

Zambia

Law Reform (Miscellaneous Provisions) Act, 1967

Chapter 74

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Law Reform (Miscellaneous Provisions) Act, 1967

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Law Reform (Miscellaneous Provisions) Act, 1967

Chapter 74

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An Act to provide for the survival of actions after death; to empower courts to award interest on debts and damages; to make provision with regard to the property, capacity and liabilities of married women; to make provision with regard to proceedings against and contribution between joint and several tortfeasors; to provide for the apportionment of liability in case of contributory negligence; to abolish the defence of common employment; and to provide for matters incidental to or connected with the foregoing.

Part I – Preliminary

1. Short title

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

Part II – Effect of death on certain causes of action

2. Survival of causes of action

- (1) Subject to the provisions of this section, on the death of any person after the commencement of this Act, 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 causes of action for defamation or seduction or for inducing one spouse to leave or remain apart from the other or to claims 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 gave 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) 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 Act, 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 Act 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 Fatal Accidents Acts, 1846 to 1908, of the United Kingdom, or any law for the time being in force relating to carriage by air, and so much of this Act as relates to causes of action against the estates of deceased persons shall apply in relation to causes of action under the said Acts as it applies in relation to other causes of action not expressly excepted from the operation of subsection (1).
- (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. Amendment of Fatal Accidents Acts, 1846 to 1908

- (1) For the purposes of the Acts, a person shall be deemed to be a parent or child of the deceased person notwithstanding that he was only related to him illegitimately or in consequence of adoption, and accordingly in deducing any relationship which under the provisions of the Acts is included within the meaning of the expressions "parent" and "child", any illegitimate person and any adopted person shall be treated as being, or as having been, the legitimate offspring of his mother and reputed father or, as the case may be, of his adopter.
- (2) In an action brought under the Acts, 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.
- (3) This section shall not apply in relation to any action in respect of the death of any person before the commencement of this Act.
- (4) In this section, unless the context otherwise requires—

"**the Acts**" means the Fatal Accidents Acts, 1846 to 1908, of the United Kingdom;

"**adopted person**" means a person who has been adopted, whether before or after the commencement of this Act, in pursuance of an adoption order made under the Adoption Act.

[Cap. 54]

Part III – Award of interest

4. Power of courts of record to award interest on debts and damages

In any proceedings tried in any court of record for the recovery of any debt or damages, the court may, if it thinks fit, order that there shall be included in the sum for which judgment is given interest at such rate as it thinks fit on the whole or any part of the debt or damages for the whole or any part of the period between the date when the cause of action arose and the date of the judgment:

Provided that nothing in the section—

- (i) shall authorise the giving of interest upon interest; or
- (ii) shall apply in relation to any debt upon which interest is payable as of right whether by virtue of any agreement or otherwise; or

- (iii) shall affect the damages recoverable for the dishonour of a bill of exchange.

Part IV – Capacity, property and liabilities of married women and liabilities of husbands

5. Capacity of married women

Subject to the provisions of this Part, and subject, as respects actions in tort between husband and wife, to the provisions of section 12 of the Married Women's Property Act, 1882, of the United Kingdom, a married woman shall—

- (a) be capable of acquiring, holding, and disposing of, any property; and
- (b) be capable of rendering herself, and being rendered, liable in respect of any tort, contract, debt, or obligation; and
- (c) be capable of suing and being sued, either in tort or in contract or otherwise; and
- (d) be subject to the law relating to bankruptcy and to the enforcement of judgments and orders;

in all respects as if she were a *femme sole*.

6. Property of married women

- (1) Subject to the provisions of this Part, all property which—
 - (a) immediately before the commencement of this Act was the separate property of a married woman or held for her separate use in equity; or
 - (b) belongs at the time of her marriage to a woman married after the commencement of this Act; or
 - (c) after the commencement of this Act is acquired by or devolves upon a married woman;shall belong to her in all respects as if she were a *femme sole* and may be disposed of accordingly.
- (2) No restriction upon anticipation or alienation attached, or purported to be attached, to the enjoyment of any property by a woman which could not have been attached to the enjoyment of that property by a man shall be of any effect after the commencement of this Act.

7. Abolition of husband's liability for wife's torts and ante-nuptial contracts, debts and obligations

Subject to the provisions of this Part, the husband of a married woman shall not, by reason only of his being her husband, be liable—

- (a) in respect of any tort committed by her whether before or after the marriage, or in respect of any contract entered into, or debt or obligation incurred, by her before the marriage; or
- (b) to be sued, or made a party to any legal proceeding brought, in respect of any such tort, contract, debt, or obligation.

8. Savings

- (1) Nothing in this Part shall enable any judgment or order against a married woman in respect of a contract entered into, or debt or obligation incurred, before the commencement of this Act, to be enforced in bankruptcy or to be enforced otherwise than against her property.

- (2) For the avoidance of doubt, it is hereby declared that nothing in this Part—
- (a) renders the husband of a married woman liable in respect of any contract entered into, or debt or obligation incurred, by her after the marriage in respect of which he would not have been liable if this Act had not been passed;
 - (b) exempts the husband of a married woman from liability in respect of any contract entered into, or debt or obligation (not being a debt or obligation arising out of the commission of a tort) incurred, by her after the marriage in respect of which he would have been liable if this Act had not been passed;
 - (c) prevents a husband and wife from acquiring, holding, and disposing of, any property jointly or as tenants in common, or from rendering themselves, or being rendered, jointly liable in respect of any tort, contract, debt or obligation, and of suing and being sued, either in tort or in contract or otherwise, in like manner as if they were not married;
 - (d) prevents the exercise of any joint power given to a husband and wife.
- (3) When a husband and wife are married according to customary law and not otherwise, the provisions of this Part shall not apply to the husband or to the wife.

Part V – Proceedings against and contribution between tortfeasors

9. Proceedings against and contribution between joint and several tortfeasors

- (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 the dependants 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) For the purpose of this section—
- (a) "dependants" means the persons for whose benefit actions may be brought under the Fatal Accidents Acts, 1846 to 1908, of the United Kingdom; and
 - (b) the reference in this section to "the judgment first given" shall, in the 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 a judgment is varied on appeal, be construed as a reference to that judgment so varied.

- (4) Nothing in this section shall—
- (a) apply with respect to any tort committed before the commencement of this Act; 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 VI – Contributory negligence

10. Apportionment of liability in case of contributory negligence

- (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—

- (i) this subsection shall not operate to defeat any defence arising under a contract;
 - (ii) 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 nine shall apply in any case where two or more persons are liable or would, if they had 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 an action were brought for the benefit of the estate under Part II, 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 the Fatal Accidents Acts, 1846 to 1908, of the United Kingdom, 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 the Limitation Act, 1939, of the United Kingdom, or any other 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 or representative by virtue of the said subsection.
- (6) Any provisions of a law for the time being in force relating to carriage by air which empowers a court to exonerate wholly or partially a carrier who proves that the damage was caused by or contributed to by the negligence of the injured person, shall have effect subject to the provisions of this section.

11. Interpretation

In this Part, unless the context otherwise requires—

"**court**", in relation to any claim, includes an arbitrator by or before whom the claim falls to be determined;

"**damage**" includes loss of life and personal injury;

"dependant" means any person for whose benefit an action could be brought under the Fatal Accidents Acts, 1846 to 1908, of the United Kingdom;

"fault" means negligence, breach of statutory 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.

Part VII – Personal injuries

12. Common employment

- (1) It shall not be a defence to an employer who is sued in respect of personal injuries caused by the negligence of a person employed by him, that that person was at the time the injuries were caused in common employment with the person injured.
- (2) Any provision contained in a contract of service or apprenticeship, or in an agreement collateral thereto (including a contract or agreement entered into before the commencement of this Act), shall be void in so far as it would have the effect of excluding or limiting any liability of the employer in respect of personal injuries caused to the person employed or apprenticed by the negligence of persons in common employment with him.

13. Assessment of damages

- (1) In assessing damages in respect of a person's death in any action under the Fatal Accidents Acts, 1846 to 1908, of the United Kingdom, or under any law for the time being in force relating to carriage by air, there shall not be taken into account any right to benefit resulting from that person's death.
- (2) This section shall not apply in relation to any action in respect of the death of any person before the commencement of this Act.
- (3) In this section, "benefit" means any insurance money (including a return of premiums), pension (including a return of contributions and any payment of a lump sum in respect of a person's employment), gratuity or workman's compensation, which has been or will or may be paid as a result of the death of the person concerned.

14. Definition of personal injury

In this Part, the expression "personal injury" includes any disease and any impairment of a person's physical or mental condition, and the expression "injured" shall be construed accordingly.

15. Part VII to bind the State

This Part shall bind the State.