

Jersey Law 3/1948

CUSTOMARY LAW AMENDMENT (JERSEY) LAW, 1948.

A LAW to amend the law as to the effect of death in relation to causes of action, sanctioned by Order of His Majesty in Council of the

2nd day of JUNE, 1948.

(Registered on the 18th day of June, 1948).

STATES OF JERSEY.

The 5th day of February, 1948.

THE STATES, subject to the sanction of His Most Excellent Majesty in Council, have adopted the following Law:-

ARTICLE 1.

(1) Subject to the provisions of this Article, on the death of any person after the promulgation of this Law 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 paragraph 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 any claim against any person for damages on the ground of the adultery of that person with the husband or wife of the claimant.¹

(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;

¹ See Matrimonial Causes (Jersey) Law, 1949 - Art. 24.

(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 calculated without reference to any loss or gain to his estate consequent on his death, except that a sum in respect of funeral expenses may be included.

(3) No proceedings shall be maintainable in respect of a cause of action in tort which by virtue of this Article 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) proceedings are taken in respect of that cause of action not later than six months after his personal representative took out representation.]²

(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 Law, 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 Law for the benefit of the estates of the deceased persons shall be in addition to and not in derogation of any rights conferred on the dependants of deceased persons by the “Lois (1886 à 1948) sur les Accidents Mortels”,³ or by the Carriage by Air Act, 1932 (22 & 23 Geo. 5, c. 36), as extended to the Island by the Carriage by Air (Jersey) Order, 1935,⁴ and so much of this Law as relates to causes of action against the estates of deceased persons shall apply in relation to causes of action under the said Laws and under the said Order, as so extended, as it applies in relation to other causes of action not expressly excepted from the operation of paragraph (1) of this Article.

² Sub-paragraph substituted by Law Reform (Miscellaneous Provisions) (Jersey) Law, 1960 (Volume 1957-1960, page 452).

³ Repealed by Article 7 of the fatal accidents (Jersey) Law, 1962 (Volume 1961-1962, page 595).

⁴ Repealed by Second Schedule to the Carriage by Air Act 1961 (Volume 1966-1967, page 473).

(6) In the event of the insolvency of an estate against which proceedings are maintainable by virtue of this Article, 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.

ARTICLE 2.

This Law may be cited as the Customary Law Amendment (Jersey) Law, 1948.