AUSTRALIAN CAPITAL TERRITORY

LAW REFORM (MISCELLANEOUS PROVISIONS) ORDINANCE 1955

EXPLANATORY MEMORANDUM

No. 3 of 1955

The purpose of this Ordinance is to reform the law of the Australian Capital Territory by bringing it into line with the latest developments of the law in the States of the Commonwealth in respect of the following seven aspects of the law of torts:–

Survival of Causes of Action

Torts and Ante-nuptial obligations of Wives

Proceedings against and Contributions between Tort-feasors

Contributory Negligence

Common Employment

Injury Arising from Mental or Nervous Shock

Attachment of Insurance Moneys.

AUSTRALIAN CAPITAL TERRITORY.

LAW REFORM (MISCELLANEOUS PROVISIONS) ORDINANCE 1955.

1. Survival of Causes of Action.

1. This part of the draft Ordinance follows the Law Reform (Miscellaneous Provisions) Act 1944 of New South Wales. It provides that, on death, all causes of action (except causes of action for defamation or seduction) subsisting against or vesting in the deceased shall survive against or for the benefit of the estate, and that, in the case of breach of promise to marry, the damages recoverable do not include any exemplary damages, but are limited to the damage to the estate that flows from the breach of promise. Where death has been caused by the act or omission which gives rise to the cause of action, damages shall be calculated without reference to any loss or gain to the estate except funeral expenses.

2. The damages recoverable for the benefit of the estate, where the death has been caused by the act or omission which gave rise to the cause of action, shall not include any 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. Any such cause of action must have arisen not earlier than twelve months before the date of death and proceedings must be brought not later than twelve months after the executor or administrator took out probate or letters of administration.

1. Torts and Ante-nuptial Obligations of Wives.

3. This part follows the United Kingdom Law Reform (Married Women and Tort-feasors) Act 1935, which abolished a husband’s liability for his wife's torts and ante-nuptial contracts, debts and obligations. Similar legislation exists in Victoria, South Australia and Tasmania.

1. Proceedings against and Contribution between Tort-feasors.
2. At common law no person who had been made liable in damages had any right of contribution or indemnity against any other person who was a wrongdoer with him. This rule was abolished in England by the Law Reform (Married Women and Tort-feasors) Act 1935 and subsequently by similar Acts in Victoria, New South Wales, Queensland, South Australia and Western Australia.
3. This part of the Ordinance follows Part III. of the Law Reform (Miscellaneous Provisions) Act, 1946, of New South Wales, and provides that where damage is suffered by any person as a result of a tort (whether a crime or not) judgment recovered against any tort-feasor 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 in respect of that damage. If more than one action is brought, the sums recovered shall not, in the aggregate, exceed the amount of damages awarded by the judgment first given, and a tort-feasor may recover contribution from any other tort-feasor. In any proceedings for contribution the amount recovered shall be such as the Court determines to be just and equitable.

4. Contributory Negligence.

6. In English law it was the rule that, when harm is suffered by a plaintiff not solely through the negligence of the defendant, but also through that of the plaintiff himself, the plaintiff was said to be guilty of contributory negligence, and was in general debarred from any action.

7. In the United Kingdom the Law Reform (Contributory Negligence) Act 1945 provided that contributory negligence should not be a bar to action, and similar provisions have been enacted in Queensland, Victoria, Western Australia and Tasmania.

8. This part of the draft Ordinance follows the pattern of the Wrongs Act 1936-1951 of South Australia.

1. Common Employment.

9. The rule in England was that a master was not responsible for negligent harm done by one of his servants to a fellow servant engaged in a common employment with him.

10. This rule has been abrogated in the United Kingdom, also in Queensland, New South Wales, Victoria, South Australia and Western Australia.

11. This part follows section 30 of the Wrongs Act 1936-1951 of South Australia.

1. Inquiry arising from Mental or Nervous Shock.

12. Australian Courts have applied the law as laid down by the Privy Council in Victorian Railways Commissioner v. Coultas, (1888) 13 A.C. 222, that there is no remedy for nervous shock in the absence of bodily injury. In England the Courts have refused to follow this decision, and, in Australia, Victoria, South Australia and New South Wales, have passed legislation to enable damages to be recovered for nervous shock.

13. This part follows Part III. of the Law Reform (Miscellaneous Provisions) Act 1944 of New South Wales.

1. Attachment of Insurance Moneys.

14. This part is in line with Part IV. of the Law Reform (Miscellaneous Provisions) Act 1946 of New South Wales, which provides that, where any person has entered into a contract of insurance whereby he is indemnified against a liability to pay any damage or compensation, the amount of his liability, on the happening of the event giving rise to the claim for damages or compensation, is a charge on all insurance moneys that are payable in respect of that liability.