

**CAYMAN ISLANDS**



**TORTS (REFORM) LAW**

**(1996 Revision)**

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## PUBLISHING DETAILS

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Revised under the authority of the *Law Revision Law (19 of 1975)*.

The Fatal Accidents Law (Cap 54) consolidated with the Law Reform (Tort-feasors) Law, 1964 (8 of 1965) (sic) and the Law Reform (Contributory Negligence) Law 1964 (9 of 1965) (sic)

-all of which were, in 1977, revised under the title of the Law of Torts Reform Law (Revised).

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Cap. 54-1st January, 1964

Law 8 of 1965-9th October, 1964

Law 9 of 1965-9th October, 1964.

Consolidated and revised this 11th day of June, 1996.



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(1996 Revision)

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# TORTS (REFORM) LAW

(1996 Revision)

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## PART I - Introductory

### Short title

1. This Law may be cited as the *Torts (Reform) Law (1996 Revision)*.

### Definitions

2. In this Law —

“**court**” includes arbitrator;

“**damage**” includes personal injury;

“**dependant**” includes spouse, child, grandchild, stepchild, parent, grandparent and step-parent, and an illegitimate person shall be regarded as legitimate for the purpose of establishing any of the above relationships;

“**fault**” means an act creating a liability in tort which, prior to the operation of this Law, would have given rise to the defence of contributory negligence; and

“**judgment**” means a judgment as confirmed or varied on appeal or in respect of which an appeal is barred by effluxion of time or otherwise.

## **PART II - Fatal Accidents**

### **Action maintainable against person causing death through neglect, etc.**

3. Whenever the death of a person is caused by a wrongful act, neglect or default, and the act, neglect or default is such as would (if death had not ensued) have entitled the party injured to maintain an action, and recover damages in respect thereof, then and in every such case the person who would have been liable, if death had not ensued, shall be liable to an action for damages notwithstanding the death of the person injured and although the death has been caused under such circumstances as amount in law to an offence.

### **Action to be for benefit of dependants**

4. (1) Every action brought under section 3 shall be for the benefit of a dependant or dependants of the person whose death has been so caused and shall be brought in the name of his personal representatives; and in every such action the court may give such damages as it thinks proportioned to the injury resulting from such death to the parties respectively for whom and for whose benefit such action is brought; and the amount so recovered after deducting the costs not recovered from the defendant shall be divided among the aforementioned parties in such shares as the court shall find and direct:

Provided that not more than one action shall lie for and in respect of the same subject matter of complaint and that every such action shall be commenced within one year of the death of such deceased person.

- (2) In any such action damages may be awarded in respect of the funeral expenses of the deceased person if such expenses have been incurred by the parties for whose benefit the action is brought.

### **Plaintiff to deliver certain particulars**

5. In every action under section 3 the plaintiff on the record shall be required, together with the statement of claim, to deliver to the defendant, or his attorney, full particulars of the person or persons for whom, and on whose behalf, such action is brought, and of the nature of the claim in respect of which damages are sought to be recovered.

## **PART III - Joint Tort-feasors**

### **Proceedings against and contribution between joint tort-feasors**

6. (1) Where damage is suffered by any person as a result of a tort (whether or not such tort is also an offence) —
- (a) judgment recovered against any tort-feasor liable in respect of such damage shall not be a bar to an action against any other person who would,



- if sued, have been liable as a joint tort-feasor in respect of the same damage;
- (b) if more than one action is brought in respect of such damage by or on behalf of the person by whom it was suffered, or for the benefit of the estate, or of the wife, husband, parent or child of such person, against tort-feasors liable in respect of the damage (whether as joint tort-feasors or otherwise) the sums recoverable under the judgments given in those actions by way of damages shall not in the aggregate exceed the amount of the damages awarded by the judgment first given; and in any of those actions, other than that in which the judgment is first given, the plaintiff shall not be entitled to costs unless the court is of opinion that there was reasonable ground for bringing the action;
  - (c) any tort-feasor liable in respect of such damage may recover contribution from any other tort-feasor who is, or would, if sued, have been liable in respect of the same damage, (whether as a joint tort-feasor or otherwise) so, however, that no person shall be entitled to recover contribution under this section from any person entitled to be indemnified by him in respect of the liability in respect of which contribution is sought.
- (2) In any proceedings for contribution under this section, the amount of the contribution recoverable from any person shall be such as may be found by the court to be just and equitable having regard to the extent of that person's responsibility for the damage, and the court shall have power to exempt any person from liability to make contribution, or to direct that the contribution to be recovered from any person shall amount to a complete indemnity.

## Savings

### 7. Nothing in this Part shall —

- (a) affect any criminal proceedings against any person in respect of any wrongful act; or
- (b) render enforceable any agreement for indemnity which would not have been enforceable if this Law had not been passed.

## PART IV - Contributory Negligence

### Apportionment of liability where plaintiff partly at fault

8. (1) Where any person suffers damage as the result partly of his own fault and partly of the fault of any other person or persons, 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 defence arising under a contract; and
  - (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.
- (2) Where damages are recoverable by any person by virtue of subsection (1), subject to such 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.
- (3) Section 6 applies in any case where two or more persons are liable or would, if they had all been sued, be liable by virtue of subsection (1) in respect of the damage suffered by any person.
- (4) Where any person dies as the result partly of his own fault and partly of the fault of any other person or persons, and, accordingly, if such person had not died and an action were brought by him the damages recoverable would be reduced under subsection (1), any damages recoverable in an action brought for the benefit of the dependants of that person under Part II shall be reduced to a proportionate extent.
- (5) Where, in any case to which subsection (1) applies, one of the persons at fault avoids liability to any other such person by pleading any enactment limiting the time within which proceedings may be taken, he shall not be entitled to recover any damages or contributions from that other person by virtue of that subsection.
- (6) Where any case to which subsection (1) applies is tried with a jury, the jury shall determine the total damages which would have been recoverable if the claimant had not been at fault and the extent to which those damages are to be reduced.
- (7) Article 21 of the Convention contained in the First Schedule of the Carriage by Air Act, 1961 (of the United Kingdom) as adapted, modified and extended to the Islands (which empowers a court to exonerate wholly or partly a carrier who





proves that the damage was caused by or contributed by the negligence of the injured person) shall have effect subject to this section.

**Savings for UK Maritime Conventions Act, 1911**

9. This Part shall not apply to any claim to which section 1 of the *Maritime Conventions Act, 1911* (of the United Kingdom) applies, and that Act shall have effect as if this Part had not been enacted.

**Publication in consolidated and revised form authorised by the Governor in Council  
this 11th day of June, 1996.**

**Mona N. Banks-Jackson**  
*Clerk of the Executive Council*