

# ORDER IN COUNCIL

**II**  
**1979**

ratifying a Projet de Loi

ENTITLED

## The Law Reform (Tort) (Guernsey) Law, 1979

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(Registered on the Records of the Island of Guernsey  
on the 8th day of May, 1979.)

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1979

# ORDER IN COUNCIL



IN THE ROYAL COURT OF THE ISLAND OF GUERNSEY

*The 8th day of May, 1979 before Sir John Loveridge, Kt., C.B.E., Bailiff; present:—Stanley Walter Gavey, Esquire, O.B.E., D'Arcy George Le Tissier, Esquire, Edward James Lainé, Esquire, C.B.E., D.F.C., Walter Francis Robin, Richard Alan Kinnersly, Esquires, Harry Wall Poat, Esquire, D.S.O., M.C., A.D.C., Richard Oliver Symons, Albert Richard McCartney Straw, Esquires, Frederick William Winslow Chandler, Esquire, D.S.O., D.F.C., Lionel Walter Sarre, Esquire, M.B.E., K.P.M., and Donald Pescott Plummer, Esquire, Jurats.*

The Bailiff having this day placed before the Court an Order of Her Majesty in Council dated the 30th day of March, 1979, ratifying a *Projet de Loi* entitled "The Law Reform (Tort) (Guernsey) Law, 1979", the Court, after the reading of the said Order in Council and after having heard Her Majesty's Comptroller thereon, ordered that the said Order in Council be registered on the records of this Island, of which Order in Council the tenor followeth:—

## At the Court at Buckingham Palace

The 30th day of March 1979

PRESENT,

### The Queen's Most Excellent Majesty in Council

WHEREAS there was this day read at the Board a Report from the Right Honourable the Lords of the Committee of Council for the Affairs of Guernsey and Jersey dated the 13th day of March 1979 in the words following, viz.:—

“YOUR MAJESTY having been pleased, by Your General Order of Reference of the 22nd day of February 1952, to refer unto this Committee the humble Petition of the States of the Island of Guernsey, setting forth:—

‘1. That, in pursuance of their Resolution of the 28th day of January 1972, the States of Deliberation at a meeting held on the 30th day of November 1978, approved a Bill or “Projet de Loi” entitled “The Law Reform (Tort) (Guernsey) Law, 1979”, and requested the Bailiff to present a most humble Petition to Your Majesty in Council praying for Your Royal Sanction thereto. 2. That the said Bill or “Projet de Loi” is in the words and figures set forth in the Schedule hereunto annexed. And most humbly praying that Your Majesty might be graciously pleased to grant Your Royal Sanction to the Bill or “Projet de Loi” of the States of Guernsey entitled “The Law Reform (Tort) (Guernsey) Law, 1979”, and to order that the same shall have force of law in the Island of Guernsey.’

“THE LORDS OF THE COMMITTEE, in obedience to Your Majesty’s said Order of Reference, have taken the said Petition and the said Projet de Loi into consideration, and do this day agree humbly to report, as their opinion, to Your Majesty, that it may be advisable for Your Majesty to comply with the prayer of the said Petition and to approve of and ratify the said Projet de Loi.”

HER MAJESTY having taken the said Report into consideration is pleased, by and with the advice of Her Privy Council, to approve of and ratify the said Projet de Loi, and to order, as it is hereby ordered, that the same shall have the force of Law within the Island of Guernsey.

AND HER MAJESTY doth hereby further direct that this Order, and the said Projet de Loi (a copy whereof is hereunto annexed), be entered upon the Register of the Island of Guernsey and observed accordingly.

AND the Lieutenant Governor and Commander-in-Chief of the Island of Guernsey, the Bailiff and Jurats, and all other Her Majesty’s Officers for the time being in the said Island, and all other persons whom it may concern, are to take notice and govern themselves accordingly.

*N. E. Leigh*



Projet de Loi referred to in the foregoing  
Order in Council.

## PROJET DE LOI

ENTITLED

### **The Law Reform (Tort) (Guernsey) Law, 1979**

#### ARRANGEMENT OF SECTIONS

*Section*

#### PART I

##### *Contributory negligence*

1. Apportionment of liability in case of contributory negligence.
2. Saving for past cases.
3. Interpretation of Part I.

#### PART II

##### *Limitation of actions*

4. Limitation of actions in tort.
5. Time limit for personal injuries.
6. Time limit for actions under Fatal Accidents Law.
7. Dependants subject to different time limits.
8. Court's power to override time limits.
9. Extension of limitation period in case of disability.
10. Time limit for claiming contribution between tortfeasors.
11. Postponement of limitation period in cases of fraud or mistake.
12. Amendment to Fatal Accidents Law.

*Section*

13. Amendment as to proceedings or causes of action surviving against estates of deceased persons.
14. Provision as to pending actions.
15. Interpretation of Part II.

PART III

*Amendment to the law with respect to proceedings in tort between husband and wife*

16. Actions in tort between husband and wife.
17. Interpretation and saving.

PART IV

*Proceedings against and contribution between tortfeasors*

18. Proceedings against and contribution between joint and several tortfeasors.

PART V

*General interpretation, repeal, citation and commencement*

19. General interpretation.
20. Repeal.
21. Citation.
22. Commencement.

SCHEDULE

*Repeal*

# PROJET DE LOI

ENTITLED

## **The Law Reform (Tort) (Guernsey) Law, 1979**

THE STATES, in pursuance of their Resolution of the twenty-eighth day of January, nineteen hundred and seventy-two, have approved the following provisions which, subject to the Sanction of Her Most Excellent Majesty in Council, shall have force of law in the Island of Guernsey.

### PART I

#### *Contributory negligence*

1. (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) Section eighteen of this Law (which relates to proceedings against and contribution between joint and several tortfeasors), 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 of 1936, 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 provisions of the Fatal Accidents Law 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 legal personal representative by pleading Part II of this Law or any other enactment or rule of law 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 legal personal representative by virtue of the said subsection.

Saving for  
past cases.

2. This Part of this Law shall not apply to any case where the acts or omissions giving rise to the

claim occurred before the date of the coming into force of this Part of this Law.

3. In this Part of this Law, except where the context otherwise requires, the following expressions have the meanings hereby respectively assigned to them, that is to say:—

Interpreta-  
tion of  
Part I.

“court” means, in relation to any claim, the court by or before whom the claim falls to be determined;

“damage” includes loss of life and personal injury;

“dependant” means any person for whose benefits an action could be brought under the Fatal Accidents Law;

“fault” means negligence, breach of a duty imposed by an enactment or other act or omission which gives rise to a liability in tort or would, apart from this Part of this Law, give rise to the defence of contributory negligence.

## PART II

### *Limitation of actions*

4. (1) Notwithstanding the provisions of any enactment or any rule of law, an action founded on tort shall not be brought after the expiration of six years from the date on which the cause of action accrued.

Limitation  
of actions  
in tort.

(2) This section shall have effect subject to the provisions of the next succeeding section.

5. (1) This section applies to any action for damages for negligence, nuisance or breach of duty (whether the duty exists by virtue of a contract or of provision made by or under an enactment or

Time limit  
for personal  
injuries.

independently of any contract or any such provision) where the damages claimed by the plaintiff for the negligence, nuisance or breach of duty consist of or include damages in respect of personal injuries to the plaintiff or any other person.

(2) Section four of this Law shall not apply to an action to which this section applies.

(3) Subject to section eight of this Law, an action to which this section applies shall not be brought after the expiration of the period specified in subsections (4) and (5) of this section.

(4) Except where subsection (5) of this section applies, the said period is three years from—

(a) the date on which the cause of action accrued, or

(b) the date (if later) of the plaintiff's knowledge.

(5) If the person injured dies before the expiration of the period in subsection (4) of this section, the period as respects the cause of action surviving for the benefit of the estate of the deceased by virtue of section one of the Law of 1936 shall be three years from—

(a) the date of death, or

(b) the date of the legal personal representative's knowledge,

whichever is the later.

(6) In this section, and in section six of this Law, references to a person's date of knowledge are references to the date on which he first had knowledge of the following facts—

(a) that the injury in question was significant, and

(b) that that injury was attributable in whole or in part to the act or omission which is

alleged to constitute negligence, nuisance or breach of duty, and

- (c) the identity of the defendant, and
- (d) if it is alleged that the act or omission was that of a person other than the defendant, the identity of that person and the additional facts supporting the bringing of an action against the defendant,

and knowledge that any acts or omissions did or did not, as a matter of law, involve negligence, nuisance or breach of duty is irrelevant.

(7) For the purposes of this section an injury is significant if the plaintiff would reasonably have considered it sufficiently serious to justify his instituting proceedings for damages against a defendant who did not dispute liability and was able to satisfy a judgment.

(8) For the purposes of the said sections a person's knowledge includes knowledge which he might reasonably have been expected to acquire—

- (a) from facts observable or ascertainable by him, or
- (b) from facts ascertainable by him with the help of medical or other appropriate expert advice which it is reasonable for him to seek,

but a person shall not be fixed under this subsection with knowledge of a fact ascertainable only with the help of expert advice so long as he has taken all reasonable steps to obtain (and, where appropriate, to act on) that advice.

(9) For the purposes of this section "legal personal representative" includes any person who is or has been a legal personal representative of the deceased, including an executor who has not proved the will (whether or not he has renounced probate)

and regard shall be had to any knowledge acquired by any such person while a legal personal representative or previously.

(10) If there is more than one legal personal representative, and their dates of knowledge are different, paragraph (b) of subsection (5) of this section shall be read as referring to the earliest of those dates.

Time limit  
for actions  
under Fatal  
Accidents  
Law.

6. (1) This section has effect subject to section eight of this Law.

(2) An action under the Fatal Accidents Law shall not be brought if the death occurred when the person injured could no longer maintain an action and recover damages in respect of the injury (whether because of a time limit in this Law or in any other Law, or any other reason).

Where any such action by the injured person would have been barred by the time limit in section five of this Law, no account shall be taken of the possibility of that time limit being overridden under section eight of this Law.

(3) An action under the Fatal Accidents Law shall not be brought after the expiration of three years from—

- (a) the date of death, or
- (b) the date of knowledge of the person for whose benefit the action is brought,

whichever is the later.

(4) Subsection (3) of this section shall not apply to an action for which a period of limitation is prescribed by or under any Law other than this Law, and section five of this Law shall not apply to an action under the Fatal Accidents Law.

(5) An action under the Fatal Accidents Law shall be one to which section nine of this Law (persons under disability) applies.

7. (1) This section applies where there is more than one person for whose benefit an action under the Fatal Accidents Law is brought.

Dependants  
subject to  
different  
time limits.

(2) Paragraph (b) of subsection (3) of section six of this Law shall be applied separately to each of them, and if that would debar one or more of them, but not all, the court shall direct that any person who would be so debarred shall be excluded from those for whom the action is brought unless it is shown that if the action were brought exclusively for the benefit of that person it would not be defeated by a defence of limitation (whether in consequence of section nine of this Law (persons under disability), or an agreement between the parties not to raise the defence, or otherwise).

8. (1) If it appears to the court that it would be equitable to allow an action to proceed having regard to the degree to which—

Court's  
power to  
override  
time limits.

- (a) the provisions of section five or six of this Law prejudice the plaintiff or any person whom he represents, and
- (b) any decision of the court under this subsection would prejudice the defendant or any person whom he represents,

the court may direct that those provisions shall not apply to the action, or shall not apply to any specified cause of action to which the action relates.

(2) The court shall not under this section dis-apply subsection (2) of section six of this Law except where the reason why the person injured could no longer maintain an action was because of the time limit in section five of this Law.

(3) In acting under this section the court shall have regard to all the circumstances of the case and in particular to—

- (a) the length of, and the reasons for, the delay on the part of the plaintiff;
- (b) the extent to which, having regard to the delay, the evidence adduced or likely to be adduced by the plaintiff or the defendant is or is likely to be less cogent than if the action had been brought within the time allowed by section five or as the case may be six of this Law;
- (c) the conduct of the defendant after the cause of action arose, including the extent if any to which he responded to requests reasonably made by the plaintiff for information or inspection for the purpose of ascertaining facts which were or might be relevant to the plaintiff's cause of action against the defendant;
- (d) the duration of any disability of the plaintiff arising after the date of the accrual of the cause of action;
- (e) the extent to which the plaintiff acted promptly and reasonably once he knew whether or not the act or omission of the defendant, to which the injury was attributable, might be capable at that time of giving rise to an action for damages;
- (f) the steps, if any, taken by the plaintiff to obtain medical, legal or other expert advice and the nature of any such advice he may have received.

(4) In a case where the person injured died when, because of section five, he could no longer maintain an action and recover **damages in respect**

of the injury, the court shall have regard in particular to the length of, and the reasons for, the delay on the part of the deceased.

(5) In a case under subsection (4) of this section, or any other case where the time limit, or one of the time limits, depends on the date of knowledge of a person other than the plaintiff, subsection (3) of this section shall have effect with appropriate modifications, and shall have effect in particular as if references to the plaintiff included references to any person whose date of knowledge is or was relevant in determining a time limit.

(6) A direction by the court disapplying the provisions of subsection (2) of section six of this Law shall operate to disapply the provisions to the same effect in section one of the Fatal Accidents Law.

(7) In this section “the court” means the court in which the action has been brought.

9. (1) If on the date when any right of action accrued for which a period of limitation is prescribed by this Law, the person to whom it accrued was under a disability, the action may be brought at any time before the expiration of six years from the date when the person ceased to be under a disability or died, whichever event first occurred, notwithstanding that the period of limitation has expired:

Extension of  
limitation  
period in  
case of  
disability.

Provided that—

- (a) this section shall not affect any case where the right of action first accrued to some person (not under a disability) through whom the person under a disability claims;
- (b) when a right of action which has accrued to a person under a disability accrues, on the death of that person while still under



a disability, to another person under a disability, no further extension of time shall be allowed by reason of the disability of the second person.

(2) If the action is one to which section five or subsection (3) of section six of this Law applies subsection (1) of this section shall have effect as if for the words "six years" there were substituted the words "three years".

(3) If the action is one to which section ten of this Law applies subsection (1) of this section shall have effect as if for the words "six years" there were substituted the words "two years".

**Time limit  
for claiming  
contribution  
between  
tortfeasors.**

10. (1) Where under section eighteen of this Law a tortfeasor (in this section referred to as "the first tortfeasor") becomes entitled after the date of the coming into force of this Part of this Law to a right to recover contribution in respect of any damage from another tortfeasor, no action to recover contribution by virtue of that right shall be brought after the end of the period of two years from the date on which that right accrued to the first tortfeasor.

(2) For the purposes of this section the date on which a right to recover contribution in respect of any damage accrues to a tortfeasor (in this subsection referred to as "the relevant date") shall be ascertained as follows, that is to say:—

- (a) if the tortfeasor is held liable in respect of that damage by a judgment given in any civil proceedings, the relevant date shall be the date on which the judgment is given;
- (b) if, in any case not falling within the preceding paragraph, the tortfeasor admits

liability in favour of one or more persons in respect of that damage, the relevant date shall be the earliest date on which the amount to be paid by him in discharge of that liability is agreed by or on behalf of the tortfeasor and that person, or each of those persons, as the case may be;

and for the purposes of this subsection no account shall be taken of any judgment given on appeal in so far as it varies the amount of damages awarded against the tortfeasor.

11. Where, in the case of any action for which a period of limitation is prescribed by this Law, either—

Postpone-  
ment of  
limitation  
period in  
case of fraud  
or mistake.

- (a) the action is based upon the fraud of the defendant or his agent or of any person through whom he claims or his agent; or
- (b) the right of action is concealed by the fraud of any such person as aforesaid; or
- (c) the action is for relief from the consequences of a mistake;

the period of limitation shall not begin to run until the plaintiff has discovered the fraud or the mistake, as the case may be, or could with reasonable diligence have discovered it.

12. In section three of the Fatal Accidents Law the words "et que tout" and all the words from those words to the end of that section are hereby repealed.

Amendment  
to Fatal  
Accidents  
Law.

Amendment  
as to pro-  
ceedings or  
causes of  
action  
surviving  
against  
estates of  
deceased  
persons.

13. In section one of the Law of 1936 (which provides, amongst other things, for the survival, with certain exceptions, of all causes of action against a deceased person's estate), so much of subsection (3) as provides that proceedings in respect of causes of action in tort which by virtue of that section survive against the estate of a deceased person are not to be maintainable unless the cause of action arose not earlier than six months before the death of the deceased is hereby repealed.

Provision as  
to pending  
actions.

14. Nothing in this Part of this Law shall affect any action commenced before the date of the coming into force of this Part of this Law.

Interpreta-  
tion of  
Part II.

15. (1) In this Part of this Law, except where the context otherwise requires, the following expressions have the meanings hereby respectively assigned to them, that is to say:—

“action” includes any proceedings in a court;

“parent” has the same meaning as in the Fatal Accidents Law as extended by subsection (2) of section two of the Fatal Accidents (Guernsey) Law, 1960;

“personal injuries” includes any disease and any impairment of a person's physical or mental condition, and “injury” and cognate expressions shall be construed accordingly.

(2) For the purposes of this Part of this Law a person shall be deemed to be under a disability while he is a minor or of unsound mind.

(3) A person shall be deemed to claim through another person, if he became entitled by, through, under, or by the act of that other person to the right claimed.

(4) In the Fatal Accidents Law any reference to injury includes any disease and any impairment of a person's physical or mental condition and section six of this Law shall be construed accordingly.

### PART III

*Amendment to the law with respect to proceedings  
in tort between husband and wife*

16. (1) Notwithstanding the provision of any enactment or any rule of law and subject to the provisions of this section, each of the parties to a marriage shall have the like right of action in tort against the other as if they were not married.

Actions in  
tort between  
husband  
and wife.

(2) Where an action in tort is brought by one of the parties to a marriage against the other during the subsistence of the marriage, the court may stay the action if it appears that no substantial benefit would accrue to either party from the continuation of the proceedings.

(3) Provision shall be made by the Royal Court by Order for requiring the court to consider at an early stage of the proceedings whether the power to stay an action under subsection (2) of this section should or should not be exercised.

17. (1) The references in subsection (1) of the last preceding section to the parties to a marriage includes references to the persons who were parties to a marriage which has been dissolved.

Interpreta-  
tion and  
saving.

(2) This Part of this Law does not apply to any cause of action which arose, or would but for the subsistence of a marriage have arisen, before the date of the coming into force of this Part of this Law.

## PART IV

*Proceedings against and contribution between tortfeasors*

Proceedings  
against and  
contribution  
between  
joint and  
several  
tortfeasors.

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

- (a) judgment recovered against any tortfeasor 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 tortfeasor 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 dependents of that person, against tortfeasors liable in respect of the damage (whether as joint tortfeasors 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 tortfeasor liable in respect of that damage may recover contribution from any other tortfeasor who is, or would if sued have been, liable in respect of the same damage, whether as a joint tortfeasor 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 expression “dependants” means the persons for whose benefit actions may be brought under the Fatal Accidents Law, 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 Part of this Law shall—

- (a) apply with respect to any tort committed before the date of the coming into force of this Part of this Law; 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 enacted.

## PART V

*General interpretation, repeal, citation and commencement***General interpretation.**

19. (1) In this Law, unless the context otherwise requires, the following expressions have the meanings hereby respectively assigned to them, that is to say:—

“enactment” includes any enactment of the Parliament of the United Kingdom;

“the Fatal Accidents Law” means the Law entitled “Loi relative à la Compensation qui pourra être accordée aux Familles de Personnes dont la Mort aura été causée par Accident” registered on the twenty-eighth day of December, nineteen hundred(a);

“the Law of 1936” means the Law Reform (Miscellaneous Provisions) (Guernsey) Law, 1936(b).

(2) Except in so far as the context otherwise requires, any reference in this Law to any other enactment shall be construed as a reference to that enactment as repealed and re-enacted, amended, extended or applied by or under any other enactment including this Law.

**Repeal.**

20. The Law set out in the left hand column of the Schedule to this Law is hereby repealed to the extent set out in the right hand column of the said Schedule.

**Citation.**

21. This Law may be cited as the Law Reform (Tort) (Guernsey) Law, 1979.

(a) Ordres en Conseil Vol. III, p. 235; Vol. XVIII, p. 281.

(b) Ordres en Conseil Vol. X, p. 410.

22. This Law shall come into force on such day as the States may by Ordinance appoint and different days may be so appointed for the coming into force of different Parts of this Law. Commence-  
ment.

SCHEDULE      Section twenty

*Repeal*

Enactment repealed	Extent of repeal
The Married Women's Property Law, 1928(c)	Section thirteen, except so far as it relates to criminal proceedings. Section twenty-two.

W. J. GAUDION,  
Her Majesty's Deputy Greffier.