

Approved for Reprint 25 September 1983.

WESTERN AUSTRALIA.

**LAW REFORM
(MISCELLANEOUS
PROVISIONS).**

5° and 6° GEO. VI., No. XXIX.

No. 29 of 1941.¹

[As amended by Acts:

No. 23 of 1947, assented to 7 November 1947;

No. 83 of 1962, assented to 6 December 1962;

No. 80 of 1982, assented to 22 November 1982,

and reprinted pursuant to the Amendments Incorporation Act 1938.]

AN ACT to amend the law relating to the liabilities of husbands; and to amend the law relating to proceedings against, and contributions between, tort-feasors; and to amend the law as to the effect of death in relation to causes of action, and to amend the Law of Property known as the Rule against Perpetuities.

[Assented to 15 December 1941.]

BE it enacted—

1. This Act may be cited as the *Law Reform (Miscellaneous Provisions) Act 1941-1982*, and shall come into operation on a day to be fixed by proclamation.¹

Short title
and com-
mencement.

¹ Came into operation on 24 October 1942; see *Gazette* 23/10/42, p. 995.

Abolition of husband's liability for wife's torts.

2. The husband of a married woman shall not, by reason only of his being her husband, be liable—

- (a) in respect of any tort committed by her whether before or after the marriage; or
- (b) to be sued or made a party to any legal proceeding brought in respect of any such tort:

Provided that nothing in this section shall affect any legal proceeding in respect of any tort if proceedings had been instituted in respect thereof before the commencement of this Act.

[Section 3 repealed by No. 23 of 1947, s. 2.]

Effect of death on certain causes of action.
Affected by No. 23 of 1947, s. 4.
Amended by No. 80 of 1982, s. 2.

4. (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 or seduction or for inducing one spouse to leave or remain apart from the other or to claims under section ninety-four of the Supreme Court Act 1935¹, for damages on the ground of adultery.

(2) Where a cause of action survives as aforesaid for the benefit of the estate of a deceased person, the damages recoverable for the benefit of the estate of that person—

- (a) shall not include any exemplary damages;
- (b) in the case of a breach of promise to marry shall be limited to such damage, if any, to the estate of that person as flows from the breach of promise to marry;
- (c) where the death of that person has been caused by the act or omission which gives rise to the cause of action, shall be

¹Section 94 of the Supreme Court Act 1935 was repealed by Act No. 73 of 1948, s. 3.

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 pain or suffering of that person or for any bodily or mental harm suffered by him or for the curtailment of his expectation of life;
- (e) shall not include any damages for the loss of the capacity of that person to earn, or for the loss of future probable earnings of that person, during such time after his death as he would have survived but for the act or omission which gives rise to the cause of action.

(3) No proceedings shall be maintainable in respect of a cause of action in tort which by virtue of this section 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 twelve months before his death and proceedings are taken in respect thereof not later than six months after his personal representative took out representation, or twelve months after his death, whichever is the later. Provided, however, that a judge of the Supreme Court may extend the time for instituting proceedings as the justice of the case may require although the application for extension be not made until after the expiration of the aforementioned times.

(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 Imperial Act 9th and 10th Victoria, Chapter 93 (adopted in Western Australia by the Act 12th Victoria No. 21), as amended by the Act No. 37 of 1900, 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.

[*Section 5 repealed by No. 83 of 1962, s. 9.*]

Section 3 of Act No. 80 of 1982 read as follows—

Transitional
and saving.

3. Section 4 of the Law Reform (Miscellaneous Provisions) Act 1941, as amended by this Act, applies to and in respect of causes of action arising before the commencement of this Act in the same way as it applies to and in respect of causes of action arising after the commencement of this Act, but section 4 (2) (e) of that Act as amended by this Act has no operation in relation to causes of action in respect of which a court has given judgment, whether or not that judgment is subject to appeal.