

CHAPTER 30 - CIVIL LIABILITY (MISCELLANEOUS PROVISIONS)
A LAW TO AMEND THE LAW AS TO THE EFFECT OF DEATH IN RELATION
TO CAUSES OF ACTION; TO AMEND THE LAW RELATING TO
PROCEEDINGS AGAINST AND CONTRIBUTION BETWEEN TORTFEASORS;
AND TO AMEND THE LAW RELATING TO CONTRIBUTORY NEGLIGENCE
AND FOR PURPOSES CONNECTED THEREWITH

PART I—PRELIMINARY

1.—(1) This Law may be cited as the Civil Liability (Miscellaneous Provisions) Law.

(2) This Law shall not, unless the context shall require, affect or modify any principle or practice of any customary law nor apply to any proceedings commenced in an area court and governed entirely by customary law.

2.—(1) "Customary law" includes Islamic law.

(2) In Part II "funeral expenses" has the same meaning as it has for the purpose of the Fatal Accidents Law.

(3) For the purposes of Part III:—

(a) the expression "immediate family" has the same meaning as it has for the purposes of the Fatal Accidents Law; and

(b) the reference in section 4 to "the judgment first given" shall in a case where that judgment is reversed on appeal, be construed as a reference to the judgment first given which is not so reversed and, in a case where judgment is varied on appeal, be construed as a reference to that judgment as so varied.

(4) In Part IV unless the context otherwise requires:—"court" means, in relation to any claim, the court or arbitrator by or before whom the claim falls to be determined but shall not include an area court other than an area court of competent jurisdiction within the meaning of the Fatal Accidents Law;

"damage" includes loss of life and personal injury;

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

PART II—EFFECT OF DEATH ON CERTAIN CAUSES OF ACTION

3.—(1) Subject to the provisions of this section, on the death of any person after the commencement of this Law all causes of action subsisting against or vested in him shall survive against, or, as the case may be, for the benefit of, his estate:

Provided that this subsection shall not apply to:-

(a) causes of action for defamation or seduction or for inducing one spouse to leave or remain apart from the other; or

(b) claims under section 31 of the Matrimonial Causes Act 1970, or any legislation replacing the same for damages on the ground of adultery.

(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 estate consequent on his 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 in respect of that cause of action were pending at the date of his death; or

(b) the cause of action arose not earlier than six months before his death and proceedings are taken in respect thereof not later than six months after his 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 Part, to have been subsisting against him before his death such cause of action in respect of that act or omission as would have subsisted if he had died after the damage was suffered.

(5) The rights conferred by this Part for the benefit of the estates of deceased persons shall be in addition to and not in derogation of any rights conferred on the members of the immediate family of deceased persons by the Fatal Accidents Law, or the members of the family of a deceased person by the Carriage by Air Act, 1932, 22 and so much of this Part as relates to causes of action against the estates of deceased persons shall apply in relation to causes of action under the said enactments 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.

PART III—PROCEEDINGS AGAINST, AND CONTRIBUTION BETWEEN, JOINT AND SEVERAL TORTFEASORS

4.—(1) Where damage is suffered by any person as a result of a tort (whether a crime or not):-

(a) judgment recovered against any tortfeasor liable in respect of that damage shall not be a bar to an action against any other person who would, if sued, have been liable as a joint tortfeasor in respect of the same damage;

(b) if more than one action is brought in respect of that damage by or on behalf of the person by whom it was suffered, or for the benefit of the estate, or of any member of the immediate family of that person against tortfeasors liable in respect of the damage (whether as joint tortfeasors 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 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 tortfeasor liable in respect of that damage may recover contribution from any other tortfeasor who is, or would if sued have been, liable in respect of the same damage, whether as a joint tortfeasor 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 the 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.

(3) Nothing in this section shall:-

(a) apply with respect to any tort committed before the commencement of this Law; or

(b) affect any criminal proceedings against any person in respect of any wrongful act; or

(c) render enforceable any agreement for indemnity which would not have been enforceable if this section had not been passed.

PART IV—CONTRIBUTORY NEGLIGENCE

5.—(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 case 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;

(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) subjects to such reduction as in 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 4 shall apply 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) of this section 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 an action were brought for the benefit of the estate under section 3, the damages recoverable would be reduced under subsection (1) of this section, any damages recoverable in an action brought for the benefit of the members of the immediate family of that person under the Fatal Accidents Law 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 or his personal representative by pleading any enactment or legislation limiting the time within which proceedings may be taken, he shall not be entitled to recover any damages or contributions from that other person or representative by virtue of the said subsection.

6.—(1) This Part shall not apply to any case where the acts or omissions giving rise to the claim occurred before the passing of this Law.

(2) For the avoidance of doubt it is hereby declared that this Part shall not apply to any claim in respect of which the Workmen's Compensation Act applies.