
CHAPTER 79**SURVIVAL OF ACTION**

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CHAPTER 79

SURVIVAL OF ACTION

An Act to amend the law as to the effect of death in relation to causes of action. *7 cf 1992*

*[Assent 7th April, 1992]
[Commencement 10th April, 1992]*

1. This Act may be cited as the Survival of Action Act, 1992. Short title.

2. (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 that person shall survive against, or, as the case may be, for the benefit of, that person's estate: Effect of death on certain causes of action.

Provided that this subsection shall not apply to causes of action for defamation, seduction or breach of promise of marriage.

(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) 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 estate consequent on the 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 section has survived against the estate of a deceased person, unless either —

- (a) proceedings against that person in respect of that cause of action were pending at the date of that person's death; or
- (b) proceedings are taken in respect thereof not later than six months after the personal representative took out representation.

(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 that person before death such cause of action in respect of that act or omission as would have subsisted if that person had died after the damage was suffered.

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(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 Fatal Accidents Act, 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).

(6) In the event of the insolvency of an estate against which proceedings are maintainable by virtue of this section, 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 the unliquidated damages arising otherwise than by a contract, promise or breach of trust.