



**BERMUDA
1949 : 87**

SURVIVAL OF ACTIONS ACT 1949

ARRANGEMENT OF SECTIONS

- 1 Interpretation
- 2 Survival of actions
- 3 Damages for benefit of estate of deceased person
- 4 Actions in tort against estate of deceased person
- 5 Death before or at same time as damage was suffered
- 6 Savings
- 7 Insolvent estates

[30 December 1949]

[preamble and words of enactment omitted]

Interpretation

- 1 For the purposes of this Act "estate" includes real estate.

Survival of actions

- 2 Subject to this Act, on the death of any person after 29 December 1949 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—

- (a) this section shall not apply to causes of action for defamation or seduction; and
- (b) in relation to a death occurring on or after 1 August 1988, this section shall not apply to any claim under

SURVIVAL OF ACTIONS ACT 1949

section 2A of the Fatal Injuries (Actions for Damages) Act 1949 [*title 8 item 66*].

Damages for benefit of estate of deceased person

3 Where a cause of action survives under section 2 for the benefit of the estate of a deceased person, the damages recoverable for the benefit of the estate of that person shall not include exemplary damages and—

- (a) in relation to a death occurring on or after 1 August 1988, shall not include—
 - (i) any damages for loss of income in respect of any period after that person's death; or
 - (ii) any damages for loss of expectation of life;
- (b) [*repealed by 1977:3*]
- (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.

Actions in tort against estate of deceased person

4 No cause of action shall be maintainable in respect of a cause of action in tort which by virtue of this Act has survived against the estate of a deceased person, unless either—

- (a) proceedings against him in respect of that cause or action were pending at the date of his death; or
- (b) the cause of action arose not earlier than six months before his death and proceedings are taken in respect thereof not later than twelve months after death.

Death before or at same time as damage was suffered

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 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.

Savings

6 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 Fatal Injuries (Actions for Damages) Act 1949 [*title 8 item 66*], or by the Act of

the Parliament of the United Kingdom entitled the Carriage by Air Act 1961, as applied to Bermuda; 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 Acts as it applies in relation to other causes of action not excepted from the operation of section 2.

Insolvent estates

7 In the event of the insolvency of an estate against which proceedings are maintainable by virtue of this Act, 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.

[Amended by

1977 : 3

1988 : 22]