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இலங்கை சட்ட உதவி ஆணைக்குழு
Legal Aid Commission of Sri Lanka



Prescription Law



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Ministry of Justice



Prescription Law

Legal Aid Commission of Sri Lanka

Contribution By
Legal Officer Chulari Hettiarachchi, LLB



Message from The Chairman

The Legal Aid Commission was established through Act No. 27 of 1978. Legal Aid Commission is a statutory legal institution which provides free legal consultations to an underprivileged community through a team of qualified lawyers. At the Commission, we provide legal assistance in multiple areas such as human rights, child rights, women's rights, elders' rights, family law, labor law to name a few. We have extended our scope of aid for awareness and guidance to provide relief in as many civil areas of law as possible.

Even though there are many organizations that deal with violation of rights, Legal Aid Commission is the only institution with the legal power to pursue legal proceedings as a statutory entity of the Sri Lankan Government.

The Legal Aid Commission provides legal consultations irrespective of income, social status, race, nationality, religion, gender or age. We are proud to serve deserving yet marginalized and vulnerable individuals with legal aid that has helped thousands island-wide obtain the equal access to justice.

I hope this series of booklets will further empower communities, officials and individuals to understand the law, to be aware of their rights and obligations, and to know that they can seek assistance from the committed team of legal officers of the Legal Aid Commission.

Rohan Sahabandu - PC
Chairman, Legal Aid Commission

The Legal Aid Commission of Sri Lanka

The Legal Aid Commission of Sri Lanka (LAC) was established by the Act No 27 of 1978, to provide legal assistance to vulnerable and needy communities and individuals whose access to justice is restricted or curtailed by social status, economic status, nature of their gender, cast, age or other criteria.

It is considered the foremost from amongst other institutions and organizations that provide legal aid, mainly due to its sustainability and stability.

The Legal Aid Commission is present in all 9 provinces across Sri Lanka in 84 centres educating, creating awareness and providing legal aid to all without prejudice. It consists of over 120 permanent legal officers and over 1000 panel lawyers from the regional Bar Associations.

The Commission's vision is to create a society where all deserving Sri Lankans must have equal access to justice.

The Legal Aid Commission has undertaken many ambitious projects to achieve this objective. The Act states that the Legal Aid Commission's mission is to provide Legal Aid to all the "Deserving Persons" in the Country.

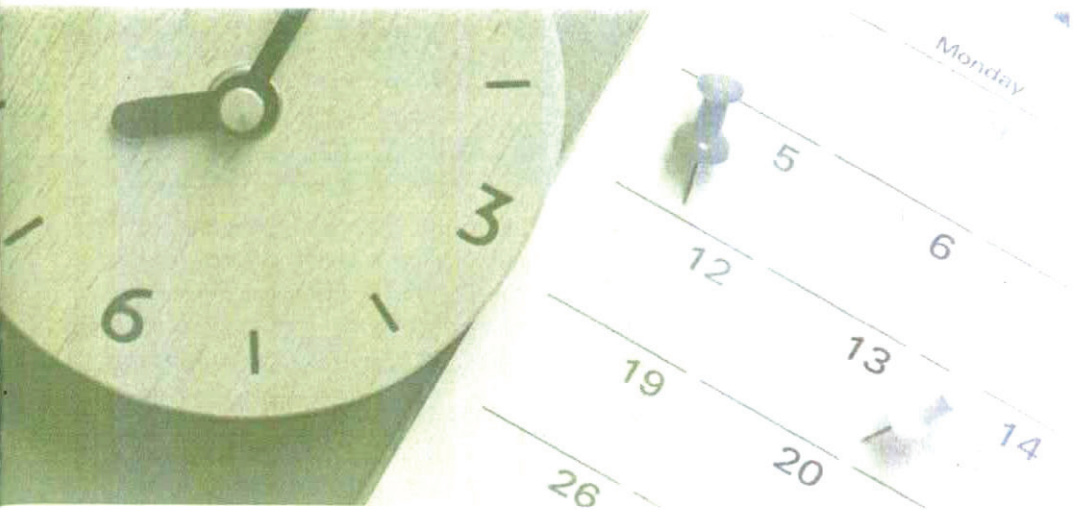
Our Vision

EQUAL ACCESS TO JUSTICE

To create a society where all deserving Sri Lankans irrespective of their economic or social status, gender, caste, creed or nationality or the disabled have equal access to justice.

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'The presumption that ignorance of law is not an excuse' is a basic principle known by everyone. This means that ignorance of applicable laws does not become an excuse for a person who is seeking redress in the face of law.

What is Prescription?

Prescription is the effect of the lapse of time in creating and destroying right. Having an understanding about the law of prescription especially by the ordinary public is important because the court does not allow a case to be brought to court after the lapse of the prescriptive period. In an instance where a case has been dismissed on the basis that the prescriptive period has lapsed, a person cannot use the excuse that he was ignorant of the prescriptive period.

An important point to notice here is that a person who seeks redress in courts must present the case to court as early as possible.

“ The preaching of Buddha;
“*Appamado amatha padam pamado
machcuno padam*” which states that being late
will lead to disappointment is applicable here.”

From a legal perspective, this principle is embedded in the Roman law principle, 'law protects the vigilant, Not the Sleepy'. Thereby, we will now analyze the law applicable in such instances.

Law of Prescription Related to Lands

The saying that 'he acquired the ownership of the land' or 'I have owned this land and have possessed it for a long period of time' are common sayings in society. Although the aim of this brief is not to analyze the law related to such ownership, a brief description on the law will be presented for the understanding of the general public. The applicable law is stated in Section 03 of the Prescription Ordinance.

If a person claiming ownership possess undisturbed and uninterrupted possession of the land or the immovable property, by a title adverse to or independent of that of the plaintiff in such action for a period of ten years, such person may claim the ownership of the land. However, the law does not apply to land registered under the Act No 21 of 1998 Registration of Ownership Ordinance. This means that a person claiming ownership if he proves undisturbed, uninterrupted and independent possession for a period of 10 years shall have an opportunity to claim the ownership of the property. However, the uninterrupted and undisturbed possession clause is limited to a certain extent by Section 13 of the Ordinance. As stated in that Section, when the possession is enjoyed against the rights of another and when such person is under disabilities stated in the Section; infancy, lunacy, idiocy, lack of sound mind or is absent beyond the seas, prescription cannot be claimed against such person.



LAND

Certain factors are considered when establishing possession over a period of ten years. They are;

Prescription cannot be claimed and undisturbed and uninterrupted possession should be established against a person who is not a co-heir to the same property.

Further the person should not be falling into disabilities stated in Section 13

In addition, a person who has been enjoying a property through a lease or a rent agreement or through the permission of the landowner cannot claim ownership on the basis that he enjoyed possession for a period over ten years.

To understand the legal principle related to this aspect, the recent amendment brought through the 2016 (Special Provisions) should be studied.

Section 20 (1) of the Act;

According to the preamble of the Act, the law has stated remedies to be taken in respect to lands possessed by people who have been subject to various terrorist activities and who have not been able to appear before courts to claim ownership during the period of May 01 1985 and 18 of May 2009.

In an instance where a case has arisen for a person to claim the ownership of any immovable property, including land and where such person is a disadvantaged person according to the Act, as long as such person remains a disadvantaged person another person cannot claim ownership on the basis established in Section 03 of the Act.

The next important aspect of the law of prescription applicable to a case in which ownership is challenged, is that according to Section 04 of the Prescription Ordinance, any person who has been dispossessed of any immovable property can institute proceedings against the person dispossessing him at any time within one year of such dispossession. After proving such dispossession within one year before the action is brought, the plaintiff in such a case is entitled to a decree against the defendant for the restoration of such possession without the proof of title.

However, if the ownership is lost due to a decree issued by the court coming into force, the reliefs stated in Section 04 of the Ordinance cannot be sought.

In an instance where a case is filed regarding the prescription of a land, the prescription period is paused from the date the case is filed in court. Such period is not included in calculating the prescriptive time.

Prescription in a jointly owned land

When a person acquires an undivided right over any immovable property or land through devolution, such ownership does not provide a person a specific ownership under the law. In such instance the applicable law is the partnership law. All partners receive the rights related to every square inch of the undivided land.

The legal principle established in *Thilakarathne vs Bastian and Alwis vs Perera* is that all joint owners of a land become agents for each other and that even joint owners enjoy the property on behalf of each other. Therefore, if a joint owner is claiming prescriptive ownership of a specific part of a land, such person should submit evidence to negate the above presumptions.

Such position can be proved if the person claiming the prescriptive ownership has ejected, disposed or has done some act against the joint ownership of the other joint owners from the specific part of the property, and the period of prescription is calculated to be undisturbed and uninterrupted possession from ten years of such action.

Servitudes and Prescription

Ownership through servitude is often enjoyed over another person's property or land. Right of way, right of sunlight, right of air, right of water fall under rights acquired through a servitude. To acquire such servitude the specific party should prove undisturbed and uninterrupted possession of the right for a period of ten years.

■ **What can be done when a land has been mortgaged or is in a bond?**

The applicable law is stated in Section 05 of the Prescription Ordinance. A case claiming the recovery of sums to be acquired in respect to such bond must be instituted within 10 years. The period of ten years start from a specific date mentioned in such bond for payment and from the date of expiry of such date. Similarly in an instance where a condition in a bond is breached or the last date of payment of interest related to such bond and the case has not been filed within ten years from such date, a case cannot be maintained in relation to the matter as per Section 05 of the Ordinance.

■ **Partnership agreements, promissory notes, bills of exchange and written agreements**

In order to bring into force the conditions stated in a written agreement, cases should be instituted in court within 06 years from the date of such breach. In the case of a bill of exchange, cases should be filed within 06 years of the date of the last payment of interest.

Negambo Urban Council vs Benedict Fernando

The issue brought to court was whether an agreement to pay a fee for the supply of water was a written agreement or a debt. The court established that such agreement falls under a written agreement and is governed by Section 06 of the Act. Another important point to note is that, in a sales agreement case to claim the remaining sales price, the prescriptive period is 06 years. This has been established in the case Lamathani vs Ranmandole (26 NLR 406)

■ **Institution of a case based on a verbal agreement**

This is governed by Section 07 of the Prescription Ordinance. Most of the time this relates to movable properties. Cases to recover money given in debt without a written agreement also fall into this category. These provisions apply in order to bring into force the conditions stated in an agreement or promise which is not written. Such cases should be brought before courts within three years of reaching the agreement and the failure to do so would result in the lapse of the prescriptive period.

Thomas vs Murugesu 1883/5 SCC 174

The issue before courts was the failure to pay money in respect to a land by the vendee to the vendor. The case has been filed after the lapse of three years from the date of signing the deed. Thereby the court held that if the agreement between the parties does not fall under Section 07 of the Ordinance, it should be considered as a simple recovery of debt and be considered to have a prescriptive period of 03 years.

How can you recover money due from a sale of a good or performance of a service?

The law applicable in such situations is stated in Section 03 of the Ordinance. In order to recover such wage or money, a case should be instituted within one year of the date of such payment is to be received. Cases brought after the lapse of the prescriptive period cannot be maintained in court.

Illangakoon vs Ranathunga 1902

In this case the date in which the cause of action arose was debated. The court decided that cause of action arose on the date in which the property under dispute was required back and the period of prescription should be calculated from such date.

Claims in an instance of any loss or damage

Section 09 of the Prescription Ordinance is applicable in this instance. A person who has suffered some damage must bring the case before the expiration of 02 years from the date in which such cause of action arose.

As an example, if a person meets with a road accident, a case should be filed to claim damages in the District Court within two years from the date of the accident. A misconception of the general public regarding this is that an action to claim damages should be made after the conclusion of the case in the Magistrate Court in respect to the said accident. Yet, according to the Prescription Ordinance the period of two years stands.

Section 10 of the Prescription Ordinance

In any case, not provided for in Section 1-9 of the Ordinance or not provided for in the Ordinance the prescriptive period is stated to be three years from the rise of cause of action.

In *William vs Baker* it has been decided that Section 10 applies in an instance of claiming damage where a property has been fraudulently disposed of.

Rathnayake vs Mary Nona the issue was the revocation of a deed of gift by a donor. In this instance the donor gave birth to a legitimate child. Therefore in order to gift the property to that child, the revocation was needed and the court inquired into the period of prescription. The court decided that Section 10 is applicable in this instance and that the cause of action arose on the day the child was born.

Claims in Reconvention

Section 11 of the Ordinance applies in this instance. No claim in reconvention shall be maintained or by way of set off shall be allowed in respect of any demand after the right to sue in respect thereof shall be barred by any of the provisions hereinbefore contained.

Section 12 of Prescription Ordinance

“ The period of prescription stated in Sections 5,6,7,8,9,10 and 11 shall not be disposed unless through a written acknowledgement. ”

Nilbrett vs Cooray has held that admissions regarding a debt in a case and detachment from the Prescription Ordinance should be stated through written acknowledgments.

Application of Prescription in Matrimonial Matters and Rights of the State

Section 15 is applicable in this instance. Accordingly, the Prescription Ordinance is not applicable in instances related to matrimonial relations and the rights of the State.

How does it Apply in Fundamental Rights Cases?

The law related to fundamental rights is stated in the Constitution of Sri Lanka, i.e. Articles 10 to 14 in the Constitution of Sri Lanka 1978.

Article 10

“Freedom of thought, conscience and religion.

Article 11

“Freedom from torture, inhumane and degrading treatment .

Article 12(1) and 12(2)

“Every person is treated equal before the law.

The Six Sub Articles of Article 13

- No one shall be arrested except according to procedure established by law.
- Avoiding unlawful detention and punishment.
- Any person charged with an offense is entitled to be heard .
- No one to be sentenced to death or imprisonment unless by a proper order of court.
- Presumption of innocence.
- Prohibition of retrospective penal legislation.

Article 126 (2) states that in the infringement or imminent infringement of such right, applications should be made to the Supreme Court within a period of one month from such breach thereof by himself or through an attorney at law.

What is the Prescriptive Period Related to the Last Will of a Deceased Person?

Section 156 of the Civil Procedure Code is applicable in this instance. According to the Code, where a person has left a last will on the security of another person or when a last will has been found by a person, such person should present it before court within three months from such date.

Section 527 of the Code of Civil Procedure has made it a mandatory requirement to subject to Administered Conveyance where a property over 5 lakhs has been left at death without a last will. The letters of administration related to the property should be forwarded to courts within 3 months of the death of the person to whom the property belongs.

Prescriptive Period Under the Code of Civil Procedure

According to Section 22 of the Code, all objections for want of parties, joinder of parties or for misjoinder as co-plaintiffs shall be taken as early as possible and in all cases before the hearing.

Section 84 of the Code of Civil Procedure

When the court is satisfied that the summons has been duly served on the defendant and if the defendant fails to file his answer on or before the date fixed for filing the answer, the case can be heard ex parte against the defendant, i.e, without the defendant being present.

Section 86 (2) of the Code of Civil Procedure

Where within 14 days of the service of the decree entered into against the fault of the defendant, the ex parte decree can be set aside if the defendant makes an application satisfying the court that he had reasonable grounds for default of non-appearance.

How much time is allowed for Amendment of Pleadings?

➔ Section 93(1) of the Code of Civil Procedure Amendment Act No 9 of 1991, is applicable in this instance. Accordingly, Section 93 (1) states that upon application made to court before the first day fixed for trial in the presence of or with reasonable notice to all parties, the court has full power in amending in its discretion all pleadings of an action by addition, alternation or omission.

How much time is allowed in Filing the List of Documents and Witnesses for a Case?

➔ The law applicable in this instance is Section 121(2) of the Civil Procedure Code and Evidence Ordinance No 14 of 1995 (Special Provisions) Act. According to Section 121 (2), every party to a case upon notice to the other party must within 15 days prior to the date fixed for trial present a list of documents and witnesses that will be used and called for during the trial.

Evidence Ordinance No 14 of 1995 (Special Provisions) Act states that, if computer evidence or recorded evidence is to be used in a trial such evidence must be presented to court 45 days before the date fixed for trial.

What is the Prescriptive Law relating to the Sale of an Immovable Property through a Court Order?

➔ Section 282 and 283 is applicable in this instance. According to Section 282(1), the fiscal should report to the court every sale of immovable property made by him or under his direction within ten days after such sale is made. No sale of such immovable property is made absolute until thirty days have lapsed following the receipt of such report and the sale has been confirmed by court.

Section 282 (2), states that as aforesaid when the fiscal has made the required reporting, any person establishing to the satisfaction of the court an interest in such property, may make a petition to court on any material irregularity in publication.

According to Section 283 (1), when no such application is made within thirty days, the court may pass an order confirming the sale, after the expiration of thirty days.

What is the Prescriptive Period related to the Abatement of an Action by Court?

According to Section 402 of the Code, where it is necessary for a plaintiff to take a further step, to carry forward a case in court and where he fails to take such step the court can abate or lessen the action in such a case. Specifically, when a period of six months lapses from the date of the last entry of an order or record in the journal.

What is the Prescriptive Period in Civil Actions Against the State?

The provisions in Section 461 and 461A are applicable in this instance. Thereby no action shall be instituted against the AG, a minister or a public officer in respect to any matter done by him in his official capacity until one month has passed after written notice has been delivered to such AG, minister, parliamentary secretary or officer. Or, an action may be instituted once such representative of the State has left office, stating the cause of action, name and place of abode of such person instituting the action and the relief he claims. It is also stated that the plaint must contain a statement that such notice has been delivered or left.

What Prescriptive Time Period is Applicable to an Order for Dissolution of Marriage?

Section 604 and 605 are applicable in this instance. According to Section 604, every decree for dissolution of the marriage, made in the first instance, shall not be absolute until after the expiration of a period of three months from the pronouncement of the dissolution of marriage.

According to Section 605, when a decree nisi, a provincial decree of divorce, has been made and no sufficient cause has been shown as to why it should not be made absolute as in the last preceding Section, the decree nisi upon the expiration of the said time will be made absolute.

What is the Legal Provisions Relating to Prescriptive Period of Appeals?

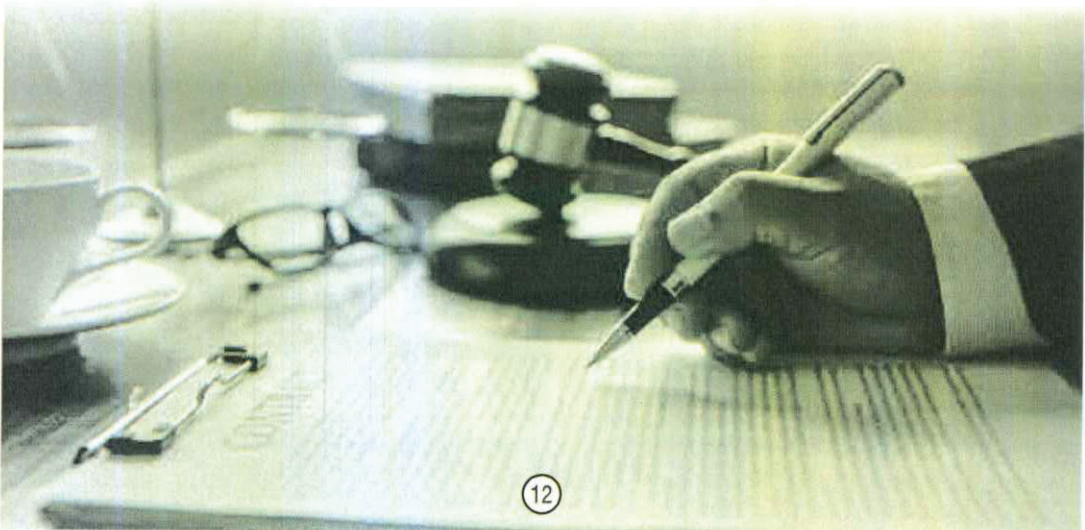
The provisions relating to appeal in a civil action is provided for in the Code of Civil Procedure. By virtue of High Court of Provinces (Special Provisions) Act No 54 of 2006 High Courts of Provinces are vested with appeal and revisionary jurisdiction.

Section 754 (4) is important in this instance. Thereby, within 14 days of the order of the original court notice, an appeal should be filed in the same first instance court.

Section 755 (3) states that the petition to appeal should be filed in the original court within 60 days from the date of making the order.

- A person who is dissatisfied by an order made by the Magistrate Court should appeal within 14 days of such order and if such appeal is made through the Attorney General within 60 days to the High Court.
- A person dissatisfied by an order made by a Labour Tribunal shall appeal to the High Court within 30 days of receiving such order.
- Appeals from Rent Board should be made within 21 days.
- An application to obtain leave from Court of Appeal should be obtained verbally as soon as the order is made or should be made within 21 days of the order, in order to consider such appeal.
- An order made by the Court of Appeal or Civil Appeal High Court shall be appealed to the Supreme Court within 42 days or 06 weeks from the date the order is received.

We have provided a list of Legal Aid Commissions for your convenience and you can obtain any legal assistance from the nearest branch of the commission.



LAC Locations

Head Office	011-2433618	Mannar	023-2222045
Akkaraipattu	067-2279462	Marawila	032-2254443
Ampara	063-2223495	Matale	066-2224828
Anuradhapura	025-2224465	Matara	041-2233815
Attanagalla	033-2297020	Mathugama	034-2249262
Awissawella	036-2233857	Mawanalla	035-2247272
Baddegama	091-2292051	Minuwangoda	011-2297790
Badulla	055-2225759	Monaragala	055-2276891
Balangoda	045-2289099	Mt. Lavinia	011-2718708
Balapitiya	091-2255753	Mullaithivu	021-2290077
Bandarawela	057-2224733	Muththur	026-2238777
Battaramulla	011-2877687	Nawalapitiya	054-2224227
Batticaloa	065-2225399	Negombo	031-2281080
Chawakachcheri	021-2270882	Nikaweratiya	037-2260203
Chilaw	032-2222175	Nugegoda	011-2809068
Dambulla	066-2284551	Nuwara Eliya	052-2235260
Deiyandara	041-2268077	Panadura	038-2244822
Deniyaya	041-2271128	Point Pedro	021-2260212
Embilipitiya	047-2230299	Polgahawela	037-2243039
Galgamuwa	037-2253290	Polonnaruwa	027-2226572
Galle	091-2226124	Pothuvil	063-2248485
Gampaha	033-2248804	Pugoda	011-2405333
Hambantota	047-2221092	Ratnapura	045-2226899
Hatton	051-2222390	Tangalle	047-2240122
Hingurakgoda	027-2245521	Thambuththegama	025-2276259
Homagama	011-2748813	Thissamaharama	047-2239611
Horana	034-2265244	Trincomalee	026-2226328
Jaffna	021-2224545	Valachchenei	065-2258349
Kadawatha	011-2922440	Vavuniya	024-2221863
Kaduwela	011-2548150	Walasmulla	047-2245566
Kakirawa	025-2263536	Wallawaya	055-2274466
Kalmunai	067-2223710	Warakapola	037-2277075
Kalutara	034-2222017	Wariyapola	037-2268199
Kandy	081-2388978	Welimada	057-2244860
Kanthale	026-2234521	Mallakam	021-2059170
Kebithigollawa	025-2298101	Puttalam	032-2266636
Kegalla	035-2231790	Siyabalanduwa	055-2279250
Kilinochchi	021-2285618	Dehiattakandiya	027-2250700
Kuliyapitiya	037-2284611	LT-Borella	011-2698003
Kurunegala	037-2229641	Galagedara	081-2061025
Mahiyanganaya	055-2258332	Wattala	011-2935907
Maho	037-2275075	Hettipola	037-2291915

Legal Aid Commission of Sri Lanka

🏠 No. 129, High Court Complex,
Hulftsdorp Street, Colombo 12.

☎ 011 2433618

➔ legalaidcommission1978@gmail.com

🌐 www.legalaid.gov.lk

