

CHAPTER 167

LAW REFORM (MISCELLANEOUS TORTS) ACT

• Act • Subsidiary Legislation •

ACT

ARRANGEMENT OF SECTIONS

1. Short title.
2. Effect of death on certain causes of action.
3. Contributory negligence.
4. Saving for Maritime Conventions Act, 1911, of United Kingdom, and past cases.
5. Abolition of doctrine of common employment.
6. Liability of owner of dog for injury to cattle or poultry.

CHAPTER 167

LAW REFORM (MISCELLANEOUS TORTS) ACT

An Act to amend the common law relating to torts, and to enact certain provisions affecting civil remedies.

[19th May, 1956.]

1. Short title

This Act may be cited as the Law Reform (Miscellaneous Torts) Act.

2. Effect of death on certain causes of action

(1) Subject to the provisions of this section, on the death of any person after the 31st December, 1955, all causes of action subsisting against or vested in him or her shall survive against or, as the case may be, for the benefit of his or her estate:

Provided that this subsection shall not apply to causes of action for defamation or seduction or for inducing one spouse to leave or remain apart from the other or to claims by a husband for damages from any person on the ground of adultery with his or her wife.

(2) Where a cause of action survives as aforesaid for the benefit of the estate of a deceased person, the damages recoverable for the benefit of the estate of that person—

- (a) shall not include any exemplary damages;
- (b) in the case of a breach of promise to marry shall be limited to such damage, if any, to the estate of that person as flows from the breach of promise to marry;
- (c) where the death of that person has been caused by the act or omission which gives rise to the cause of action, shall be calculated without reference to any loss or gain to his or her estate consequent on his or her death, except that a sum in respect of funeral expenses may be included.

(3) No proceedings shall be maintainable in respect of a cause of action in tort which by virtue of this section has survived against the estate of a deceased person, unless either—

- (a) proceedings against him or her in respect of that cause of action were pending at the date of his or her death; or
- (b) the cause of action arose not earlier than six months before his or her death and proceedings are taken in respect thereof not later than six months after his or her personal representative took out representation.

(4) Where damage has been suffered by reason of any act or omission in respect of which a cause of action would have subsisted against any person if that person had not died before or at the same time as the damage was suffered, there shall be deemed, for the purposes of this section, to have been subsisting against him or her before his death such cause of action in respect of that act or omission as would have subsisted if he or she had died after the damage was suffered.

(5) The rights conferred by this section for the benefit of the estates of deceased persons shall be in addition to and not in derogation of any rights conferred on the dependants of deceased persons by the Compensation for Injuries Act, Chapter 59, and so much of this section as relates to causes of action against the estates of deceased persons shall apply in relation to causes of action under that Act as it applies in relation to other causes of action not expressly excepted from the operation of subsection (1) of this section.

(6) In the event of the insolvency of an estate against which proceedings are maintainable by virtue of this section, any liability in respect of the cause of action in respect of which the proceedings are maintainable shall be deemed to be a debt provable in the administration of the estate, notwithstanding that it is a demand in the nature of unliquidated damages arising otherwise than by a contract, promise or breach of trust.

3. Contributory negligence

(1) In this section—

“court” means, in relation to any claim, the court or arbitrator by or before whom the claim falls to be determined;

“employer” and “workman” have the same meanings as in the Workmen’s Compensation Act, Chapter 343;

“fault” means negligence, breach of statutory duty or other duty or other act or omission which gives rise to a liability in tort or would apart from this Act give rise to the defence of contributory negligence.

(2) Where a person suffers damage as the result partly of his or her own fault and partly of the fault of some other person, a claim in respect of that damage shall not be defeated by reason of the fault of the person suffering the damage, but the damages recoverable in respect thereof shall be reduced to such extent as the court thinks just and equitable having regard to the claimant’s share in the responsibility for the damage:

Provided that—

- (a) this subsection shall not operate to defeat any defences arising under a contract;
- (b) where any contract or enactment providing for the limitation of liability is applicable to the claim, the amount of damages recoverable by the claimant by virtue of this subsection shall not exceed the maximum limit so applicable.

(3) Where damages are recoverable by a person by virtue of the foregoing subsection subject to any reduction as is therein mentioned, the court shall find and record the total damages which would have been recoverable if the claimant had not been at fault.

(4) Section 6 of the Law Reform (Married Women and Tortfeasors) Act, Chapter 166 (which relates to proceedings against, and contribution between, joint and several tortfeasors) shall apply in any case where two or more persons are liable or would, if they