

In Her Majesty's name I assent to this Ordinance this
26th day of April, 1961.

A 227

MAURICE H. DORMAN,
Governor.

LS

No. 33



Sierra Leone

1961

An Ordinance to Amend the Law relating to Tort

[11th May, 1961.] **Date of commencement.**

BE IT ENACTED by the Legislature of Sierra Leone, as follows:—
1. This Ordinance may be cited as the Law Reform (Law **Short title.**
of Tort) Ordinance, 1961.

PART I—OCCUPIER'S LIABILITY

2. (1) The provisions enacted by the two next following **Preliminary.**
sections shall have effect, in place of the provisions of the common
law, to regulate the duty which an occupier of premises owes to
his visitors in respect of dangers due to the state of the premises
or to things done or omitted to be done on them.

(2) The provisions so enacted shall regulate the nature of the duty imposed by law in consequence of a person's occupation or control of premises and of any invitation or permission he gives (or is to be treated as giving) to another to enter or use the premises, but they shall not alter the provisions of the common law as to the persons on whom a duty is so imposed or to whom it is owed; and accordingly for the purpose of the provisions so enacted the persons who are to be treated as an occupier and as his visitors are the same as the persons who would at common law be treated as an occupier and as his invitees or licensees.

(3) The provisions so enacted in relation to an occupier of premises and his visitors shall also apply, in like manner and to the like extent as the principles applicable at common law to an occupier of premises and his invitees or licensees would apply, to regulate—

- (a) the obligations of a person occupying or having control over any fixed or moveable structure, including any vessel, vehicle or aircraft; and
- (b) the obligations of a person occupying or having control over any premises or structure in respect of damage to property, including the property of persons who are not themselves his visitors.

3. (1) An occupier of premises owes the same duty, the "common duty of care", to all his visitors, except in so far as he is free to and does extend, restrict, modify or exclude his duty to any visitor or visitors by agreement or otherwise.

(2) The common duty of care is a duty to take such care as in all the circumstances of the case is reasonable to see that the visitor will be reasonably safe in using the premises for the purposes for which he is invited or permitted by the occupier to be there.

(3) The circumstances relevant for the present purposes include the degree of care, and of want of care, which would ordinarily be looked for in such a visitor, so that (for example) in proper cases—

- (a) an occupier must be prepared for children to be less careful than adults; and
- (b) an occupier may expect that a person, in the exercise of his calling, will appreciate and guard against any special risks ordinarily incident to it, so far as the occupier leaves him free to do so.

(4) In determining whether the occupier of premises has discharged the common duty of care to a visitor, regard is to be had to all the circumstances, so that (for example)—

(a) where damage is caused to a visitor by a danger of which he had been warned by the occupier, the warning is not to be treated without more as absolving the occupier from liability, unless in all the circumstances it was enough to enable the visitor to be reasonably safe; and

(b) where damage is caused to a visitor by a danger due to the faulty execution of any work of construction maintenance or repair by an independent contractor employed by the occupier, the occupier is not to be treated without more as answerable for the danger if in all the circumstances he had acted reasonably in entrusting the work to an independent contractor and had taken such steps (if any) as he reasonably ought in order to satisfy himself that the contractor was competent and that the work had been properly done.

(5) The common duty of care does not impose on an occupier any obligation to a visitor in respect of risks willingly accepted as his by the visitor (the question whether a risk was so accepted to be decided on the same principles as in other cases in which one person owes a duty of care to another).

(6) For the purposes of this section, persons who enter premises for any purpose in the exercise of a right conferred by law are to be treated as permitted by the occupier to be there for that purpose, whether they in fact have his permission or not.

4. (1) Where an occupier of premises is bound by contract to permit persons who are strangers to the contract to enter or use the premises, the duty of care which he owes to them as his visitors cannot be restricted or excluded by that contract, but subject to any provision of the contract to the contrary, shall include the duty to perform his obligations under the contract, whether undertaken for their protection or not, in so far as those obligations go beyond the obligations otherwise involved in that duty.

**Effect of
contraction
occupier's
liability to
third party.**

(2) A contract shall not by virtue of this section have the effect, unless it expressly so provides, of making an occupier who has taken all reasonable care answerable to strangers to the contract for dangers due to the faulty execution of any work of construction, maintenance or repair or other like operation by persons other than himself, his servants and persons acting under his direction and control.

(3) In this section "stranger to the contract" means a person not for the time being entitled to the benefit of the contract as a party to it or as the successor by assignment or otherwise of a party to it, and accordingly includes a party to the contract who has ceased to be so entitled.

(4) Where by the terms or conditions governing any tenancy (including a statutory tenancy which does not in law amount to a tenancy) either the landlord or the tenant is bound, though not by contract, to permit persons to enter or use premises of which he is the occupier, this section shall apply as if the tenancy were a contract between the landlord and the tenant.

(5) This section, in so far as it prevents the common duty of care from being restricted or excluded, applies to contracts entered into and tenancies created before the commencement of this Ordinance, as well as to those entered into or created after its commencement; but, in so far as it enlarges the duty owed by an occupier beyond the common duty of care, it shall have effect only in relation to obligations which are undertaken after that commencement or which are renewed by agreement (whether express or implied) after that commencement.

Landlord's liability in virtue of obligation to repair.

5. (1) Where premises are occupied by any person under a tenancy which puts on the landlord an obligation to that person for the maintenance or repair of the premises, the landlord shall owe to all persons who or whose goods may from time to time be lawfully on the premises the same duty, in respect of dangers arising from any default by him in carrying out that obligation, as if he were an occupier of the premises and those persons or their goods were there by his invitation or permission (but without any contract).

(2) Where premises are occupied under a sub-tenancy, the foregoing subsection shall apply to any landlord of the premises (whether the immediate or a superior landlord) on whom an obligation to the occupier for the maintenance or repair of the premises is put by the sub-tenancy, and for that purpose any obligation to the occupier which the sub-tenancy puts on a mesne landlord of the premises, or is treated by virtue of this provision as putting on a mesne landlord, shall be treated as put by it also on any landlord on whom the mesne landlord's tenancy puts the like obligation towards the mesne landlord.

(3) For the purpose of this section, where premises comprised in a tenancy (whether occupied under that tenancy or under a sub-tenancy) are put to a use not permitted by the tenancy, and the landlord of whom they are held under the tenancy is not debarred by his acquiescence or otherwise from objecting or from enforcing his objection, then no persons or goods whose presence on the premises is due solely to that use of the premises shall be deemed to be lawfully on the premises as regards that landlord or any superior landlord of the premises, whether or not they are lawfully there as regards an inferior landlord.

(4) For the purposes of this section, a landlord shall not be deemed to have made default in carrying out any obligation to the occupier of the premises unless his default is such as to be actionable at the suit of the occupier or, in the case of a superior landlord whose actual obligation is to an inferior landlord, his default in carrying out that obligation is actionable at the suit of the inferior landlord.

(5) Nothing in this section shall relieve a landlord of any duty which he is under apart from this section.

(6) For the purposes of this section, obligations imposed by any enactment in virtue of a tenancy shall be treated as imposed by the tenancy, and "tenancy" includes a statutory

tenancy which does not in law amount to a tenancy, and includes also any contract conferring a right of occupation, and "landlord" shall be construed accordingly.

(7) This section applies to tenancies created before the commencement of this Ordinance, as well as to those created after its commencement.

6. (1) Where persons enter or use, or bring or send goods to, any premises in exercise of a right conferred by contract with a person occupying or having control of the premises, the duty he owes them in respect of dangers due to the state of the premises or to things done or omitted to be done on them, in so far as the duty depends on a term to be implied in the contract by reason of its conferring that right, shall be the common duty of care. Implied term
in contracts.

(2) The foregoing subsection shall apply to fixed and moveable structures as it applied to premises.

(3) This section does not affect the obligations imposed on a person by or by virtue of any contract for the hire of, or for the carriage for reward of persons or goods in, any vehicle, vessel, aircraft or other means of transport, or by or by virtue of any contract of bailment.

(4) This section does not apply to contracts entered into before the commencement of this Ordinance.

PART II—COMMON EMPLOYMENT

7. (1) It shall not be a defence to an employer who is sued in respect of personal injuries caused by the negligence of a person employed by him, that that person was at the time the injuries were caused in common employment with the person injured. Common
employment
no defence.

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

(3) In this section the expression "personal injury" includes any disease and any impairment of a person's physical or mental condition and the expression "injured" shall be construed accordingly.

PART III—CONTRIBUTORY NEGLIGENCE

8. (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: Apportionment of
liability in
case of
contributory
negligence.

Provided that—

(a) this subsection shall not operate to defeat any defence arising under a contract;

(b) where any contract or 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 the foregoing subsection 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) Part IV of this Ordinance shall apply in any case where two or more persons are liable or would, if they had all been sued, be liable by virtue of subsection (1) of this section in respect of the damage suffered by any person.

(4) Where any person dies as the result partly of his own fault and partly of the fault of any other person or persons, and accordingly if an action were brought for the benefit of the estate under the Law Reform (Miscellaneous Provisions) Ordinance the damages recoverable would be reduced under subsection (1) of this section, any damages recoverable in an action brought for the benefit of the dependants of that person under the Fatal Accidents Act, 1846 and the Fatal Accidents Act, 1864, shall be reduced to a proportionate extent.

(5) Where, in any case to which subsection (1) of this section applies, one of the persons at fault avoids liability to any other such person or his personal representative by pleading any enactment limiting the time within which proceedings may be taken, he shall not be entitled to recover any damages or contributions from that other person or representative by virtue of the said subsection.

(6) Article 21 of the Convention contained in the First Schedule to the Carriage by Air Act, 1932 (which empowers a 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), shall have effect subject to the provisions of this section.

(7) In this section, the following expressions have the meanings hereby respectively assigned to them, that is to say—
“court” means, in relation to any claim, the court or arbitrator by or before whom the claim falls to be determined;

“damage” includes loss of life and personal injury;
“dependant” means any person for whose benefit an action could be brought under the Fatal Accidents Act, 1846 and the Fatal Accidents Act, 1864;

“fault” means negligence, breach of statutory duty or other act or omission which gives rise to a liability in tort or would, apart from this Ordinance, give rise to the defence of contributory negligence.

9. (1) This Ordinance shall not apply to any claim to which Saving. section 1 of the Maritime Conventions Act, 1911, applies and that Act shall have effect as if this Ordinance had not been passed.

(2) This part shall not apply to any case where the acts or omissions giving rise to the claim occurred before the passing of this Ordinance.

PART IV—JOINT TORT-FEASORS

10. (1) Where damage is suffered by any person as a result of a tort (whether a crime or not)—

(a) judgment recovered against any tort-feasor liable in respect of that damage shall not be a bar to an action against any other person who would, if sued, have been liable as a joint tort-feasor in respect of the same damage;

(b) if more than one action is brought in respect of that damage by or on behalf of the person by whom it was suffered, or for the benefit of the estate, or of the wife, husband, parent or child, of that person, against tort-feasors liable in respect of the damage (whether as joint tort-feasors or otherwise) the sums recoverable under the judgments given in those actions by way of damages shall not in the aggregate exceed the amount of the damages awarded by the judgment first given; and in any of those actions, other than that in which judgment is first given, the plaintiff shall not be entitled to costs unless the court is of opinion that there was reasonable ground for bringing the action;

(c) any tort-feasor liable in respect of that damage may recover contribution from any other tort-feasor who is, or would if sued have been, liable in respect of the same damage, whether as a joint tort-feasor or otherwise, so, however, that no person shall be entitled to recover contribution under this section from any person entitled to be indemnified by him in respect of the liability in respect of which the contribution is sought.

(2) In any proceedings for contribution under this section the amount of the 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; and the court shall have power 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) For the purposes of this section—

(a) the expressions "parent" and "child" have the same meanings as they have for the purposes of the Fatal Accidents Act, 1846 and the Fatal Accidents Act, 1864; and

(b) the reference in this section to "the judgment first given" shall, in a case where that judgment is reversed on appeal, be construed as a reference to the judgment first given which is not so reversed and, in a case where a judgment is varied on appeal, be construed as a reference to that judgment as so varied.

(4) Nothing in this section shall—

- (a) apply with respect to any tort committed before the commencement of this Ordinance; or
- (b) affect any criminal proceedings against any person in respect of any wrongful act; or
- (c) render enforceable any agreement for indemnity which would not have been enforceable if this section had not been passed.

PART V—LIMITATION, ETC.

Amendment
of Cap. 116.

Cap 19

11. Paragraph (b) of subsection (3) of section 2 of the Law Reform (Miscellaneous Provisions) Ordinance is hereby repealed and replaced by the following—

"(b) proceedings are taken in respect thereof not later than three years from the date of death."

Amendment
of Fatal Accidents Act,
1846.

12. In section 3 of the Fatal Accidents Act, 1846 (which provides that actions under that Act shall be commenced within twelve calendar months after the death of the deceased person) for the words "twelve months" there shall be substituted the words "three years".

Application
of cap 116 to the Protec-
torate.

13. The Law Reform (Miscellaneous Provisions) Ordinance shall apply to the Protectorate in relation to all causes of action arising after the passing of this Ordinance.

Transitional
provisions

14. (1) The time for bringing proceedings in respect of a cause of action which arose before the passing of this Ordinance shall, if it has not then already expired, expire at the time when it would have expired apart from the provisions of this Ordinance or at the time when it would have expired if all the provisions of this Ordinance had at all material times been in force, whichever is the later.

Cap. 116.

(2) The repeal effected by this Ordinance in subsection (3) of section 2 of the Law Reform (Miscellaneous Provisions) Ordinance shall, in the case of a person dying after the passing of this Ordinance, apply as well in relation to causes of action arising before, as in relation to causes of action arising after, the passing thereof.

(3) Save as aforesaid, nothing in this Ordinance shall effect any action or proceeding if the cause of action arose before the passing thereof.

Passed in the House of Representatives this 8th day of March, in the year of our Lord one thousand nine hundred and sixty-one.

S. V. WRIGHT,
Clerk of the House of Representatives.

THIS PRINTED IMPRESSION has been carefully compared by me with the Bill which has passed the House of Representatives and found by me to be a true and correct copy of the said Bill.

S. V. WRIGHT,
Clerk of the House of Representatives.

M.P. O.P.M./28/37.

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