three years | When the property is wrongfully taken or injured, or when the detainer's possession becomes unlawful. |

PART VIII – SUITS RELATING TO TRUST PROPERTY

92. To recover possession of immovable property conveyed or bequeathed in trust and afterwards transferred by the trust for valuable consideration. **Twelve years** When the transfer becomes known to the plaintiff.
93. To recover possession of movable property conveyed or bequeathed in trust and afterwards transferred by the trustee for a valuable consideration. **Three years** When the transfer becomes known to the plaintiff.
94. To set aside a transfer of immovable property comprised in a Hindu, Muslim or Buddhist religious or charitable endowment, made by a manager thereof for a valuable consideration. **Twelve years** When the transfer becomes known to the plaintiff.
95. To set aside a transfer of movable property comprised in a Hindu, Muslim or Buddhist religious or charitable endowment, made by a manager thereof for a valuable consideration. **Three years** When the transfer becomes known to the plaintiff.
96. By the manager of a Hindu, Muslim or Buddhist religious or charitable endowment to recover possession of movable or immovable property comprised in the endowment which has been transferred by a previous manager for a valuable consideration. **Twelve years** The date of death, resignation or removal of the transfer or the date or appointment of the plaintiff as manager of the endowment, whichever is later.

PART IX – SUITS RELATING TO MISCELLANEOUS MATTERS

97. To enforce a right of pre-emption whether the right is founded on law or general usage or on a special contract. **One year** When the purchaser takes under the sale sought to be impeached, physical possession of the whole or part of the property sold, or, where the subject-matter of the sale does not admit of physical possession of the whole or part of the property, when the instrument of sale is registered.
98. By a person against whom [an order referred to in rule 63 or in rule 103] of Order II of the Code of Civil Procedure, 1908 (5 of 1908) or an order under Section 28 of the Presidency Small Cause Courts Act, 1882 (15 of 1882) (15 of 1882) has been made, to establish the right which he claims to the property comprised in the order. **One year** The date of the final order.
99. To set aside a sale by a civil or revenue Court or a sale for arrears of Government revenue or for any demand recoverable as such arrears. **One year** When the sale is confirmed or would otherwise have become final and conclusive had no such suit been brought.
100. To alter or set aside any decision or order of a civil Court in any **One year** The date of the final decision or order by the Court or the date of the act or order

	proceeding other than a suit or any act or order of an officer or Government in his official capacity.			of the officer as the case may be.
101.	Upon a judgment including a foreign judgment or a recognizance.	Three years		The date of the judgment or recognizance.
102.	For property which the plaintiff has conveyed while insane.	Three years		When the plaintiff is restored to sanity and has knowledge of the conveyance.
103.	To make good out of the general estate of a deceased trustee the loss occasioned by a breach of trust.	Three years		The date of the trustee's death or if the loss has not then resulted, the date of the loss.
104.	To establish a periodically recurring right.	Three years		When the plaintiff is first refused the enjoyment of the right.
105.	By a Hindu for arrears of maintenance.	Three years		When the arrears are payable.
106.	For legacy or for a share of a residue bequeathed by a testator or for a distributive share of the property of an intestate against an executor or an administrator or some other person legally charged with the duty of distributing the estate.	Twelve years		When the legacy or share becomes payable.
107.	For possession of a hereditary office. <i>Explanation:</i> A hereditary office is possessed when the properties thereof are usually received, or (if there are no properties) when the duties thereof are usually performed.	Twelve years		Whether defendant takes possession of the office adversely to the plaintiff.
108.	Suit during the life of a Hindu or Muslim female by a Hindu or Muslim who, if the female died at the date of instituting the suit, would be entitled to the possession of land, to have an alienation of such land made by the female declared to be void except for her life or until her marriage.	Twelve years		The date of the alienation.
109.	By a Hindu governed by Mitakshara law to set aside his father's alienation of ancestral property.	Twelve years		When the alienation takes possession of the property.
110.	By a person excluded from a joint family property to enforce a right to share therein.	Twelve years		When the exclusion becomes known to the plaintiff.
111.	By or on behalf of any local authority for possession of any public street or road or any part thereof from which it has been dispossessed or of which it has discontinued the possession.	Thirty years		The date of the dispossession or discontinuance.
112.	Any suit (except a suit before the Supreme Court in the exercise of its original jurisdiction) by or on behalf of the Central Government or any State Government including the Government of the State of Jammu and Kashmir.	Thirty years		When the period of limitation would begin to run under this Act against a like suit by a private person.

PART X – SUITS FOR WHICH THERE IS NO PRESCRIBED PERIOD

113. Any suit for which no period of limitation is provided elsewhere in this Schedule. **Three years** When the right to sue accrues.

SECOND DIVISION - APPEAL

114. Appeal from an order of acquittal, -
- a) under sub-section (1) or sub-section (2) of Section 417 of the Code of Criminal Procedure, 1898 (5 of 1898). **Ninety days** The date of the order appealed from.
 - b) Under sub-section (3) of Section 417 of that code. **Thirty days** The date of the grant of special leave.
115. Under the Code of Criminal Procedure 1898 (5 of 1898), -
- a) From a sentence of death passed by a Court of Session or by a High Court in the exercise of its original criminal jurisdiction. **Thirty days** The date of the sentence.
 - b) From any other sentence or any order not being an order of acquittal, -
 - i) to the High Court, **Sixty days** The date of the sentence or order.
 - ii) to any other Court. **Thirty days** The date of the sentence or order.
116. Under the Code of Criminal Procedure, 1908 (5 of 1908), -
- a) to a high Court from any decree or order; **Ninety days** The date of the decree or order.
 - b) to any other Court from any decree or order. **Thirty days** The date of the decree or order.
117. From a decree or order of any High Court to the same Court. **Thirty days** The date of the decree or order.

PART I – APPLICATIONS IN SPECIFIED CASES

118. For leave to appear and defend a suit under summary procedure. **Ten days** When the summons is served.
119. Under the Arbitration Act, 1940 (10 of 1940), -
- a) for the filing in Court of an award **Thirty days** The date of service of the notice of the making of the award.
 - b) for setting aside an award or getting an award remitted for reconsideration. **Thirty days** The date of service of the notice of the filing of the award.
120. Under the Code of Civil Procedure, 1908 (5 of 1908), to have the legal representative of deceased plaintiff or appellant or of a deceased defendant or respondent, made a party. **Ninety days** The date of death of the plaintiff, appellant, defendant or respondent as the case may be.

121. Under the same Code for an order to set aside an abatement.	Sixty days	The date of abatement.
122. To restore a suit or appeal or application for review or revision dismissed for default of appearance or for want of prosecution or for failure to pay costs of service of process or to furnish security for costs.	Thirty days	The date of dismissal.
123. To set aside a decree passed ex-parte or to re-hear an appeal decreed or heard ex-parte. <i>Explanation:</i> For the purpose of this Article, substituted service under rule 20 of Order V of the Code of Civil Procedure, 1908 (5 of 1908) shall not be deemed to be service.	Thirty days	The date of the decree or where the summons or notice was not duly served, when the applicant had knowledge of the decree.
124. For a review of judgment by a Court other than the Supreme Court.	Thirty days	The date of the decree or order.
125. To record an adjustment or satisfaction of a decree.	Thirty days	When the payment or adjustment is made.
126. For the payment of the amount of a decree by installments.	Thirty days	The date of the decree.
127. To set aside a sale in execution of a decree, including any such application by a judgment-debtor.	Sixty days	The date of the sale.
128. For possession by one dispossessed of immovable property and disputing the right of the decree-holder or purchaser at a sale in execution of a decree.	Thirty days	The date of the dispossession.
129. For possession after removing resistance or obstruction to deliver of possession of immovable property decreed or sold in execution of a decree.	Thirty days	The date of resistance or obstruction.
130. For leave to appear as a pauper – a) to the High Court; b) to any other Court	Sixty days Thirty days	The date of decree appealed from. The date of decree appealed from.
131. To any Court for the exercise of its powers of revision under the Code Civil procedure, 1908 (5 of 1908), or the Code of Criminal Procedure, 1898 (5 of 1898).	Ninety days	The date of the decree or order or sentence sought to be revised.
132. To the High Court for a certificate of fitness to appeal to the Supreme Court under clause (1) of Article 132, Article 133 or sub clause (c) of (1) or Article 134 of the Constitution or under any other law for the time being in force.	Sixty days	The date of the decree, order or sentence.

133. To the Supreme Court for special leave to appeal, -

- a) in a case involving death sentence;
- b) in a case where leave to appeal was refused by the High Court
- c) in any other case

Sixty days

The date of the judgment, final order or sentence.

Sixty days

The date of the order of refusal.

Ninety days

When date of the order judgment or order.

One year

When the sale becomes absolute

134. For delivery of possession by a purchaser or immovable property at a sale in execution of a decree.

135. For the enforcement of a decree granting a mandatory injunction.

Three years

The date of the decree or where a date is fixed for performance, such date.

136. For the execution of any decree (other than a decree granting a mandatory injunction) or order of any civil Court.

Twelve years

When the decree or order becomes enforceable or where the decree or any subsequent order directs any payment of money or the delivery of any property to be made at a certain date or at recurring default in making the payment or delivery in respect of which execution is sought, takes place:

Provided that an application for the enforcement or execution of a decree granting a perpetual injunction shall not be subject to any period of limitation.

PART II- OTHER APPLICATION

137. Any other application for which no period of limitation is provided elsewhere in this division.

Three years

When the right to apply accrues.