

LAW OF LIMITATION

CONTENTS

PREAMBLE

1. Preamble.....	1
2. History of law of limitation.....	3
3. Statement of objects and reasons.....	4
4. Intention of the legislature.....	4
5. Casus Omissus.....	5
6. Headings.....	5
7. Marginal notes.....	5
8. Proviso.....	6
9. Sections.....	6
10. Whether a provision is mandatory or directory.....	6
11. Conflict between general provision and specific provision.....	7
12. Golden Rule of interpretation.....	7
13. Statutes are presumed to be valid.....	7
14. Words not defined.....	8
15. Report of Law Commission.....	8
16. Legislative entries.....	8
17. Supply of non-existing words.....	8
18. Penal Provisions.....	8
19. Deeming Provision.....	8
20. Reading down.....	8
21. Limitation Act is a self contained, exhaustive code.....	8
22. Public Policy.....	9
23. Limitation Act and Criminal Proceeding.....	9

PART -- I

PRELIMINARY

1. Short title extent and commencement.....	10
2. Definitions.....	12
1. Scope.....	14
2. Applicant.....	15
3. Application.....	15
4. Bill of Exchange.....	16
5. Bond.....	16
6. Defendant.....	18

7. Definition of Easement.....	18
8. Essentials of an "Easement".....	19
9. "Profits-a-remdre" and "Easements".....	21
10. "Customary" and "public rights" and "Easements".....	23
11. "Natural rights" and "Easements".....	24
12. "Licences" and "Easements".....	24
13. "Covenants" and "Easements".....	25
14. "Quasi-Easements" and "Easements".....	25
15. "Encumbrances" and "Easements".....	26
16. Pleadings and proof.....	26
17. ownership and Easements.....	28
18. Co-ownership and Easements.....	29
19. The rights of way.....	30
20. Easement of light.....	32
21. Easements of access of air.....	32
22. Easements regarding pollution of air.....	32
23. Easements relating to water.....	33
24. Easements of support.....	34
25. Whether the claim to overhang branches be claimed as an easement?.....	34
26. Whether a right to commit nuisance be claimed as an easement?.....	35
27. Certain rights which may amount to easement.....	35
28. Positive easements and negative easements.....	36
29. Miscellaneous Easements.....	36
30. Foreign country.....	37
31. Good faith.....	37
32. plaintiff.....	37
33. Period of limitation.....	37
34. Promissory note.....	38
35. Suit.....	38
36. Tort.....	39
37. Trustee.....	39

PART -- II

LIMITATION OF SUITS, APPEALS AND APPLICATIONS

3. Bar of Limitation.....	39
1. Scope.....	42
1A. Applicability.....	43
2. Law of Limitation is a procedural Law.....	44

3. Limitation does not extinguish the right but only bars the remedy.....	44
4. Section 3 peremptory and should be given effect to though not referred to in the pleadings.....	45
5. The maxim " <i>Lex non Cogit and impossibilia</i> " does not prevail against the provisions of Section 3 of the Act.....	45
6. Subject to the provisions contained in Section 4 to Section 24.....	46
7. Court cannot grant exemption from limitation on equitable considerations.....	46
8. Limitation Act is a complete code by itself.....	47
9. Inherent powers cannot be invoked to extend the period of limitation.....	47
10. No principle can be invoked to add to or supplement the provisions of the Limitation Act.....	47
11. A decree obtained in a suit which was barred by time cannot be treated as a nullity.....	48
12. Doctrine of lispendents cannot arrest the running of period of limitation.....	48
13. Every suit instituted.....	49
14. Appeal preferred.....	51
15. Application made.....	52
16. After the prescribed period.....	52
17. Shall be dismissed.....	53
18. Although limitation has not been setup as a defence.....	53
19. Section 3 of the Act is applicable in case of special or local law.....	54
20. When the plaint is presented to the proper officer.....	55
21. The want of jurisdiction may be either territorial or pecuniary.....	55
22. Plaint presented to a court lacking jurisdiction.....	55
23. Plaint presented with deficient court fee.....	56
24. Plaint amended at a later stage.....	58
25. Plaint presented to a higher court.....	58
26. Plaint disclosing a clear case of bar of limitation.....	59
27. When his application for leave to sue as a pauper is made.....	59
28. Cause of action and bar of limitation are quite distinct.....	60
29. Sub-section (2) (a) (iii).....	60
30. Sub-section (2) (b).....	63
31. Sub-section (2) (c).....	64

32. Laches.....	66
33. Waiver	66
34. Abandonment.....	66
35. Admission.....	66
36. There cannot be an agreement affecting the question of limitation.....	66
37. No conversion of proceeding if it will be barred by limitation.....	66
38. Withdrawing of suit does not save limitation.....	67
39. Plaint returned for want of pecuniary jurisdiction.....	67
40. There is no bar of limitation to defence under Section 53-A of the Transfer of Property Act.....	67
41. A mortgage barred by limitation can be used as a shield to defend possession.....	67
42. Section 3 does not refer to a defendant.....	68
43. Defendant can urge that a lease was obtained by undue influence or misrepresentation though a suit by him to set aside the instrument is barred by time.....	68
44. The plea that a transaction is voidable can be raised in defence though the prior suit to void the transfer was dismissed as barred by limitation.....	68
45. The defence that the prior decrees were obtained by fraud can be taken though a suit to set aside the decrees is barred by time.....	68
46. The remedy by a suit and defence in a suit should be treated on a different footing.....	69
47. Tacking agreement or bond to a mortgage can be pleaded in defence though the right to enforce it is statute barred.....	69
48. Right of the hypothecatee to be in possession of pledged Goods.....	69
49. Right of the court auction purchaser of a mortgage right.....	70
50. Right of subjugation cannot be setup as defence where the mortgage discharged is time barred one.....	70
51. Vendee's right to defend his title though his remedy by way of rectification of instrument is a time barred one.....	71
52. The general assertion "that the suit is time barred" is of no value.....	71
53. Court can suo motu decide the question of limitation if it is a pure question of law which can be decided on admitted facts.....	72
54. Where the question of limitation is a pure question of law it can be raised at any stage of the proceedings.....	72
55. Where the question of limitation is a question of fact also, it cannot be raised for first time in appeal as a matter of right.....	73

CONTENTS

(v)

56. Question of limitation in remand matters.....	74
57. There cannot be an estoppel on the plea of limitation.....	74
58. The plea of limitation has to be examined with reference to all the available statutory provisions.....	74
59. Section 3 of the Limitation Act and Order VII Rule 6 Code of Civil Procedure.....	75
60. New plea on question of limitation can be taken if the defendants are not prejudiced.....	77
61. The law of limitation is addressed to the commence- ment of a proceeding and not to its disposal.....	77
62. Section 3 of the limitation Act and Order VII Rule 11 Code of Civil Procedure.....	77
63. Question of limitation in insolvency proceedings.....	78
64. Question of limitation in arbitration proceedings.....	79
65. Question of limitation in cases of petitions and applications under other Acts.....	80
66. Plea of limitation and Resjudicata.....	82
67. Burden of proof.....	84
68. Question of limitation in the case of execution of a foreign decree.....	84
69. No provision to condone delay in filing suit.....	84
70. Time barred amendment.....	85
71. Mere pendency of appeal.....	85
72. Special provision under N.I. Act.....	85
73. Reference under L.A. Act.....	85
74. Execution.....	85
75. Suit for recovery of tax paid in excess.....	85
76. Claim under Motor Vehicles Act, 1988.....	85
77. Revision.....	85
78. Review.....	86
79. Technical plea.....	86
80. Counter claim.....	86
81. Question of limitation in continuing guarantee.....	86
82. Condonation of Delay.....	86
4. Expiry of the prescribed period when Court is closed.....	86
1. Scope.....	87
2. Section 10 of the General Clauses Act and Section 4 of the Limitation Act.....	88
3. Secs.4 of the Limitation Act is not applicable to Private Agreements.....	91
4. Section 4 and Section 12 of the Limitation Act.....	91