



SAMOA

LAW REFORM ACT 1964

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LAW REFORM ACT 1964

1964

No.7

AN ACT to effect reforms in the law relating to:

- (1) the effect of death in relation to causes of action;
- (2) charges on insurance money payable as indemnity for liability to pay damages or compensation; and

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- (3) proceedings against and contributions among tortfeasors, –
and to restate the law as to the liability of employers to their servants for injuries caused by the negligence of fellow servants

[Assent and commencement date: 31 July 1964]

**PART 1
PRELIMINARY**

- 1. Short title** – This may be cited as the Law Reform Act 1964.
- 2. Balance of Act divided into parts** – The balance of this Act is divided into Parts as follows:
- (a) PART 1A – Survival of causes of action after death;
 - (b) PART 2 – Charges on insurance money;
 - (c) PART 3 – Liability of tortfeasors; and
 - (d) PART 4 – Liability of employers.

**PART 1A
SURVIVAL OF CAUSES OF ACTION AFTER DEATH**

3. Effect of death on certain causes of action –(1) Subject to the provisions of this Part, on the death of a person after the passing of this Act all causes of action subsisting against or vested in the person shall survive against or, as the case may be, for the benefit of his or her estate:

PROVIDED THAT this subsection does not apply to causes of action for defamation or seduction or for inducing 1 spouse to leave or remain apart from the other or to claims under the Divorce and Matrimonial Causes Ordinance 1961 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, is 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, is to be calculated without reference to any loss or gain to his or her estate consequent on his or her death, except that a sum in respect of funeral expenses may be included.

(3) 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 a deceased person, unless either:

- (a) proceedings against him or her in respect of that cause of action were pending at the date of his or her death; or
- (b) the cause of action arose not earlier than 2 years before his or her death and proceedings are taken in respect thereof not later than 12 months after his or her personal representative took out representation:

PROVIDED THAT no such proceedings are to be maintainable unless notice in writing giving reasonable information of the circumstances upon which the proceedings will be based and the name and address of the prospective plaintiff and of his or her solicitor or agent (if any) in the matter is given by the prospective plaintiff to the personal representative of the deceased person as soon as practicable after the personal representative took out representation.

(4) Despite anything in subsection (3), application may be made to the Court, after notice to the personal representative, for leave to bring the proceedings at any time before the expiration of 6 years after the date when the cause of action arose, whether or not notice has been given to the personal representative under subsection (3); and the Court may, if it thinks it is just to do so, grant leave accordingly, subject to such conditions (if any) as it thinks it is just to impose, where it considers that the failure to give the notice or the delay in bringing the proceedings, as the case may be, was occasioned by mistake or by any other reasonable cause or that the personal representative was not materially prejudiced in his or her defence or otherwise by the failure or delay. No distribution of any part of the estate of the deceased made before the date of the giving of the notice of the intended application is to be disturbed by reason of the application or of an order made thereon.

(5) Where damage has been suffered by reason of an 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, it is taken, for the purposes of this Part, to have been subsisting against the person before his or her death such cause of action in respect of that act or omission as would have subsisted if he or she had died after the damage was suffered.

(6) 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 by the Fatal Accidents Act 1974, 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 that Act.

(7) 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 is regarded as a debt provable in the administration of the estate, despite that it is a demand in the nature of unliquidated damages arising otherwise than by a contract, promise, or breach of trust.

4. Limitation of damages recoverable – Where by virtue of this Part a cause of action survives for the benefit of the estate of a deceased person, the damages recoverable for the benefit of the estate of that person shall not include any damages for his or her pain or suffering, or for any bodily or mental harm suffered by him or her, or for the curtailment of his or her expectation of life.

PART 2

CHARGES ON INSURANCE MONEY

5. Amount of liability to be charged on insurance money payable against that liability – (1) If a person (hereinafter in this Part referred to as the insured) has, whether before or after the passing of this Act, entered into a contract of insurance by which he or she is indemnified against liability to pay any damages or compensation, the amount of the person's liability shall, on the happening the event giving rise to the claim for damages or compensation, and despite that the amount of such

liability may not then have determined, be a charge on all insurance money that is or may become payable in respect of that liability.

(2) If, on the happening of the event giving rise to any claim for damages or compensation as aforesaid, the insured has died insolvent or is bankrupt or, in the case of a corporation, is being wound up, or if any subsequent bankruptcy or winding up of the insured is deemed to have commenced not later than the happening of that event, the provisions of the last preceding subsection shall apply despite the insolvency, bankruptcy, or winding up of the insured.

(3) A charge created by this section has priority over all other charges affecting the said insurance money, and where the same insurance money is subject to 2 or more charges by virtue of this Part those charges shall have priority between themselves in the order of the dates of the events out of which the liability arose, or, if such charges arise out of events happening on the same date, they shall rank equally between themselves.

(4) A charge under subsection (3) is enforceable by way of an action 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; and in respect of any such action and of the judgment given therein the parties shall, to the extent of the charge, have the same rights and liabilities, and the Court shall have the same powers, as if the action were against the insured:

PROVIDED THAT, except where subsection (2) applies, no such action is to be commenced in any Court except with the leave of that Court.

(5) 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.

(6) A payment made by an insurer under the contract of insurance without actual notice of the existence of any such charge shall to the extent of that payment be a valid discharge to the insurer, despite anything contained in this Part.

(7) No insurer is liable under this Part for any sum beyond the limits fixed by the contract of insurance between the insurer and the insured.

(8) If the liability of an insurer to a worker is less than the liability of the employer to the worker, the worker may prove for the balance in the bankruptcy or liquidation of the employer.

6. Claims for damages or compensation against estate of deceased owner where no administrator – (1)Where:

- (a) a person desires to claim damages or compensation on account of an event, whether happening before or after the commencement of this section, in respect of which a contract of insurance was in force at the time of the happening of the event indemnifying the insured from liability in respect of those damages or that compensation; and
- (b) the insured is deceased and there is in Samoa no administrator within the meaning of the Administration Act 1975 of the estate of the insured, –

the person desiring to claim those damages or that compensation may give notice in writing to the insurer requiring the insurer to nominate some person to be the defendant in place of the insured in any action proposed to be brought in any Court claiming those damages or that compensation.

(2) Within 14 days after the service on the insurer of such a notice, the insurer may, by notice in writing served on the claimant, nominate some person (with his or her consent) to be the defendant in the proposed action, and thereupon the claimant may sue the defendant so nominated, describing him as the administrator *ad litem* of the estate of the insured.

(3) If within the period of 14 days the insurer does not nominate a defendant as aforesaid, the Court, in which an action claiming those damages or that compensation is intended to be commenced may, on the application of the claimant, appoint the Public Trustee to be the administrator *ad litem* of the estate of the insured for the purposes of the intended action, and it is the duty of the Public Trustee to act as such.

(4) Where any such appointment is made, the claimant may sue the Public Trustee, describing him as the administrator *ad litem* of the estate of the insured.

(5) The person nominated as the defendant by the insurer or, as the case may be, the Public Trustee is indemnified by the insurer in respect of any judgment against him or her (including the costs of the action and any costs awarded under subsection (6), and also in respect of all costs and expenses reasonably incurred by him or her in or in connection with the action

irrespective of the result of the action, and, in the case of the Public Trustee, is entitled to recover from the insurer reasonable remuneration for his or her services:

PROVIDED THAT, where in such action the plaintiff obtains judgment against the administrator *ad litem*, the judgment shall not be enforceable against the administrator *ad litem* by execution or otherwise except to the extent to which the insured was entitled to be indemnified by the insurer under the contract of insurance, and, to the extent to which the judgment is not so enforceable, the amount thereof is taken to be a liability of the estate (if any) of the insured, and is enforceable accordingly against that estate.

(6) Where in an action against the Public Trustee as administrator *ad litem* the plaintiff recovers judgment, the Court may award the plaintiff his or her costs of and incidental to the order appointing the Public Trustee as such administrator.

(7) No appointment or nomination of an administrator *ad litem* under this section shall confer any rights or impose any obligations on the Public Trustee or on the person so nominated in respect of any other assets of the estate of the insured or any liabilities in connection with that estate.

7. Consequential repeal and saving –*Section 22 of the Worker’s Compensation Ordinance 1960 is consequentially repealed:*

PROVIDED THAT where the event giving rise to a claim for damages or compensation happens before the passing of this Act all rights under that section 22, whether accrued on the passing of this Act or subsequently accruing, shall subsist for the benefit of the person having the claim.

PART 3 LIABILITY OF TORTFEASORS

8. Proceedings against, and contribution between, joint and several tortfeasors – (1) Where damage is suffered by a 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 1 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 wife, husband, parent, or child 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 in time have been, liable in respect of the same damage, whether as a joint tortfeasor or otherwise, so, however, that no person is entitled to recover contribution under this section from any person entitled to be indemnified by him or her in respect of the liability in respect of which the contribution is sought.

(2) A tortfeasor may recover contribution under this section from the husband or wife of the former husband or wife of the person by whom the damage was suffered, in any case where he or she could have recovered such contribution if the marriage relationship had never existed.

(3) In any proceedings for contribution under this section the amount of the contribution recoverable from a 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 may exempt a person from liability to make contribution, or to direct that the contribution to be recovered from any person shall amount to a complete indemnity.

(4) For the purposes of this section:

- (a) "parent" and "child" have the same meanings as they have for the purposes of the Fatal Accidents Act 1974;

- (b) the reference in this section to “the judgments 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.
- (5) Nothing in this section:
- (a) affects any criminal proceedings against a person in respect of a wrongful act; or
 - (b) renders enforceable an agreement for indemnity which would not have been enforceable if this section had not been passed.

PART 4 LIABILITY OF EMPLOYERS

9. Defence of common employment abolished –(1)Where an injury or damage is suffered by a servant by reason of the negligence 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.

(2) This section applies to every case in which the relation of employer and servant exists, whether the contract of employment is made before or after the passing of this Act.

10. Repeal – Section 361 of the Samoa Act 1921 (NZ) ceases to be part of the law of Samoa.

REVISION NOTES 2008 – 2019

This is the official version of this Act as at 31 December 2019.

This Act has been revised by the Legislative Drafting Division from 2008 to 2019 respectively under the authority of the Attorney General given under the *Revision and Publication of Laws Act 2008*.


The following general revisions have been made:

- (a) Amendments have been made to conform to modern drafting styles and to use modern language as applied in the laws of Samoa.
- (b) Amendments have been made to up-date references to offices, officers and statutes.

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- (c) Insertion of the commencement date
- (d) Other minor editing has been done in accordance with the lawful powers of the Attorney General.
 - (i) “Every” and “any” changed to “a”
 - (ii) “shall be” changed to “is” and “shall be deemed” changed to “is taken”
 - (iii) “shall have” changed to “has”
 - (iv) “shall be guilty” changed to “commits”
 - (v) “notwithstanding” changed to “despite”
 - (vi) “pursuant to” changed to “under”
 - (vii) “it shall be lawful” changed to “may”
 - (viii) “it shall be the duty” changed to “shall”
 - (ix) Numbers in words changed to figures
 - (x) “hereby” and “from time to time” (or “at any time” or “at all times”) removed
 - (xi) “under the hand of” changed to “signed by”
 - (xii) “shall be” changed to “is to be” or “is”.
 - (xiii) Part numbering changed to decimal.

There were no amendments made to this Act since the publication of the *Consolidated and Revised Statutes of Samoa 2007*.



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Attorney General of Samoa

*This Act is administered by
The Office of the Attorney General.*
