

No. 3 of 1988.

Frauds and Limitations Act 1988.

Certified on: / /20 .

INDEPENDENT STATE OF PAPUA NEW GUINEA.



No. 3 of 1988.

Frauds and Limitations Act 1988.

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INDEPENDENT STATE OF PAPUA NEW GUINEA.



AN ACT

entitled

Frauds and Limitations Act 1988,

Being an Act to make provisions with respect to—

- (a) transactions that must be, or be evidenced, in writing; and
- (b) the limitation period for the bringing of actions,

and for related purposes,

MADE by the National Parliament.

PART I. – PRELIMINARY.

1. APPLICATION TO THE STATE.

This Act binds the State.

PART II. – TRANSACTIONS THAT MUST BE, OR BE EVIDENCED, IN WRITING.

Division 1.

Land Transactions.

2. CREATION, ETC., OF INTEREST IN LAND.

(1) Subject to Subsection (2) and Section 5–

- (a) no interest in land can be created or disposed of except–
 - (i) by writing signed–
 - (A) by the person creating or disposing of the interest; or
 - (B) by that person’s agent lawfully authorized in writing for the purpose; or
 - (ii) by operation of law; or
 - (iii) by will; and
- (b) a declaration of trust respecting any land or interest in land must be manifested and proved–
 - (i) by some writing signed by a person lawfully able to declare such trust; or
 - (ii) by that person’s will; and
- (c) a disposition of an equitable interest or trust subsisting at the time of the disposition must be–
 - (i) in writing signed–
 - (A) by the person disposing of the equitable interest or the trust; or
 - (B) by that person’s agent lawfully authorized in writing for the purpose; or
 - (ii) by will.

(2) Nothing contained in Subsection (1) shall be construed as affecting the creation or operation of resulting, implied or constructive trusts, and that subsection shall be read and construed accordingly.

3. EFFECT WHERE INTEREST IN LAND CREATED BY PAROL.

(1) Subject to Subsection (2) and Section 5, where–

- (a) an interest in land is created by parol; and
- (b) the creation of that interest is not in accordance with Section 2(1)(a)(i),

that interest shall, notwithstanding any consideration having been given in respect of it, have the force and effect of an interest at will only.

(2) Nothing contained in Subsection (1) shall be construed as affecting the creation, by parol, of a lease that—

- (a) takes effect in possession for a term not exceeding three years; and
- (b) is at the best rent that can reasonably be obtained without taking a fine,

and that subsection shall be read and construed accordingly.

4. CONTRACTS FOR THE SALE OF LAND, ETC.

No action shall be brought upon a contract for the sale or other disposition of land or an interest in land unless the contract, or some note or memorandum of the contract, upon which the action is brought is in writing signed—

- (a) by the person against whom the action is brought; or
- (b) by an agent of that person lawfully authorized in writing for the purpose.

5. SAVINGS IN RESPECT OF SECTIONS 2 AND 3.

Nothing contained in Section 2 or 3 shall—

- (a) invalidate dispositions by will; or
- (b) affect any interest validly created before the commencement of this Act; or
- (c) affect the right to acquire an interest in land by virtue of possession; or
- (d) affect the operation of the law relating to part performance.

Division 2.

Guarantees, Part-Payments, Acknowledgements, Endorsements, etc.

6. CONSIDERATION FOR GUARANTEE NEED NOT BE IN WRITING.

Where—

- (a) a person promises to answer for the debt, default or miscarriage of another person; and
- (b) the promise is in writing signed—
 - (i) by the person making the promise; or
 - (ii) by some other person lawfully authorized for the purpose,

that promise is valid to support an action, suit or other proceeding to enforce the promise notwithstanding that—

- (c) the consideration given in respect of the promise is not in writing; or
- (d) the consideration cannot be inferred from a written document.

7. FRESH ACCRUAL OF ACTION ON ACKNOWLEDGEMENT OR PART-PAYMENT.

(1) Subject to Subsection (2) and Sections 8, 9 and 10—

(a) where—

- (i) a right of action has accrued to recover a debt or other liquidated pecuniary claim; or
- (ii) a claim is made to, or to any share or part in, the personal estate of a deceased person; and

(b) the person—

- (i) liable in respect of that debt or other liquidated pecuniary claim; or
- (ii) accountable in respect of that personal estate,

acknowledges or makes a part payment in respect thereof,

the right to the debt or other liquidated pecuniary claim, or the claim to, or to a share or part in, the personal estate of the deceased person, is deemed to have accrued on, and not before, the date of the acknowledgement or the date of the last payment, as the case may be.

(2) Notwithstanding Subsection (1), where in respect of any rent or any interest that is due, a person, at any time, makes a part-payment, that part-payment—

- (a) shall not extend the period for claiming the remainder then due; and
- (b) shall, if it is a payment in respect of interest, be treated as a payment in respect of the principal debt.

8. ACKNOWLEDGEMENT OF PART-PAYMENT BY AGENT.

An acknowledgement or part-payment under Section 7—

(a) may be made by the agent of the person—

- (i) liable in respect of the debt or other liquidated pecuniary claim; or
- (ii) accountable in respect of the personal estate; and

(b) shall be made to the person, or to the agent of the person—

- (i) whose claim is being acknowledged; or
 - (ii) in respect of whose claim the payment is being made,
- as the case may be.

9. ACKNOWLEDGEMENT TO BE IN WRITING.

An acknowledgement under Section 7 or 8 shall be in writing signed by the person making the acknowledgement.

10. EFFECT OF ACKNOWLEDGEMENT.

(1) Subject to Subsection (2), an acknowledgement of a debt or other liquidated pecuniary claim binds the person making the acknowledgement and his successors, but does not bind any other person.

(2) Notwithstanding Subsection (1), where—

- (a) an acknowledgement is made after the expiration of a period of limitation specified for the bringing of an action to recover a debt or other liquidated pecuniary claim; and
- (b) the liability devolves on a successor on the determination of—
 - (i) a preceding estate; or
 - (ii) an interest in property under a settlement; and
- (c) the determination takes effect before the date of the acknowledgement,

that acknowledgement shall not bind the successor.

11. EFFECT OF PART-PAYMENT.

(1) Subject to Subsection (2), a part-payment made in respect of a debt or other liquidated pecuniary claim binds all persons liable in respect of that debt or liquidated pecuniary claim.

(2) Notwithstanding Subsection (1), a part-payment made after the expiration of a period of limitation specified for the bringing of an action to recover a debt or other liquidated pecuniary claim—

- (a) shall not bind any person other than the person making the part-payment and his successors; and
- (b) shall not bind any successor on whom the liability devolves on the determination of—
 - (i) a preceding estate; or
 - (ii) an interest in property under a settlement,

taking effect before the date of the part-payment.

12. EFFECT OF ACKNOWLEDGEMENT BY PERSONAL REPRESENTATIVES.

Where one of several personal representatives—

- (a) acknowledges any claim to, or to a share or interest in, the personal estate of a deceased person; or

(b) makes a payment in respect of a claim referred to in Paragraph (a), that acknowledgement or payment, as the case may be, binds the estate of the deceased person.

13. INTERPRETATION.

For the purposes of Sections 10 and 11, “**successor**” in relation to a mortgagor or other person liable in respect of a debt or other liquidated pecuniary claim means that mortgagee’s or that other person’s—

- (a) personal representative; and
- (b) any other persons on whom—
 - (i) the rights under the mortgage; or
 - (ii) the liability in respect of the debt or claim,

as the case may be, devolve, whether such devolution takes effect on death, bankruptcy, the disposition of property, the determination of a limited estate or interest in settled property or otherwise.

14. PROMISES BY INFANTS.

Where a person, not being of full age—

- (a) incurs a debt; or
- (b) enters into a simple contract; or
- (c) makes a promise,

and that person, on attaining full age—

- (d) in respect of Paragraph (a), promises to repay the debt; or
- (e) in respect of Paragraph (b) or (c), ratifies the contract or the promise, as the case may be,

no action shall be brought to charge that person upon the promise referred to in Paragraph (d) or upon the ratification referred to in Paragraph (e) unless that promise or ratification, as the case may be, is in writing signed by that person.

15. REPRESENTATIONS, ETC., AS TO CHARACTER.

Where a person, to the intent or for the purpose that another person may obtain credit, money or goods—

- (a) makes a representation; or
- (b) gives an assurance,

in respect of the character, conduct, credit, ability, trade or dealings of that other person, and that representation or assurance, as the case may be, is not—

(c) in writing; and

(d) signed by that person,

no action shall be brought against that person by reason only of that representation or that assurance.

**PART III. – LIMITATION PERIODS FOR ACTIONS IN CONTRACT, TORT,
ETC.**

16. LIMITATION OF ACTIONS IN CONTRACT, TORT, ETC.

(1) Subject to Sections 17 and 18, an action—

- (a) that is founded on simple contract or on tort; or
- (b) to enforce a recognisance; or
- (c) to enforce an award, where the submission is not by an instrument under seal; or
- (d) to recover any sum recoverable by virtue of any enactment, other than a penalty or forfeiture or sum by way of penalty or forfeiture,

shall not be brought after the expiration of six years commencing on the date on which the cause of action accrued.

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

(3) Subject to Subsection (4), an action upon a specialty shall not be brought after the expiration of 12 years commencing on the date when the cause of action accrued.

(4)¹ ²Nothing contained in Subsection (3) shall be construed as affecting any action for which a period of limitation is specified by any other Act, and that subsection shall be read and construed accordingly.

(5) An action shall not be brought upon any judgment after the expiration of 12 years commencing on the date when the judgement became enforceable.

(6) No arrears of interest in respect of any judgment debt shall be recovered after the expiration of six years commencing on the date when the interest became due.

(7) Subject to Subsection (8), an action to recover any penalty or forfeiture, or sum by way of penalty or forfeiture, recoverable by virtue of any enactment shall not be brought after the expiration of two years commencing on the date when the cause of action accrued.

(8) For the purpose of Subsection (7) the word “penalty” does not include a fine to which any person is liable on conviction of a criminal offence.

17. ACTIONS WITHIN THE ADMIRALTY JURISDICTION OF THE NATIONAL COURT.

(1) Subject to Subsection (2), Section 16 does not apply to any cause of action—

- (a) that is within the admiralty jurisdiction of the National Court; and

¹ Section 16(4) was repealed and replaced by the *Frauds and Limitations (Amendment) Act 1992* (No. 6 of 1992).

² Section 16(4) was repealed and replaced by the *Frauds and Limitations (Amendment) Act 1992* (No. 6 of 1992).

(b) that is enforceable *in rem*.

(2) Notwithstanding Subsection (1), Section 16(1) applies to, and in relation to, an action to recover seamen's wages.

18. CLAIMS FOR SPECIFIC PERFORMANCE, ETC.

Section 16 does not apply to any claim for specific performance of a contract or for an injunction or for other equitable relief.

19. ACTIONS CLAIMING PERSONAL ESTATE OF A DECEASED PERSON, ETC.

(1) No action in respect of any claim—

(a) to the personal estate; or

(b) to any share or interest in the personal estate,

of a deceased person, whether such claim is under a will or on intestacy, shall be brought after the expiration of 12 years commencing on the date when the right to receive the personal estate or the share or interest in the personal estate accrued.

(2) No action to recover arrears of interest in respect of any legacy, or damages in respect of such arrears, shall be brought after the expiration of six years commencing on the date when the interest became due.

20. PROVISIONS AS TO SET-OFF OR COUNTERCLAIM.

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

PART IV. – DISABILITIES.**21. INTERPRETATION.**

For the purposes of this Part a person shall be deemed to be under a disability—

- (a) if he is under the age of 21 years; or
- (b) if he is of unsound mind within the meaning of Part VIII. (Mental disorders and treatment) of the *Public Health Act 1973*.

22. EXTENSION OF LIMITATION PERIOD IN CASE OF DISABILITY.

(1) Subject to the provisions of this section, where—

- (a) a right of action in respect of which a period of limitation is specified by this Act accrues to a person; and
- (b) on the date when the right of action accrues the person is under a disability,

the action may be brought at any time before the expiration of six years commencing on the date when the person ceases to be under the disability, notwithstanding that the period of limitation has expired.

(2) Subsection (1) does not affect any case where the right of action first accrued to a person, not being a person under a disability, through whom the person under a disability claims.

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

(4) No action to recover land or money charged on land shall, by virtue of this section, be brought by any person after the expiration of 30 years commencing on the date when the right of action accrued to that person or to some other person through whom that person claims.

(5) This section does not apply to any action to recover a penalty or forfeiture, or sum by way of penalty or forfeiture, by virtue of any enactment, except where the action is brought by an aggrieved party.

PART V. – REPEAL.

23. REPEAL.

The *Statute of Frauds and Limitations Act* (Chapter 330) is repealed.

Office of Legislative Counsel, PNG