

Law Reform Act 1936

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Note

This Act is administered in the Ministry of Justice.

Part 7
**Covenants in leases not to assign or underlet without
consent of lessor**

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13

An Act to effect reforms in the law relating to—

- (1) the effect of death in relation to causes of action;**
- (2) the payment of compensation under the Deaths by Accidents Compensation Act 1908;**
- (3) charges on insurance money payable as indemnity for liability to pay damages or compensation;**
- (4) the capacity, property, and liabilities of married women, and the liabilities of husbands;**
- (5) proceedings against and contributions between tortfeasors;**
- (6) the liability of employers to their servants for injuries caused by the negligence of fellow servants; and**
- (7) covenants in leases not to assign or underlet without consent of lessor**

1 Short Title

This Act may be cited as the Law Reform Act 1936.

2 Act divided into Parts

This Act is divided into Parts as follows:

- Part 1—Survival of Causes of Action After Death.
- Part 2—Deaths by Accidents Compensation.
- Part 3—Charges on Insurance Money Payable as Indemnity for Liability to Pay Damages or Compensation.
- Part 4—Capacity, Property, and Liabilities of Married Women, and Liabilities of Husbands.
- Part 5—Liability of Tortfeasors.
- Part 6—Liability of Employers to Their Servants for Injuries Caused by the Negligence of Fellow Servants.

- Part 7—Covenants in Leases Not to Assign or Underlet Without Consent of Lessor.

Part 1

Survival of causes of action after death

3 Effect of death on certain causes of action

- (1) Subject to the provisions of this Part of this Act, on the death of any person after the passing 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 for inducing one spouse to leave or remain apart from the other.
- (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)
 - (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:
 - (d) Shall not include any damages for the loss of earnings of the person relating to the period when, but for the death of the person, he or she would have been likely to receive earnings from his or her employment or other occupation.
- (3) No proceedings shall be maintainable in respect of a cause of action in tort which by virtue of this Part of this Act 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 2 years before his death and proceedings are taken in respect thereof

not later than 12 months after his personal representative took out representation:

Provided that no such proceedings shall 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 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.

- (3A) Notwithstanding anything in subsection (3) of this section, 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) of this section; 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 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 shall be disturbed by reason of the application or of an order made thereon.
- (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 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 Part of this Act for the benefit of the estates of deceased persons shall be in addition to and not in derogation of any rights conferred by the Deaths by Accidents Compensation Act 1952, and so much of this Part of this Act

as relates to causes of action against the estates of deceased persons shall apply in relation to causes of action under that Act.

(6)

(7) No contract of insurance entered into under the Motor Vehicles Insurance (Third Party Risks) Act 1928 in respect of any period before the 1st day of June 1937, shall, notwithstanding anything to the contrary in that Act, be deemed to indemnify the insured—

(a) Against liability to pay damages in respect of any pain or suffering caused to any person by reason of any act or omission that has caused his death:

(b) Against liability to pay damages in respect of any cause of action which by virtue of this Part of this Act has survived for the benefit of the estate of a deceased person unless proceedings in respect of that cause of action were pending at the date of his death or proceedings are taken in respect of the cause of action not later than 12 months after his personal representative took out representation.

(8) This section is subject to sections 394 and 395 of the Accident Insurance Act 1998.

In subsection (1) the proviso was substituted for the original proviso by section 6(2) of the Domestic Actions Act 1975.

Subsection (2)(b) was repealed by section 6(3) Domestic Actions Act 1975.

Subsection (2)(d) was inserted, as from 2 September 1996, by section 2(1) Law Reform Amendment Act 1996 (1996 No 130). *See* section 2(2) of that Act as to the transitional provisions.

In subsection (3)(b) the words “earlier than 2 years” were substituted for the words “earlier than 12 months” by section 35(2) of the Limitation Act 1950.

In subsection (3)(b) the proviso was added by section 2(1) of the Law Reform Amendment Act 1955.

Subsection (3A) was inserted by section 2(2) of the Law Reform Amendment Act 1955.

In subsection (5) the Deaths by Accidents Compensation Act 1952 has been substituted for the repealed Deaths by Accidents Compensation Act 1908.

Subsection (6) was repealed, as from 1 January 1971, by section 171(1) Insolvency Act 1967. *See* SR 1970/244.

Subsection (8) was added by section 184 of the Accident Compensation Act 1972, which came into force on 1 April 1973 *See* SR 1973/290.

A reference to section 27 of the Accident Compensation Act 1982 was substituted, as from 1 April 1983, for a reference to section 5 of the Accident Compensation Act 1972 pursuant to section 122(1) Accident Compensation Act 1982 (1982 No 181). That reference was in turn substituted, as from 1 July 1992, by a reference to section 14 Accident Rehabilitation and Compensation Insurance Act 1992 pursuant to section 179(1) Accident Rehabilitation and Compensation Insurance Act 1992 (1992 No 13). That reference was in turn substituted, as from 1 July 1999, by a reference to sections 394 and 395 of the Accident Insurance Act 1998 pursuant to section 417(1) Accident Insurance Act 1998 (1998 No 114).

Part 2

Deaths by accidents compensation

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Section 4 was repealed by section 23(1) Deaths by Accidents Compensation Act 1952.

5

Section 5 was repealed by section 23(1) Deaths by Accidents Compensation Act 1952.

6

Section 6 was repealed by section 23(1) Deaths by Accidents Compensation Act 1952.

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Section 7 was repealed by section 23(1) Deaths by Accidents Compensation Act 1952.

8

Section 8 was repealed by section 23(1) Deaths by Accidents Compensation Act 1952.

Part 3

Charges on insurance money payable as indemnity for liability to pay damages or compensation

9 Amount of liability to be charge on insurance money payable against that liability

- (1) If any person (hereinafter in this Part of this Act referred to as the insured) has, whether before or after the passing of this Act, entered into a contract of insurance by which he is indemnified against liability to pay any damages or compensation, the amount of his liability shall, on the happening of the event giving rise to the claim for damages or compensation,

and notwithstanding that the amount of such liability may not then have been 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 notwithstanding the insolvency, bankruptcy, or winding up of the insured.
- (3) Every charge created by this section shall have 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 of this Act 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) Every such charge as aforesaid shall be 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; 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 the provisions of subsection (2) of this section apply, no such action shall 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) Any 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, notwithstanding anything in this Part of this Act contained.

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

9A Claims for damages or compensation against estate of deceased owner where no administrator

- (1) Where—
- (a) Any person desires to claim damages or compensation on account of any 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 New Zealand no administrator within the meaning of the Administration Act 1969 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 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 said 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 Public Trust to be the administrator *ad litem* of the estate of the insured for the purposes of the intended action, and it shall be the duty of Public Trust to act as such.
- (4) Where any such appointment is made, the claimant may sue Public Trust, describing it 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, Public Trust shall be indemnified by the insurer in respect of any judgment against it (including the costs of the action and any costs awarded under subsection (6) of this section), and also in respect of all costs and expenses reasonably incurred by it in or in connection with the action irrespective of the result of the action, and, in the case of Public Trust, shall be entitled to recover from the insurer reasonable remuneration for its services:

Provided that, where in any 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 shall be deemed to be a liability of the estate (if any) of the insured, and shall be enforceable accordingly against that estate.

- (6) Where in any action against Public Trust as administrator *ad litem* the plaintiff recovers judgment, the Court may award the plaintiff his costs of and incidental to the order appointing Public Trust 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 Public Trust 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.

Section 9A was inserted by section 2 Law Reform Amendment Act 1957.

Section 9A was amended, as from 1 March 2002, by section 170(1) Public Trust Act 2001 (2001 No 100) by substituting the words "Public Trust" for the words "the Public Trustee" wherever they occur. *See* clause 2 Public Trust Act Commencement Order 2002 (SR 2002/11).

In subsection (1)(b) the Administration Act 1969, being the corresponding enactment in force, has been substituted for the repealed Administration Act 1952.

Subsection (4) was amended, as from 1 March 2002, by section 170(1) Public Trust Act 2001 (2001 No 100) by substituting the word "it" for the word "him". *See* clause 2 Public Trust Act Commencement Order 2002 (SR 2002/11).

Subsection (5) was amended, as from 1 March 2002, by section 170(1) Public Trust Act 2001 (2001 No 100) by substituting the word "it's" for the word "his". *See* clause 2 Public Trust Act Commencement Order 2002 (SR 2002/11).

Subsection (5) was amended, as from 1 March 2002 by substituting the word “it” for the word “him”. This change was made without specific authority, but accords with the change made by section 170(1) Public Trust Act 2001 (2001 No 100) to subsection (4). *See* clause 2 Public Trust Act Commencement Order 2002 (SR 2002/11).

10 Consequential repeals

Section 48 of the Workers’ Compensation Act 1922 and section 10 of the Motor Vehicles Insurance (Third Party Risks) Act 1928 are hereby 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 those sections, whether accrued on the passing of this Act or subsequently accruing, shall subsist for the benefit of the person having the claim.

Part 4 Capacity, property, and liabilities of married women, and liabilities of husbands

11

Section 11 was repealed by section 27(1) Married Women’s Property Act 1952.

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Section 12 was repealed by section 27(1) Married Women’s Property Act 1952.

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Section 13 was repealed by section 27(1) Married Women’s Property Act 1952.

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Section 14 was repealed by section 27(1) Married Women’s Property Act 1952.

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Section 15 was repealed by section 27(1) Married Women’s Property Act 1952.

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(1)

(2)

(3)

(4)

(5)

Subsection (1) was repealed by section 27(1) of the Married Women’s Property Act 1952.

Subsection (2) was repealed by section 171(1) of the Insolvency Act 1967 from 1 January 1971. *See* SR 1970/244.

Subsection (3) was repealed by section 68(2)(c) of the Copyright Act 1962.

Subsection (4) was impliedly repealed by section 134(1) of the Domestic Proceedings Act 1968.

Subsection (5) was repealed by section 90(1) of the Matrimonial Proceedings Act 1963.

Part 5

Liability of tortfeasors

- 17 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 wife, husband, civil union partner, de facto partner, 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 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.

(1A)

- (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 purposes of this section—
- (a) The expressions “parent” and “child” have the same meanings as they have for the purposes of the Deaths by Accidents Compensation Act 1952:
 - (b) The reference in this section 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.
- (4) Nothing in this section shall—
- (a) Affect any criminal proceedings against any person in respect of any wrongful act; or
 - (b) Render enforceable any agreement for indemnity which would not have been enforceable if this section had not been passed.
- (5) Section 94 of the Judicature Act 1908 shall not hereafter apply with respect to any action or other proceeding to which this Part of this Act applies.

Subsection (1)(b) was amended, as from 26 April 2005, by section 7 Relationships (Statutory References) Act 2005 (2005 No 3) by inserting the words “civil union partner, de facto partner,” after the word “husband,”.

In subsection (1)(c) the words “in time” were inserted by section 35(2) of the Limitation Act 1950.

Subsection (1A) was inserted by section 3 Law Reform Amendment Act 1955.

Subsection (3) was repealed by section 9(2)(b) of the Matrimonial Property Act 1963.

In subsection (3)(a) the Deaths by Accidents Compensation Act 1952 has been substituted for the repealed Deaths by Accidents Compensation Act 1908 as amended by Part 2 of this Act.

Part 6
**Liability of employers to their servants
for injuries caused by the negligence of
fellow servants**

18 Defence of common employment abolished

- (1) Where any injury or damage is suffered by a servant by reason of the negligence of a fellow servant, the employer of those servants shall be 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.
- (3) This section shall bind the Crown.
- (4)

Subsection (4) was repealed by section 34(1) Crown Proceedings Act 1950.

Part 7
**Covenants in leases not to assign or
underlet without consent of lessor**

19

Section 19 was repealed by section 155(2) of the Property Law Act 1952.

Schedule

Section 16(1)

The Schedule was repealed by section 27(1) of the Married Women's Property Act 1952.

[Repealed]