

No. S 4

CONSTITUTION OF BRUNEI DARUSSALAM
(Order under section 83(3))

EMERGENCY (FATAL ACCIDENTS AND PERSONAL INJURIES)
ORDER, 1991

In exercise of the powers conferred by section 83(3) of the Constitution of Brunei Darussalam, His Majesty The Sultan and Yang Di-Pertuan of Brunei Darussalam hereby makes the following Order —

PART I

PRELIMINARY

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| 1. | This Order may be cited as the Emergency (Fatal Accidents and Personal Injuries) Order, 1991 and shall come into force on 1st day of February, 1991. | Short title and commencement. |
| 2. | This Order shall apply to any action commenced after the date of commencement of this Order, whether the cause of action accrued before or after such date. | Application. |

PART II

FATAL ACCIDENTS CLAIMS

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| 3. | (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. | Right of action. |
| | (2) Subject to section 4, every such action shall be for the benefit of the dependants of the person ('the deceased') whose death has been so caused. | |
| | (3) In this Part 'dependant' 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) includes a reference to a person whose marriage to the deceased has been dissolved.

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

(a) any relationship by affinity shall be treated as a relationship by consanguinity, any relationship of the half blood as a relationship of the whole blood, and the step-child 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 Part to injury includes any disease and any impairment of a person's physical or mental condition.

Bereavement. 4. (1) An action under this Part 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) the sum to be awarded as damages under this section shall be \$10,000.00.

(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 Minister may by order published in the *Gazette* amend this section by varying the sum for the time being specified in subsection (3).

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

Persons
entitled to
bring action.

(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 advocate and 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.

6. (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 dependants respectively.

Assessment
of damages.

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

(3) In an action under the Part 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 Part where there fall to be assessed damages payable to a person who is a dependant by virtue of section (3)(b) in respect of the death of the person with whom the dependant 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 dependant had no enforceable right to financial support by the deceased as a result of their living together.

(5) If the dependants 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 Part may be in one sum without specifying any person's share.

Disregard of
benefits.

7. In assessing damages in respect of a person's death in an action under this Part, 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.

Contributory
negligence.

8. 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 Part IV the damages recoverable would be reduced under section 9(1), any damages recoverable in an action brought for the benefit of the dependants of that person under this Part shall be reduced to a proportionate extent.

PART III

CONTRIBUTORY NEGLIGENCE

Apportionment
in case of
contributory
negligence.

9. (1) Where any person suffers damage as the result partly of his own fault and partly of the fault of any other person or persons, a claim in respect of that damage shall not be defeated by reason of the fault of the person suffering the damage, but the damages recoverable in respect thereof 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 :

Provided that —

- (a) this subsection shall not operate to defeat any defence arising under a contract ;
- (b) where any contract or enactment providing for the limitation of liability is applicable to the claim, the amount of damages recoverable by the claimant by virtue of this subsection shall not exceed the maximum limit so applicable.

(2) Where damages are recoverable by any person by virtue of the foregoing subsection subject to such reduction as is therein mentioned, the court shall find and record the total damages which would have been recoverable if the claimant had not been at fault.

(3) Where, in any case to which subsection (1) of this section applies, one of the persons at fault avoids liability to any other person or his personal representative by pleading the Limitation Act, or any

other enactment limiting the time within which proceedings may be taken, he shall not be entitled to recover any damages from that other person or representative by virtue of the said subsection.

10. In this Part, unless the context otherwise requires — Interpretation.

'court' means in relation to any claim, the court or arbitrator by or before whom the claim falls to be determined ;

'damage' includes loss of life and personal injury ;

'dependant' has the same meaning as in Part II ;

'fault' means negligence, breach of statutory duty or other act or omission which gives rise to a liability in tort or would, apart from this Part, give rise to the defence of contributory negligence.

PART IV

EFFECT OF DEATH

11. (1) Subject to the provisions of this section, on the death of any person 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 : Effect of death in cause of action.

Provided that this subsection shall not apply to causes of action for defamation.

(2) The right of a person to claim under section 4 of this Order (bereavement) shall not survive for the benefit of his estate on his death.

(3) 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) 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.

(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, 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 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 Part II of this Order, or the Air Navigation Act, 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 the said Part and 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.

Abolition of damages for loss of expectation of life.

12. (1) In an action for damages for personal injuries —

- (a) no damages shall be recoverable in respect of any loss of expectation of life caused to the injured person by the injuries ; but
- (b) if the injured person's expectation of life has been reduced by the injuries, the court, in assessing damages in respect of pain and suffering caused by the injuries, shall take account of any suffering caused or likely to be caused to him by awareness that his expectation of life has been so reduced.

(2) The reference in subsection (1)(a) to damages in respect of loss of expectation of life does not include damages in respect of loss of income.

Maintenance at public expense.

13. In an action for damages for personal injuries (including any such action arising out of a contract) any saving to the injured person which is attributable to his maintenance wholly or partly at public expense in a hospital, nursing home or other institution shall be set off against any income lost by him as a result of his injuries.

PART V

CONTRIBUTION

Entitlement to contribution.

14. (1) Subject to the following provisions of this section, any person liable in respect of any damage suffered by another person may recover contribution from any other person liable in respect of the same damage (whether jointly with him or otherwise).

(2) A person shall be entitled to recover contribution by virtue of subsection (1) notwithstanding that he has ceased to be liable in respect of the damage in question since the time when the damage occurred, provided that he was so liable immediately before he made or was ordered or agreed to make the payment in respect of which the contribution is sought.

(3) A person shall be liable to make contribution by virtue of subsection (1) notwithstanding that he has ceased to be liable in respect of the damage in question since the time when the damage occurred, unless he ceased to be liable by virtue of the expiry of a period of limitation or prescription which extinguished the right on which the claim against him in respect of the damage was based.

(4) A person who has made or agreed to make any payment in bona fide settlement or compromise of any claim made against him in respect of any damage (including a payment into court which has been accepted) shall be entitled to recover contribution in accordance with this section without regard to whether or not he himself is or ever was liable in respect of the damage, provided, however, that he would have been liable assuming that the factual basis of the claim against him could be established.

(5) A judgment given in any action by or on behalf of the person who suffered the damage in question against any person from whom contribution is sought under this section shall be conclusive in the proceedings for contribution as to any issue determined by that judgment in favour of the person from whom the contribution is sought.

(6) References in this section to a person's liability in respect of any damage are references to any such liability which has been or could be established in an action brought against him by or on behalf of the person who suffered the damage ; but it is immaterial whether any issue arising in any such action was or would be determined (in accordance with the rules of private international law) by reference to the law of a country outside Brunei Darussalam.

15. (1) Subject to subsection (3) of this section, in any proceedings for contribution under section 14 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 in question.

Assessment of
contribution.

(2) Subject to subsection (3) of this section, the court shall have power in any such proceedings 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) Where the amount of the damages which have or might have been awarded in respect of the damage in question in any action by or on behalf of the person who suffered it against the person from whom

the contribution is sought was or would have been subject to —

- (a) any limit imposed by or under any enactment or by any agreement made before the damage occurred ;
- (b) any reduction by virtue of section 8 or section 9 ; or
- (c) any corresponding limit or reduction under the law of a country outside Brunei Darussalam ;

the person from whom the contribution is sought shall not by virtue of any contribution awarded under section 14 be required to pay in respect of the damage a greater amount than the amount of those damages as so limited or reduced.

Joint liability.

16. Judgment recovered against any person liable in respect of any debt or damage shall not be a bar to an action, or to the continuance of an action, against any other person who is (apart from any such bar) jointly liable with him in respect of the same debt or damage.

Successive actions.

17. If more than one action is brought in respect of any damage by or on behalf of the person by whom it was suffered against persons liable in respect of the damage (whether jointly or otherwise) the plaintiff shall not be entitled to costs in any of those actions, other than that in which judgment is first given, unless the court is of the opinion that there was reasonable ground for bringing the action.

Interpretation.

18. (1) A person is liable in respect of any damage for the purposes of this Part if the person who suffered it (or anyone representing his estate or dependants) is entitled to recover compensation from him in respect of that damage (whatever the legal basis of his liability, whether tort, breach of contract, breach of trust or otherwise).

(2) References in this Part to any action brought by or on behalf of the person who suffered any damage include references to an action brought for the benefit of his estate or dependants.

(3) In this Part "dependants" has the same meaning as in Part II.

(4) In this Part "action" means an action brought in Brunei Darussalam.

Savings.

19. (1) Nothing in this Part shall affect any case where the debt in question became due or (as the case may be) the damage in question occurred before the date on which this Order comes into force.

(2) A person shall not be entitled to recover contribution or liable to make contribution in accordance with section 14 by reference to any liability based on breach of any obligation assumed by him before the date on which this Order comes into force.

(3) The right to recover contribution in accordance with section 14 supersedes any right, other than an express contractual right, to recover contribution (as distinct from indemnity) otherwise than under this Part in corresponding circumstances ; but nothing in this Part shall affect —

- (a) any express or implied contractual or other right to indemnity ; or
- (b) any express contractual provision regulating or excluding contribution ;

which would be enforceable apart from this Part (or render enforceable any agreement for indemnity or contribution which would not be enforceable apart from this Part).

PART VI

MISCELLANEOUS

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

Common
employment.

(2) Any provision contained in a contract of service or apprenticeship, or in an agreement collateral thereto, (including a contract or agreement entered into before the commencement of this Part) shall be void in so far as it would have the effect of excluding or limiting any 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.

(3) In this section the expression "personal injury" includes any disease and any impairment of a person's physical or mental condition, and the expression "injured" shall be construed accordingly.

Interpretation.

21. (1) This section applies to an action for damages for personal injuries in which there is proved or admitted to be a chance that at some definite time in the future the injured person will, as a result of the act or omission which gave rise to the cause of action, develop some serious disease or suffer some serious deterioration in his physical or mental condition.

Provisional
damages.

(2) Subject to subsection (4) of this section, as regards any action for damages to which the section applies in which a judgment is given in the High Court, provision may be made by rules of court for enabling the court, in such circumstances as may be prescribed, to award the injured person —

- (a) damages assessed on the assumption that the injured person will not develop the disease or suffer the deterioration in his condition ; and

(b) further damages at a future date if he develops the disease or suffers the deterioration.

(3) Any rules made by virtue of this section may include such incidental, supplementary and consequential provisions as the rule-making authority may consider necessary or expedient.

(4) Nothing in this section shall be construed —

(a) as affecting the exercise of any power relating to costs, including any power to make rules of court relating to costs ; or

(b) as prejudicing any duty of the court under any enactment or rule of law to reduce or limit the total damages which would have been recoverable apart from any such duty.

Repeals.

22. The Acts specified in the First Schedule are repealed.

United
Kingdom
Acts.

23. The United Kingdom Acts specified in the Second Schedule (as applied to Brunei Darussalam by virtue of the Application of Laws Act and the Acts specified in the First Schedule to this Order) shall cease to apply to Brunei Darussalam.

FIRST SCHEDULE

(Section 22)

Repeals

The Law Reform (Contributory Negligence) Act (Chapter 53)

The Law Reform (Personal Injuries) Act (Chapter 10)

SECOND SCHEDULE

(Section 23)

Fatal Accidents Act 1846

Fatal Accidents Act 1864

Fatal Accidents (Damages) Act 1908

Law Reform (Miscellaneous Provisions) Act 1934

Law Reform (Married Women and Tortfeasors) Act 1935

Made this 19th day of January, 1991 at Our Istana Nurul Iman, Bandar Seri Begawan, Brunei Darussalam.

HIS MAJESTY
THE SULTAN AND YANG DI-PERTUAN
BRUNEI DARUSSALAM