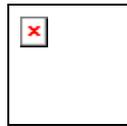


DRAFT CUSTOMARY LAW AMENDMENT (AMENDMENT) (JERSEY) LAW 200-

**Lodged au Greffe on 3rd July 2001
by the Legislation Committee**



STATES OF JERSEY

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European Convention on Human Rights

The President of the Legislation Committee has made the following statement -

In the view of the Legislation Committee the provisions of the Draft Customary Law Amendment (Amendment) (Jersey) Law 200- are compatible with the Convention Rights.

(Signed) **Senator W. Kinnard.**

REPORT

There are two Laws in Jersey dealing with recovery of damages when a person dies as a result of a tort or wrongful act of another person.

The first Law is the Customary Law Amendment (Jersey) Law 1948, as amended (“the 1948 Law”) under which a claim in damages may be brought by or against the estate of the deceased.

The second Law is the Fatal Accidents (Jersey) Law 1962, as amended (“the 1962 Law”) under which the husband or wife, parent or child (and certain other categories of relatives) may institute proceedings for damages.

The 1948 Law enables the estate of the deceased in effect to claim damages as though the deceased were still alive. The amount of damages recoverable in proceedings under the 1948 Law is the same as in any other action except that there can be no claim for exemplary damages. There are certain other minor limitations but, essentially, the estate may recover damages for pain and suffering and loss of amenity, loss of expectation of life, loss of wages prior to death and, in particular, damages for loss of earnings during the years which the deceased would normally have been expected to work and earn income, but which were lost because of his or her premature death. Once the Court has made the award of damages, the money is paid into the estate and is then distributed in accordance with the will of the deceased. If there is no will, it is distributed according to the rules on intestacy.

Under the 1962 Law it is not the estate but the dependants (as described above) who institute the proceedings normally through the executor or administrator of the deceased. Again, damages are recoverable, but, instead of the money being paid into the estate of the deceased, the Court allocates the award of damages as it thinks appropriate having regard to the loss suffered as a result of the death by each of the persons for whose benefit or by whom the action was brought, and the money is paid in the appropriate shares. Proceedings in the Royal Court are often combined in a single Order of Justice seeking damages both under the 1948 Law and under the 1962 Law.

The Royal Court, in a Judgment dated 30th May 2000, identified an important respect in which the two Laws clash. The problem relates to damages for loss of earnings during what are known as ‘the lost years’, i.e. those years during which the person who died would normally have been expected to work and earn income but which were lost because of that person’s premature death. In the case of (say) a young professional person, the damages may run into thousands or even hundreds of thousands of pounds. If that young person left a spouse and small children, the damages would, under the 1948 Law, be paid into the estate of the deceased. The distribution of the money would then be dependent upon any will made by the deceased. Normally, one might expect the will to be drawn in favour of the spouse and children, but this is not always the case. For one reason or another a person might leave their property to someone else. Albeit, in the example given, the spouse and children would have certain reserved rights of inheritance, they would be denied a claim *qua* dependants because the provisions of the will would take precedence. If, in the above example, the young professional person were not married, a claim by a dependant parent, brother, sister, uncle, aunt, nephew, niece, or cousin would be eliminated altogether unless the will made provision for them or there was an intestacy.

The situation is unfair because, had the death not occurred, the dependants would have continued to benefit from the income during the lost years. However, under the existing position, those dependants are, so to speak, at the mercy of the will of the deceased relative instead of there being a discretion in the Royal Court to apportion damages between them for the lost years.

The purpose of the draft Law is to confer a discretion on the Court to award damages as it thinks appropriate to the dependant relatives (depending upon their degree of dependency) in respect of the lost years. This is achieved by removing from the scope of the 1948 Law the right of the estate of the deceased to claim damages for loss of income in respect of any period after the death occurred.

An amendment having similar effect was introduced in England and Wales in 1982. The Legislation Committee believes that the amendment will bring about greater fairness in the allocation of damages and, in particular, will alleviate potential hardship.

Financial/manpower statement

This draft Law has no implications for the financial or manpower resources of the States.

European Convention on Human Rights

Article 16 of the Human Rights (Jersey) Law 2000 will, when brought into force by Act of the States, require the Committee in charge of a *Projet de Loi* to make a statement about the compatibility of the provisions of the *Projet* with the Convention

rights (as defined by Article 1 of the Law). Although the Human Rights (Jersey) Law 2000 is not yet in force, on 15th June 2001, the Legislation Committee made the following statement before Second Reading of this projet in the States Assembly -

In the view of the Legislation Committee the provisions of the Draft Customary Law Amendment (Amendment) (Jersey) Law 200- are compatible with the Convention Rights.

Explanatory Note

This draft Law would amend the Customary Law Amendment (Jersey) Law 1948. That Law provides for a cause of action to survive the death of a person, either for the benefit of or against that person's estate.

Article 1 is the interpretation provision.

Article 2 has the effect that, where a cause of action survives for the benefit of the estate of a deceased person, the damages which may be recovered will not include any damages for income which that person would have earned if he had not died.

Article 3 updates cross references to other enactments which have been repealed and replaced.

Article 4 is the citation and commencement provision.

CUSTOMARY LAW AMENDMENT (AMENDMENT) (JERSEY) LAW 200-

A LAW to further amend the Customary Law Amendment (Jersey) Law 1948; sanctioned by Order of Her Majesty in Council of the

(Registered on the _____ day of _____ 200-)

STATES OF JERSEY

The _____ day of _____ 200-

THE STATES, subject to the sanction of Her Most Excellent Majesty in Council, have adopted the following Law -

ARTICLE 1

In this Law, “principal Law” means the Customary Law Amendment (Jersey) Law 1948, as amended.^[1]

ARTICLE 2

(1) For Article 1(2)(a) of the principal Law¹ there shall be substituted the following sub-paragraph -

“(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;”.

(2) The amendment made by paragraph (1) shall not have effect in relation to any cause of action in respect of a death occurring before the commencement of this Law.

ARTICLE 3

In Article 1(5) of the principal Law^[2] -

- (a) for the words beginning “the ‘Lois (1886 à 1948)’” and ending “Carriage by Air (Jersey) Order, 1935,” there shall be substituted the words “the Fatal Accidents (Jersey) Law 1962,^[3] as amended,^[4] and the Carriage by Air Act 1961 and the Carriage by Air (Supplementary Provisions) Act 1962, as extended to the Island by the Carriage By Air (Jersey) Order 1967^[5]”;
- (b) for the words “the said Laws and under the said Order” there shall be substituted the words “the said Law and under the said Acts”.

ARTICLE 4

This Law may be cited as the Customary Law Amendment (Amendment) (Jersey) Law 200- and shall come into force on the seventh day following its registration.

^[1] Tome VII, page 477.

[2] Tome VII, page 478.

[3] Volume 1961-1962, page 591.

[4] Volume 1996-1997, page 601.

[5] Volume 1966-1967, page 435.