

Chapter 297.
Wrongs (Miscellaneous Provisions) Act 1975.

Certified on: / /20 .

INDEPENDENT STATE OF PAPUA NEW GUINEA.



Chapter 297.

Wrongs (Miscellaneous Provisions) Act 1975.

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INDEPENDENT STATE OF PAPUA NEW GUINEA.



AN ACT

entitled

Wrongs (Miscellaneous Provisions) Act 1975,

Being an Act relating to various aspects of the law of wrongs.

PART I. – STATE LIABILITY IN TORT.

Division 1.

General.

1. GENERAL LIABILITY OF THE STATE IN TORT.

(1) Subject to this Division, the State is subject to all liabilities in tort to which, if it were a private person of full age and capacity, it would be subject—

- (a) in respect of torts committed by its servants and agents; and
- (b) in respect of any breach of the duties that a person owes to his servants or agents under the underlying law by reason of being their employer; and
- (c) in respect of any breach of the duties attaching under the underlying law to the ownership, occupation, possession or control of property.

(2) Proceedings do not lie against the State by virtue of Subsection (1)(a) in respect of an act or omission of a servant or agent of the State unless the act or omission would, apart from this Division, have given rise to a cause of action in tort against the servant or agent or his estate.

(3) Where the State is bound by a statutory duty that is binding also on persons other than the State and its officers, then, subject to this Division, the State is, in respect of a failure to comply with that duty, subject to all liabilities in tort (if any) to which it would be subject if it were a private person of full age and capacity.

(4) Where functions are conferred or imposed on an officer of the State as such either by a rule of the underlying law or by statute, and the officer commits a tort

while performing or purporting to perform the functions, the liabilities of the State in respect of the tort are such as they would have been if the functions had been conferred or imposed solely by virtue of instructions lawfully given by the Government.

(5) An Act or subordinate enactment that negatives or limits the amount of the liability of a Department of the Government or officer of the State in respect of a tort committed by the Department or officer applies, in the case of proceedings against the State under this section in respect of a tort committed by the Department or officer, in relation to the State as it would have applied in relation to the Department or officer if the proceedings against the State had been proceedings against the Department or officer.

(6) Proceedings do not lie against the State by virtue of this section in respect of anything done or omitted to be done by a person while discharging or purporting to discharge responsibilities of a judicial nature vested in him, or responsibilities that he has in connection with the execution of judicial process.

2. APPLICATION OF LAW AS TO INDEMNITY, CONTRIBUTION, JOINT AND SEVERAL TORT-FEASORS AND CONTRIBUTORY NEGLIGENCE.

(1) Where the State is subject to liability by virtue of this Division, the law relating to indemnity and contribution is enforceable by or against the State in respect of the liability to which it is so subject as if the State were a private person of full age and capacity.

(2) Without prejudice to the effect of Subsection (1), Part VIII. binds the State.

(3) Part IX. binds the State.

Division 2.

Liability in Respect of Motor Vehicles.

3. INTERPRETATION OF DIVISION 2.

(1) In this Division, unless the contrary intention appears—

“**driver**” includes the rider of a motor cycle and a person for the time being in charge of a motor vehicle;

“**motor vehicle**” means a motor car, motor carriage, motor cycle, motor lorry, motor omnibus, motor tractor or other vehicle propelled wholly or partly by a volatile spirit or by steam, gas, oil or electricity, or by any means other than human or animal power, and includes a trailer or semi-trailer other than a vehicle used on a railway or tramway;

“**statutory instrumentality**” means a corporation incorporated for a public purpose by a law, but does not include an incorporated company or association;

“third-party policy” means a policy of insurance that is a third-party policy within the meaning of the *Motor Vehicles (Third Party Insurance) Act 1974*;

“uninsured motor vehicle” means a motor vehicle in respect of which a third-party policy is not in force.

(2) This Division does not apply in relation to proceedings arising out of an occurrence that took place outside the country.

4. CONCLUSIVE PRESUMPTION OF AGENCY IN RESPECT OF DRIVING OF GOVERNMENT VEHICLES.

(1) In proceedings in which—

(a) a claim is made against the State or a statutory instrumentality for damages in respect of the death of, or personal injury to, a person caused by, or arising out of the use of, an uninsured motor vehicle owned by the State or the instrumentality; or

(b) a claim is made by or against the State or a statutory instrumentality for contribution in relation to liability of the State or the instrumentality for such damages,

the driver of the vehicle shall, for the purposes of the claim, be conclusively presumed to have been at all relevant times, with respect to the driving of the vehicle, the agent of the State or of the instrumentality, as the case may be, acting within the scope of his authority.

(2) Nothing in this Division implies ratification by the State or a statutory instrumentality of the acts of the driver of a vehicle.

Division 3.

Liability in Respect of Aircraft Accidents.

Subdivision A. – Preliminary.

5. INTERPRETATION OF DIVISION 3.

In this Division, unless the contrary intention appears—

“damages” includes an amount received under a compromise or settlement of a claim for damages, whether legal proceedings had been instituted or not;

“flying pay” includes flying instructional pay, flight pay and flying allowance and any other similar pay or allowance;

“passenger”, in relation to an aircraft, does not include—

(a) a member of the crew (including a pilot) of the aircraft; or

(b) a member of the Defence Force, whether a member of the crew of the aircraft or not, who—

- (i) is in receipt of flying pay; or
- (ii) is included in a prescribed class of members of the Defence Force, being a class as to whom the terms and conditions of their service include provision for risks arising out of the performance of duties in aircraft; or
- (c) a person whose carriage in the aircraft is specifically and only for the purpose of his performing in the aircraft–
 - (i) duties or services for the performance of which he is employed or engaged by the State or an instrumentality of the Government; or
 - (ii) duties as a member of the Defence Force; or
- (d) a person whose carriage in the aircraft is specifically and only for the purpose of his performing duties or services in the aircraft; or
- (e) a person who is not lawfully entitled to be on board the aircraft.

6. APPLICATION OF DIVISION 3.

This Division applies both within and outside the country.

Subdivision B. – Carriage in Aircraft Operated by the State or an Instrumentality of the Government.

7. APPLICATION OF SUBDIVISION B.

This Subdivision applies to the carriage of a passenger in an aircraft operated by the State or an instrumentality of the Government, not being carriage to which Part III. of the *Civil Aviation (Aircraft Operators' Liability) Act 1975* applies.

8. APPLICATION OF THE CIVIL AVIATION (AIRCRAFT OPERATORS' LIABILITY) ACT 1975.

Subject to this Subdivision, Sections 24, 28(1), 29, 30, 31 (other than Subsection (2)) and 33 to 35 (inclusive) of the *Civil Aviation (Aircraft Operators' Liability) Act 1975* apply to and in relation to carriage to which this Subdivision applies as if those provisions were incorporated in this Subdivision and as if–

- (a) references in those provisions to a carrier or the carrier were references to the State or the instrumentality of the Government by which the aircraft was being operated, as the case requires; and
- (b) the reference in Section 29 of that Act to Section 27 of that Act were a reference to Section 9 of this Act.

9. LIMITATION OF LIABILITY UNDER SUBDIVISION B.

(1) The maximum liability under this Subdivision of the State or an instrumentality of the Government in respect of any one person, by reason of his death or injury, is K30,000.00.

(2) The amount of any damages that would, but for this subsection, be recoverable by virtue of this Subdivision by a person from the State or from an instrumentality of the Government, in respect of a death or injury is reduced by any amount received or receivable by him in consequence of the death or injury by reason of—

- (a) insurance effected by the State or the instrumentality for the benefit of the deceased or injured person or his estate; or
- (b) insurance effected by the deceased or injured person that is referable to an allowance granted by the State or the instrumentality for the purpose of enabling him to effect such insurance.

10. RELIEF FROM CERTAIN OTHER LIABILITIES.

(1) Subject to Section 33 of the *Civil Aviation (Aircraft Operators' Liability) Act 1975* in its application by virtue of this Subdivision, the liability, under this Subdivision, of the State or an instrumentality of the Government in respect of the death of a passenger, or personal injury to a passenger that has not resulted in his death, is in substitution for any other civil liability of the State or the instrumentality in respect of the death or injury other than—

- (a) a liability under Division II.1 or Division II.2 of the *Civil Aviation (Aircraft Operators' Liability) Act 1975*; or
- (b) a liability arising otherwise than by reason of the operation of the aircraft by the State or the instrumentality.

(2) Notwithstanding Division II.1 and Division II.2 of the *Civil Aviation (Aircraft Operators' Liability) Act 1975* but without prejudice to the operation of Section 11 of this Act, any liability, under this Subdivision, of the State or an instrumentality of the Government is not excluded by reason of the existence of any liability of the State or of the instrumentality under either of those Divisions.

11. LIABILITY OF STATE, ETC., INDEPENDENTLY OF SUBDIVISION B.

(1) Where, apart from this section, damages in respect of any death or injury are recoverable, under this Subdivision, from the State or an instrumentality of the Government by or for the benefit of a person and such damages are also recoverable from the State or an instrumentality of the Government by or for the benefit of that person otherwise than under this Subdivision—

- (a) if damages are recovered otherwise than under this Subdivision—damages are not recoverable under this Subdivision; and

- (b) if damages are recovered under this Subdivision—the amount of damages recoverable otherwise than under this Subdivision is reduced by the amount of the damages so recovered.

(2) In Subsection (1), “**damages**” does not include compensation under the *Workers’ Compensation Act 1978*.

(3) This section does not prevent the application of Section 7 of the *Workers’ Compensation Act 1978* in relation to damages recovered or recoverable under this Subdivision.

Subdivision C. – Carriage in Aircraft not Operated by the State or an Instrumentality of the Government.

12. APPLICATION OF SUBDIVISION C.

(1) Subject to this section, this Subdivision applies to the carriage in an aircraft, operated by a person other than the State or an instrumentality of the Government, of a passenger—

- (a) who is an employee within the meaning of the *Workers’ Compensation Act 1978*, and is travelling in the course of his employment by the State or an instrumentality of the Government; or
- (b) the cost of whose carriage has been, or is to be, borne by the State or an instrumentality of the Government; or
- (c) who is travelling by air for the purposes of the State or of an instrumentality of the Government under arrangements made or authority given by the State or the instrumentality.

(2) This Subdivision does not apply to carriage to which Part III. of the *Civil Aviation (Aircraft Operators’ Liability) Act 1975* applies.

13. LIABILITY OF STATE, ETC., FOR DEATH OR INJURY.

Subject to this Subdivision, where this Subdivision applies to the carriage of a person—

- (a) the State; or
- (b) if the person is employed by an instrumentality of the Government or an instrumentality of the Government has borne, or is to bear, the cost of his carriage or has arranged for or authorized his carriage—the instrumentality,

is liable—

- (c) for damage sustained by reason of his death; or
- (d) for any personal injury suffered by him,

resulting from an accident that took place—

- (e) on board the aircraft; or

(f) in the course of any of the operations of embarking or disembarking.

14. APPLICATION OF THE CIVIL AVIATION (AIRCRAFT OPERATORS' LIABILITY) ACT.

Subject to this Subdivision, Sections 30, 31 (other than Subsections (2) and (10)), 34 and 35 of the *Civil Aviation (Aircraft Operators' Liability) Act 1975* apply to and in relation to carriage to which this Subdivision applies as if those provisions were incorporated in this Subdivision and as if references in those provisions to a carrier were references to the State or an instrumentality of the Government.

15. LIMITATION OF LIABILITY UNDER SUBDIVISION C.

(1) The maximum liability under this Subdivision of the State or an instrumentality of the Government in respect of any one person, by reason of his death or injury, is K30,000.00.

(2) The amount of any damages recoverable, by virtue of this Subdivision, but for this subsection by a person from the State or an instrumentality of the Government in respect of a death or injury is reduced by—

(a) the amount of any damages or compensation—

(i) paid or payable, in respect of the death or injury, to or for the benefit of the person by; or

(ii) recovered or recoverable by or for the benefit of that person from,

the carrier, a servant or agent of the carrier or any other person other than the State or the instrumentality, as the case may be; and

(b) any amount received or receivable by the person, in consequence of the death or injury, by reason of—

(i) insurance effected, for the benefit of the deceased or injured person or his estate, by the carrier or by the State or the instrumentality; or

(ii) insurance effected by the deceased or injured person that is referable to an allowance granted by the State or the instrumentality for the purpose of enabling him to effect such insurance.

16. LIABILITY OF STATE, ETC., INDEPENDENTLY OF SUBDIVISION C.

(1) Where, apart from this section, damages in respect of any death or injury are recoverable from the State or an instrumentality of the Government by or for the benefit of a person under this Subdivision, and such damages are also recoverable from the State or an instrumentality of the Government by or for the benefit of the person otherwise than under this Subdivision—

(a) if damages are recovered otherwise than under this Subdivision—damages are not recoverable under this Subdivision; and

- (b) if damages are recovered under this Subdivision—the amount of damages recoverable otherwise than under this Subdivision is reduced by the amount of the damages so recovered.

(2) In Subsection (1), “**damages**” does not include compensation under the *Workers’ Compensation Act 1978*.

(3) This section does not prevent the application of Section 7 of the *Workers’ Compensation Act 1978* in relation to damages recovered or recoverable under this Subdivision.

17. DAMAGES NOT RECOVERABLE UNDER SUBDIVISION C IN CERTAIN CIRCUMSTANCES.

(1) Damages under this Subdivision in respect of a death or injury are not recoverable from the State or an instrumentality of the Government by or for the benefit of a person where the person, or a person lawfully acting or entitled to act on behalf of the person—

- (a) has failed to take any action that he could reasonably have been expected to take, if this Subdivision had not been enacted, to recover damages in respect of the death or injury from any other person who was, or may have been, liable to pay damages in respect of the death or injury; or
- (b) has, without the written consent of the Government or the instrumentality, as the case may be, entered into a compromise, settlement or agreement by which a person other than the State or the instrumentality has been discharged, in whole or in part, from liability to which he was, or might have been, subject in respect of the death or injury; or
- (c) has refused to comply with a request under Subsection (2).

(2) The State or an instrumentality of the Government may, in writing, request a person who appears to be entitled to recover damages in respect of a death or injury to which this Subdivision applies against a person other than the State or the instrumentality, or a person lawfully acting or entitled to act on behalf of such a person, to take or continue proceedings (whether in the country or elsewhere) to recover the damages.

(3) Where proceedings are taken or continued in accordance with Subsection (2), the proceedings shall be conducted on behalf of the first-mentioned person at the expense of the State or the instrumentality, as the case may be.

(4) The State or an instrumentality of the Government may, by written notice, revoke a request made under Subsection (2), and, in that event, it is not liable for any costs or expenses incurred in respect of the continuance of the proceedings after the revocation.

18. ACTION AGAINST STATE, ETC., UNDER SUBDIVISION C WHEN OTHER PROCEEDINGS PENDING.

An action against the State or an instrumentality of the Government for damages under this Subdivision in respect of a death or injury shall not be heard or determined if an action against a person other than the State or the instrumentality for damages in respect of the death or injury is pending in any court, whether in the country or elsewhere.

Subdivision D. – Regulations.

19. REGULATIONS.

The Head of State, acting on advice, may make regulations, not inconsistent with this Division, prescribing all matters that by this Division are required or permitted to be prescribed, or that are necessary or convenient to be prescribed for carrying out or giving effect to this Division.

PART II. – ACTIONS BETWEEN HUSBAND AND WIFE.**20. ACTIONS IN TORT.**

(1) Subject to this section, each of the parties to a marriage has a like right of action in tort against the other as if they were not married.

(2) Where an action in tort is brought by one of the parties to a marriage against the other during the subsistence of the marriage–

- (a) the court before which the action is brought may stay the action if it appears that no substantial benefit would accrue to either party from the continuation of the proceedings; or
- (b) if the action is brought in the National Court, the Court–
 - (i) may stay the action if it appears that the question or questions in issue could more conveniently be disposed of on an application under Section 15 of the *Married Women's Property Act 1953*; and
 - (ii) may, without the necessity of any further application, exercise any power that could be exercised on an application under that Section, or give such directions as it thinks proper for the disposal under that section of any question arising in the proceedings.

21. APPLICATION OF SECTION 20 WHERE MARRIAGE ANNULLED, ETC.

The reference in Section 20(1) to the parties to the marriage includes a reference to persons who were parties to a marriage that has been annulled or dissolved.

22. APPLICATION OF PART II TO CERTAIN CAUSES OF ACTION.

Sections 20 and 21 do not apply to a cause of action that arose or would, but for the subsistence of a marriage, have arisen before 25 June 1970 (being the date of commencement of the pre-Independence *Law Reform (Husband and Wife) Act 1970*).

PART III. – SEDUCTION.

23. PROOF OF LOSS OF SERVICE IN ACTIONS OF SEDUCTION.

In an action of seduction brought by a parent or person in *loco parentis* it is not necessary for the plaintiff to allege or give evidence of loss of service to the plaintiff by the woman or girl seduced, or that between them there was the relation of master and servant, but the loss of service and relation shall be conclusively presumed in favour of the plaintiff.

PART IV. – WRONGFUL ACT OR NEGLIGENCE CAUSING DEATH.**24. INTERPRETATION OF PART IV.**

(1) In this Part, unless the contrary intention appears–

“**child**” includes son, daughter, grandson, granddaughter, stepson and stepdaughter;

“**parent**” includes father, mother, grandfather, grandmother, stepfather and stepmother.

(2) For the purposes of this Part, a person shall be deemed to be the parent or child of a deceased person notwithstanding that he was related to him illegitimately or in consequence of adoption, whether under a law of Papua New Guinea or under a law of a place outside Papua New Guinea, and, in deducing a relationship that under the provisions of this Part is included within the meaning of the expression “parent” or “child”, an illegitimate person and an adopted person shall be treated as being or as having been the legitimate offspring of his mother and reputed father or of his adopters, as the case may be.

(3) In deducing a relationship for the purposes of this Part, a relationship by affinity shall be treated as a relationship by consanguinity and a relationship of the half-blood as a relationship of the whole blood.

25. LIABILITY FOR DEATH CAUSED WRONGFULLY, ETC.

Where the death of a person is caused by a wrongful act, neglect or default and the act, neglect or default is such as would (if death had not ensued) have entitled the party injured to maintain an action and recover damages in respect of it, the person who would have been liable if death had not ensued is liable to an action for damages notwithstanding the death of the person injured and notwithstanding that the death has been caused under such circumstances as amount in law to an offence.

26. ACTIONS UNDER SECTION 25.

(1) An action referred to in Section 25 shall be for the benefit of the wife, husband, parent and child of the deceased person, and a person who is, or is the issue of, a brother, sister, uncle or aunt of the deceased person, and shall be brought by and in the name of the executor or administrator of the person deceased.

(2) In the case of the death of a native within the meaning of the *Interpretation Act 1975*, an action referred to in Subsection (1) may be for the benefit of the persons who by custom were dependent on the deceased immediately before his death, in addition to the persons specified in that subsection.

27. ACTIONS FOR DAMAGES BY PERSONS INTERESTED.

(1) Where in any case to which this Part applies there is no executor or administrator of the person deceased, or where no action referred to in this Part has, within six months after the death of the deceased person, been brought by his

executor or administrator, the action may be brought by all or any of the persons for whose benefit the action would have been if it had been brought by the executor or administrator.

(2) An action brought under Subsection (1) shall be for the benefit of the same person or persons and shall be subject to the same procedure as nearly as may be as if it were brought by the executor or administrator.

28. AMOUNT OF DAMAGES.

(1) In an action referred to in Section 25, the court may award such damages as it thinks proportioned to the injury resulting from the death to the respective parties for whom and for whose benefit the action is brought, and the amount so recovered, after deducting the costs not recovered from the defendant, shall be divided amongst those parties in such shares as the court directs.

(2) In an action referred to in Section 25, damages may be awarded in respect of medical expenses incurred as a result of the injury causing the death, together with reasonable expenses of the funeral or cremation of the deceased person (including the cost of erecting a headstone or tombstone over the grave of the deceased person), if those expenses have been incurred by one or more of the parties for whose benefit the action is brought.

29. SOLATIUM TO PARENTS OF CHILD WRONGFULLY KILLED.

(1) In this section, “parent” means—

- (a) where the child has been adopted, the adopted father or mother of the child; and
- (b) where the child has not been adopted, the father or mother of a legitimate child and the mother of an illegitimate child.

(2) In an action referred to in Section 25 in relation to the death of a child after 25 July 1968 (being the date of commencement of the pre-Independence *Law Reform (Miscellaneous Provisions) Act 1967*) the court may award such damages, not exceeding K600.00 in the aggregate, as the court thinks just, by way of solatium for the suffering caused to a parent by the death of the child.

(3) When both parents bring an action to recover the sum of money payable under this section, the amount recovered, after deducting the costs not recovered from the defendant, shall be divided between the parents in such shares as the court directs.

(4) Where both parents survive the child and one of them does not join in bringing an action under this section, the other may bring an action for such amount as he claims to be due to him.

(5) In an action brought to enforce a right conferred by this section the court may, in its discretion, refuse to order the payment of any sum by way of solatium if, having regard to the conduct of the plaintiff in relation to the deceased person, or to

the relations that existed between the plaintiff and the deceased person, or for any other sufficient reason, it thinks that no such payment should be made.

(6) The rights conferred by this section are in addition to, and not in derogation of, any rights conferred on a parent by any other provision of this Act.

(7) The cause of action conferred on a person by this section does not, on his death, survive for the benefit of his estate.

30. EXCLUSION OF PAYMENTS BY INSURERS IN ASSESSMENT OF DAMAGES.

In assessing damages in an action under this Part there shall not be taken into account—

- (a) any sum (including a return of premiums) paid or payable, on the death of the deceased person, under a contract of assurance or insurance, whenever made; or
- (b) any sum paid or payable by way of social service benefit under an Act; or
- (c) any sum (including a return of contributions) paid or payable out of a superannuation, provident or like fund, or by way of benefit from a friendly society, benefit society or trade union; or
- (d) any benefit or gratuity, in cash or in kind, received, as a result of the death, by a person for whose benefit the action is brought.

31. LIMITATION OF ACTIONS UNDER PART IV.

Only one action under this Part lies for and in respect of the same subject-matter of complaint, and every such action must be commenced within three years after the death of the deceased person.

32. PARTICULARS OF DEMAND.

In an action under this Part, the plaintiff on the record must deliver, together with the statement of claim, to the defendant or his lawyer full particulars of the person 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.

33. PAYMENT INTO COURT.

(1) In an action under this Part, the defendant may pay money into court as compensation in one sum to all persons entitled under this Part for the wrongful act, neglect or default, without specifying the shares into which the sum is to be divided by the court.

(2) No portion of the sum paid in shall be paid out of court except under the order of a Judge, but otherwise the rules of the court for the time being in force

relating to payment into and out of court and tender, and matters associated with such payment and tender, with any necessary modifications, apply.

PART V. – SURVIVAL OF CAUSES OF ACTION.**34. EFFECT OF DEATH ON CERTAIN CAUSES OF ACTION.**

(1) Subject to this section, on the death of a person after 1 January 1963 (being the date of commencement of the pre-Independence *Law Reform (Miscellaneous Provisions) Act 1962*) all causes of action subsisting against or vested in him survive against or for the benefit of, as the case may be, his estate.

(2) Subsection (1) 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.

(3) Where a cause of action survives under this section for the benefit of the estate of a deceased person, the damages recoverable for the benefit of the estate—

- (a) do not include exemplary damages; and
- (b) in the case of a breach of promise of marriage, are limited to such damages (if any) to the estate of the person as flow from the breach of the promise to marry; and
- (c) where the death of the person has been caused by the act or omission that 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.

(4) No proceedings are maintainable in respect of a cause of action in tort that, by virtue of Subsection (1), has survived against the estate of a deceased person unless—

- (a) proceedings against him in respect of the cause of action were pending at the date of his death; or
- (b) proceedings are taken in respect of the cause of action not later than 12 months after his personal representative took out representation.

(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 a person if the person had not died before, or at the same time as, the damage was suffered, there shall be deemed, for the purposes of this section, to have been subsisting against him before his death such cause of action in respect of the act or omission as would have subsisted if he had died after the damage was suffered.

(6) The rights conferred by this section 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 a deceased person by any other law, and this section applies in relation to causes of action under that law as it applies in relation to other causes of action not expressly excepted from the operation of Subsection (1).

PART VI. – COMMON EMPLOYMENT.

35. ABOLITION OF DOCTRINE OF COMMON EMPLOYMENT.

(1) It is not a defence to an employer who is sued in respect of personal injuries caused by the negligence of a person employed by him, that the person was at the time when the injuries were caused in common employment with the person injured.

(2) A provision in a contract of service or apprenticeship, or in an agreement collateral to any such contract, is void so far as it would have the effect of excluding or limiting the liability of the employer in respect of personal injuries caused to the person employed or apprenticed by the negligence of persons in common employment with him.

PART VII. – MENTAL OR NERVOUS SHOCK.

36. MENTAL OR NERVOUS SHOCK.

In an action for injury to the person, the plaintiff is not debarred from recovering damages merely because the injury complained of arose wholly or in part from mental or nervous shock.

PART VIII. – TORT-FEASORS.

37. PROCEEDINGS AGAINST, AND CONTRIBUTION BETWEEN, JOINT AND SEVERAL TORT-FEASORS.

(1) In this section–

“**child**” has the same meaning as in Part IV.;

“**dependant**” means a person for whose benefit an action could be brought under Part IV.;

“**judgement first given**” means, where a judgement is reversed on appeal, the judgement first given that is not so reversed or, where the judgement first given is varied on appeal, that judgement as so varied;

“**parent**” has the same meaning as in Part IV.;

“**plaintiff**” means the person suffering the damage referred to in Subsection (2), whether or not he has commenced an action for recovery of judgement in respect of the damage;

“**third party**” means a tort-feasor from whom any other tort-feasor is entitled to recover contribution under Subsection (2)(c).

(2) Where damage is suffered by a person as a result of a tort (whether it is also an offence or not)–

(a) judgement 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 joint tort-feasor in respect of the same damage; and

(b) 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, parent or child of that person, against tort-feasors liable in respect of the damage (whether as joint tort-feasors or otherwise)–

(i) the sums recoverable under the judgements given in the actions by way of damages shall not in the aggregate exceed the amount of the damages awarded by the judgement first given; and

(ii) in any of the actions, other than the one in which judgement 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 separately; and

(c) 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; and

- (d) a tort-feasor liable in respect of the damage may recover contribution from a third party or commence proceedings for the recovery of contribution notwithstanding that—
- (i) judgement in an action founded on the tort has not been given determining the tort-feasor's liability in respect of that damage; or
 - (ii) the plaintiff has released the third party from his liability to the plaintiff for the damage or any part of it; or
 - (iii) the liability of the tort-feasor to the plaintiff has been extinguished in whole or in part by payment before proceedings for contribution under this section are commenced.

(3) In any proceedings for contribution under this 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 his responsibility for the damage, and the court may exempt a person from liability to make contribution, or direct that the contribution recovered from a person amounts to a complete indemnity.

(4) No execution for the recovery of contribution under this section shall issue without the leave of the court or a Judge, and on application for leave the court or Judge may direct that payment to the original plaintiff is sufficient satisfaction of the order for contribution.

(5) Notwithstanding any law requiring notice to be given before action or prescribing the time within which an action may be brought, proceedings for contribution under this section may, although no such notice has been given or the time has expired, be commenced at any time within 12 months after—

- (a) the receipt by the party seeking the contribution of written notice of the claim of the original plaintiff against him in respect of the damage; or
- (b) settlement of the claim,

whichever first occurs, but at the expiry of that period of 12 months the right to recover contribution is extinguished.

(6) In a case referred to in Section 54 of the *Motor Vehicles (Third Party Insurance) Act 1974* and Section 20 of the *Motor Vehicles (Third Party Insurance) (Basic Protection Compensation) Act 1974* the Trust shall be deemed, for the purposes of this Part—

- (a) to be a tort-feasor in relation to the death or bodily injury in question, if the insured person was a tort-feasor in relation to the death or injury; and
- (b) to be responsible for the damage to the same extent as the insured person would have been held to be responsible if sued.

(7) Nothing in this section—

- (a) applies with respect to a tort committed before 1 January 1963 (being the date of commencement of the pre-Independence *Law Reform (Miscellaneous Provisions) Act 1962*); or
- (b) affects any criminal proceedings against a person in respect of a wrongful act; or
- (c) makes enforceable an agreement for indemnity that would not have been enforceable if this section had not been made.

PART IX. – CONTRIBUTORY NEGLIGENCE.**38. APPLICATION OF PART IX.**

This Part does not apply to any case where the acts or omissions giving rise to the claim occurred before 1 January 1963 (being the date of commencement of the pre-Independence *Law Reform (Miscellaneous Provisions) Act 1962*).

39. INTERPRETATION OF PART IX.

In this Part, unless the contrary intention appears–

“**court**”, in relation to a claim, means 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 Part IV.;

“**employer**” includes–

- (a) the State, an authority constituted by or under a law, a body of persons, corporate or unincorporate, and the legal personal representative of a deceased employer; and
- (b) where the services of a worker are temporarily lent or let on hire to another person by the person with whom the worker has entered into a contract of service or apprenticeship, the person so lending the services or letting them on hire;

“**fault**” means negligence, breach of statutory duty or other act or omission that gives rise to a liability in tort or would, apart from this Part, give rise to the defence of contributory negligence;

“**worker**” means a worker within the meaning of the *Workers’ Compensation Act 1978*.

40. APPORTIONMENT OF LIABILITY IN CASE OF CONTRIBUTORY NEGLIGENCE.

(1) Subject to Subsection (2), where a person suffers damage as the result partly of his own fault and partly of the fault of any other person, a claim in respect of the damage shall not be defeated by reason of the fault of the person suffering the damage, but the damages recoverable in respect of it 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.

(2) Notwithstanding Subsection (1)–

- (a) that subsection does not operate to defeat a defence arising under a contract; and

- (b) where a contract or enactment providing for the limitation of liability is applicable to the claim, the amount of damages awarded to the claimant by virtue of that subsection shall not exceed the maximum so applicable; and
- (c) where an action is brought in a court of limited jurisdiction, the court may award damages up to the limit of its jurisdiction even though the damages have first been reduced under that subsection.

(3) Where damages are recoverable by any person by virtue of Subsection (1) subject to a reduction under that subsection or under Subsection (5) or (6), the court shall find and record the total damages that, apart from any limitation referred to in Subsection (1)(b) or (c), would have been awarded if the claimant had not been at fault.

(4) Part VIII. applies where two or more persons are liable or would, if they had all been sued, be liable by virtue of Subsection (1) in respect of the damages suffered by a person.

(5) Where a person dies as the result partly of his own fault and partly of the fault of any other person, and accordingly if an action were brought for the benefit of the estate under Part V. the damages recoverable would be reduced under Subsection (1), any damages recoverable in an action brought for the benefit of the dependants of a deceased person under Part IV. shall be reduced to a proportionate extent.

(6) Where a person dies as a result partly of the fault of one of his dependants and partly of the fault of any other person, any damages recoverable in an action brought for the benefit of the dependants of the deceased person under Part IV. shall be reduced, so far as the share in them of the negligent dependant is concerned to such extent as the court thinks just and equitable, having regard to the share of the negligent dependant in the responsibility for the death of the deceased person.

(7) Where—

- (a) a person (in this subsection called “**the injured person**”) suffers damage as a result partly of his own fault and partly of the fault of any other person; 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),

then, in any claim by the third person for the damage so suffered by him the fault of the injured person shall be taken into account under Subsection (1) for the purpose of reducing the damages recoverable by the third party as if it were the fault of the third party.

(8) Where in a case to which Subsection (1) applies one of the persons at fault avoids liability to any other such person or the personal representative of any other person by pleading any enactment limiting the time within which proceedings may be taken, he is not entitled to recover any damages or contributions from the other person or the representative by virtue of that subsection.

41. PROVISIONS AS TO WORKERS AND EMPLOYERS.

(1) Where, within the time limited for the taking of proceedings under the *Workers' Compensation Act 1978*, an action is brought to recover damages independently of that Act in respect of an injury or disease giving rise to a claim for compensation under that Act, and it is determined in the action that—

- (a) damages are recoverable, independently of that Act, subject to reduction under Section 40(1); and
- (b) the employer would have been liable to pay compensation under that Act,

Section 22 of the *Workers' Compensation Act 1978* applies as if the action had been dismissed, and if the claimant chooses to have compensation assessed and awarded in accordance with that section no damages are recoverable in the action.

(2) Where a worker or his personal representative or dependant has recovered compensation under the *Workers' Compensation Act 1978* or any corresponding previous enactment in respect of an injury caused in circumstances that would give a right to recover reduced damages in respect of it by virtue of Section 40 from some person other than the employer (in this subsection referred to as “**the third party**”), any right to be indemnified by the third party that is conferred by Section 23 of that Act on—

- (a) the person by whom the compensation was paid; or
- (b) any person called on to pay an indemnity under Section 6 of that Act,

is limited to a right to be indemnified in respect of such part only of the sum paid or payable by the person as bears to the total sum so paid or payable the same proportion as the reduced damages bear to the total damages that would have been recoverable if the worker had not been at fault.

PART X.¹ –

42 - 44². [*Repealed.*]

¹ Part X repealed by No 21 of 2000.

² Part X repealed by No 21 of 2000; Section 42 repealed by No 21 of 2000; Section 43 repealed by No 21 of 2000; Section 44 repealed by No 21 of 2000.

PART XI. – DAMAGE TO NAVIGATION WORKS.**45. INTERPRETATION OF PART XI.**

In this Part, unless the contrary intention appears–

“**harbour works**” includes all wharves, piers, jetties, embankments, lights and other constructions for the improvement, protection, management or utilization of a port or harbour, that are–

- (a)³ owned or controlled by the State or any person or authority having under the laws of Papua New Guinea control and management of any harbour or port and of ships using the same, as the case may be; or
- (b) private harbour works;

“**private harbour work**” means a construction declared under Section 47 to be a private harbour work for the purposes of this Part;

“**vessel**” includes a ship, boat, lighter, floating plant or other craft, whether propelled by mechanical means or otherwise, but does not include an aircraft.

46. LIABILITY UNDER OTHER LAWS.

This Part does not limit the liability of any person under any other law.

47. PRIVATE HARBOUR WORKS.

The Minister may, by notice in the National Gazette, declare a construction for the improvement, protection, management or utilization of a port or harbour, being a construction that is owned or controlled by a person other than the State or the Harbours Board, to be a private harbour work for the purposes of this Act.

48. LIABILITY FOR DAMAGE TO HARBOUR WORKS.

(1) Subject to this section, the owner of a vessel or a float of timber is liable for any damage done to a port or harbour or to harbour works by the vessel or float, or by a person employed on or about the vessel or float.

(2) Where damage to a port or harbour or to harbour works is caused by a vessel or float of timber through the wilful act or negligence of the master or the person having charge of the vessel or float, or of a person employed on or about the vessel or float, the master or person is jointly and severally liable with the owner for the damage.

(3) This section does not impose liability on the owner of a vessel or float of timber–

- (a) that is derelict; or

³ Section 45 Amended by No. 83 of 2006, Sched. 1.

- (b) where the damage is caused by act of God.

49. OWNER MAY RECOVER FROM MASTER, ETC.

If the owner of a vessel or float of timber makes satisfaction under Section 48 for damage wilfully or negligently done by the master or person having charge of the vessel or float, or by a person employed on or about the vessel or float, the master or person shall repay to the owner the amount paid in satisfaction, together with the costs of the proceedings to enforce the repayment.

50. SEIZURE OF VESSEL, ETC., DOING DAMAGE.

In addition to any other remedy given by any other law—

- (a) the State, in relation to harbour works owned by it; or
- (b) the Harbours Board, in relation to harbour works owned by it; or
- (ba)⁴ any person or authority having under the laws of Papua New Guinea control and management of any harbour or port and of ships using the same, as the case may be, in relation to harbour works owned by it; or
- (c) the owner or person in control of any private harbour works, in relation to those works,

may at any time detain a vessel or float of timber that has done any damage to a port or harbour, or to any harbour works, whether or not the vessel or float has left the place where the damage was done, until satisfaction has been made or sufficient security has been given for the amount of damage done by the vessel or float.

⁴ Section 50 Amended by No. 83 of 2006, Sched. 1.

PART XII. – OCCUPIERS' LIABILITY.**51. PRELIMINARY.**

(1) The rules prescribed by this Part–

- (a) have effect to regulate the duty that an occupier of premises owes to his visitors in respect of dangers due to the state of the premises or to things done or omitted to be done on the premises; and
- (b) subject to Subsection (3), regulate the nature of the duty imposed by law in consequence of the occupation or control of premises by a person and of an invitation or permission that he gives (or is, under this Part, to be deemed to give) to another to enter or use the premises.

(2) The rules prescribed by this Part in relation to an occupier of premises and his visitors, also apply, in the same manner and to the same extent as the principles applicable in accordance with the underlying law to an occupier of premises and his invitees or licensees would apply, to regulate–

- (a) the obligations of a person occupying or having control over any fixed or moveable structure, including a vessel, vehicle or aircraft; and
- (b) the obligations of a person occupying or having control over any premises or structure in respect of damage to property, including the property of persons who are not themselves his visitors.

(3) This Part does not alter the rules of the underlying law as to the persons on whom a duty is so imposed, or to whom it is owed.

52. EXTENT OF OCCUPIER'S ORDINARY DUTY.

(1) An occupier of premises owes the same duty (in this section referred to as “**the common duty of care**”) to all his visitors, except so far as he is free to, and does, extend, restrict, modify or exclude his duty to a visitor by agreement or otherwise.

(2) The common duty of care is a duty to take such care as in all the circumstances of the case is reasonable to see that the visitor will be reasonably safe in using the premises for the purposes for which he is invited or permitted by the occupier to be there.

(3) The relevant circumstances for the purposes of this section include the degree of care, and of want of care, that would ordinarily be looked for in such a visitor, so that, amongst other things, in proper cases–

- (a) an occupier must be prepared for children to be less careful than adults; and
- (b) an occupier may expect that a person, in the exercise of his calling, will appreciate and guard against any special risks ordinarily incident to it, so far as the occupier leaves him free to do so.

(4) In determining whether the occupier of premises has discharged the common duty of care to a visitor, regard shall be had to all the circumstances, so that, amongst other things—

- (a) where damage is caused to a visitor by a danger of which he had been warned by the occupier, the warning shall not be treated without more as absolving the occupier from liability unless, in all the circumstances, it was enough to enable the visitor to be reasonably safe; and
- (b) where damage is caused to a visitor by a danger due to the faulty execution of any work of construction, maintenance or repair by an independent contractor employed by the occupier, the occupier shall not be treated without more as answerable for the danger if, in all the circumstances, he had acted reasonably in entrusting the work to an independent contractor and had taken such steps (if any) as he reasonably ought in order to satisfy himself that the contractor was competent and that the work had been properly done.

(5) The common duty of care does not impose on an occupier an obligation to a visitor in respect of risks willingly accepted as his by the visitor, and the question whether a risk was so accepted shall be decided on the same principles as in other cases in which one person owes a duty of care to another.

(6) For the purposes of this section, persons who enter premises for any purpose in the exercise of a right conferred by law shall be deemed to have been permitted by the occupier to be there for that purpose, whether they in fact have his permission or not.

53. EFFECT OF CONTRACT ON OCCUPIER'S LIABILITY TO THIRD PARTY.

(1) In this section—

“stranger to the contract” in relation to a contract, means a person not for the time being entitled to the benefit of the contract as a party to it or as the successor by assignment or otherwise of a party to it, and includes a party to the contract who has ceased to be so entitled;

“tenancy” includes a statutory tenancy that does not in law amount to a tenancy, and **“landlord”** has a corresponding meaning.

(2) Where an occupier of premises is bound by contract to permit persons who are strangers to the contract to enter or use the premises, the duty of care that he owes to them as his visitors may be restricted or excluded by the contract, but (subject to any provision of the contract to the contrary) includes the duty to perform his obligations under the contract, whether or not undertaken for the protection of those strangers, so far as those obligations go beyond the obligations otherwise involved in that duty.

(3) Unless it expressly so provides, a contract does not, by virtue of this section, have the effect of making an occupier who has taken all reasonable care

answerable to strangers to the contract for dangers due to the faulty execution of any work of construction, maintenance or repair or other such operation by persons other than himself, his servants and persons acting under his direction and control.

(4) Where by the terms or conditions governing a tenancy the landlord or the tenant is bound, otherwise than by contract, to permit persons to enter or use premises of which he is the occupier, this section applies as if the tenancy were a contract between the landlord and the tenant.

(5) So far as it prevents the common duty of care within the meaning of Section 52 from being restricted or excluded, this section applies to contracts entered into and tenancies created at any time, but so far as it enlarges the duty owed by an occupier beyond the common duty of care it has effect only in relation to obligations that are undertaken after 1 January 1963 (being the date of commencement of the pre-Independence *Law Reform (Miscellaneous Provisions) Act 1962*) or that are renewed by agreement (whether express or implied) after that date.

54. LANDLORD'S LIABILITY BY VIRTUE OF OBLIGATION TO REPAIR.

(1) Where premises are occupied by a person under a tenancy that imposes on the landlord an obligation to the person for the maintenance or repair of the premises, the landlord owes to all persons who or whose goods are from time to time lawfully on the premises the same duty, in respect of dangers arising from a default by him in carrying out that obligation, as if he were an occupier of the premises and the persons or their goods were there by his invitation or permission (but without a contract).

(2) Where premises are occupied under a sub-tenancy, Subsection (1) applies to a landlord of the premises (whether the immediate or a superior landlord) on whom an obligation to the occupier for maintenance or repair of the premises is put by the sub-tenancy, and for that purpose an obligation to the occupier that the sub-tenancy imposes on a mesne landlord of the premises, whether of its own force or under this section, shall be deemed to be imposed by it also on a landlord on whom the tenancy of the mesne landlord puts the same obligation towards the mesne landlord.

(3) For the purposes of this section, where—

- (a) premises comprised in a tenancy (whether occupied under the tenancy or under a sub-tenancy) are put to a use not permitted by the tenancy; and
- (b) the landlord of whom they are held under the tenancy is not debarred by his acquiescence or otherwise from objecting or from enforcing his objection,

no persons or goods whose presence on the premises is due solely to that use of the premises shall be deemed to be lawfully on the premises as regards the landlord or any superior landlord of the premises, whether or not they are lawfully there as regards an inferior landlord.

(4) For the purposes of this section, a landlord shall not be deemed to have made default in carrying out an obligation to the occupier of the premises unless his default is such as to be actionable at the suit of the occupier or, in the case of a superior landlord whose actual obligation is to an inferior landlord, his default in carrying out the obligation is actionable at the suit of the inferior landlord.

(5) This section does not impose on a landlord of premises a greater duty than the occupier to persons who or whose goods are lawfully on the premises by reason only of the exercise of a right of way.

(6) Nothing in this section relieves a landlord of any duty that he is under apart from this section.

(7) For the purposes of this section, obligations imposed by an Act or subordinate enactment in virtue of a tenancy shall be deemed to be imposed by the tenancy.

(8) This section applies to tenancies whenever created.

PART XIII. – DAMAGE BY FIRE.

55. ACCIDENTAL FIRES.

(1) Subject to Subsection (2), an action for damage caused by fire does not lie against a person in whose buildings or on whose land the fire accidentally begins.

(2) Subsection (1) does not operate to defeat or make void a contract or agreement made between a landlord and his tenant.

Office of Legislative Counsel, PNG