

ภาคผนวก

**LAW REFORM (MISCELLANEOUS PROVISIONS) ACT 1934****1. Effect of death on certain 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 .

(1A) The right of a person to claim under section 1A of the Fatal Accidents Act 1976 (bereavement) shall not survive for the benefit of his estate on his death.

(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-

(i) any exemplary damages;

(ii) any damages for loss of income in respect of any period after that person's death;]

(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.

(3) .....

(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 Act 1976 ... 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

Act as it applies in relation to other causes of action not expressly excepted from the operation of subsection (1) of this section.

(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.

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## FATAL ACCIDENTS ACT 1976

### 1. Right of action for wrongful act causing death.

(1) If death is caused by any wrongful act, neglect or default which is such as would (if death had not ensued) have entitled the person injured to maintain an action and recover damages in respect thereof, the person who would have been liable if death had not ensued shall be liable to an action for damages, notwithstanding the death of the person injured.

(2) Subject to section 1A(2) below, every such action shall be for the benefit of the dependents of the person ("the deceased") whose death has been so caused.

(3) In this Act "dependent" means-

- (a) the wife or husband or former wife or husband of the deceased;
- (b) any person who-
  - (i) was living with the deceased in the same household immediately before the date of the death; and
  - (ii) had been living with the deceased in the same household for at least two years before that date; and
  - (iii) was living during the whole of that period as the husband or wife of the deceased;
- (c) any parent or other ascendant of the deceased;
- (d) any person who was treated by the deceased as his parent;
- (e) any child or other descendant of the deceased;
- (f) any person (not being a child of the deceased) who, in the case of any marriage to which the deceased was at any time a party, was treated by the deceased as a child of the family in relation to that marriage;
- (g) any person who is, or is the issue of, a brother, sister, uncle or aunt of the deceased.

(4) The reference to the former wife or husband of the deceased in subsection (3)(a) above includes a reference to a person whose marriage to the deceased has been annulled or declared void as well as a person whose marriage to the deceased has been dissolved.

(5) In deducing any relationship for the purposes of subsection (3) above-

(a) any relationship by affinity shall be treated as a relationship of consanguinity, any relationship of the half blood as a relationship of the whole blood, and the stepchild of any person as his child, and

(b) an illegitimate person shall be treated as the legitimate child of his mother and reputed father.

(6) Any reference in this Act to injury includes any disease and any impairment of a person's physical or mental condition.

#### **1A. Bereavement.**

(1) An action under this Act may consist of or include a claim for damages for bereavement.

(2) A claim for damages for bereavement shall only be for the benefit-

(a) of the wife or husband of the deceased; and

(b) where the deceased was a minor who was never married-

(i) of his parents, if he was legitimate; and

(ii) of his mother, if he was illegitimate.

(3) Subject to subsection (5) below, the sum to be awarded as damages under this section shall be £7,500.

(4) Where there is a claim for damages under this section for the benefit of both the parents of the deceased, the sum awarded shall be divided equally between them (subject to any deduction falling to be made in respect of costs not recovered from the defendant).

(5) The Lord Chancellor may by order made by statutory instrument, subject to annulment in pursuance of a resolution of either House of Parliament, amend this section by varying the sum for the time being specified in subsection (3) above.

**2. Persons entitled to bring the action.**

(1) The action shall be brought by and in the name of the executor or administrator of the deceased.

(2) If-

(a) there is no executor or administrator of the deceased, or

(b) no action is brought within six months after the death by and in the name of an executor or administrator of the deceased, the action may be brought by and in the name of all or any of the persons for whose benefit an executor or administrator could have brought it.

(3) Not more than one action shall lie for and in respect of the same subject matter of complaint.

(4) The plaintiff in the action shall be required to deliver to the defendant or his solicitor full particulars of the persons for whom and on whose behalf the action is brought and of the nature of the claim in respect of which damages are sought to be recovered.

**3. Assessment of damages.**

(1) In the action such damages, other than damages for bereavement, may be awarded as are proportioned to the injury resulting from the death to the dependents respectively.

(2) After deducting the costs not recovered from the defendant any amount recovered otherwise than as damages for bereavement shall be divided among the dependents in such shares as may be directed.

(3) In an action under this Act where there fall to be assessed damages payable to a widow in respect of the death of her husband there shall not be taken into account the re-marriage of the widow or her prospects of re-marriage.

(4) In an action under this Act where there fall to be assessed damages payable to a person who is a dependent by virtue of section 1(3)(b) above in respect of the death of the person with whom the dependent was living as husband or wife there shall be taken into account (together with any other matter that appears to the court to be relevant to the action) the fact that the dependent had no enforceable right to financial support by the deceased as a result of their living together.

(5) If the dependents have incurred funeral expenses in respect of the deceased, damages may be awarded in respect of those expenses.

(6) Money paid into court in satisfaction of a cause of action under this Act may be in one sum without specifying any person's share.

#### **4. Assessment of damages; disregard of benefits.**

In assessing damages in respect of a person's death in an action under this Act, benefits which have accrued or will or may accrue to any person from his estate or otherwise as a result of his death shall be disregarded.

#### **5. Contributory negligence.**

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 the Law Reform (Miscellaneous Provisions) Act 1934 the damages recoverable would be reduced under section 1(1) of the Law Reform (Contributory Negligence) Act 1945, any damages recoverable in an action under this Act shall be reduced to a proportionate extent.