



Jersey

CUSTOMARY LAW AMENDMENT (JERSEY) LAW 1948

Official Consolidated Version

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CUSTOMARY LAW AMENDMENT (JERSEY) LAW 1948

A **LAW** to amend the law as to the effect of death in relation to causes of action

Commencement [[see endnotes](#)]

1 Cause of action

- (1) Subject to the provisions of this Article, on the death of any person after 19th June 1948 all causes of action subsisting against or vested in the person shall survive against, or, as the case may be, for the benefit of the person's 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.

- (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 –
 - (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 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 the person's estate consequent on the person's death, except that a sum in respect of funeral expenses may be included.¹
- (3) Paragraph (2)(b) shall have effect only for the purposes of the cause of action preserved by Article 4 of the [Law Reform \(Miscellaneous Provisions\) \(Jersey\) Law 2003](#).²

- (4) 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 the deceased person in respect of that cause of action were pending at the date of the deceased person's death; or
 - (b) proceedings are taken in respect of that cause of action not later than 6 months after the deceased person's personal representative took out representation.³
- (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 same time as the damage was suffered, there shall be deemed, for the purposes of this Law, to have been subsisting against the person before the person's death such cause of action in respect of that act or omission as would have subsisted if the person had died after the damage was suffered.
- (6) 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 [Fatal Accidents \(Jersey\) Law 1962](#), and the Carriage by Air Act 1961 of the United Kingdom and the Carriage by Air (Supplementary Provisions) Act 1962 of the United Kingdom, as extended to Jersey by the Carriage By Air (Jersey) Order 1967 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 Law and under the said Acts, as so extended, as it applies in relation to other causes of action not expressly excepted from the operation of paragraph (1).⁴
- (7) 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.

2 Citation

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

ENDNOTES

Table of Legislation History

Legislation	Year and No	Commencement
Customary Law Amendment (Jersey) Law 1948	L.3/1948	18 June 1948
Law Reform (Miscellaneous Provisions) (Jersey) Law 1960	L.5/1960	4 June 1960
Customary Law Amendment (Amendment) (Jersey) Law 2001	L.30/2001	30 November 2001
Law Reform (Miscellaneous Provisions) (Jersey) Law 2003	L.2/2003	10 January 2003

Table of Renumbered Provisions

Original	Current
1(2A)	1(3)
1(3)	1(4)
(4)	(5)
(5)	(6)
(6)	(7)

Table of Endnote References

¹ Article 1(2) *amended by L.30/2001*

² Article 1(3) *inserted by L.2/2003*

³ Article 1(4) *amended by L.5/1960, which provided –*

“(1) For Article 1(3)(b) of the Customary Law Amendment (Jersey) Law 1948, there shall be substituted the following sub-paragraph –

“(b) proceedings are taken in respect of that cause of action not later than 6 months after his or her personal representative took out representation.”

(2) The amendment effected by this Article shall, in the case of a person dying after the commencement of this Law, apply as well in relation to causes of action arising before, as in relation to causes of action arising after, the commencement thereof.

(3) Save as aforesaid, nothing in this Article shall affect any action if the cause of action arose before the commencement of this Law.”

⁴ Article 1(6) *amended by L.30/2001*