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CHAPTER 5:01

LAW OF ENGLAND (APPLICATION) ACT

An Act to declare how far the law of England shall be in force in The Gambia, to reform the common law so applied in certain respects, and for connected matters.

[Act No. 16 of 1953 amended by Act No. 11 of 1957, Act No. 12 of 1964, Act No. 16 of 1986, Act No. 16 of 1992.]

[Date of commencement: 31st December, 1953.]

1. Short title

This Act may be cited as the Law of England (Application) Act.

2. Application of English law

Subject to the provisions of this and any other Act, the common law, the doctrines of equity, and the statutes of general application in force in England on the first day of November, 1888, shall be in force in The Gambia.

3. Rules as to the application of Acts of Parliament of the United Kingdom

(1) All Acts of Parliament of the United Kingdom declared to extend or apply to The Gambia, which had effect as part of the laws of The Gambia immediately before the eighteenth day of February, 1965, shall continue to be in force so far only as the limits of the local jurisdiction and local circumstances permit and subject to any existing or future local Act.

(2) For the purpose of facilitating the application of the said Acts of Parliament, they shall be read with such formal alterations, as to names, localities, courts, offices, persons, monies, penalties and otherwise as may be necessary to render the same applicable to the circumstances.

(3) Every Magistrate or officer of a court, having or exercising functions of the like kind, or analogous to the functions of a Magistrate, Justice of the Peace or officer referred to in any such law, shall be deemed to be within the meaning of the enactments thereof relating to such last-mentioned officer.

(4) Whenever the great seal or any other seal is mentioned in any such laws, it shall be read as if the seal of the court were substituted therefor.

(5) In matters of practice, all documents may be written on ordinary paper, notwithstanding any practice or directions as to printing or engrossing on vellum, parchment or otherwise.

4. Law and equity to be concurrently administered but equity to prevail in certain cases

(1) In every civil cause or matter which comes before a court, law and equity shall be administered concurrently.

(2) A court shall, in the exercise of the jurisdiction vested in it by any Act, have power to grant, either absolutely or on such reasonable terms and conditions as shall seem just, such remedies or relief whatsoever, interlocutory or final, as any of the parties may appear to be entitled to in respect of any and every legal or equitable claim or defence properly brought forward by them respectively, or which shall appear in such cause or matter.

(3) A court shall, in exercise of its powers under subsection (2), ensure that all matters in controversy between the parties are completely and finally determined, and all multiplicity of legal proceedings concerning any of those matters avoided.

(4) In all causes or matters in which there is any conflict or variance between the rules of equity and the rules of the common law with reference to the same subject, the rules of equity shall prevail.

5. Application of customary law

(1) Nothing in this Act shall deprive a court of the right to observe and enforce the observance, or deprive a person of the benefit, of any customary law existing in The Gambia, as long as the law is not repugnant to natural justice, equity and good conscience, nor incompatible either directly or by necessary implication with any law for the time being in force.

(2) Such customary law shall be deemed applicable in causes and matters where the parties thereto are citizens of The Gambia, or between citizens of The Gambia and non citizens of The Gambia, where it may appear to the court that substantial injustice would be done to either party by a strict adherence to the rules of English law.

(3) A party shall not be entitled to claim the benefit of any customary law, if it appears either from express contract or from the nature of the transactions out of which any suit or question may have arisen, that such party agreed that his or her obligations in connection with such transactions should be regulated exclusively by English law or that such transaction is a transaction unknown to customary law.

(4) In cases where no express rule is applicable to any matter in controversy, the court shall be governed by the principles of justice, equity and good conscience.

6. Amendment and declaration of law as to certain matters

(1) A claim of a *cestui que* trust against his or her trustee for any property held on an express trust, or in respect of any breach of such trust, shall not be held to be barred by any Statute of Limitation, which forms part of the laws of The Gambia.

(2) An estate for life without impeachment of waste shall not confer or be deemed to have conferred on the tenant for life any legal right to commit waste of the description known as equitable waste, unless an intention to confer the right shall expressly appear by the instrument creating such estate.

(3) There shall not be any merger by operation of law only of any estate, the beneficial interest in which would not be deemed to be merged or extinguished in equity.

(4) A mortgagor entitled for the time being to the possession or receipt of the rents and profits of any land as to which no notice of his or her intention to take possession, or to enter into the receipt of the rents and profits thereof, has been given by the mortgagee, may sue for such possession, or for the recovery of such rents or profits, or to prevent or recover damages in respect of any trespass or other wrong relative thereto, in his or her own name only, unless the cause of action arises on a lease or other contract made by him or her jointly with any other person.

(5) An absolute assignment, by writing under the hand of the assignor, not purporting to be by way of charge only, of any debt or other legal chose in action, of which express notice in writing has been given to the debtor, trustee, or other person from whom the assignor would have been entitled to claim or receive such debt or chose in action, shall be deemed to be effectual in law, subject to all equities which would have been entitled to priority over the right of the assignee if this Act had not passed, to pass and transfer the legal right to the debt or chose in action from the date of the notice, and all legal or other remedies therefor and the power to give a good discharge therefor without the concurrence of the assignor.

(6) If the debtor, trustee or other person liable in respect of such debt or chose in action, has notice that an assignment is disputed by the assignor or any one claiming under him or her, or of any other opposing or conflicting claims to such debt or chose in action, he or she shall be entitled to call upon the several persons making claim thereto to interplead concerning it, or he or she may pay the amount thereof into the High Court under and in conformity with the provisions of any law in force in The Gambia for the relief of trustees.

7. Power of courts of record to award interest on debts and damages

(1) In any proceedings tried in any court of record for the recovery of any debt or damages, the court may, if it thinks fit, order that there shall be included

in the sum for which judgement is given, interest at such rate as it thinks fit on the whole or any part of the debt or damages, for the whole or any part of the period between the date when the cause of action arose and the date of the judgement.

(2) Nothing in subsection (1) shall—

- (a) authorise the giving of interest upon interest;
- (b) apply in relation to any debt upon which interest is payable as of right whether by virtue of any agreement or otherwise; or
- (c) affect the damages recoverable for the dishonour of a bill of exchange.

8. Proceedings against, and contribution between, joint and several tort-feasors

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

- (a) judgement 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 the person, against tort-feasors liable in respect of the damage (whether as joint tort-feasors or otherwise) the sums recoverable under the judgements given in those actions by way of damages shall not in the aggregate exceed the amount of the damages awarded by the judgement first given; provided that in any of those actions, other than that in which judgement is first given, the plaintiff shall not be entitled to costs unless the court is of the 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, provided that a person shall not be entitled to recover contribution under this section from any person entitled to be indemnified by him or her 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 a 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.

(3) 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.

(4) For the purposes of this section—

- (a) the words “**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, as amended by this Act;
- (b) the reference in this section to “the judgement first given” shall, in a case where that judgement is reversed on appeal, be construed as a reference to the judgement first given which is not so reversed, and, in a case where a judgement is varied on appeal, be construed as a reference to that judgement as so varied.

[9 & 10 Vict. c. 93, 27 & 28 Vict. c. 95.]

(5) Nothing in this section shall—

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

9. Effect of death on certain causes of action

(1) Subject to the provisions of this section, on the death of a person after the commencement of this Act, all causes of action subsisting against or vested in him or her shall survive against, or as the case may be, for the benefit of, his or her estate.

(2) Subsection (1) shall not apply to causes of action for defamation or seduction or for inducing one spouse to leave or remain apart from the other or to claims for damages on the ground of adultery.

(3) Where a cause of action survives as specified in subsection (1) 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) in the case of a breach of promise to marry, shall be limited to such damage, if any, to the estate of that person as flows from the breach of promise to marry;
- (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.

(4) 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 him or her in respect of that cause of action were pending at the date of his or her death; or
- (b) the cause of action arose not earlier than six months before his or her death and proceedings are taken in respect thereof not later than six months after his or her personal representative took out representation.

(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 section, to have been subsisting against him or her before his or her death such cause of action in respect of that act or omission as would have subsisted if he or she had died after the damage was suffered.

(6) The rights conferred by this section 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, 1846, the Fatal Accidents Act, 1864, or the Carriage by Air Act, 1932, and so much of this section 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) of this section.

[22 & 23 Geo. 5, c. 36.]

(7) 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 unliquidated damages arising otherwise than by a contract, promise or breach of trust.

10. Amendment of Fatal Accidents Acts, 1846 and 1864

(1) For the purposes of the Fatal Accidents Act, 1846, and the Fatal Accidents Act, 1864, a person shall be deemed to be the parent or child of the deceased person notwithstanding that he or she was only related to him or her illegitimately or in consequence of adoption; and accordingly in deducing any relationship which under the provisions of those Acts is included within the meaning of the words “parent” and “child”, any illegitimate person and any adopted person shall be treated as being, or as having been, the legitimate offspring of his or her mother and reputed father, or, as the case may be, of his or her adopters.

(2) In an action brought under the Fatal Accidents Act, 1846, and the Fatal Accidents Act, 1864, damages may be awarded in respect of the funeral expenses of the deceased person if the expenses were incurred by the parties for whose benefit the action is brought.

(3) This section shall not apply in relation to any action in respect of any person before the commencement of this Act.

(4) In this section, the expression “**adopted person**” means a person who was adopted under the provisions of any law for the time being in force in the country in which the adoption took place.

11. Apportionment of liability in case of contributory negligence

(1) Where a person suffers damage as the result partly of his or her 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.

(2) Subsection (1) shall not operate to defeat any defence arising under a contract.

(3) 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 subsection (1) of this section shall not exceed the maximum limit so applicable.

(4) Where damages are recoverable by any person by virtue of subsection (1) of this section subject to such reduction as is mentioned in that subsection, the court shall find and record the total damages which would have been recoverable if the claimant had not been at fault.

(5) Section 8 of this Act 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 damages suffered by a person.

(6) Where a person dies as the result partly of his or her own fault and partly of the fault of any other person or persons, and an action were brought for the benefit of the estate under section 9 of this Act and 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.

(7) 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 or her personal representative by pleading the Limitation Act, or any other enactment limiting

the time within which proceedings may be taken, he or she shall not be entitled to recover any damages or contributions from that other person or representative by virtue of the said subsection.

[Cap. 8:01.]

(8) Article 21 of the Convention contained in the First Schedule to the Carriage By Air Act, 1932, as applied to The Gambia (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.

12. Provisions as to workmen and employers

(1) Where, within the time limited for the taking of proceedings under the Workmen's Compensation Act an action is brought to recover damages independently of the said Act in respect of an injury or disease giving rise to a claim for compensation under the said Act, and it is determined in that action that—

- (a) damages are recoverable independently of the said Act subject to such reduction as is mentioned in subsection (1) of section 11 of this Act; and
- (b) the employer would have been liable to pay compensation under the Workmen's Compensation Act,

subsection (2) of section 26 of the Workmen's Compensation Act (which enables the court, on the dismissal of an action to recover damages independently of the said Act, to assess compensation under the said Act) shall apply in all respects as if the action had been dismissed, and if the claimant chooses to have compensation assessed and awarded in accordance with the said subsection (2), no damages shall be recoverable in the action.

[Act No. 19 of 1966 of England.]

(2) Where a workman or his or her personal representative or dependant has recovered compensation under the Workmen's Compensation Act in respect of an injury caused under circumstances which would give a right to recover reduced damages in respect thereof by virtue of section 11 of this Act from some person other than the employer (hereinafter referred to as "the third party"), any right conferred by section 25 of the Workmen's Compensation Act on the person by whom the compensation was paid or on any person called on to pay an indemnity under section 24 of that Act, to be indemnified by the third party shall be limited to a right to be indemnified in respect of such part only of the sum paid or payable by the said person as bears to the total sum so paid or payable the same proportion as the said reduced damages bear to the total damages which would have been recoverable if the workman had not been at fault.

[Act No. 19 of 1966 of England.]

13. Interpretation of sections 11 and 12

In sections 11 and 12 of this Act—

“**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, or the Fatal Accidents Act, 1864;

“**employer**” and “**workman**” have the same meaning as in the Workmen’s Compensation Act, as amended by any subsequent Act;

[Act No. 19 of 1966 of England.]

“**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 Act, give rise to the defence of contributory negligence.

14. Saving for Maritime Conventions Act, 1911, and past cases

(1) Sections 11 and 12 of this Act do not apply to any claim to which section 1 of the Maritime Conventions Act, 1911, applies and that Act shall have effect as if those sections were not in force.

(2) Sections 11 and 12 of this Act shall not apply to any case where the acts or omissions giving rise to the claim occurred before the commencement of this Act.

[1 & 2 Geo. 5. c. 57.]

15. Common employment

(1) It is not a defence to an employer who is sued in respect of personal injuries caused by the negligence of a person employed by him or her, that that person was at the time the injuries were caused, in common employment with the person injured.

(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 Act) 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) For the purposes of 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.

16. Orders of *mandamus*, prohibition and *certiorari* substituted for writs

(1) The High Court shall not, whether in the exercise of its respective civil or criminal jurisdictions, issue any of the prerogative writs of *mandamus*, prohibition or *certiorari*.

(2) In any case in which the High Court of Justice in England was immediately before the eighteenth day of February, 1965, by virtue of the provisions of section 7 of the Administration of Justice (Miscellaneous Provisions) Act, 1938, empowered to make an order of *mandamus*, prohibition or *certiorari*, the High Court shall have power to make a like order.

(3) An order of *mandamus*, prohibition or *certiorari* shall not be made in any case in which the High Court is empowered by the exercise of the powers of review or revision contained in any Act to make an order having the like effect as the order applied for or whereby the order applied for would be rendered unnecessary.

[1 & 2 Geo. 6, c. 63.]

(4) A return shall not be made to any such order and a pleadings in prohibition shall not be allowed, but the order shall be final, subject to the right of appeal therefrom conferred by subsection (6) of this section.

(5) In any Act references to any writ of *mandamus*, prohibition or *certiorari* shall be construed as references to the corresponding order and references to the issue or award of any such writ shall be construed as references to the making of the corresponding order.

(6) A person aggrieved by an order made in the exercise of the civil jurisdiction of the High Court under this section may appeal therefrom to the Court of Appeal of The Gambia.

(7) Rules of court shall be made under subsection (1) of section 55 of the Courts Act—

- (a) prescribing the procedure and the fees payable on documents filed or issued in cases where an order of *mandamus*, prohibition or *certiorari* is sought;
- (b) requiring, except in such cases as may be specified in the rules, that leave shall be obtained before an application is made for any such order;
- (c) requiring that, where leave is obtained, no relief shall be granted and no ground relied upon, except with the leave of the court, other than the relief and grounds specified when the application for leave was made.

[Cap. 6:01.]

(8) Subject to the provisions of subsection (9) of this section, rules of court made pursuant to the provisions of subsection (7) of this section may prescribe that applications for an order of *mandamus*, prohibition or *certiorari* shall, in specified proceedings, be made within six months or such shorter period as may be prescribed after the act or omission to which the application for leave relates.

(9) In the case of an application for an order of *certiorari* to remove any judgement, order, decree, conviction or other proceeding for the purpose of its being quashed, leave shall not be granted unless the application for leave is made not later than six months after the date of such judgement, order, decree, conviction or other proceeding or such shorter period as may be prescribed under any Act; and where such judgement, order, decree, conviction or other proceeding is subject to appeal, and a time is limited by law for the bringing of the appeal, the court or judge may adjourn the application for leave until the appeal is determined or the time for appealing has expired.

(10) The rules of court made under section 99 of the Supreme Court of Judicature (Consolidation) Act, 1925, pursuant to the provisions of section 10 of the Administration of Justice (Miscellaneous Provisions) Act, 1938, shall apply, *mutatis mutandis*, to proceedings under this section in the High Court until rules of court under subsection (1) of section 55 of the Courts Act have been made pursuant to the provisions of subsection (7) of this section.

[15 & 16 Geo. 5. c. 49, 1 & 2 Geo 6. c. 63, Cap. 6:01.]

17. Application to the State

This Act shall bind the State.

18. Abrogation of sections 28 and 29 of Civil Procedure Act of England

Sections 28 and 29 of the Civil Procedure Act, 1833, and the Employers Liability Act, 1880, shall cease to have effect in The Gambia.

[3 & 4 Will. 4, c. 42 & 43 & 44 Vict., c. 42]

19.

[Deleted by Act No. 16 of 1992.]

20.

[Deleted by Act No. 16 of 1992.]

21. Employment of aliens in the public service

Notwithstanding anything in section 3 of the Act of Settlement, 1700, an alien may be employed in any suitable capacity under the State in the right of The Gambia and so much of the said section 3 as imposes disability for employment in any such capacity shall cease to have effect in relation to British protected persons.

[12 & 13 Will. 3, c. 2.]

CHAPTER 5:01

LAW OF ENGLAND (APPLICATION) ACT

SUBSIDIARY LEGISLATION

No Subsidiary Legislation
