

# AUSTRALIAN CAPITAL TERRITORY.

No. 3 of 1955.

## AN ORDINANCE

### To effect certain Reforms in the Law.

**B**E it ordained by the Governor-General in and over the Commonwealth of Australia, with the advice of the Federal Executive Council, in pursuance of the powers conferred by the *Seat of Government (Administration) Act 1910-1947*, as follows:—

#### PART I.—PRELIMINARY.

1. This Ordinance may be cited as the *Law Reform (Miscellaneous Provisions) Ordinance 1955*.<sup>\*</sup> Short title.

2. This Ordinance is divided into Parts, as follows:—

Parts.

- Part I.—Preliminary (Sections 1-3).
- Part II.—Survival of Causes of Action (Sections 4-8).
- Part III.—Torts and Ante-nuptial Obligations of Wives (Section 9).
- Part IV.—Proceedings against and Contributions between Tort-feasors (Sections 10-13).
- Part V.—Contributory Negligence (Sections 14-20).
- Part VI.—Common Employment (Section 21).
- Part VII.—Injury arising from Mental or Nervous Shock (Sections 22-24).
- Part VIII.—Attachment of Insurance Moneys (Sections 25-28).

3. This Ordinance binds the Crown.

Ordinance to bind Crown.

#### PART II.—SURVIVAL OF CAUSES OF ACTION.

4.—(1.) Subject to this Part, on the death of a person after the commencement of this Ordinance all causes of action subsisting against or vested in him survive against his estate or, as the case may be, for the benefit of his estate. Effect of death on certain causes of action.

(2.) This section does 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.

5. Where a cause of action survives under this Part for the benefit of the estate of a deceased person, the damages recoverable for the benefit of the estate of that person— Damages in actions which survive under this Part.

(a) do not include exemplary damages;

<sup>\*</sup> Notified in the *Commonwealth Gazette* on 31st March, 1955.

- (b) in the case of a breach of promise to marry, are limited to such damage, if any, to the estate of that person as flows from the breach of promise to marry; and
- (c) where the death of that person has been caused by the act or omission which gives rise to the cause of action—
  - (i) shall be calculated without reference to any loss or gain to his estate consequent upon his death, except that a sum in respect of funeral expenses may be included; and
  - (ii) do not include damages for the pain or suffering of that person or for any bodily or mental harm suffered by him or for the curtailment of his expectation of life.

Conditions precedent to survival of causes of action.

6.—(1.) No proceedings are maintainable in respect of a cause of action in tort which, by virtue of this Part, has survived against the estate of the deceased person unless—

- (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 twelve months before his death and proceedings are taken in respect of the cause of action not later than twelve months after his executor or administrator took out probate or letters of administration.

(2.) The fact that the cause of action arose earlier than twelve months before the death of the deceased person is not, of itself, a bar to the maintenance of proceedings in respect of a cause of action referred to in the last preceding sub-section where the court in which the proceedings are taken is satisfied that, having regard to all the circumstances of the case, it would be reasonable to allow the proceedings to continue.

(3.) The last preceding sub-section does not affect the operation of any law, other than this section, relating to the limitation of actions.

Provision for cases where person liable dies before or at time of damage.

7. Where damage has been suffered by reason of an act or omission in respect of which a cause of action would have subsisted against a 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.

Saving of other rights.

8.—(1.) The rights conferred by this Part for the benefit of the estates of deceased persons are in addition to, and not in derogation of, any rights conferred on the dependants of deceased persons by the *Compensation (Fatal Injuries) Ordinance 1938*, and so much

of this Part as relates to causes of action against the estates of deceased persons applies in relation to causes of action under that Ordinance as it applies in relation to other causes of action not expressly excepted from the operation of section four of this Ordinance.

(2.) The rights conferred by this Part are in addition to, and not in derogation of, any rights conferred by or under Part IV.A. of the *Motor Traffic Ordinance* 1936-1951.

### PART III.—TORTS AND ANTE-NUPTIAL OBLIGATIONS OF WIVES.

9.—(1.) The husband of a married woman is not, by reason only of his being her husband, liable—

Abolition of husband's liability for wife's torts and ante-nuptial obligations.

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

(2.) The last preceding sub-section does not affect a legal proceeding in respect of a tort if proceedings had been instituted in respect of the tort before the commencement of this Ordinance.

### PART IV.—PROCEEDINGS AGAINST AND CONTRIBUTIONS BETWEEN TORT-FEASORS.

10. In this Part—

Interpretation.

- (a) “parent” and “child” have the same meanings as they have in the *Compensation (Fatal Injuries) Ordinance* 1938; and
- (b) the reference 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 a judgment is varied on appeal, be construed as a reference to that judgment as so varied.

11.—(1.) This section applies where damage is suffered by a person as a result of a tort (whether a crime or not).

Proceedings against and contribution between joint and several tort-feasors.

(2.) Judgment recovered against a tort-feasor liable in respect of the damage is not 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.

(3.) If more than one action is brought in respect of the 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, brother, sister,

half-brother, half-sister, parent or child, of that person against tort-feasors liable in respect of the damage (whether as joint tort-feasors or otherwise)—

- (a) the sums recoverable under the judgments given in those actions by way of damages do not in the aggregate exceed the amount of the damages awarded by the judgment first given; and
- (b) in any of those actions other than that in which judgment is first given, the plaintiff is not entitled to costs unless the court is of opinion that there was reasonable ground for bringing the action.

(4.) A tort-feasor liable in respect of the 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, but no person is entitled to recover contribution under this section from a person entitled to be indemnified by him in respect of the liability in respect of which the contribution is sought.

(5.) Where the tort causing the damage was, or the torts causing the damage were, committed by the husband or wife of the person suffering the damage and some other person, that other person may recover contribution as mentioned in the last preceding sub-section from the husband or wife, as if the husband or wife had been liable to the person suffering the damage.

**Extent of contribution.**

**12.** In proceedings for contribution under the last preceding section the amount of the contribution recoverable from a person is such as is 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 has power to exempt a person from liability to make contribution, or to direct that the contribution to be recovered from a person shall amount to a complete indemnity.

**Exemptions.**

**13.** Nothing in this Part—

- (a) applies with respect to a tort committed before the commencement of this Ordinance;
- (b) affects any criminal proceedings against a person in respect of a wrongful act; or
- (c) renders enforceable an agreement for indemnity which would not have been enforceable if this Part had not been enacted.

#### **PART V.—CONTRIBUTORY NEGLIGENCE.**

**Interpretation.**

**14.—(1.)** In this Part—

- “court” means, in relation to a claim, the court or arbitrator by or before whom the claim falls to be determined;
- “damage” includes loss of life and personal injury;

“dependant” means a person for whose benefit an action could be brought under the *Compensation (Fatal Injuries) Ordinance 1938*;

“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 Part, give rise to the defence of contributory negligence.

(2.) A reference in this Part to the fault of a person shall be deemed to include a reference to a fault for which that person is vicariously responsible.

**15.—**(1.) Subject to this section, where a person suffers damage as the result partly of his own fault and partly of the fault of another person or other persons, a claim in respect of that damage is not liable to be defeated by reason of the fault of the person suffering the damage, but the damages recoverable in respect of the damage 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. Apportionment of liability.

(2.) This section does not operate to defeat any defence arising under a contract.

(3.) Where damages are recoverable by a person by virtue of sub-section (1.) of this section subject to the reduction specified in that sub-section, the court shall find and record the total damages which, apart from any limitation of liability provided by contract or enactment or any limitation of the jurisdiction of the court, would have been recoverable if the claimant had not been at fault.

(4.) Where damages are recoverable by virtue of sub-section (1.) of this section subject to the reduction specified in that sub-section, and a contract or enactment providing for a limitation of liability is applicable to the claim or the jurisdiction of the court is limited—

(a) the total damages found in accordance with the last preceding sub-section shall be reduced to such extent as the court thinks just and equitable having regard to the claimant’s share in responsibility for the damage, and the reduced amount is, except as provided in the next succeeding paragraph, the amount recoverable; and

(b) if the amount of damages as reduced under the last preceding paragraph exceeds the limit provided for in the contract or enactment or the limit of the jurisdiction of the court, the court shall award the maximum amount of damages permitted by the contract or enactment, or by the limit of the court’s jurisdiction.

Application of  
Part IV.

**16.**—(1.) The provisions of Part IV. of this Ordinance apply in any case where two or more persons are liable, or would, if they had all been sued, be liable, by virtue of the last preceding section in respect of the damage suffered by a person.

(2.) Where a person dies as the result partly of his own fault and partly of the fault of another person or other persons, and accordingly, if an action were brought for the benefit of the estate under Part II. of this Ordinance, the damages recoverable would be reduced under section fifteen of this Ordinance, any damages recoverable in an action brought for the benefit of the dependants of that person under the *Compensation (Fatal Injuries) Ordinance 1938* shall be reduced to a proportionate extent.

Claims by third  
parties.

**17.** Where—

- (a) a person (in this section called “the injured person”) suffers damage as a result partly of his own fault and partly of the fault of another person or other persons; and
- (b) by reason of the damage to the injured person a third person suffers damage (whether by way of the loss of the society or services of the injured person or otherwise),

the fault of the injured person shall, in a claim by the third person for the damage so suffered by him, be taken into account under section fifteen of this Ordinance for the purpose of reducing the damages recoverable by the third person as if the fault of the injured person were the fault of the third person.

Pleading of  
statute of  
limitations.

**18.** Where, in a case to which section fifteen of this Ordinance applies, one of the persons at fault avoids liability to another such person or his personal representative by pleading an enactment limiting the time within which proceedings may be taken, he is not entitled to recover damages or contribution from that other person or representative by virtue of that section.

Where case is  
tried with jury.

**19.** Where a case to which section fifteen of this Ordinance applies is tried with a jury, the jury shall determine the total damages which, apart from any limitation of liability provided by contract or enactment or any limitation of the jurisdiction of the court, would have been recoverable if the claimant had not been at fault, and the extent to which those damages are to be reduced.

Savings.

**20.**—(1.) Section fifteen of this Ordinance does not apply to a claim to which section two hundred and fifty-nine of the *Navigation Act 1912-1953* applies.

(2.) Section fifteen of this Ordinance does not apply to a case where the acts or omissions giving rise to the claim occurred before the commencement of this Ordinance.

#### PART VI.—COMMON EMPLOYMENT.

**21.**—(1.) Where injury or damage is suffered by a servant by reason of the wrongful act, neglect or default of a fellow servant, the employer of those servants is liable in damages in respect of that injury or damage in the same manner and in the same cases as if those servants had not been engaged in a common employment. Abolition of rule of common employment.

(2.) This section applies to injury or damage arising from a wrongful act, neglect or default committed after the date of commencement of this Ordinance, whether the contract of employment was made before or is made after that date.

#### PART VII.—INJURY ARISING FROM MENTAL OR NERVOUS SHOCK.

**22.** In this Part—

Definitions.

“child”, in relation to a person, means the son, daughter, grandson, granddaughter, step-son or step-daughter of that person, or a person to whom that person stands *in loco parentis*;

“member of the family”, in relation to a person, means the husband, wife, parent, child, brother, sister, half-brother or half-sister of that person;

“parent”, in relation to a person, means the father, mother, grandfather, grandmother, step-father or step-mother of that person, or a person standing *in loco parentis* to that person.

**23.**—(1.) In an action for injury to the person caused after the commencement of this Ordinance, the plaintiff is not debarred from recovering damages merely because the injury complained of arose wholly or in part from mental or nervous shock. Personal injury received from mental or nervous shock.

(2.) In determining a question of liability for injury to the person caused before the commencement of this Ordinance, no regard shall be paid to the fact that this section has been enacted or to the provisions of this section.

**24.**—(1.) The liability of a person in respect of injury caused after the commencement of this Ordinance by act, neglect or default by which another person is killed, injured or put in peril extends to include liability for injury arising wholly or in part from mental or nervous shock sustained by— Extension of liability in certain cases.

(a) a parent or the husband or wife of the person so killed, injured or put in peril; or

- (b) another member of the family of the person so killed, injured or put in peril, where the person was killed, injured or put in peril within the sight or hearing of that other member of the family.

(2.) Where an action is brought by a member of the family of a person so killed, injured or put in peril in respect of liability for injury arising wholly or in part from mental or nervous shock sustained by the plaintiff and claims have been made against or are apprehended by the defendant at the suit of other members of the family of that person in respect of liability arising by operation of sub-section (1.) of this section out of the same act, neglect or default, the defendant may apply to the Court for the exercise of its powers under the next succeeding sub-section.

(3.) The Court may thereupon stay any proceedings pending at the suit of any such other member of the family arising out of the same act, neglect or default and may proceed in such manner and subject to such orders as to—

- (a) making members of the family of the person killed, injured or put in peril parties to the action;
  - (b) who is to have the carriage of the action; and
  - (c) the exclusion of any member of the family who does not come in within a time fixed by the Court,
- as the Court thinks just.

(4.) Where an application under sub-section (2.) of this section is made, the action shall be for the benefit of the original plaintiff and such members of the family of the person killed, injured or put in peril as are joined by the Court as plaintiffs in pursuance of the application, and the Court (or, if there is a jury, the jury) may give such damages as it thinks proportioned to the injury resulting to the plaintiffs respectively, and the amount so recovered, after deducting the costs not recovered from the defendant, shall be divided amongst the plaintiffs in such shares as the Court (or, if there is a jury, the jury) decides.

(5.) An action in respect of a liability arising by operation of sub-section (1.) of this section shall be brought in the Supreme Court.

#### PART VIII.—ATTACHMENT OF INSURANCE MONEYS.

**25.**—(1.) If a person (in this Part referred to as “the insured”) has, whether before or after the commencement of this Ordinance, entered into a contract of insurance by which he is indemnified against liability to pay any damages or compensation, the amount of his liability is, on the happening of the event giving rise to the claim for damages or compensation, and notwithstanding

Amount of liability to be charge on insurance moneys payable against that liability.



that the amount of the liability may not then have been determined, a charge on all insurance moneys that are or may become payable in respect of that liability.

(2.) If, on the happening of the event giving rise to the claim for damages or compensation, the insured (being a corporation) is being wound up, or if any subsequent winding-up of the insured (being a corporation) is deemed to have commenced not later than the happening of that event, the provisions of sub-section (1.) of this section apply notwithstanding the winding-up.

(3.) Every charge created by this section has priority over all other charges affecting the insurance moneys, and where the same insurance moneys are subject to two or more charges by virtue of this section those charges have priority between themselves in the order of the dates of the events out of which the liability arose, or, if the charges arise out of events happening on the same date, they rank equally between themselves.

**26.**—(1.) Subject to the next succeeding sub-section, a charge created by this Part is enforceable by way of an action against the insurer in the same way and in the same court as if the action were an action to recover damages or compensation from the insured. Enforcement of charge.

(2.) In respect of any such action and of the judgment given in any such action the parties have, to the extent of the charge, the same rights and liabilities, and the court has the same powers, as if the action were against the insured.

(3.) Except where the provisions of sub-section (2.) of the last preceding section apply, no such action shall be commenced in any court except with the leave of that court, and leave shall not be granted where the court is satisfied that the insurer is entitled under the terms of the contract of insurance to disclaim liability, and that any proceedings, including arbitration proceedings, necessary to establish that the insurer is so entitled to disclaim have been taken.

(4.) Such an action may be brought although judgment has been already recovered against the insured for damages or compensation in respect of the same matter.

**27.**—(1.) Notwithstanding anything in this Part, a payment made by an insurer under the contract of insurance without actual notice of the existence of a charge under this section is, to the extent of that payment, a valid discharge to the insurer. Protection of insurer.

(2.) An insurer is not liable under this Part for any greater sum than that fixed by the contract of insurance between himself and the insured.

Certain other  
provisions not  
affected.

**28.** Nothing in this Part affects the operation of any of the provisions of the *Workmen's Compensation Ordinance* 1951-1952 or Part IVA. of the *Motor Traffic Ordinance* 1936-1951.

Dated this tenth day of March, 1955.

W. J. SLIM  
Governor-General.

By His Excellency's Command,

J. A. SPICER  
for and on behalf of the Minister of State  
for the Interior.

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