COMMONWEALTH OF DOMINICA

ARRANGEMENT OF SECTIONS

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I assent

C. A. SEIGNORET
President.

14th May, 1991.

AN ACT TO AMEND THE CIVIL LAW RELATING TO PROCEEDINGS IN CASES OF CONTRIBUTORY NEGLIGENCE, TO PROVIDE FOR ACTIONS TO SURVIVE AGAINST AND TO SURVIVE FOR THE BENEFIT OF THE ESTATE OF A DECEASED PERSON, AND FOR PURPOSES INCIDENTAL TO THE FOREGOING.

(Gazetted 23rd May, 1991.)

BE IT ENACTED by the Parliament of the Commonwealth of Dominica as follows:—
1. This Act may be cited as the—

**LAW REFORM (MISCELLANEOUS PROVISIONS) ACT, 1991.**

2. In this Act—
   “court” in relation to any claim means the court, arbitrator or other tribunal before whom the claim falls to be determined;
   “damage” includes loss of life and personal injury;
   “dependant” has the same meaning as in the Fatal Accidents Act, 1991.
   “employer” has the same meaning as in the Workmen’s Compensation Ordinance;
   “fault” includes negligence, breach of statutory duty and any other act or omission which gives rise to liability in tort;
   “personal injury” includes any disease and any impairment of a person’s physical or mental condition, and the expression “injured” shall be construed accordingly;
   “workman” has the same meaning as in the Workmen’s Compensation Ordinance.

**PART I**

**CONTRIBUTORY NEGLIGENCE**

3.—(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 any 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 subsection (1) 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) applies, one of the persons at fault avoids liability to any other such person or his personal representative by pleading any contract or 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 that subsection.

(4) Article 21 of the Convention contained in the First Schedule of the Carriage by Air Act, 1932, of the United Kingdom Parliament (which empowers the court to exonerate wholly or partly a carrier who proves that the damage was caused by or contributed to by the negligence of the injured person) and applied to Dominica by Order-in-Council shall have effect subject to the provisions of this section.

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

(a) damages are recoverable independently of that Ordinance, subject to such reduction as is mentioned in section 3 of this Ordinance; and

(b) the employer would have been liable to pay compensation under that Ordinance,

section 3 (4) of that Ordinance, (which enables the court on dismissal of an action to recover, damages independently of that Ordinance) to assess and award compensation under that Ordinance, shall apply
in all respect as if the action had been dismissed, and, if the claimant chooses to have compensation assessed and awarded in accordance with the said section 3 (4), no damages shall be recoverable in the action.

(2) Where a workman or his personal representative or defendant has recovered compensation under the Workmen's Compensation Ordinance in respect of an injury caused under circumstances which would give a right to recover reduced damages in respect of thereof by virtue of section 3 of this Act from some person other than the employer (hereinafter referred to as "the third party") any right conferred by that Ordinance on the person by whom the compensation was paid, or any person called on to pay an indemnity under that Ordinance, to be indemnified by the third party shall be limited to a right to be indemnified in respect of such part only of the sum so paid or payable by the said person as bears to the total sum so paid or payable the same proportion as the said reduced damages bears to the total damages which would have been recoverable if the workman had not been at fault.

5.—(1) Section 3 shall not apply to any claim to which section 1 of the Maritime Conventions Act, 1911, of the United Kingdom Parliament applies and that Act shall have effect as if section 3 of this Act had not been passed.

(2) Section 3 shall not apply to any case where the Act or omission giving rise to the claim occurred before the commencement of this Act.

PART II

CIVIL LIABILITY CONTRIBUTION

6.—(1) A person is liable in respect of any damage for the purpose 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 an 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.
7.—(1) Subject to the following provisions of this section, a 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 provided that he was so liable immediately before he made or was ordered or agreed to make the payment in respect of which 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 a 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 brought in Dominica by or on behalf of any person who suffered the damage in question against the 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 in Dominica 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 other than Dominica.
8.—(1) Subject to subsection (3), in any proceedings for contribution under section 7 the amount of 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.

(2) Subject to subsection (3), 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 brought in Dominica by or on behalf of the person who suffered it against the person from whom 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 made by virtue of section 3 of this Act or section 8 of the Fatal Accidents Act, 1991; or

(c) any corresponding limit or reduction under the law of a country other than Dominica,

the person from whom the contribution is sought shall not by virtue of any contribution awarded under section 7 be required to pay in respect of the damage a greater amount of those damages as so limited or reduced.

9. Judgment recovered against any person liable in respect of any debt or damage shall not be a bar to an action, or to the continuation 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.

10. 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.

11.—(1) Where under section 6 any person becomes entitled to a right to recover contribution in respect of any damage from any other person, no action to recover contribution by virtue of that right shall be brought after the expiration of two years from the date on which that right accrued.

(2) For the purposes of this section the date on which a right to recover contribution in respect of any damage accrues to any person (hereinafter referred to as “the relevant date”) shall be ascertained as provided in subsections (3) and (4).

(3) If the person in question is held liable in respect of that damage—

(a) by a judgment given in civil proceedings; or

(b) by an award made on any arbitration,

the relevant date shall be the date on which the judgment is given, or the date of the award as the case may be. For the purposes of this subsection no account shall be taken of any judgment or award given or made on appeal in so far as it varies the amount of damages awarded against the person in question.

(4) If in any case not within subsection (3), the person in question makes or agrees to make any payment to one or more persons in compensation for that damage (whether he admits any liability in respect of the damage or not), the relevant date shall be the earliest date on which the amount to be paid by him is agreed between him (or his representative) and the person or each of the persons, as the case may be, to whom the payment is to be made.

12.—(1) Nothing in this Part shall affect any case where the debt in question becomes due or, as the case may be, the damage in question occurred before the date on which this Act commenced.
(2) A person shall not be entitled to recover contribution, or be liable to make contribution, in accordance with section 7 by reference to any liability based on breach of any obligation assumed by him before the date on which this Act commenced.

(3) The right to recover contribution 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 III

SURVIVAL OF CAUSES OF ACTION

13.—(1) Subject to 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.

(2) This section shall not apply to causes of action for defamation, seduction or for inducing one spouse to leave or remain apart from the other.

(3) The right of a person to claim under section 4 of the Fatal Accidents Act, 1991, for bereavement shall not survive for the benefit of his estate on his death.

(4) Where a cause of action survives 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) in the case of breach of promise to marry shall be limited to such damage, if any, to the estate of the 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 calculated without reference to any loss or gain to his estate consequent on his death, except that a sum in respect of funeral may be included.

(5) 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 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.

(6) 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 the Fatal Accidents Act, 1991, 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 that Act as it applies in relation to other causes of action not expressly excepted from the operation of subsection (1) of this section.

(7) In the event of the insolvency of an estate against which proceedings are maintainable by virtue of this Part, 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.
14.—(1) Rules of court may be made under section 17 of the Eastern Caribbean Supreme Court Order, 1967, making provision for—

(a) enabling proceedings to be commenced against the estate of a deceased person (whether by the appointment of a person to represent the estate or otherwise) where no grant of probate or administration has been made;

(b) enabling proceedings purporting to be commenced against a person who has died to be treated as having been commenced against his estate; and

(c) enabling any proceedings commenced or treated as commenced against the estate of a deceased person to be maintained (whether by substitution of parties, amendment or otherwise) against a person appointed to represent the estate or, if a grant of probate or administration is made, against the personal representative.

(2) Unless and until rules of court are made under the said section 17, rules of the Supreme Court in England for such purpose as are set out in subsection (1) shall apply in Dominica.

PART IV

ABOLITION OF DOCTRINE OF COMMON EMPLOYMENT

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

(2) Any provision contained in a contract of service or apprenticeship, or an agreement collateral thereto (including a contract or agreement entered into before the commencement of this Act) shall be void, except in relation to injuries or death caused before the commencement of this Act, in so far as it would have
the effect of excluding or limiting any liability of the employer in respect of personal injuries or death caused to the person employed or apprenticed by the negligence of any person or persons in common employment with him.

(3) This section shall not apply in any case where the act or omission giving rise to the claim occurred before the commencement of this Act.

PART V

MISCELLANEOUS

16.—(1) In an action for damages for personal injuries (including any such action arising out of a contract), in assessing those damages there shall be taken into account against any loss of earnings or any profit which has accrued or probably will accrue to the injured person from the injury—

(a) the value of any rights which have accrued or probably will accrue to him therefrom in respect of employment injury benefit; and

(b) one half of the value of any rights which have accrued or probably will accrue to him therefrom in respect of any other benefit, for a period of five years beginning with the time when the cause of action arose.

(2) For the purposes of subsection (1), any grant by way of disablement benefit referred to in section 27 (1) (f) of the Social Security Act, 1975, shall be treated as benefit for the period taken into account by the assessment of the extent of the disablement made in accordance with regulations in respect of which it is payable.

(3) The reference in subsection (1) to assessing damages for personal injuries shall, in cases where the damages otherwise recoverable are subject to reduction under the provisions of this Act relating to contributory negligence or are limited by or under any other enactment or by contract, be taken as referring to the total damages which would have been recoverable apart from the reduction or limitation.
17.—(1) This section applies to any action for damages for negligence, nuisance or breach of duty (whether the duty exists by virtue of a contract or of provision made by or under any enactment or independently of any contract or any such provision) where the damages claimed by the plaintiff for the negligence, nuisance or breach of duty consist of or include damages in respect of personal injuries to the plaintiff or any other person.

(2) An action to which this section applies shall not be brought after the period applicable in accordance with subsection (3) or (4).

(3) Except where subsection (4) applies, the period applicable is three years from—

(a) the date on which the cause of action accrued; or

(b) the date of knowledge, if later, of the person injured.

(4) If the person injured dies before the expiration of the period mentioned in subsection (3), the period applicable as respects the cause of action surviving for the benefit of his estate by virtue of section 13 shall be three years from—

(a) the date of death; or

(b) the date of the personal representative's knowledge,

whichever is the latter.

(5) For the purposes of this section "personal representative" includes any person who is or has been a personal representative of the deceased, including an executor who has not proved the will (whether or not he has renounced probate) but not anyone appointed only as a special personal representative to settled land; and regard shall be had to any knowledge acquired by any such person while a personal representative or previously.

(6) If there is more than one personal representative, and their dates of knowledge are different, subsection (4) (b) shall be read as referring to the earliest of those dates.
18.—(1) In section 17 reference to a person’s date of knowledge is a reference to the date on which he first had knowledge of the following facts—

(a) that the injury in question was significant; and

(b) that the injury was attributable in whole or in part to the act or omission which is alleged to constitute negligence, nuisance or breach of duty; and

(c) the identity of the defendant; and

(d) if it is alleged that the act or omission was that of a person other than the defendant, the identity of that person and the additional facts supporting the bringing of an action against the defendant,

and knowledge that any acts or omission did or did not as a matter of law, involve negligence, nuisance or breach of duty is irrelevant.

(2) For the purposes of this section an injury is significant if the person whose date of knowledge is in question would reasonably have considered it sufficiently serious to justify his instituting proceedings for damages against a defendant who did not dispute liability and was able to satisfy a judgment.

(3) For the purposes of this section a person’s knowledge includes knowledge which he might reasonably be expected to acquire—

(a) from facts observable or ascertainable by him; or

(b) from facts ascertainable by him with the help of medical or other appropriate expert advice which it is reasonable for him to seek,

but a person shall not be fixed under this subsection with knowledge of a fact ascertainable only with the help of expert advice so long as he has taken all reasonable steps to obtain, and, where appropriate, to act on that advice.
19. Without prejudice to section 6 of the Crown Proceedings Ordinance, this Ordinance shall bind the State.

20.—(1) Subject to subsection (2) section 63 of the Social Security Act, 1975, is repealed.

(2) Notwithstanding the provisions of subsection (1) section 63 of the Social Security Act, 1975, shall continue to apply to causes of action arising on an injury suffered before the commencement of this Act.

Passed in the House of Assembly this 9th day of April, 1991.

M. ALBERTHA JNO. BAPTISTE
Clerk of the House of Assembly.