

CHAPTER 150

TORTS LAW

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CHAPTER 150

TORTS LAW

A Law to provide for civil wrong and remedies therefore and for matter connected therewith.

ANSL 1986
Cap 135.

[27th August 1991]

PART I.—NATURE OF CIVIL WRONGS

1. This Law may be cited as Torts Law.

Short title and
commencement
date

2. (1) For avoidance of doubt, tort is a civil wrong and means an act or omission arising from the breach of a duty fixed by this law or as may be recognized so to exist by the courts by virtue of the provisions of this Law or generally and its breach is redressible or by an action for damages of any alternative remedy

Meaning of
tort

(2). Such to the provision of this Law .liability for civil wrong may arise from—

- a) an act which, without lawful justification or excuse, is intended by the wrong doer to cause harm, and does cause the harm complained of;
- b) an act in itself contrary to law, or an omission of a specific legal duty, which causes harm not intended by the person so acting or omitting;
- c) an act violating an absolute right (especially rights of possession of property), and treated as wrongful without regard to the actor's intention or knowledge;
- d) an act or omission causing harm which the person so acting or omitting did not intend to cause, but might and should with due diligence have been foreseen and prevented;
- e) an omission consisting merely in not avoiding or preventing harm which the party was bound, absolutely or within limits, to avoid or prevent.

Ways in which
civil wrong
arises

3. (1) Except insofar as it is otherwise provided in this Law, no action in tort shall lie for any harm arising from any act done or omission made within the Constitution by a person who within the limits permitted by law –

- a) is merely exercising his own rights;
- b) is exercising a right of property;
- c) is acting under necessity to prevent a greater evil.

Dammum sine
injuria

Exercise of
one's right

Acting under
necessity

Trivial acts

(2) Subject to this Law, no action shall lie at the instance of any person for harm—

- a) which may be too trivial or too indefinite, or too difficult of proof for the legal suppression of it to be expedient or effective;

Mental
suffering

(b) consisting of mere mental suffering unaccompanied by physical harm, though caused by the willful act or the negligence of someone;

(c) arising from the existence of a public nuisance unless the person complaining of such public nuisance can show some direct, particular and substantial damage to himself other than and beyond that suffered by other members of the public.

(d) arising from defamatory statements which are absolutely privileged

(e) arising from fair competition in trade.

4. Notwithstanding the provisions of sections 2 and 3 of this Law, the court may entertain any suit arising from some act or omission which is alleged to be tortious if on the facts established before it the court is satisfied that there has been a breach of duty resulting in the damage complained of and therefore ought to be redressed as a tort.

5. (1) Subject to the provisions of this Law, where a person suffers harm as a result of a tortious act or omission which also amounts to a felony, no action in tort shall be instituted, or if instituted, shall be continued unless—

(a) the felon has been prosecuted for the felony; or

(b) report is made to the police who fail to prosecute; or

(c) reasonable excuse is offered for failure to prosecute the felon.

(2) Where a person does an act or makes an omission which amounts to an offence of a criminal nature as well as a civil wrong preceding by a court of competent jurisdiction, then and in every such case, it shall not be necessary for any person who suffers damage or bodily hurt by reason of that act or omission, and who is a party in a subsequent civil action founded upon that act or omission, to prove by oral evidence the said act or omission or any other fact found by the court at the said criminal proceeding; and, mentioned it a copy of the said criminal proceeding, and, it shall be sufficient proof of the several matters herein mentioned if a copy of the said criminal proceedings, duly certified by the registrar of the court by which the proceeding was held, is duly tendered in evidence at the hearing of the civil action:

Provided that nothing in this subsection shall be constructed to prevent party in such civil action from proving the special damages suffered by him by reason of the said act or omission, or from proving any facts from which the court could form an opinion as to the quantum of general damages it may award in the case.

This subsection shall apply notwithstanding the provisions of Section 51 and 52 of the Evidence Act; and it shall be immaterial that the parties in the criminal proceeding are not the same as the parties in the subsequent civil action.

Public

nuisance

Statements
absolutely
privileged.

Competition
in trade

Court may
entertain a wrong
as tortious

Felon to be
prosecuted before
civil remedy

Motive and
malice

6. Subject to the express provisions of this Law, the motive by which a person is induced to do or omit to do an act is immaterial so far as regards tortious liability, but it is still open to the court, in considering the appropriate remedy, to take motive into account in so far as to do so affords a proper ground for the exercise, or refusal to exercise, any discretion vested in the court.

Motive relevant

7. Where a person has in the exercise of his own right or the performance of his duties committed some act which is alleged to be tortious, and seeks to establish a legal justification or excuse on the ground that the act was done in the exercise of some power or in pursuance of some duty, the motive with which the act was done may be relevant as showing that it was or was not done in the exercise of such power or in pursuance of such duty, as the case may be, and therefore was or was not justified or excused.

Damage and causation

8. (1) Except where it is otherwise expressly provided in this Law, proof of damage shall be necessary to an action for tort provided that damage so proved may by way of defence, be shown to be remote.

(2) Damage is remote when it could not have been reasonably foreseen having regard to all the circumstances in which it arose, or where there is want of connection between the damage suffered and the act complained of.

Self – help

9. Subject to the provisions of this Law, any person against whom a civil wrong has been committed is entitled to take any steps reasonably necessary in the circumstances to prevent further commission of such wrong, and in addition to his right of action in court may do any other extra-judicial thing to redress the wrong and to minimize the damage- suffered therefrom.

Provided that nothing in this section shall be construed as affecting the provisions of the Criminal Code or any other written law creating offences of a criminal nature and prescribing penalties therefore.

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

Effect of death on certain causes of action

Provided that this subsection 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 claim for damages on the ground of adultery.

(2) Where a cause of action survives as aforesaid for the benefit of the estate of a deceased, the damages recoverable for the benefit of the estate of that person—

(a) shall not include any exemplary damages;

(b) in the case of breach of promise to marry, shall be limited to such damages, 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.

(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 him in respect of that cause of action were pending at the date of his death; or

- (b) The cause of action arose not earlier than six months before his death and proceedings are taken in respect thereof not later than three years after his death or six months after his personal representative took out administration, whichever is the later.

(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, there shall be deemed, for the purposes of this Law, to have been subsisting against him before his death such cause of action in respect of that act or omission as would have subsisted if he had died after the damage was suffered.

(5) Where damages are recovered for the benefit of the estate of a deceased by virtue of this action, they have to be taken into account in assessing the damages which may be awarded under Part IX of this Law.

PART II —PARTIES

Any legal person may sue in tort.

11. Subject to the provisions of this Law or to any other law in force in the State any person or other legal entity who is injured by a tort or who is guilty of a tortious act or omission may sue or be sued, as the case may be, subject to the rules of procedure in force in the court in which the action is brought.

Action maintainable by State

12. The State may maintain all claims in tort against any person as if it were a private person of full age and capacity.

Liability of the State for tortious act of servant

13. (1) Subject to the provisions of this Law, the State shall be subject to all those liabilities in tort to which, if it were a private person of full age and capacity, would be subject—

- (a) in respect of torts committed by its servants or agents;
- (b) in respect of any breach of those duties which a State owes to its servants or agents by virtue of the provisions of any written law in force in the State by reason of being their employer.
- (c) in respect of any breach of duties attached to the ownership, occupation, possession or control of property in accordance with the provisions of any written law in force in the State:

Provided that nothing herein contained shall be construed as affecting any written law in force in the State which limits the liability of the State in matters specified therein.

(2) Where the State is bound by a statutory duty which is binding also upon persons other than the State and its officers, then, subject to the provisions of this Law, the State shall, in respect of failure to comply with that duty, be subject to all those liabilities in tort (if any) to which it would be so subject if it were a private person of full age and capacity.

14. (1) Notwithstanding the provisions of the last foregoing section of this Law, no action in tort shall be brought—

(a) against the Governor of the State to his private capacity;

(b) against the State in respect of anything done or omitted to be done by any person while discharging or purporting to discharge any responsibilities which he has in connection with the execution of a judicial function or process.

(c) against the State for tort committed by any public officer in discharge of his duties unless such officer has been appointed directly or indirectly by the Civil Service Commission of the State, or is employed by a body established by statute by the State:

Action against the Governor, for judicial act; or against public officer

Provided that nothing in this paragraph shall prevent a person from suing a body set up by statute for a tort committed by its servant.

(2) For purposes of this section the onus shall be on the plaintiff to show that an officer of the State for whose tortious act or omission he seeks to sue the State, has been employed as public officer, or receives his salary as such, as the case may be:

Action in tort against public officers

Provided further that nothing in this section shall prevent an action in tort being taken against any public officer in his own name for an alleged tort committed by him in the performance of his public duties.

Public officer not liable for wrong of another public
Infants

15. No public officer shall be liable for any civil wrong committed by any other public officer unless he shall have expressly authorized or ratified such civil wrong.

16. Subject to the provisions of this Law and to any other law or procedure in force in the State, an infant shall be liable to be sued in tort as an ordinary person of full age and capacity.

Provided that in torts involving negligence or malice the age of any child so sued shall be relevant in considering whether he is old enough to be able to have foreseen the consequences of his act and whether malice or want of due care ought reasonably to be ascribed to him;

Provided further that no child shall be sued in tort in respect of any act or omission which also constitutes a breach of contract where no action would lie against such child by reason of his minority.

Persons of unsound mind: tort committed while insane

17. Any person medically certified to be of unsound mind shall not be liable to be sued in court for any alleged tortious act committed by him if by reason of his mental infirmity he is unable to understand the nature and consequences of his act, or, where intention is an element of the tort, is unable to form the necessary intention.

Pre-natal
injury

18. An action in tort may be brought on behalf of a child for any pre-natal tortious injury done to the child in accordance with the rules of procedure governing actions by infants in the court in which such action is brought.

Vicarious
liability

19. A principal shall be liable for a tortious act done by his agent if—

- (a) he expressly authorizes the agent to commit the tortious act; or
- (b) he subsequently ratifies such act by the agent; or
- (c) the agent has committed the tortious act while acting within the scope of general authority given to him by the principal:

Provided that nothing in this section shall make an employer liable for the tortious act committed by an independent contractor in the course of his employment unless—

- (i) the employer retains control over, or interferes with the performance of the contractor's work in such a way as to cause the injury or damages complained of; or
- (ii) a personal duty of care on the employer's part exists under any law in force in the State; or
- (iii) the employer was negligent in the selection of such contractor, or
- (iv) the thing for the doing of which the contract was entered was unlawful.

20. Subject to this Law and to any other law for the time being applicable in the State, where a master has been sued vicariously for any wrongful act committed by his servant in the course of his employment and judgment is obtained against him, he shall have a right of indemnity against the servant.

Master's
indemnity
against
servant

21. Each member of a firm is liable for a tort committed by any member of the firm in the ordinary course of business as carried on by the firm or with the authority of any of the partners.

Partners.

22. Each of two or more persons who have committed a tort whether acting in concert or severally is liable as a joint and several tortfeasors for the damage arising therefrom.

Joint and
several
tortfeasors.

23. (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 tort shall not be a bar to an action against any 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 wife, husband, parent or child, of that person against tortfeasors liable in respect of the damage (whether as joint feasons 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 the opinion that there was reasonable ground for bringing those actions.

Proceedings
against and
contribution
between
joint and
several tort
feasors.

(2) A 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 contributions 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.

(3) In any proceedings for contribution under this section, the amount or 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 each person's responsibility for the damages; and the court shall have the 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.

Interpretation

24. For the purposes of this Part—

- (a) the expressions “parent” and “child” shall have the meaning assigned to them in section 87 of this Law.
- (b) the reference in this Part to “judgment first given” shall in a case where the judgment is reversed on appeal be construed as reference to the judgment first given which is not so reversed, and in the case of judgment which is varied on appeal, construed as a reference to that judgment as so varied.

(3) Nothing in this Part shall—

- (a) apply with respect to any tort committed before the commencement 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 Law had not been passed.

25. Where two persons would otherwise be liable for a tort, one of them is not relieved from liability by the fact that the other has an absolute privilege to act or an immunity from liability to the person against whom the tort is committed.

One joint tortfeasor alone may be liable.

26. A valid release of one joint tortfeasor from liability for damage given by the injured person discharges all others liable for the same damages unless the parties to the release agree that the release shall not discharge the other, and if the release is embodied in a document, unless such agreement appears in the document.

Release of one joint tortfeasor discharges all

27. An agreement not to sue one tortfeasor for an injury does not discharge any other person otherwise liable for the injury.

Agreement not to sue one joint tortfeasor affects no other

28. Payments made by one tortfeasor on account of a tort for which he and another are each liable, diminish the amount of the claim against the other whether or not it was so agreed and whether the payment was made before or after judgment; the extent of the diminution is the amount of the payment made, or a greater amount if so agreed between the payer and the injured person.

Payment by one joint tortfeasor diminishes amount payable pro tanto

29. (1) 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.

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 strike out the action if it appears—

- (a) that no substantial benefit would accrue to either party from the continuation of the proceedings; or
- (b) that the question or questions in issue could more conveniently be disposed of on an application made under any other written law in force in the State regarding disputes between husband and wife over property.

30. (1) A corporation can sue for any tort committed against it.

(2) A corporation shall be liable for any wrong of its servant or agent committed during the course of his employment or, as the case may be, within the scope of his authority, actual or apparent.

(3) A corporation can be sued for wrongs involving fraud or malice as well as for wrongs in which intention is immaterial, and where such wrongs are committed by a servant or agent of the corporation in the course of his employment or within the scope of his authority, actual or implied, the fraud or malice of such servant or agent shall be that of the corporation.

(4) A tort expressly authorized by the directing mind and will of the corporation, the very ego and centre of the corporation shall be actionable even where the tort in question is *ultra vires* the corporation.

31. (1) A bankrupt can be sued for torts of all kinds, whether committed before or during the bankruptcy.

(2) Where a tort is committed against the person of a bankrupt, it is the bankrupt himself who can sue for damages. But where the tort is committed against the property of the bankrupt, the cause of action is vested in his trustee, and it is the trustee who can bring an action for damages.

(3) If an act of a tortfeasor causes damage both to the person and property of the bankrupt, the bankrupt still retains his right to sue for the tort against his person while the trustee shall sue for the damage done to the property of the bankrupt. In such a situation, however, the trustee and bankrupt can bring separate actions to recover their appropriate damages or can be joined as plaintiffs in an action, in which case the damages shall be separately assessed.

32. (1) A person who procures work to be done for him by an independent contractor is, subject to the exceptions mentioned in subsections (2), (3) and (4) of this section not liable for negligence or other torts committed by the contractor in the course of the execution of the work.

Liability for
acts of
persons are
not servants

(2) If an employer willfully or negligently chooses an incompetent independent contractor to do a piece of work for him, the employer shall be answerable for torts committed against third parties by the independent contractor and his servants.

(3) Nothing in this section shall affect the liability of the independent contractor for any tort committed by him or his servant.

(4) A third party suing both employer and independent contractor or both master and servant or both principal and agent, is not to recover in aggregate more than he would have recovered if he had sued only one of these.

(5) A master, an employer or a principal made liable for a wrong of a servant, an independent contractor or an agent shall have a right of indemnity against the servant, the independent contractor or the agent.

(6) A person who engages any other person to do an unlawful act shall be liable for any damage done to a third party by the person so engaged in the execution of such unlawful act.

(7) Where any written law imposes a duty on a person to do an act, he shall be answerable for any damage resulting from failure to perform such duty or to perform it duly, even where he has employed another person to do that act.

Liability or
right in tort
not assignable

33. (1) Subject to the provisions of subsections (3), (4) and (5) of this section, a right of action for damages to respect of a tort shall not be assignable *inter vivos*.

(2) A person, can assign the damages to be recovered in an action in tort,

(3) A right of action may be assigned to the State.

(4) Rights of action of any Kind which pass to a trustee in bankruptcy (including rights of action for torts to the debtor's property) shall be assignable by the trustee to a stranger.

(5) An insurer who has paid under an indemnity policy the loss sustained by the assured, shall be subrogated to the later's rights even though those rights are in tort.

PART III.—GENERAL DEFENCES TO ACTION IN TORT

Volenti non fit
injuria:
consent

34. (1) No act shall be actionable as a tort at the suit of any person who has expressly or impliedly assented to it:

Provided that this defence shall not avail if an act is itself unlawful and criminal;

Provided also that consent shall not be a defence under this section unless such consent is freely given without force, fear or fraud and is not obtained under the compulsion of legal or moral duty, or on impulse.

(2) For purposes of this section mere knowledge of a danger by a person shall not be construed to imply a consent thereto by him.

(3) Where a risk to a servant, which may or may not result in injury, has been created or enhanced by the negligence of the master, the mere continuance in service, with knowledge of the risk, shall not preclude the servant, if he suffers injury from such negligence, from recovering in respect of his master's breach of duty.

(4) For the avoidance of doubt, the principles stated in this section may be extended *mutatis mutandis* to cases where there is no relationship of master and servant

(5) Where a person has, under an exigency caused by another's wrongful act, consciously and deliberately faced a risk, even of death, to rescue a third party from imminent danger of personal injury or death, whether the third party endangered is one to whom he owes a duty of protection or is a mere stranger to whom such duty is owed, the person who has so assumed the risk shall be entitled to recover damages from the person whose wrongful act has occasioned the risk, if it resulted in injury.

(6) A person who knows that another has created a danger or is doing a dangerous act or that the land or chattels of another are dangerous and who nevertheless chooses to enter upon or to remain within or permit things to remain within the area of risk is not entitled to recover for injury unintentionally caused to him or his things by the other's conduct or by the condition of the premises, except where the other's conduct constitutes a breach of duty to him and has created a situation in which it is reasonably necessary to undergo a risk in order to protect a right or avert an injury.

35. (1) Subject to the provision of this law relating to defamation and wrongs of strict liability, a person shall not be liable in tort for injury which he causes to another person by accident. An injury is caused "by accident" when the incident giving rise to it is no way caused by or certificated to by negligence on the part of the person causing the injury.

Accident

36. A wrongdoer shall not be precluded from maintaining an action in tort unless some unlawful act or conduct on his sown part is connected within the harm suffered by him as part of the same transaction or unless otherwise he is barred from recovering cither because of his own default or because he consented to the harm suffered.

37. Subject to the provisions of this Law, mistake shall not be a defence to an action in tort, except, however, that where a wrongful motive or unreasonableness is a condition of liability, then a bona fide mistake of fact may have the effect of negating liability.

38. No person shall be held liable in tort for an injury resulting from an extraordinary act of nature which he could not reasonably anticipate.

39. Where a written law in force in the State authorizes the commission of what would otherwise be a tort, the party injured shall not be entitled to any remedy apart from the compensation (if any) which the law allows him.

40. Where any person suffers damage as a 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 tire court thinks just and equitable having regard to the claimant's share in the responsibility for the damage.

41. Any person to the extent that it is reasonably necessary in the circumstances of a particular situation and within the limits allowed by this Law or any other written law in force in the State, is entitled —

- a) to repel force by force: not for the redress of injuries, but for their prevention, or
- b) to cut the wrong short before it is done

PART IV.—TRESPASS GENERALLY

Trespass

42. The action of trespass is a wrongful act done in disturbance of the possession of property of another, or against the person of another, against his will and is actionable without proof of damage.

43. To constitute trespass, the act shall be wrongful at the time when it is committed and shall be a voluntary act done without justifiable necessity. Act voluntary and unlawfully

44. The continuance of a trespass is a fresh trespass, and is actionable in the same way as the original act of trespass, although damages have been recovered for the original act. Continuing trespass

PART V. —TRESPASS TO LAND

45. Any person who without lawful excuse and without the consent of owner or the person entitled to possession of any land – Meaning of trespass to land

(a) enters upon such land: or

(b) takes possession of such land or any part thereof, or causes a third party to do so; or

(c) remains thereon; or

(d) permits or suffers to remain thereon a person or a thing which he or his predecessor in title brought thereon in the manner stated in the next following two sections, shall be a trespasser to such land and shall be liable for damages at the suit of the person entitled to possession thereof.

46. A person who has lawfully placed any structure, chattel or other thing on land which is in another person's possession shall if he permits or suffers such thing to remain on the land, be deemed to commit trespass to that land in the following cases— Failure to remove a thing lawfully placed on land initially

(a) where the thing was on the land with the consent of the person in possession, after such consent has been lawfully withdrawn or otherwise terminated;

(b) where the thing was placed on the land with lawful and sufficient excuse after such excuse has ceased to exist.

Failure to remove a thing unlawfully placed on land

47. (1) A person who unlawfully places any structure, chattel or other thing on land in the possession of another person shall be liable to the person who is, or is entitled to be, in possession of such land for damages for trespass to the land

(2) A person who while in possession of another person's land, permits or suffers to remain on such land any structure, chattel or other thing which his predecessor in title unlawfully placed on the land shall be liable for damages for trespass to the owner of such land if at the time he took possession of such land he had knowledge of the existence of such thing, or subsequently acquired such knowledge.

Wrongful acts of trespass generally

48. Any person who by himself or by his servants or agent, wrongfully in respect of land in possession of another or part thereof—

(a) sets foot on or rides or drives over it; or

(b) takes possession of it; or

(c) takes any fruits or farm crops thereon, or

- (d) pulls down or destroys anything permanently fixed to it; or
- (e) wrongfully takes minerals from it, or
- (f) places or fixes anything on it or in it; or
- (g) sends filth or any injurious substance which has been collected on his own hand on to it.

is liable for trespass unless he does so with the consent of the person in possession or his agent or unless he is otherwise permitted by custom or licence.

49. A person who enters on land in possession of another under a licence granted to him by the Law to carry out a specific purpose, is nevertheless liable for trespass if he—

Trespass by persons authorized by law to enter land.

- (a) wrongfully and unreasonably carries out such purpose; or
- (b) refuses to leave the land after the purpose has been carried out or otherwise terminated.

50. A person who wrongfully invades the possession of or destroys or damages an interest acquired by another in land shall be liable in trespass irrespective of his being the owner, or in possession, of the land to which such an interest is attached.

Trespass to interest in land

51. For purposes of this Law, a person who is entitled to reap economic trees on another's land shall have such a right of way through that other's land as shall be reasonably necessary to enable him to reap the said economic trees or fruits and shall not be liable for trespass to the land on which he passes for this purpose.

Right of way to person in possession of trees, etc., in another's land

52. With regard to the provisions of this Law relating to trespass to land, a person who is in possession of land includes one who—

Meaning of possession of land

- (a) is in occupation of land with intent to exclude others therefrom;
- (b) has been but no longer is in occupation of land with intent to exclude others therefrom if after he has ceased his occupation, no other person has obtained possession;
- (c) has the right as against all persons to immediate occupation of land, if no other person is in possession;
- (d) is a member of the community, village or family and is in occupation of a portion of land belonging to that community, village or family and has not abandoned the possession thereof; or
- (e) has economic trees growing on land which is in possession of another.

53. A person who has wrongfully entered land in possession of another shall not by his act of trespass and without acquiescence on the part of that other acquire possession of the land to enable him to maintain an action in trespass against the person he has so ejected.

Trespass cannot acquire possession by force

Who may sue in trespass to land

54. Subject to the provisions of this Law, any person who is in possession of land as stated in section 52 (a) of this Law may sue for trespass.

Owner of land

55. An owner of land is not entitled to sue in trespass if any other person was lawfully in possession of the land at the time of trespass; Provided that where the land is vacant such owner shall be deemed to have sufficient possession to enable him to sue in trespass.

Where possession is doubtful

56. Where possession of land is doubtful or equivocal, the owner shall be deemed to be in possession thereof.

Person with right to possession

57. Any person having the right to the possession of land acquires by entry the lawful possession of it, and may maintain action for trespass committed before and after such entry, against any person who being in possession at the time of entry, wrongfully continues on the land.

Customary tenant

58. A customary tenant may sue in trespass if his customary tenancy is invaded.

Occupation of an agent

59. Where a servant is in occupation of land, his master is deemed to be in possession and may sue in trespass.

Tenant and reversioners

60. Except where there is an actual damage to the reversion, a reversioner shall have no right to sue in trespass; the tenant who is in possession of land shall have the right to do so.

Co-owners

61. A joint tenant, a person entitled in common under trust for sale, or any other co-owner of land may maintain action for trespass against any other co-owner if such co-owner ousts him from the land or destroys the subject-matter of the co-ownership without his consent but not otherwise

62. Subject to the provisions of this Law. where a person enters on the land of another under an authority given to him by law or otherwise and while there, uses the land in a manner that is not authorized or otherwise abuses the authority by an act which amounts to a misfeasance, he shall be deemed to be a trespasser *ab initio*, and may therefore be sued as if his original entry' were unlawful.

Trespass *ab initio*

63. Any person who is in possession of land or who is entitled to possession thereof may—
(a) use such force as may be reasonably necessary to expel a trespasser after he has given the trespasser reasonable notice to leave and the said trespasser has refused to do so:

Expulsion of trespasser

Provided that where the trespasser has entered the land forcibly, no such notice requiring him to leave shall be necessary,

(b) distrain any animal or thing which is unlawfully on the land and doing damage to the land or anything thereon:

Distress damage feasant.

(c) sue a trespasser for damage: and the court in which the action is brought may, subject to this Law or any other law in force in the State—

(i) award general and special damages having regard to the injury suffered by the plaintiff, and

- (ii) either in addition or as alternative to such damages, grant an injunction restraining a continuance or threatened repetition of the trespass.

64. It shall be a defence in an action for trespass to land for the defendant to plead and prove—^{Claim of right and jus tertii}
(a) that he entered on the land by the authority, precedent or subsequent, of the true owner of the land:

Provided that this defence shall not avail in any situation in which the defendant merely pleads that the right of possession is outstanding in some third person as against the fact of possession in the plaintiff.

- (b) that he enters on the land by leave and licence of the plaintiff:

Provided that the defendant does not exceed the terms of the licence;

- (c) that he enters on the land in the exercise of a legal right whether statutory or otherwise:

Provided that such entry is made and the acts are done in a reasonable manner.

- (d) that the action is barred by lapse of time if the plaintiff fails to prosecute his claim for six years from the date of the trespass;
- (e) subject to this Law any other defence which the court in which the action is brought may consider reasonable in the circumstances of a particular case.

PART VI. —TRESPASS TO GOODS

65. Subject to the provisions of this Law, a person who is in "possession of a chattel" is one who—

- (a) has physical control of a chattel with the intent to exercise such control on his own behalf or, otherwise than an servant, on behalf of another; or
- (b) has been in physical control of a chattel with intent to exercise such control; if—
 - (i) he has not abandoned it; and
 - (ii) no other person has obtained possession as stated in paragraph (a) of this section; or
- (c) has the right as against all persons to the immediate physical control of a chattel, if no other person is in possession as stated in paragraphs (a) and (b) of this section.

66. The civil wrong of trespass to chattel consists in committing without lawful justification any act of direct physical interference with a chattel in the possession of another person. ^{Trespass to chattels.} For purposes of this section physical interference consists in some form of physical contact or some application of force by which the chattel is moved from its place or otherwise affected.

67. (1) Subject to the provisions of this Law, any person in possession of the chattel at the time of trespass may sue in trespass: ^{Who may sue in trespass to chattel.}

Provided that where the possession is doubtful it is attached to title.

(2) One co-owner of goods may sue another co-owner in trespass if, but only if the latter co-owner has ousted the former or destroyed the common property without his consent. Co-owners

(3) On a bailment of goods which does not exclude the right of the bailor to immediate possession, either the bailor or the bailee may sue a trespasser to such goods. Bailor and bailee

(4) Where a chattel is mortgaged by one person to another, value the mortgagee is given exclusive possession of the chattel so mortgaged, it is only the mortgagor who may bring an action in trespass against any wrongdoer. Mortgagor and mortgagee

68. Any person whose chattel has been trespassed upon may—
 Remedies available
 (a) resist such trespass if it continues, by using as much force as is reasonably necessary to prevent further trespass; Retaking of chattel.
 (b) enter upon the land of the wrongdoer in order to retake any chattel seized;
 (c) sue for damages, which need not be actual; or Action for damages
 (d) in a proper case, obtain an injunction to prevent the continuance or repetition of the wrongful act, or obtain a declaration that the defendant was a trespasser in committing the act complained of. Action of declaration and injunction.

69. It shall be a defence in an action for trespass to a chattel that—
 Claim of right
 (a) the defendant is the owner of the chattel and had not parted with possession thereof at the time of such trespass;
 (b) the plaintiff was not in possession of the chattel at the time of trespass.

70. (1) Where a person who is in possession of a chattel sues in trespass in respect of the said chattel, it shall not be open to the defendant to set up the right of a third person under whom the said defendant does not claim:
 Jus tertii

Provided that where the plaintiff relies on a mere right of property the defendant may set up the right of such third person,

(2) It shall be no defence to an action for trespass to a chattel that the defendant took the plaintiff's goods in ignorance that they were the plaintiff's or in the belief that they belonged to a third person, even if the plaintiff's goods were mixed with those of the third person:

Provided that the said goods can be distinguished and identified.

71. An act which otherwise would be a trespass to goods may be justified on the ground that—
 Self – defence
 (a) it was reasonably necessary for the defence of the person or property of the defendant or of someone whom, or whose property, the defendant is bound or entitled to protect: or
 (b) under the customary law in force in the locality where the alleged trespass was committed, the defendant's act complained of is justified: or

- (c) the trespass is otherwise justified, having regard to the provisions of this Law

PART VII. —DETINUE AND CONVERSION

72. (1) Detinue is an action which lies—

- (a) against a person who wrongfully detains the goods of another;
- (b) against a person who has had possession of goods but improperly imparted with such possession: or
- (c) against a bailee who has negligently lost or otherwise wrongfully failed to return goods bailed to him, but not where the goods were merely misused or restored in a damaged condition.

(2) "Action for detention" has the same meaning as "action for detinue".

73. Conversion is an act of willful interference, without lawful justification, with any chattel in a manner inconsistent with the rights of another, whereby that other is deprived of the use and possession of it permanently or for a substantial time,

74. (1) No action shall lie for conversion or detinue unless—

- (a) the subject-matter of such action is corporeal personal property;
- (b) a demand for the return of the subject-matter has been made and has not been met within a reasonable time.

(2) Subject to this Law, no action shall lie for conversion or detinue in respect of—

- (a) money or other negotiable instrument, unless it is specifically identified;
- (b) fixtures, timber, crops, soil and minerals until they have been severed from the soil;
- (C) animals *ferae naturae* which have escaped the power of pursuit.

75. Subject to the provisions of this Law, conversion is committed by—

- (a) one person intentionally dispossessing another of goods which are his own or in his lawful possession;
- (b) one person intentionally destroying or without due authority altering goods in the possession of another person,
- (c) one person wrongfully selling the goods of another person, if such sale is accompanied by delivery of the goods or documents of title;
- (d) one person doing any act amounting to denial of the plaintiff's right to possession of the goods although the defendant has not physically dealt with them or been in physical possession of them;
- (e) one person receiving goods of another pursuant to a sale, lease, pledge, gift or other transaction intending to acquire for oneself or for another a proprietary interest in it;

Meaning
of detinue

Meaning of
conversion.

Subject-
matter of
conversion
and
detinue.

Ways of
committing
detinue and
conversion.

- (f) any person doing any other wrongful disposition of goods if it has the effect of depriving the owner of the use or possession of them permanently or for a substantial time.

When
action
does not
lie.

76. Subject to the provisions of the last foregoing section of this Law, no action in conversion shall lie in the following cases—

Obtaining
property
for value
under
voidable
contract.

(1) Where property in goods passes from the true owner to another person under a contract which is voidable by the true owner, and a purchaser for value without notice of the true owner's interest acquires such goods, such purchaser shall obtain a good title to such true owner unless before property in the goods passed to the purchaser, the true owner had avoided the contract.

A buyer in
open
market.

Meaning
of detinue

(2) A buyer in open market obtains an indefeasible title if the goods he buys are sold to him according to the usage of the market, and no action for conversion shall lie against him for buying such goods:

Provided that he has no knowledge of the defect in the seller's title.

(3) A *bona fide* purchaser of goods for value obtains a good title to such goods from a mercantile agent acting in the ordinary course of business, and no action for conversion shall lie against him even though the agent disposes of the goods without his principal's authority.

Purchase from
a mercantile
agent.

A seller or
buyer in
possession may
pass good title

(4) A seller continuing in possession of goods after sale, or buyer obtaining possession of goods with the consent of the seller, passes good title to such goods to a *bona fide* purchaser, and no action for conversion shall lie against such purchaser even if the goods were sold to him without the consent of the true owner.

(5) An owner of goods may be stopped by conduct or negligent omission from denying another's right to pass title in such goods, and where this happens, any disposition by that other person becomes binding on the owner, who shall have no right to sue the transferee in conversion.

Estoppel
of owner.

77. (1) One in possession goods as a bailee or otherwise, who on demand, refuses to surrender its possession to another entitled to immediate possession thereof, is liable or its conversion unless—

Detinue
demand and
refusal

(a) his refusal is qualified as provided under subsection (1), (2), (3) of this section 80;

(b) his refusal is otherwise excused.

78. One in possession of goods is privileged to make qualified refusal immediately to surrender the chattel when the circumstances are such that the demand for immediate surrender is unreasonable.

Qualified refusal
in order to
identify demand.

79. A bailee in possession of good for delivery to a designated person is privileged to make a qualified refusal to surrender it for the purpose of affording the bailee a reasonable opportunity to identify the claimant as the person so designated if the bailee is in reasonable doubt of the claimant's identity

Qualified refusal
in order to
identify claimer.

80. (1) A bailee in possession of goods who is in reasonable doubt of the right of a claimant other than his bailor to its immediate possession is excused to make a qualified refusal to

Qualified refusal
to surrender to
double claimant.

surrender it to the claimant for the purpose of affording a reasonable opportunity to inquire into the right of such person to the immediate possession of the goods.

(2) A bailee in possession of goods is excused to make a qualified refusal to surrender it to his bailor for the purpose of affording a reasonable opportunity to determine the validity of an adverse claim which has been made upon him.

(3) One in possession of goods as finder or person upon whom possession of goods has been imposed without his permission is excused to refuse to surrender it to any claimant where such refusal is for the purpose of affording reasonable opportunity to inquire into the right of such claimant to the immediate possession of the goods.

(4) One who at the request of another person repairs or performs other acts upon any goods for reward is excused to refuse to surrender such goods until he is paid the agreed or, in the absence of prior agreement, a reasonable reward for such repairs or other net.

81. The privilege to make a qualified refusal as stated section 80 above exists only if—

Possessor's
communicati
on of
purpose in
making

- (a) he person in possession of the goods in good faith makes the refusal to surrender it for the purpose for which the privilege is given; and
- (b) such purpose in making the refusal is communicated to the claimant, unless the circumstances of the case justify the failure to do so.

82. (1) A document in which a personal obligation or the title to goods is contained may be the subject of detinue or conversion under the provisions of the last foregoing section of this Law.

Detinue or
conversion of
documents.

(2) The amount to be recovered for the conversion of such a document is the value of the obligation or the goods relating to such title.

83. (1) Any person who—

Who may sue in
detinue,
conversion.

- (a) has actual possession of the goods, or
- (b) has special property in the goods at the time of conversion or detention, may sue in conversion or in detinue

(2) For purposes of this section—

- (a) “special possession” includes constructive possession of goods which are or are not lawfully, in the possession of another person
- (b) “special property” denotes any charge or lien upon the goods and any right arising from or dependent upon holding possession of the goods whether by the person entitled to such right or by some other person for his benefit;

84. Subject to the provisions of this Law, where an owner of goods is induced by the fraud of another person to enter into a contract under which he disposes of goods to the person committing the fraud on the mistaken basis that the contract is with a different person, there is no contract, and unless the goods have been sold in the open market to an innocent third party, the owner may sue in detinue or conversion any person in possession of the goods.

Void and
voidable
contracts..

Provided that where a contract of sale so induced is merely voidable and has not been avoided and a third party has acquired the goods arising therefrom, *bona fide* for value without notice of the fraud, the owner shall not be entitled to maintain an action for conversion or detinue against such person.

85. Where the goods of one person have got into possession of another in consequence of unlawful dealing between them, the owner may recover such goods by action for conversion or detinue if he founds his claim on his right to possess that which is his own:

Illegal transaction.

Provided that he does not and is not compelled to rely on the illegal transaction in support of his right.

86. The owner of stolen goods may maintain an action in detinue or conversion to recover them from anybody who has acquired them except as against a person who *bona fide* and without notice has bought the same in the open market.

Provided that where the thief is convicted, the goods revert in the owner who is entitled thereafter to maintain an action against any person irrespective of the latter having bought them *bona fide* in the open market.

87. One co-owner of property may sue another co-owner in conversion if that other has committed conversion of the goods:

88. Subject to the provisions of this Law, where goods are mortgaged, then as between the mortgagor and the mortgagee the person to sue in detinue or conversion is the one in possession the goods:

Provided that if the goods are merely pledged, it is the pledgee who may sue;

Provided also that where a pledgee wrongfully parts with possession of the goods to another person, the true owner may sue that other person. •

89. Where goods are sold, the right to sue in conversion or detinue passes to the buyer as soon as he has the right of possession and right of property in the good sold:

Provided that where the goods are sold under special conditions for delivery and payment, the right to sue remains in the seller until those conditions are fulfilled and, pending this, the seller may sue the buyer or any other person for conversion or detinue of the goods.

90. The damages awarded in an action for detinue, where the goods are not returned shall be the market value of the goods at time of judgment.

Provided that if the value of such goods at the date of the judgment is attributable in part to expenditure on work thereon, done by the defendant, allowance for that should be made in his favour in assessing damage;

Provided further that where the goods have fallen in value between the refusal to return and judgment, the damages for detention will include the amount of that fall in value.

91. Where a person sues in conversion, the damages recoverable by him shall be equal to the value of the goods at the time of conversion, and if the goods have risen in value between conversion and judgment he shall be entitled to recover the difference in value as additional damages, save to the extent to which he ought to have mitigated any loss sustained by him.

Measure of damages in conversion..

Value increases by defendant.

92. Where a defendant has increased the value of the goods, by or after converting them, the plaintiff shall not be entitled to recover that increase:

Provided that where a defendant who has been guilty of fraud or negligence and has *bona fide* incurred expenses with respect to goods and the goods are delivered up to the plaintiff who takes the benefit of those expenses, the defendant is entitled to have the expenses taken into account when damages for detention are assessed.

93. Subject to the provisions of subsections 90, 91 and 92 this Law, where there is no market in the goods the value is assessed at what the plaintiff could get by sale to a solvent buyer or at any other value which the court may find reasonable having regard to the nature of the goods and what is just and equitable in the circumstances of a particular case.

Special damages.

94. A plaintiff in an action for conversion or detention of his goods may in addition to the general value of the goods, recover any special damage suffered by him as a result of their wrongful detention or conversion.

Successive conversion.

95. Where goods have been the subject of successive conversions, each person dealing with them is liable in full for the conversion committed by him:

Provided that where the owner receives full satisfaction in an action against one defendant, he will be precluded from recovering judgment against any other defendant.

96. Where a person who has a limited interest in the goods sues the owner for their detention or conversion, the damages recoverable by him shall be limited to his interest in the goods; but if such a person is suing a wrongdoer, he will be entitled to recover the whole value of the goods.

Person with limited interest or special property in the goods.

Nominal damages.

97. The court may in appropriate cases award nominal damages to a plaintiff in an action for conversion or detention of goods

Waiver of tort.

98. (1) Where a person whose goods have been converted or detained sues for money had and received and recovers judgment he shall not subsequently be entitled, to sue in conversion or detention in respect of the same transaction

(2) Where an owner of goods converted or detained accepts part of the proceeds of sale of the goods so converted or detained, he shall be deemed to have waived such tort and shall be incapable of maintaining any subsequent action in tort, unless he shows that such proceeds were not received in full discharge;

Provided that where goods are converted by two persons and the owner accepts a sum of money, part of the proceeds of the conversion, from one of the wrongdoers without prejudice to his claim against the other, this shall not amount to a waiver of the tort as against the other wrongdoer, and does not preclude the owner from suing him in conversion.

99. Subject to the provisions of this Law, a defendant in an action for detinue or conversion may plead any of the following—

Specific defences
for the action.

- (a) that the goods have not been in his possession;
- (b) that he took them lawfully under a distress, or under an execution or with the leave and licence of the plaintiff;
- (c) that he is entitled as against the plaintiff to a lien on the goods;
- (d) that he is entitled to retain the goods as mortgagee or pledgee or owner or part owner, or as person with a right to their possession.

100. The defendant in an action for conversion may plead *jus tertii* in the following circumstances, and in no others—

- (a) when he defends the action on behalf and by the authority of the true owner.
- (b) when he committed the act complained of by the authority of the true owner;
- (c) when he has already made satisfaction to the true owner by returning the property to him:

Provided, however, that when the plaintiff was not in actual possession but relies upon his right to possession, he shall not recover except on the strength of his title, and proof of *jus tertii* shall destroy the only thing upon which he relies.

102. Where the owner of goods by his words or conduct allows another to represent the goods as his own and thereby induces a third person to buy them *bona fide* or otherwise convert or detain them, the owner shall not recover them from the buyer nor is he entitled to maintain an action in detinue or conversion against him.

103. (1) Judgment for the plaintiff in the case of conversion is for the recovery of damages; and judgment in the case of detinue is for delivery of the chattel or payment of its value and damages for detention.

(2) The court may make an order under its equitable jurisdiction for the specific delivery of a chattel without measuring its value, when from the nature of the chattel there can be no adequate compensation in damages, or where the person in possession of the chattel has acquired it through the abuse of a fiduciary relationship.

PART VIII. —ASSAULT AND BATTERY

104. (1) Any act by a person which results in a direct application of physical force to the person of another shall constitute a civil wrong which shall be called battery, where—

- (a) the act is accompanied with a hostile intent, or
- (b) the act is done intentionally or negligently; and
- (c) the person against whom such act is done does not consent, or his consent thereto is procured by fraud or duress.

(2) For purposes of this section, the physical force referred to may be inflicted with a hand weapon or other object including a missile and it shall be immaterial what degree of force is used.

(3) Subject to this Law, any person who commits the civil wrong of battery against another person shall be liable for damages to that other person, and it shall be immaterial that no physical damage results from such battery.

(4) In an action for battery, the court may award exemplary damages for battery which constitutes an affront to the plaintiff's personal dignity.

Assault liability
for.

105. Any act, by person, other than mere speaking of words, which puts another person in reasonable fear of an immediate battery, coupled with the capacity for committing such battery, shall make the person doing such action liable to the other person for a tort of assault, if the person so put in fear on reasonable grounds believes that he is in danger of suffering some physical harm

106. Notwithstanding the provisions of the last foregoing section of this Law, where a person makes a deliberate, false statement calculated to cause nervous shock or other mental harm to another and such harm actually results, the person making the false statement shall be liable to that other for assault.

Nervous shock.

107. It shall a defence in an action for assault and battery that the plaintiff consented to the physical force applied against him

Consent to
assault and batter.

Provided that consent shall not be a defence where the defendant's act is excessive or amounts to a felony, or the plaintiff's consent was obtained by fraud.

108. Any person who is sued for an assault or an assault and battery may justify the act on the ground that—

- (a) he was defending his own or any other person or his property, using no more force than was reasonably necessary;
- (b) he did the act complained of in the course of lawful correction or punishment as in the case of a child by his parent, or of an apprentice or scholar by his master:
- (C) he was effecting or assisting to effect a lawful arrest.

109. A person who disturbs public worship in a church or chapel, or who disturbs a lawful public meeting or a lawful game, may lawfully be removed with necessary force if he refuses to desist from such disturbance.

PART IX. —FATAL ACCIDENT

110. Notwithstanding any other rule of law practice or procedure heretofore in force to the contrary, whenever the death of a person shall be caused by a wrongful act, neglect or default of another person and such act, neglect or default is such as would, if death had not ensued, have entitled the person injured to maintain an action and recover damages in respect thereof, then and in every such case the person who would have been liable if death had not ensued, shall be liable to an action for damages, notwithstanding the death of the person injured.

Fatal accident
claims right of
action in respect
of death of a
person where
action would lie
for injury of such
person..

111. Every action under section 110 of this Law shall be for the benefit of the members of the immediate family of the person whose death shall have been so caused and shall be brought—

For whose benefit and by whom action to be brought

- (a) in the case of a deceased person to whom customary law did not apply immediately before his death, by and in the name of the executor or administrator of the deceased person; and
- (b) in the case of a deceased person to whom any customary law- applied immediately before his death, at the option of his immediate family by and in the name of such person or persons as the court may be satisfied is or are entitled or empowered to represent the deceased person or his estate according to such customary law or by, and in the name of the executor or administrator of the deceased person.

Where there is no executor or administrator.

112. (1) If there is, in respect of a deceased person no executor or administrator or no representative for the purposes of section 111 if there is such an executor, administrator or representative but no action is brought under the provisions of section 111 within six months after the death of such deceased person, then such action may be brought by an and in the name or names of all or any of the persons for whose benefits such action would have been brought if it had been brought by and in the name or the executor, administrator or representative, as aforesaid, and every action so brought shall be for the benefit of the same person or persons and shall be subject to the same law and procedure, as nearly as may be, as if it were brought by and in the name of such executor, administrator or representative.

(2) Not more than one award of damages may be made for and in respect of the same subject-matter.

113. In every action brought under the provisions of this section, the plaintiff shall give to the court and to the defendant full particulars of the person or persons for whom and on whose behalf such action is brought and of the nature of the claim in respect of which damages are sought to be recovered-

Particulars to be given by plaintiff in an action.

Period of limitation. Subject to the provisions of section (2) of this section, every action brought under the of this Part of the Law shall be commenced within three years after the death of the deceased person.

(2) This section shall apply notwithstanding anything contained in the State Proceedings Law or Actions Law or any Local Government Law

115. (1) In every action brought under the provisions of this Part of this Law the court may give to the persons respectively for whom and for whose benefit such action is brought such damages as it may think proportionate to the injury resulting from the death.

Method of award, assessment and apportionment of damages.

(2) Any amount recovered under the provisions of subsection (1) of this section, after deducting the costs not recovered from the defendant, shall be apportioned amongst the persons entitled thereto in such shares as the court shall direct

(3) In assessing damages in any such action there shall not be taken into account any insurance money, benefit, pension or gratuity which has been or will or may be paid as a result of the death whether before or after the passing of this Law.

Method and
effect of
payment into
court.

116. (1) It shall be sufficient if the defendant is advised to pay money into court, that he pays it in as compensation in one sum to all persons entitled under this Part of this Law for his wrongful act, neglect or default without specifying the shares into which it is to be divided by the court.

(2) If any sum so paid is not accepted and issue is joined as to the sufficiency thereof and the court shall consider the same sufficient, the defendant shall be entitled to judgment on the issue.

117. Any action or proceeding arising under the provisions of this Part of this Law may be brought either in the High Court or in a Magistrate's Court:

Provided that if all the parties to such action or proceedings are subject to the jurisdiction of a customary court the plaintiff may, at option, bring any such action or proceedings in a customary court of competent jurisdiction.

118. (1) In any action brought under the provisions of this Law, any damages awarded and apportioned to a widow of the person killed or to an infant or to a person of unsound mind shall not be paid to such widow, infant, or person of unsound mind nor to the next friend or legal practioner of such infant or person of unsound mind nor to the legal practitioner of such widow unless the court shall so direct.

(2) Any damages so awarded and apportioned shall be dealt with as the court shall direct and the said damages or part thereof may be—

- (a) paid into the court and invested or otherwise dealt with,
- (b) paid into the High Court and transferred to a Magistrate's Court in the area in which the widow, infant or person of unsound mind resides or to such other Magistrate's Court as shall be convenient, or
- (c) otherwise dealt with.

119. (1) Notwithstanding any rule of law, practice or procedure in force in the State whenever the death of a person, injury to the person or damage to property shall be caused by a wrongful act, neglect or default of a servant, and the act, neglect or default is such as would, if the servant had not died, have entitled the administrator of the person killed, the person injured or the person whose property is damaged, as the case may be, to maintain an action and recover damages in respect thereof, then, and in every such case, the master of that servant shall be liable to an action for damages, notwithstanding the death of the servant.

Provided that in such a case, the alleged wrongful act, neglect or default of the servant shall be proved beyond reasonable doubt.

(2) Where the death of a person, injury to the person or damage to property shall be caused by wrongful act, neglect or default, and the wrongful act, neglect or default is such as would, if death had not ensued, have entitled the administrator of the person killed, the person injured or the person whose property is damaged, as the case may be, to maintain an action and recover damages in respect thereof, then and in every such case, the administrator of the person who would have been liable if he had not died shall be liable to an action for damages,

Interpretation ng the dead of that person.

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120. For purposes of this Part of this Law—

“action” includes any equivalent civil proceeding in a customary court;

“administrator” includes an Administrator-General acting under his powers under Administrator of Estate Law and any person appointed or otherwise acting under any system of law as the representative of a deceased person or his estate;

“customary court of competent jurisdiction” means a customary court upon which the competent authority, by an order made under the Customary Courts Law, has conferred jurisdiction to enforce this Law;

“funeral expense” include the reasonable expenses of the decent interment or obsequies of a deceased person but does not include the cost of the mourning of any person or a tombstone or memorial or of any celebrations or customary presents:

“immediate family” includes the—

- (a) wife or wives’;
- (b) husband,;
- (c) parents, which shall include father and mother, grandfather and grandmother and step-father and step-mother:
- (d) child, which shall include son and daughter, adopted issue, grandson and granddaughter of a deceased person;
- (e) brother and sister which expression shall include half brother, and half sister; and
- (f) nephew and niece of a deceased person who were under the age of sixteen years at the time of the death of the deceased and who were being maintained by him.

PART X—FALSE IMPRISONMENT

121. Any person who falsely imprisons another shall be liable to that other for a tort of false imprisonment.

122. An imprisonment shall be false if, without lawful justification, a person—

- (a) arrests another; or
- (b) causes another's liberty to be totally restrained for however short a time by the use of threat of force or by confinement;
- (c) compels another person to remain in a given place or to go in a given direction against his will:
- (d) fails to discharge a prisoner whose term of detention has expired: or
- (e) confines a prisoner other than in a place where he was lawfully authorized to be confined.

123. Subject to the provisions of this Part of the Law and to any law for the time being in force in the State, no action for false imprisonment shall lie against’—

Use
imprisonment.

Meaning of
false

Justifiable arrest
or detention.

- (a) a private citizen who has arrested any person who has actually committed or attempted to commit a felony or whom he has reasonable and probable cause to suspect has committed, or attempted to commit, a felony;
- (b) a Magistrate or any other person acting in a judicial capacity for acts done within his jurisdiction;
- (c) a ministerial officer who acts under the orders of a person in a judicial capacity;
- (d) a sheriff or other officer to whom a warrant for the arrest of a person under civil process is directed, and who lawfully executes the warrant:

Provided that he arrests the actual person against whom the warrant was issued and that the warrant was executed in a lawful manner;

- (e) a parent or Schoolmaster to whose care the child has been entrusted for confining the child in a reasonable manner and for sufficient reason. The term "parent" includes a foster parent or any person in *loco parents*.
- (f) any person who detains or confines a mentally disordered person who seems disposed to do mischief to himself or any other person

124. Where a person is falsely imprisoned, he may—

- (a) use force as it may be reasonable in the circumstances to release himself;
- (b) sue for damages.

Remedies for false imprisonment.

125. Where a plaintiff in action for false imprisonment proves that he has been imprisoned by the defendant, the onus shall lie on the defendant to prove a justification; and the defendant may rely on any of the grounds which shall justify his act in accordance with the provisions of this Part of the Law

126. An action in tort for damages shall lie against a person who alienates the affection of one spouse from the other, or who without lawful justification or excuse induces one spouse to leave the other or to remain away from that other thereby causing the latter to lose the consortium so enticed away. In order to establish the loss of consortium evidence of previous acts of enticement of the plaintiff's spouse by the defendant shall be admissible.

127. One who, without the husband's consent, has sexual intercourse with a married woman is liable to the husband for the harm thereby caused to his marital interest.

128. A person who alienates the affections of a married woman or induces her to separate from or, if separated, not to return to her husband is not liable to the husband if he—

- (a) is a parent or near relative or is otherwise in a relation with her which justifies the giving of advice in personal matters, or is one who acts reasonably in response to a request from the wife for advice; and
- (b) acts primarily to advance what he reasonably believes to be her welfare; and
- (c) makes no false statements not reasonably believed by him to be true, and employs no means in themselves unlawful.

For purposes of this section it is for the court to decide when a privileged relationship exists.

Onus of proof and general defences in action for trespass to person.

Adultery with spouse

Adultery with wife.

Privilege of parent or other person.

Husband's
conduct
immaterial.

129. The husband's consent or conduct on his part which indicates a willingness that his wife's affections be alienated, that she separate from him or that she has adulterous relations with another, bars him from recovery for the resulting harm to his marital interest.

130. The fact that the husband's conduct constitute cause for divorce does not of itself bar his recovery of damages for invasion by another of any of his marital interests.

Action by
husband for
harm caused
against wife.

131. One who by reason of his tortious conduct causes illness or other bodily harm to a married woman is subject to liability to the husband of such woman for any resulting loss of her capacity for sexual intercourse and for any reasonable expense incurred by him in providing medial treatment for her.

132. One who, without lawful justification to do so—

- (a) abducts a minor child, or
- (b) with knowledge that the parent has not consented, induces it to leave its home; or
- (c) with knowledge that it has left its home and that the parent is unwilling that the child should be absent, induces it not to return thereto or prevents it from so doing,

Inducing minor
child to leave or
not to return
home

is liable to the parent who is legally entitled to the child's custody.

133. One other than her husband who, without her parent's consent, seduces a minor female child is liable—

- (a) to the parent who is entitled to the child's service for any resulting loss of services or ability to render services; and
- (b) to the parent who is under a legal duty to furnish medical treatment for expenses reasonably incurred or likely to be incurred for such treatment.

Reduction of
unmarried

134. A parent is entitled to recover damages against any person who, without his consent seduces his adult unmarried daughter who lives in his home under the same conditions as though she were a minor and who renders services to him for the resulting loss of service or for the reasonable expenses incurred by the parent for medical treatment of the daughter.

per quod
scriptum
assist.

135. A master is entitled to recover damages against any person whose wrongful act, without the master's consent, has occasioned some bodily harm to the servant who has not consented thereto, for any loss of service resulting therefrom and for any medical treatment furnished by the master consequent upon such harm:

Provided that a master's right under this section shall avail notwithstanding the fact that the servant died as a result of the harm.

PART XII.—DEFAMATION

liability for
defamation

136. Subject to the provisions of this Law, a person who publishes a defamatory statement about another person shall be liable for damages to that other person.

Definition of
defamatory
statement

137. A statement is defamatory if it is false and made without lawful excuse or justification and is such that if published of and concerning a person, is calculated —

- (a) to lower him in the estimation of right-thinking men; or

- (b) to cause him to be shunned or avoided; or
- (c) to expose him to hatred, contempt or ridicule; or
- (d) to convey an imputation on him disparaging or injurious to him in his office, profession, calling, trade or business.

Defamation of deceased persons

138. One who publishes a defamatory statement of a deceased person is not liable either to the estate of such person or his descendants or relatives

139. One who falsely, and without lawful justification, publishes of a corporation which does not operate for profit but which depends upon the financial support of the public, a statement which tends to prejudice it in public estimation and thereby to interfere with the conduct of its activities shall be liable to the corporation for the tort of defamation.

Defamation of a corporation

140. One who falsely and without lawful justification publishes of a partnership a statement which is calculated to prejudice it in its trade or business or to deter third persons from dealing with it shall be liable to the partnership for the tort of defamation.

Defamation of a partnership

141. (1) To be actionable, a defamatory statement must be published or otherwise communicated to a third party.

Publication necessary

(2) For the purposes of this Part of this Law, communication of a defamatory statement means communication of meaning which the recipient whether correctly or mistakenly but reasonably, understands that the statement was intended to express.

142. A defamatory communication shall be deemed to be made of and concerning that person to whom its recipient correctly, or mistakenly but reasonably, understands it as intended to refer.

Meaning of communication of defamatory statement

143. A defamatory communication may consist of—

- (a) a statement of fact; or
- (b) a statement of opinion based upon facts known or assumed by both parties to the communication; or
- (c) a statement of opinion upon undisclosed facts.

Defamatory communication must apply to plaintiff

144. (1) A defamatory statement may be a libel or a slander.

Types of communication

(2) A libel is a defamatory statement made or conveyed by written or printed words or in some permanent form, published of and concerning the plaintiff to a person other than the plaintiff and without justification or excuse.

(3) A slander is a defamatory statement, made or conveyed by spoken words, sounds, looks, signs, gestures or in some other non-permanent form, published of and concerning the plaintiff to a person other than the plaintiff and without lawful justification or excuse.

Broadcast statements

145. For the purpose of the tort of libel and slander the broadcasting of words shall be treated as publication in permanent form.

Libel requires no proof of special damage	146. One who publishes a libel of and concerning another persons shall be liable to that other person although no special damage results therefrom.	
Slander not actionable without special damage	147. Subject to the provisions of sections 148, 149, 150, 151 and 152 of this Law, no action shall lie for slander unless there is proof that the plaintiff suffered special damage by reason of such slander.	
Slander affecting official, professional or business reputation	148. In on action for slander in respect of words calculated to disparage the plaintiff in any office, profession, calling, trade or business held or carried on by him at the time of the publication, it shall not be necessary to allege or prove special damage whether or not the words are spoken of the plaintiff in the way of his office, profession, calling, trade or business.	
Word imputing unchastity actionable per se	149. (1) Subject to subsection (2), a slander which imputes unchastity nr adultery to a woman or a girl shall not require allegation or proof of special damage to render it actionable. (2) In an action for slander under subsection (1) of this section, a plaintiff shall not recover more costs than damages unless the Court is satisfied that there were reasonably grounds for bringing the action.	
Slandorous imputation of felony	150. One who publishes a slander which imputes to another person conduct constituting a criminal offence shall be liable for damages to that other person if the offence alleged is of a type which, if committed in the place of publication, would— (a) amount to a felony under the Criminal Code; and (b) be punishable by death or by imprisonment otherwise than in lieu of a fine.	
	151. One who publishes a slander which imputes to another person an existing contagious or infectious disease is liable to that other for damages, notwithstanding that no special damage is alleged or proved.	Slandorous imputation of contagious disease
	152. One who publishes a slander which ascribes to another person conduct, characteristics or a condition incompatible with the proper conduct of his lawful business, trade, profession or of his public office whether honorary or for profit, is liable for damages to the other notwithstanding that special damage is not proved.	Slandorous imputations affecting conduct of business, trade or profession
	153. One who publishes a slander which imputes to a woman unchastity is liable for damages to her, notwithstanding that she has not suffered any special damage as a result.	Slandorous imputations of unchastity
	154. (1) A person who publishes a slander of and concerning another person shall be liable to that other person for any special damage he has suffered by reason of such slander. It shall be immaterial that such slander is one which is actionable without proof of special damage, (2) Where a person suffers special damage by reason of a slander published of and concerning him and the slander is one that is-actionable without proof of special damage under this Part of	Slander requiring proof of special damage

this Law, he shall be entitled to recover the special damage so suffered in addition to general damages for the slander.

(3) "Special damage", for the purposes of this Part of this Law, means loss of some material temporal advantage which is capable of being estimated in money.

155. The publication of a slander is the legal cause of any special damage resulting from its repetition by a third person, and the person who published the slander in the first place shall be liable for such damage, if—

Damage caused by repetition of slander

- (a) the third person was justified or excused to repeat it; or
- (b) the repetition was authorized or intended by the original defamer; or
- (c) there were circumstances known to the original defamer at the time of the publication which gave him reason to expect such repetition.

What constitutes publication of defamatory matter

156. Publication of defamatory matter is its communication intentionally or by a negligent act to any person other than the person defamed.

Liability of one who repeats defamatory matter

157. Notwithstanding the provisions of section 155, and except as stated in section 158 of this Law, a person who repeats or otherwise republishes defamatory matter is liable to the same extent as though he had originally published it.

Circulation of libel created by third person

158. One who disseminates matter defamatory of and concerning another person is liable as though the dissemination were an original publication by him, unless he has not reason to know of its defamatory character. The word "disseminates" as used in this section means the circulation of the physical embodiment of the defamatory matter. It includes the selling, renting, giving or otherwise circulating a book, paper, or document composed or written or printed by a third person. It also includes the sending of a letter or the transmission of messages by other means such as by telegraph or radio.

Mistaken belief that description refers to third party no excuse

159. One who publishes defamatory matter of and concerning another person is not relieved from liability because he acts under a mistaken belief, however reasonable, that the name or description used is applicable only to a third person intended by him, unless the mistake is intentionally induced by the person defamed.

Intention

160. Except as stated in section 158, one who publishes defamatory matter of and concerning another person is not relieved from liability by reason only that—

- (a) he did not intend the matter so published to be understood as defamatory and neither knew nor by the exercise of every possible precaution could have known that it could be so understood; or
- (b) knowing the matter to be defamatory, he did not intend to harm the other's reputation.

161. (1) A person who has published words alleged to be defamatory of another person may, if he claims that the words were published by him innocently in relation to that other person, make an offer of amends under this section, and in any such case—

Unintentional defamation

- (a) if the offer is accepted by the party aggrieved and is duly performed, no proceedings for libel or slander shall be taken or continued by that party against the person making the offer in respect of the publication in question, but without

prejudice to any cause of action against any other person, jointly responsible for that publication;

- (b) if the offer is not accepted by the party aggrieved, then, except as otherwise provided by this section, it shall be a defence, in any proceedings by him for libel or slander against the person making the offer in respect of the publication in question, to prove that the words complained of were published by the defendant innocently in relation to the plaintiff and that the offer was made as soon as practicable after the defendant received notice that they were or might be defamatory of the plaintiff, and has not been withdrawn.

(2) An offer of amends under this section must be expressed to be made for the purposes of this section and must be accompanied by an affidavit specifying the facts relied upon by the person making it to show that the words in question were published by him innocently in relation to the party aggrieved; and for the purposes of a defence under paragraph (b) of subsection (1) no evidence, other than evidence of facts specified in the affidavit shall be admissible on behalf of that person to prove that the words were so published.

(3) An offer of amends under this section shall be understood to mean an offer—

- (a) in any case to publish or join in the publication of a suitable correction of the words complained of and a sufficient apology to the party aggrieved in respect of those words;
- (b) where copies of a document or record containing the said words have been distributed by or with the knowledge of the person making the offer, to take such steps as are reasonably practicable on his part for notifying persons to whom copies have been so distributed that the words are alleged to be defamatory of the party aggrieved.

(4) Where an offer of amends under this section is accepted by the party aggrieved—

- (a) any question as to the step to be taken in fulfillment of the offer as so accepted shall in default of agreement between the parties be referred to and determined by the court whose decision thereon shall be final.
- (b) the power of the court to make orders as to costs in proceedings by the party aggrieved against the person making the offer in respect of the publication in question, or in proceedings in respect of the offer under paragraph (a) shall include power to order the payment by the person making the offer of costs on an indemnity basis and any expenses reasonably incurred by that party in consequence of the publication in question; and if no such proceedings as aforesaid are taken, the court may, upon application made by the party aggrieved, make any such order for the payment of such costs and expenses as aforesaid as could be made in such proceedings.

(5) For the purposes of this section words shall be treated as published by one person (in this subsection referred to as the publisher) innocently in relation to another person if and only if the following conditions are satisfied, that is to say—

- (a) that the publisher did not intend to publish them of and concerning that oilier person, and did not know of circumstances by virtue of which they might be understood to refer to him; or
- (b) that the words were not defamatory on the face of them and die publisher did not know of circumstances by virtue of which they might be understood to be defamatory of that other person;

and in either case that the publisher exercised all reasonable care in relation to the publication; and any reference in this subsection to the publisher shall be construed as including a reference to any servant or agent of his who was concerned with the contents of the publication.

(6) Paragraph (b) of subsection (1) shall not apply in relation to the publication by a person of words of which he is not the author unless he proves that the words were written by the author without malice.

162. For the purposes of fee law of libel and slander under the provisions of this part of this Interpretation Law, a reference to words, statement or matter shall be construed as including a reference to pictures, visual images, gestures and other methods of signifying meaning.

163. The truth of a defamatory statement of fact is a complete defence to an action for defamation. Plea of justification

164. Except ns provided in this section, the publication of defamatory matter of and concerning another person is absolutely privileged if that other consented thereto. Consent

165. The repetition of the publication of a defamatory matter of and concerning another person by one who has previously published it is not privileged or excused by reason only that the person defamed in an honest effort to ascertain the source of the original defamatory publication procures the repetition of the publication. Consent to repetition

166. In an action for libel or slander in respect of words containing two or more distinct charges against the plaintiff, a defence of justification shall not fail by reason only that the truth of every charge is not proved, if the words not proved to be true do not materially injure the plaintiffs reputation having regard to the truth of the charges proved as true. Where some allegation are proved to be true and other are not

Judges of superior
court absolutely
privileged

167. A Judge of the High Court is absolutely privileged to publish a defamatory matter in the performance of his judicial function.

Magistrates and
tribunals or
courts of inferior
jurisdiction

168. A Magistrate or other officer performing a judicial function is absolutely privileged to publish defamatory matter in the performance of such function while acting within his jurisdiction.

Privilege of legal
practitioners and
advocates
absolute

169. An advocate or legal practitioner is absolutely privileged to publish defamatory matter of and concerning another person in communications preliminary to a proposed judicial proceeding or in the institution or, during the course and as a part of a judicial proceeding in which he participates as counsel or legal practitioner.

Parties to judicial
proceedings

170. A party to a private litigation or a private prosecutor or an accused in a criminal prosecution is absolutely privileged to publish defamatory matter of and concerning another

person in communications preliminary to a proposed judicial proceeding or in the institution of or during the course and as part of a judicial processing in which he participates.

A witnesses
in judicial
proceedings

171. A witness is absolutely privileged to publish defamatory matter of and concerning another person in communications preliminary to a proposed judicial proceeding and as part of a judicial proceeding in which he is testifying.

Special
courts

172. Where a tribunal is a court of justice or a body acting in a matter similar to that in which a court of justice acts, any statement made by a member thereof is absolutely privileged and no action can be brought thereon.

Jurors

173. Subject to the provisions of this Law, where an action for defamation is being tried with a jury, a member of the jury is absolutely privileged to publish false and defamatory matter of and concerning another person in the performance of his function as a juror if the defamatory matter has relation to the proceedings in which he is acting as juror.

174. A member of the legislative house of the Federal Republic of Nigeria or of the legislative house of any State or territory thereof is absolutely privileged to publish in the House of which he is a member false and defamatory matter of and concerning another person in the performance of his legislative function.

Members of
legislative
houses

175. The Head of State of the Federal Republic of Nigeria and the Governor of any State or territory thereof, cabinet officers of the Federal Republic of Nigeria and the corresponding officers of any State or Territory thereof are absolutely privileged to publish defamatory matter of and concerning another person in the exercise of an executive function, if the matter has some relation to the executive proceeding in which the officer is acting.

Executive
proceedings

176. Publication of defamatory matter by a husband to his wife, or by a wife to her husband, or by one wife to another wife both of whom are married to the same person shall be absolutely privileged and shall not constitute publication of such material for the purposes of this Part of this Law.

Husband
and wife

177. One who publishes defamatory matter to or concerning another person is not liable therefore if—

Elements
and
occasions of
qualified
privilege

- (a) it is published on an occasion of qualified privilege; and
- (b) the privilege is not defeated by express or actual malice.

178. An occasion is one of qualified privilege where the person who makes a communication has an interest or a duty, legal, social or moral, to make it to the person to whom it is made, and the person to whom it is so made has a corresponding interest or duty to receive it.

Definition of
privileged
occasion

179. Where privilege is claim on the ground that there was a duty on the defendant to make the communication, and an interest in the party to whom it is made to receive it, such duty and such interest must have existed in fact and it is for the Judge or Magistrate trying the action to decide as a matter of law whether or not such duty or interest docs in a fact exist. For purposes of this section moral or social duty shall be deemed to exist where the facts are such that right-minded men in the position of the defendant would have considered it their duty under the circumstances to make the communication.

Function of
judge or
Magistrate

Classes of privileged statements

180. (1) Subject to the provisions of this Part of this Law the court is entitled to hold that the following classes of statement are privileged, that is to say—

- (a) statements made in the discharge of public or private duty;
- (b) statements made on a subject-matter in which both the defendant and the person to whom the statements are made have legitimate common interest.
- (c) statements made by the defendant in the conduct of his own affairs in a matter in which his interest is concerned;
- (d) statements made by the defendant to obtain redress for a grievance;
- (e) statements made by the defendant in reply to inquiries by, or on behalf of the plaintiff or at his invitation.

(2) Notwithstanding the provisions of this section, the court is also entitled to hold that any other statement not falling within the class of statements mentioned in subsection (1) in a matter that is before it, shall nevertheless be privileged if it is made on an occasion upon which, on grounds of public policy and convenience, a person ought to be free, without incurring legal liability, to make such statement about another even if it is otherwise defamatory.

Reasonable introduction of third persons into the occasion

181. Where there is duty, legal or moral, to make a statement, and such duty forms the grounds of privilege, the person making such statement is entitled to use all reasonable means of doing so although such means may include the introduction of a third person, when that is reasonable in the ordinary course of things.

182. Where the presence of a third person, on an occasion otherwise privileged, is reasonably necessary for the protection of the interest of the defendant, and the third person is not unfairly selected, the presence of the third person, though introduced by the defendant is no evidence of actual malice.

Slander, presence of third

183. A defamatory statement by the defendant to the plaintiff, though uttered in the presence of a third person, is a statement made on a privileged occasion if and in so far as it is an answer to a question put by the plaintiff.

Answer to a question in presence of third person

184. (1) Subject to this section, the publication to a newspaper of any such report or other matter as is mentioned in sections 189 and 194 shall be privileged unless the publication is proved to be made with malice.

Qualified privilege of newspaper

(2) In an action for libel in respect of the publication of any such report or matter as is mentioned in section 190, this section shall not be a defence if it is proved that the defendant has been requested by the plaintiff to publish in the newspaper in which the original publication was made a suitable correction or contradiction, and has refused or neglected to do so, or has done so in a manner not adequate or reasonable having regard to all the circumstances

(3) Nothing in this section shall be construed as protecting the publication of any matter the publication of which is prohibited by law, or of any matter which is not of public concern and the publication of which is not for the public benefit.

Newspaper reports of proceedings in court privileged

185. (1) Subject to this section, a fair and accurate report in a newspaper of proceedings publicly heard before a court exercising judicial authority within Nigeria shall, if published contemporaneously with those proceedings, be privileged

(2) Nothing in this section shall authorize the publication of blasphemous or indecent matter.

Extension of
certain
defences to
broadcasting

186. (1) Sections 184 and 185 shall apply in relation to reports or matters broadcast as part of any programme or service provided by means of a broadcasting station within Nigeria, and in relation to any broadcasting of any such report or matter, as they apply in relation to reports published in a newspaper and to publication in a newspaper; and subsection (2) of section 184 shall have effect in relation to such broadcasting as if the words " in the newspaper in which" are replaced by the following new words " in the manner in which"

(2) In this section, "broadcasting station" means a station in respect of which a licence granted under any Law or Act relating to wireless telegraphy is in force, being a licence which (by whatever form of words) authorizes the use of the station for the purpose of providing broadcasting services for general reception.

Limitation of
privilege at
elections

187. A defamatory statement published by or on behalf of a candidate in an election to a legislative house or a Local Government Council in Nigeria shall not be deemed to be published on a privileged occasion on the ground that it is materials to a question in issue in the election whether or not the person by whom it is published is qualified to vote at the election.

Newspaper,
plea of absence
of malice or
negligence, etc.

188. (1) In an action for libel contained in a newspaper, it shall be competent for the defendant to plead that the libel was inserted in that newspaper without actual malice and without negligence and that before the commencement of the action or at the earliest opportunity afterwards he inserted in that newspaper a full apology' for the libel or if the newspaper in which the libel appeared should be ordinarily published at intervals exceeding one week had offered to publish the apology in any newspaper selected by the plaintiff; and to such a plea it shall be competent for the plaintiff to reply generally, denying the whole or any part thereof.

(2) It shall not be competent to a defendant in such an action to file a plea under this section without at the same time making a payment of money into court by way of amends, and a plea so filed without payment of money into court shall be deemed a nullity and may be so treated by the plaintiff in the action.

189. A newspaper statement shall be privileged without explanation or contradiction if such statement is—

When
newspaper
statement is
privileged
without
explanation or
contradiction

- (a) a fair and accurate report of any proceedings in public of the legislature of any Commonwealth country outside Nigeria;
- (b) a fair and accurate report of any proceedings in public of an international organization of which Enugu State or the Federal Republic of Nigeria or the Government of either is a member or of any international conference to which either sends representative.
- (c) a fair and accurate report of any proceedings in public of an international court.

- (d) a fair and accurate report of any proceedings in public of a body or person appointed to hold a public enquiry by the Government or legislature of any part of the Commonwealth outside Nigeria;
- (e) a fair and accurate report of any proceedings before a court exercising jurisdiction throughout any part of the Commonwealth outside Nigeria under the Nigerian Army Act, or the Nigeria Navy Act;
- (f) a fair and accurate copy or extract from any register kept in pursuance of any law or Act which is open to inspection by the public or any other document which is required by any Law or Act to be open to inspection by the public;
- (g) notice or advertisement published by or on the authority of a court within Nigeria or officer of such a court.

190.(1) A newspaper statement shall be privileged subject to explanation or contradiction if it is—

(a) a fair and accurate report of the findings or decision of any of the following associations or bodies that is to say—

- (i) an association formed in Nigeria for the purpose of prompting or encouraging the exercise of or interest in any art, science, religion or learning and empowered by its constitution to exercise control over or adjudicate upon matters of interest or concern to the association, or the actions or conduct of any persons subject to such a control or adjudication.
- (ii) an association formed in Nigeria for the purpose of safeguarding the interests of any trade, business, industry or profession, or of the persons carrying on or engaged in any trade, business, industry or profession and empowered by its constitution to exercise control over or adjudicate upon matters connected with the trade, business, industry or profession, or the actions or conducts of those persons;
- (iii) an association formed in Nigeria for the purpose of promoting or safeguarding the interests of any game, sport or pastime to the playing or exercise of which members of the public are invited or admitted and empowered by its constitution to exercise control over or adjudicate upon person connected with or taking part in the game, sport or pastime being a finding or decision relating to a person who is a member of or is subject by virtue of any contract to the control of the association;

(b) a fair and accurate report of the proceedings at any public meeting held in Nigeria, that is to say a meeting bona fide and lawfully held for a lawful purpose and for the furtherance or discussion of any matter of public concern, whether the admission to the meeting is general or restricted;

(c) a fair and accurate report of proceedings at any meeting or sitting in any part of Nigeria—

- (i) any local government council or committee of local government councils.
- (ii) any Magistrate or Judge or a Customary' Court acting otherwise than as a court exercising judicial authority,
- (iii) any commission, tribunal, committee or person appointed for the purposes of on enquiry by law, by an Executive Council or by a Commissioner of the

When
newspaper
statement is
privileged
subject to
explanation

Government.

(iv) any other tribunal, board, committee or body constituted by or under, and exercising functions under, any law or Act;

(d) a fair and accurate report of the proceedings at a general meeting of a company or association constituted, registered or certified by or under a law or Act or incorporated by Royal Charter, not being a private company within the meaning of the Companies and Allied Matters Act;

(e) a copy of a fair and accurate report or summary of any notice or other matter issued for the information of the public by or on behalf of a Government department, office of State, local government council or superior officer of police.

(2) "International Court" means the International Court of Justice and any other judicial or arbitral tribunal deciding matters in dispute between States;

"legislature" in relation to any territory comprised in the Commonwealth, which is subject to a central and local legislature means either of these legislatures;

"local government council" means a local government body established within Nigeria under any law or Act.

Malice defeats
privilege

191. One who publishes defamatory matter of another on an occasion of qualified privilege is liable to that person if he made the publication with malice.

Excessive
publication

192. One who on an occasion of qualified privilege knowingly publishes defamatory matter to a particular person or persons to whom its publication is not otherwise privileged shall be deemed to have made such publication with malice.

Burden of proof of
privilege and malice

193. Where a defendant seeks to rely on a defence of qualified privilege, it is for him to prove the facts and circumstances which establish that the occasion was privileged, if he does so, the burden of showing actual or express malice rests upon the plaintiff.

Defence of fair
comment

194. (1) Fair comment shall be a defence in an action for libel or slander, if, subject to subsection (2) of this section, such comment—

(a) is based on facts truly stated;

(b) does not go beyond the limits of fair criticism; and

(c) is an honest expression of the writer's real opinion.

(2) In an action for libel or slander in respect of words consisting partly of allegations of fact and partly of expression of opinion, a defence of fair comment shall not fail by reason only that the truth of every allegation of fact is not proved if the expression of opinion is a fair comment having regard to such of the facts alleged or referred to in the words complained of as are proved:

Provided that if there is any defamatory element in any of the facts on which the comment is based and which are contained in the statement complained of, the defendant must plead and prove justification; '

Provided further that the principle stated under subsection (1) shall not apply where comment is made on facts stated in a privilege document.

195. The defence of fair comment may be defeated by proof of malice on the part of the person making or publishing the comment; evidence of such malice is accordingly admissible

Effect of malice

196. (1) Where the words are not *prima facie* defamatory of the plaintiff, or have no meaning at all in ordinary acceptance, the statement of claim will not disclose a good cause of action unless the plaintiff assigns therein a meaning to the words which is defamatory of him. In the absence of evidence of extrinsic facts and circumstances which justify the defamatory meaning alleged in the innuendo, the action must fail.

Pleading, practice and relief; innuendo

(2) Where a statement of claim alleges an innuendo which is not proved, the court has to consider whether the words complained of are defamatory in their natural and ordinary meaning, and it shall not be necessary for a plaintiff to call a witness to say what he understood the words to mean.

197. (1) Where the statement complained of is in a foreign language or in any language other than that in which the proceedings are taking place, the actual words must be set out in the statement of claim together with a translation thereof and if they are not *prima facie* defamatory, an innuendo shall also be pleaded assigning to the words defamatory meaning.

Where defamation is in foreign language

(2) For purposes of this section, "foreign language" means a language not indigenous to the place where it is written or spoken.

198. In an action for libel or slander, the plaintiff is entitled to give particulars which show that he has a proper case to put before the court which shall have the power to make orders for any particulars essential for a just determination of the matter before it.

Particulars

199. (1) The question whether the words complained of are defamatory is for the jury, (if the case is being tried before a jury), but, before the question is submitted to them it is for the trial Judge or Magistrate to rule upon the evidence whether the words complained of are capable of referring to the plaintiff and capable of bearing a defamatory meaning in the minds of reasonable persons in the circumstances of the particular case.

Function of judge and jury

If the words are reasonably capable of being understood in a defamatory sense, he must leave it to the jury to say whether they did in fact defame the plaintiff. If not, he must give judgment for the defendant without leaving the case to the jury,

(2) Where there is a case to go to the jury, the duty of the Judge is simply to define what is a libel or slander as the case may be in law to the jury to pronounce their opinion as a matter of fact whether a particular publication falls within the definition or not.

200. (1) Where the defence of fair comment is pleaded, the question whether or not the subject-matter of the comment or criticism is a matter of public interest is one of law for the Judge, and it is for the jury to decide whether or not the comment is fair if the case is being tried before a jury.

Functions where defence is fair comment

(2) Where the defence is that the publication of the words complained of was made on an occasion of qualified privilege, it shall be a question of law for the Judge to decide whether the occasion was privilege and if the issue of malice is raised the jury will have to decide it.

Consolidation of actions.

201. (1) It shall be competent for the court upon an application by or on behalf of two or more defendants, in actions in respect of the same or substantially the same libel brought by one and the same person, to make an order for the consolidation of actions so that they shall be tried together and after the order has been made and before the trial of the actions the defendants in the new actions instituted in respect of the same or substantially the same libel shall also be entitled to be joined in a common action upon a joint application being made by those new defendants and the defendants in the actions already consolidated.

(2) In an action consolidated under this section, the court shall assess the whole amount of the damages (if any) in one sum but a separate judgment shall be entered for or, against each defendant in the same way as if the actions consolidated had been tried separately and if the court shall have entered a judgment against the defendant or defendants in more than one of the actions so consolidated it shall proceed to apportion the amount of damages which it has so found as between and against the last mentioned defendants and the court if it awards to the plaintiff the costs of the action shall make such order as it shall deem just for the apportionment of those costs between and against the defendants.

(3) This section applies to actions for slander and to actions for slander of title, slander of goods or other malicious falsehood as it applies to actions for libel and reference in the preceding subsections to the same or substantially the same libel shall be construed accordingly.

202. In an action for defamation it shall be lawful for the defendant (after notice in writing of his intention so to do given to the plaintiff at the time of filing or delivering the plea in that action) to give in evidence, in mitigation of damages, that he had made or offered an apology to the plaintiff for the defamation before the commencement of the action or as soon afterwards as he had an opportunity of doing so in case the action shall have been commenced before there was opportunity of making or offering the apology.

Offer of apology admissible in evidence in mitigation of damages

203. In an action for libel or slander the defendant may give evidence, in mitigation of damages, that the plaintiff has recovered damages or has brought action for damages for libel or slander in respect of the publication of words to the same effect as the words on which the action is founded or has received or agreed to receive compensation in respect of any such publication.

Evidence of other damages recovered by plaintiff

204. An agreement indemnifying a person against civil liability for libel in respect of the publication of any matter shall not be unlawful unless at the time of the publication that person knows that the matter is defamatory, and does not reasonably believe there is good defence to any action brought upon it.

Agreement for indemnity

205. (1) The court in assessing damages in an action for libel or slander is entitled to take into consideration the whole conduct of the defendant from the time of publication to the time of judgment, and may assess the damages accordingly.

Damages general

(2) The court may award any special damage which consists in the loss of some material temporal advantage, pecuniary or capable of being estimated in money, which flows directly and in the ordinary course of things from the act of the defendant or an act for which he is responsible.

Injunction

206. The High Court may grant injunction before or at the trial of an action to restrain publication of defamatory words or matter in all cases in which the court thinks it is just and may, if damage is imminent and is likely to follow as the natural and direct result of words complained of, even though no actual damage has yet occurred, grant an interlocutory injunction if the court is satisfied that the matter complained of is clearly defamatory.

Saving as to criminal

207. Nothing in this Part of this Law shall affect the law relating to criminal libel.

Liability or deceit

PART XIII.—DECEIT

208. Where a person makes a representation of fact to another person with intent that it shall be acted upon by that other person, and such representation—

- (a) is false to the knowledge of the person making it;
- (b) is made recklessly, the maker not caring whether it is true or false; or
- (c) is made with a fraudulent intent;

the person making such representation shall be liable for damages to the person to whom he makes it if that person acts upon it and suffers damage by so acting. Such representation shall be known as deceit and an action for damages founded upon it shall be known as an action for deceit.

Representation of fact

209. (1) To create liability for deceit as provided under section 208 of this Law, the representation may be—

- (a) of a past or existing fact;
- (b) in the form of a promise by which the promisor impliedly represents that he has at the moment of making the promise the intention of fulfilling the obligation that he is undertaking;
- (c) in the form of an expression of opinion not honestly entertained;
- (d) in the form of an expression of intention made by a person who is not able and willing to put such intention into effect.

(2) For the purposes of this section, a representation may be either express or implied by conduct.

Representation between vendor and purchaser

210. Notwithstanding the provisions of section 169 of this Law, where parties stand in the relation of vendor and purchaser, a misstatement as to the highest price which the purchaser has the intention to pay or the lowest price which the vendor has the intention to accept shall not be a ground of action for deceit.

211.(1) A person shall not be liable for deceit for making a negligent or careless false representation to another person who, relying on the statement, acts in a way whereby he suffers damages, unless the statement was made fraudulently.

Negligent or careless statement

(2) Notwithstanding the provisions of subsection (1) of this section, a court may nevertheless hold such a representation actionable although not made fraudulently where—

- (a) it is satisfied that, having regard to the circumstances of a particular case, there was a duty on the part of the defendant to be careful when he made the statement;
- (b) there has been a breach of a special duty arising out of fiduciary relationship between the parties whereby the defendant should be compelled in equity to indemnify the plaintiff;
- (c) in breach of warranty of authority, an agent misrepresents the existence or extent of his authority resulting in damage to the plaintiff;
- (d) the defendant estopped from denying the truth of his own statement upon which the plaintiff has relied and acted to his own detriment;
- (e) a duty not to make any false statement is imposed by any law in force in the State;
- (f) the defendant is vicariously liable for the fraudulent misrepresentation of his agent who made such representation.

Intent

212. In order to sustain an action for deceit. the plaintiff must show that the representation was made with intent that he shall act on it:

Provided that such intent need not be an intent to cause damage to the plaintiff, and that it is enough that he was intended to act on it and has acted on it in the manner contemplated, and suffered damage which was a natural and probable consequence of his so acting.

Reliance on statement

213. A deceit shall be actionable if the person to whom such false representation was made relied on it, but not otherwise

Provided that if the deceit complained of consists in a latent defect in a thing sold, the plaintiff shall not be deemed to have relied on the representation; and for this purpose, the knowledge of an agent as to the latent defect in the subject-matter shall not be imputed to his principal

Ambiguous statement

214. Where the representation complained of is ambiguous, in order to succeed in an action for deceit arising therefrom, the plaintiff must prove—

- (a) the sense in which he understood the statement;
- (b) that in that sense it was false;
- (c) that the defendant intended him to understand it in that sense or deliberately made use of the ambiguity for the purpose of deceiving him.

215. In an action for deceit, the plaintiff must prove that he has suffered pecuniary loss or damage, either to his property or to his person, in consequence of acting on the representation complained of.

Damage

216. Where a person has entered into contract after a misrepresentation has been made to him by another party thereto and as a result whereof he has suffered damage, then if the person making the representation would be liable for damages in respect thereof had the misrepresentation been made fraudulently that person shall he so liable notwithstanding that the misrepresentation was not made fraudulently, unless he proves that he had reasonable ground to believe up to the time the contract was made that the facts represented were true.

Representation inducing contract

PART XIV.—NEGLIGENCE

217. Negligence as civil wrong shall consist of breach of a legal duty to take care which results in damage, which may not have been desired or even contemplated by the person committing the breach, to the person to whom the duty is owing.

Essentials Of
negligence

218. Subject to this Law, every 'person shall have a duty to take reasonable care to avoid any act or omission which he is reasonably expected to foresee as likely to injure persons who are so closely and directly affected by his acts or omissions that he ought reasonably to have them in contemplation as being so affected when he is directing his mind to any such act or omission

Duty of care

219. (1) A person shall be liable for damages for the tort of negligence if —

- (a) he fails to take reasonable care to avoid such acts or omissions as he has a duty to avoid under section 179 of this Law; and
- (b) the failure amounts to a breach of the duty to take care as provided in that section and results in damage to the person to whom he owes such duty.

Breach
of duty
of care

(2) Whether a given set of facts giving rise to an allegation of negligence creates a legal duty or results in a redressible damage is for the court trying the issue to decide having regard to the particular circumstances of each case, and in deciding this the court shall be guided by the provisions of this Law and any other principle of law in force in the State

220. (1) Without prejudice to the generality of the provisions of section 219, a manufacturer of products which he sells in such form as to show that he intends them to reach the ultimate consumer in the form in which they left him with no reasonable probability of intermediate examination and with the knowledge that the absence of reasonable care in the preparation or putting up for sale of the products will result in injury to the consumer's life or property owes a duty to the consumer to take reasonable care in the manufacture and putting up for the sale of such products, and shall be liable for damages to any consumer who suffers damage by means of his breach of such duty:

Provided that the manufacturer shall not be regarded as owing any such duty of care to the consumer if—

- (a) there is a reasonable probability of intermediate examination of his products; or
- (b) the product was not dangerous at the time when the manufacturer parted with it and he had no reason to anticipate that it would become dangerous; or
- (c) the manufacturer has taken all reasonable care in the manufacture, packing and delivery of the products; or
- (d) the responsibility for taking care to avoid damage does not rest on him

(2) For purposes of this section—

“manufacturer” includes any person who being in control of any products delivers them to another for use or to apply in particular manner;

“ultimate consumer” includes user of chattels or persons affected by them;

Manufacturer
of products

“sale” includes free samples of goods provided by the manufacturer;

“intermediate examination” means an act by a third party which may put an end to the duty of care owed by the manufacturer;

“preparation or putting up” includes the design, the container and the labeling of the package.

221. In any action against the manufacturer under section 220 of this Law, the burden of proof shall be upon the injured party to establish that the defect which caused the injury was present in the article when it left the hands of the party whom he sues, or developed subsequently as manufactured or put up for sale by him and that the defect was occasioned by the negligence of that party:

Action
against the
manufacturer

Provided that any reasonable inference of such negligence may be drawn by the court from the facts proved

222. The degree or the amount of care which every person is under obligation to maintain in order to be free from a charge of negligence shall be determined by balancing the risk involved in the act or omission complained of in the light of the social value of the harm done, and the probability and extent of the harm done, against the value of the interest which the person against whom negligence is alleged is seeking to protect, and the expedience of the course he pursued.

Degree of
care

223. (1) Whenever negligence is alleged against any person, the standard by which such person's conduct is to be determined shall be the standard of a reasonable man based upon those considerations which ordinarily regulate the conduct of human affairs, regard being had to the circumstances of the particular case in which such person's conduct is called in question.

The
reasonable
man

(2) The standard of a reasonable man provided for in this section shall be ascertained—

- (a) in accordance with the provisions of this Law; or
- (b) in the absence of such provision, in accordance with what a reasonable and prudent man would or would not do in the circumstances, as the case may be, regard being had to judicial decisions and opinions, where necessary.

224. Where a person possesses special skill or holds himself out as possessing such skill, it shall be his duty to exercise such care as a normal skillful member of his trade or profession is reasonably expected to exercise, and where he is alleged to have been negligent in so exercising it, his performance shall be judged in the light of the normal standard reasonably expected of an ordinary person with the requisite skill in a similar profession or business

225. Any person who alleges negligence against another person shall produce to the court before whom the case is being tried evidence, whether it be direct or circumstantial, which purports to show that he suffered his damage from the negligence of that other. It is for the court to decide whether on the evidence so produced such negligence is a direct cause of the damage complained of.

226. Where a thing which brought about an injurious incident is shown to be under the management of the person charged with negligence or his servant, and the incident is such as

*Inperita
culpas ad
numeratu*

Evidence of
causation

Resique loqnitur

in the ordinary course of things does not happen if the person who has such management uses proper care, this shall be deemed to be sufficient evidence, unless the contrary is shown, that the incident arose from his want of care.

Extent of dosage

227. A person is liable to the full extent of the damage which he has caused to another person as a result of his negligent act or omission if he could reasonably have foreseen that kind of damage, be it physical injury to the person or damage to property, could result from such act or omission to that other person, although he might not have foresee the extent of the damage so caused:

Provided that where such damage is pecuniary loss, liability shall be limited to the extent of loss foreseeable.

228. Where the negligent act of a person places another person in a situation of alternative danger and that other person acts reasonably in the agony of the moment, his act shall not make the ensuing damage too remote a consequence of the act of the person who originally acted negligently.

Agency of moment

229. Where a person's active force constituting a negligent act or omission has come to rest in a position of apparent safety, such a person shall not be liable for damage as a result of some new force which later combines with this condition to bring about injury to another person.

Person not liable

230. Where two tortious acts result in damage and either one would have produced the same kind of damage, then the perpetrator of each act is responsible for the whole damage.

Each perpetrator

231. Where two independent negligent acts or omissions simultaneously bring about the same damage, the persons responsible for the respective negligent acts are each fully liable.

Independent acts resulting in same injury

232. Where a person negligently commits a tort and before his tortious act spends its force some later negligent act or omission by another person combines with it to produce a particular damage to a third person which would not have been produced without the operation of the second subsequent negligent acts shall each be liable in full for the damage which has so resulted.

Subsequent acts within earlier act

233. A person who is guilty of negligence to another shall be liable to that other for the full damage resulting from his negligence although such damage was made greater by the defective state of his victim's health.

Defective health of victim immaterial

234. (1) Subject to subsections (2) and (3), where a person suffers damage as the result partly of his own fault and partly of the fault of another person, a claim in respect of that damage shall not be defeated by reason of the fault 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 share of the claimant in the responsibility for the damage.

Contributory negligence

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

(3) Where a contract or an enactment providing for limitation of liability is applicable to a claim, the amount of damages recoverable by any claimant by virtue of subsection (1) shall not exceed the maximum limit so applicable.

(4) Where damages are recoverable by a person by virtue of subsection (1) 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.

(5) Where a person dies as a result partly of his own fault and partly of the fault of another person and if death had not ensued, damages would have been recoverable by him by virtue of subsection (1) of an amount reduced in accordance with that subsection, any damages recoverable in an action brought for the benefit of the dependants of that person under section 87 of this Law shall be reduced to a proportionate extent.

(6) Where in any case to which subsection (1) applies one of the persons at fault avoids liability to any other 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 contribution from that other person or representative by virtue of the said subsection.

Common
employment

235. (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 such person was at the time the injuries were caused in common employment with the injured person.

(2) Any provisions contained in a contract of service or apprenticeship or in an agreement collateral thereto shall be void insofar 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 person in common employment with him.

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

236. An owner of premises adjoining a highway owes a duty of care to any person reasonably using the highway and shall be liable to such highway user for any injury suffered either—

Liability of
occupiers to
high way
users

(a) because of the dangerous state of adjoining premises, or

(b) because of harmful operations being carried out there.

237. Subject to the provisions of this Law, any occupier of premises who orders or carries out repairs or any other operations owes a duty to take care that such repairs or any other operations do not cause injury to adjoining property or to persons thereon.

Liability of
occupiers to
those on
adjoining
premises

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

Liability of
occupiers to
persons on the
premises

(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 purpose include the degree of care, and of want of care, which would ordinarily be looked for in such a visitor, so that, without prejudice to the generality of this provision—

- (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, and in particular—

- (a) where the 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 to take 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 risk willingly accepted as his by the visitor and the question whether a risk was so accepted shall be decided on the same principles as any other cases in which one person owes a duty of care to another.

(6) For the purpose of this section, persons who enter premises for any purpose in the exercise of 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.

(7) "Visitor" includes invitees or licensees or any person entering the premises with the permission (express or implied) of the occupier of the premises but does not include persons doing so by virtue of an access agreement

239. (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 them as visitors cannot be restricted or excluded by that contract but, subject to any provisions of the contract to the contrary, shall include the duty to perform his obligation under the contract, whether undertaken for their protection or not, insofar as those obligations go beyond the obligations otherwise involved in that duty

Effect of
contract on
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 "strangers 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 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 insofar 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 Law, as well as to those entered into or created after its commencement; but insofar 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 of which are renewed by agreement (whether express or implied) after that commencement.

240. (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 are 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 (where 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 this purpose any obligation to the occupier which the sub-tenancy puts on a mesne landlord of the premises, or is created 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 purposes 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 enforcing his objection, then no person or goods whose presence on the premises is due solely to that use of 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 the obligation is actionable at the suit of the inferior landlord.

(5) This section shall put a landlord of premises under a greater duty than the occupier to a person who or whose goods are lawfully on the premises by reason only of the exercise of a right of way or right conferred by virtue of an access agreement.

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

(7) 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 any contract

conferring a right of occupation, and "landlord" includes any person conferring such right of occupation.

(8) This section applies to tenancies created before the commencement of this Law, as well as those created after the commencement

241 (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, insofar 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

(2) The foregoing subsection shall apply to fixed and movable structures as it applies to premises,

(3) This section does not affect the obligation 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 or other means of transport or by virtue of any contract of bailment.

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

242. Subject to the provisions of this Law. no common duty of care is owed to a trespasser:

Provided that where premises of which a person is the occupier consists of a movable structure that is likely to attract children, and such structure stands on land of which such person is not the occupier (as where the structure stands in a public place or on land occupied by another person), it shall not be a defence to an action brought by or on behalf of a child who is injured by that structure that he was a trespasser at the material time.

"Child" for the purposes of this section means a person below the age of fourteen years.

243. Any person who sets a trap or other object calculated to injure persons who enter on his land and which actually causes harm to such persons is liable to the persons so injured:

Provided that this rule does not apply where a person takes reasonable steps or measures designed to prevent trespassers from entering his land.

244. An occupier who, knowing that a trespasser is on his land or is likely to be on his land, commits a negligent act which is foreseeable as likely to harm him. is liable to such trespasser for any harm resulting from such an act

245. Subject to the provisions of sections 242. 243. 244, and occupier owes duty of care not to conduct activities on his land which are foreseeable as likely to harm persons (other than trespassers) of whose presence he ought to be aware.

246. Any person who, not being an occupier of any premises negligently conducts operations therein and thereby causes harm to a visitor to the premises shall be liable to that visitor for negligence.

247. No purchaser or occupier of premises shall be liable in tort for any negligent acts or omissions committed before his occupation thereof, even where such act or omission or the

Purchasers or occupiers liability for acts at occupation

Implied term in contracts

No duty to trespassers in respect of state of premises; trespass by children

Putting traps on land

Negligent not against trespassers

Liability of non-occupier to those premises

Liability of non-occupier to those premises

effect thereof continues up to the time when he became the purchaser or occupier as the case may be.

248. No landlord shall be liable to third parties for letting premises in an unsafe condition whether or not he knew of the defect at the time of the lease, unless he is under a duty, express or implied, to remedy such defect.

Landlord's liability for letting unsafe premises

249. (I) Subject to this Law, and to any other law in force in the State, every employer owes a duty to take reasonable care for the safety of his workmen whether the employer be an individual, a firm, a company or any other body, and whether or not the employer takes any share in the conduct of the operation

Employer's duty of care to workmen

(2) To discharge his obligations under this section, the employer shall—

- (a) where necessary, provide competent staff for his work;
- (b) provide adequate premises and plant for his workers; and
- (c) provide generally a proper system of work for his workers.

(3) The word "system" means a permanent or continuous mode of work which includes the physical layout of the job, the sequence in which the work is to be carried out, the provision in proper cases of warning and notices, and the issue of special instructions.

(4) In deciding whether an employer is negligent in regard to the provisions of this section, the court shall take into consideration the employer's knowledge of physical defects of particular workmen and other relevant facts.

250. Subject to the provisions of this Law, the duty of the occupier to children visitors to his premises shall be the same as that which he owes to adult visitors, except that in determining the liability for the occupier in the case of the former, the Court shall have regard to the fact that-

Responsibility to children visitors generally

- (a) Things which are dangers or traps to adults may well be to children, and accordingly, the occupier shall take reasonable steps to prevent them from being dangerous to children,
- (b) The notice or warning of the danger which may be adequate in the case of adults may not be adequate in the case of children, and accordingly, if warning is relied upon as a defence, it has to be one which is capable of being understood by children and;
- (c) There is duty to guide and protect a child lawfully on the premises from things dangerous to a child, with which the child may be tempted to meddle.

PART XV. — NUISANCE

251. A person who does an act or makes an omission or otherwise creates a condition which unreasonably interferes with another person's use or enjoyment of land, or of a right over or interest in land shall, subject to this Part of this Law, be liable to such other person for a civil wrong known as nuisance.

Liability for nuisance

Public
Nuisance

252. (1) A nuisance is public if it inflicts damage, injury or inconvenience upon the public at large, that is upon all the people who are in the State or upon all persons of a class who come within the sphere of this operation.

Private
nuisance

253. A nuisance is private if it does not cause damage or inconvenience to the public at large, but does interfere with a person's use or enjoyment of land, or of some right connected with land, in his possession.

Essentials
of
nuisance

254. (1) In order to constitute a nuisance, there must be

- (a) a wrongful act or omission;
- (b) damage actual or presumed.

(2) Whether an act or omission constitutes a nuisance depends on the circumstances of the particular case, including, the time of the act complained of, the place and manner of its commission, and whether it is transitory, permanent, occasional or continuous.
(3) A malicious motive may sometimes make an act unreasonable and therefore actionable as a nuisance.

255. (1) Where the nuisance complained of is one which by its very nature is calculated to cause physical damage to land, no action shall lie except where actual damage to land has occurred.

How far
damage is
necessary

(2) In all other cases, an action for nuisance shall lie even if no financial or physical damage has occurred

256. (1) Every person shall be required to exercise his rights, whether over his own or public property, with due regard to the co-existing rights of others, and shall be liable for nuisance for any unreasonable, excessive, or extravagant exercise of his rights to the damage of others, provided that such exercise of rights is not otherwise justifiable under this Law

Nuisance
between
neighbouring
properties

(2) Any owner or occupier of land or building shall be entitled to use or occupy his land for any purpose for which it may in the ordinary and natural course of the enjoyment of land be used or occupied, and shall not be liable for damage sustained by the property of others through natural agencies operating as a consequence of such ordinary and natural user or occupation

(3) No act can be justified as an ordinary user of premises which in fact results in a state of things amounting to a substantial interference with the ordinary use and enjoyment of property by other persons.

(4) A test whether a lawful activity constitutes a nuisance is what is reasonable according to the ordinary usages of mankind living in a particular society.

257. Where the roots, branches or leaves of trees or shrubs encroach upon the land of an adjoining owner and there cause damage to either his property or cattle or there cause damage to either his property or cattle or other domestic animal or bird, an action for nuisance will lie irrespective of whether the trees were planted or self-sown.

Nuisances
created on
the
boundaries

Interference
for noxious
fumes or
vapours

258. Where an owner or occupier interferes with natural agencies or conditions and thereby causes damage or imposes a financial burden upon his neighbour, he shall be liable in an

action for nuisance at the suit of the neighbour, for such loss or damage occasioned thereby to the neighbour.

259. Where any person causes or suffers fumes or vapours or any other noxious matter which are dangerous to themselves; to escape and damage or otherwise affect the property of a neighbour, he shall be liable to such neighbour for nuisance, if the effect is to diminish the value of the neighbours property or the comfort and enjoyment of such property.

Liability for
noxious
fumes or
vapours

260. Any smoke, fume or smell and any other condition or operation or any combination of these which materially interferes with the ordinary comfort of human existence shall constitute a nuisance under this Law.

Smokes,
fumes and
smells, etc.

261. (1) The owner or occupier of premises shall have a right to a free flow to such premises of natural light and air and a reasonable view or prospect therefrom; and any person who interferes with this right shall be liable for damages for nuisance at the suit of the owner or occupier

Interference
with
prospect or
view or with
privacy.

Provided that lawful and reasonable use by any person of his premises shall not constitute interference by him with any other person's right under this section even where the value of that other person's premises is diminished by such use.

(2) Any act done by a person with regard to the use of his premises with intent, express or reasonably inferable from all the circumstances of the case, to cause annoyance and actually causing annoyance to the owner or occupier of any neighbouring premises shall constitute interference with the right of the owner or occupier of such neighbouring premises, and shall accordingly render the person doing such act liable for nuisance under subsection (1) of this section.

262. (I) Any person who is affected by a nuisance is entitled to sue for damages if—

(a) he is the occupier of the land, that is, he is in actual possession of land which is affected by the nuisance; or

(b) he is a reversioner and the nuisance is of a permanent nature.

(2) Where anybody sues for nuisance he shall be entitled to recover damages for—

(a) any injury to his person arising directly from the nuisance, or

(b) damage to his property or other interest connected therewith.

(3) Nothing in this section shall affect the provisions of subsection (2) of section 255 of this Law

263. (I) Any person who creates a nuisance by some act of misfeasance, whether or not he is in occupation of the land on which it originates, is liable to be sued for nuisance.

(2) Any person who continues a nuisance created by another shall be liable if he knows or ought to know of its existence;

Provided that he is in a position to take reasonable steps to end it

Who can be
sued for
private
nuisance

Who can sue in
private nuisance

(3) An occupier of any premises shall be liable for a nuisance created by—

- (a) a visitor to the premises;
- (b) an independent contractor in cases where in the natural course of things, injurious consequences to an adjoining neighbour must be expected to arise from the work he is employed to execute:

Provided that such nuisance does not arise from collateral negligence of the contractor himself, and "Collateral" means not in the course of employment:

- (c) a trespasser, if---
 - (i) with knowledge or means of knowledge on the part of the occupier or his agent the nuisance is continued without taking reasonable steps to abate it:

Provided that he is in a position to do so;

- (ii) the occupier adopts the nuisance by making any use of the thing which constitutes it;
- (iii) the nuisance existed before the occupier acquired the property:

Provided that he knew or ought reasonably to have known of its existence.

Liability
of the
landlord
for
nuisance

264. A landlord who is not in occupation of the premises shall not be liable to be sued for nuisance:

Provided that he shall be so liable if—

- (a) he caused the nuisance by himself, his servant or agent;
- (b) he expressly or impliedly authorized his tenant to create the nuisance:
- (c) the nuisance was on the premises before he parted with them and he knew of it;
- (d) he ought to have known of the nuisance before the letting of the premises:
- (e) the covenants to repair the premises, and the nuisance arose from his failure to repair the premises.

Two or more
persons may
be sued

265. Notwithstanding the provisions of sections 263 and 264 of this Law, two or more persons may be jointly sued for nuisance where it can be shown that both or more of them were responsible for creating the nuisance.

266. Subject to any law in force in the State concerning State liability, a private individual may bring an action in his own name in respect of a public nuisance if he can show—

- (a) that he has suffered some particular, direct and substantial damage over and above that sustained by the public at large: or
- (b) that the interference with the public right involves a violation of some private right of his own; or
- (c) that a statute has given him a special protection or benefit which is being invaded,

Defences to
action for
nuisance

267. Local authorities may take civil proceedings in their own names in respect of public nuisance if

Principle of
strict liability

- (a) they have sustained or are threatened with damage to property of which they are the actual owners;
- (b) they are seeking to enforce a contract involving rights over property;
- (c) they are complaining of a breach of statutory conditions imposed by an enactment which gives them special protection or benefit;
- (d) they have an express or an implied statutory power to take proceedings.

268. (1) Any person sued for nuisance may plead such defences to an action in tort under this Law as are applicable to the facts of the case against him.

Defences
in action
for
nuisance

(2) Notwithstanding the provisions of this section, it shall be no defence to an action for nuisance to plead merely—

- (a) that the activity giving rise to the nuisance is carried on at a convenient or suitable place; or
- (b) that the trade or business giving rise to nuisance is a useful one and one which is necessary in the public interest; or
- (c) that the trade or business giving rise to the nuisance is carried on with all due care and skill and every effort is made to prevent it from being nuisance, or
- (d) that the person suing for the nuisance has himself come to it; or
- (e) that the act of the person sued is not a nuisance by itself and only becomes a nuisance when combined with the act of some other person.

PART XVI. —WRONGS OF STRICT LIABILITY

Principles
of strict
liability

269. (1) Any person who in the course of non-natural user of land brings for his own purposes and collects and keeps on such kind any object likely to do mischief if it escapes shall keep it at his peril, and if he does not do so he shall be liable for any damage which is the natural consequence of its escape:

Provided that this rule shall not apply where such object is not brought to such land by human agency and is there in its natural state.

(2) Subject to this Part of this Law, it shall not be necessary to prove negligence against any person who is sued under this section.

(3) A person may be liable under this section although he does not occupy the land when the object escapes from it if he has authorized another to accumulate such object on the land.

Non-natural
user, a
question of
fact

270. It shall be a question of fact whether a particular user is non-natural, and in deciding this question, the court trying the issue shall take into consideration all the circumstances of the time and place and practice of mankind.

There
must be
escape

271. In order to make any person liable as provided under section 269 of this Law, it shall be proved that subject to subsection (3) of section 269, the object actually escaped from a place over which the person sought to be made liable had occupation or control to a place which was outside his occupation or control.

272. In an action brought under section 269 of this Law, damages may be recovered for injury to the person or damage to property, movable or immovable.

Damage

273. No action brought under section 269 of this Law shall succeed unless there is proof of damage.

Damage
must be

274. Any person sued under this Part of this Law shall not be liable if he proves—

(a) that he is exempted from liability by any law or law in force in the State:

Provided that in such a case he must show that he has exercised reasonable care to prevent injury to other persons;

(b) that the person suing him has permitted him to accumulate, or has benefitted from, the object the escape of which is complained of:

Provided that no such defence shall be available as between a commercial supplier of gas (in respect of gas mains under the highway) and a consumer in premises adjoining the highway. Permission under this subsection may be express or implied;

(c) that the escape was caused by the act of the person injured or of a third party, unless it can be shown that the act was of a kind which the defendant could reasonably have foreseen and guarded against; or

(d) that the escape is caused through natural causes and without human intervention in circumstances which no human foresight can provide against, and of which human prudence is not expected to recognize the possibility.

Statutory
authority
consent,
act of God,
etc.

Accumulatio
n of water

275. Any person who artificially accumulates water on any land or otherwise interferes with water naturally on the land, shall, if it escapes and causes damage to the occupier of any other land, be liable to such occupier.

Escape of
fire

276. (1) No action, suit, or process whatever shall be had, maintained or prosecuted against any person in whose house, chamber, stable, bam, or other building or on whose estate any fire shall accidentally begin unless it shall be proved—

(a) that the fire was caused by the negligence of the householder, his agents or servant or was lit with intent that it shall spread to other lands:

(b) that although the fire began accidentally, it was negligently allowed to continue by the householder or by his servant or agent; or

(c) that the householder has not taken reasonable care to prevent the fire from spreading.

(2) Nothing in this section shall exempt an insurer against fire from discharging his liability under the insurance.

Sparks from
277. Where sparks are emitted from a traction engine passing along the highway, and cause damage either by setting fire to crops or in any other way, the owner of the engine is liable, though he took all reasonable precautions to prevent the escape of sparks.

Sparks from railways.
278. Subject to this Law and to any other law in force in the State, railway authorities are liable for fire caused by sparks emitted from an engine which result in damage to the property or the person of an adjoining owner of land.

Dangerous operations involving the creation of fire
279. Any person who carries on by himself or by any other person any operation which involves the creation of fire shall be liable if the fire escapes and causes injury to the person or property of another person.

280. A fireman who is injured while performing his duty at a fire shall not be entitled *ipso facto* to recover damages from the person whose negligence has caused such fire unless the occupier of the premises at which the fire takes place knew or ought to know that he was creating and maintaining a serious risk of fire or explosion on such premises which was likely to expose firemen called to extinguish the fire, to an exceptional and serious risk of being injured by fire explosion.

Firemen

281. An occupier of land who authorizes, expressly or by necessary implication, persons to enter on his land for the purpose of carrying on a dangerous operation which involves the creation of fire or of an act likely to cause fire on the land is liable for any damage caused to third parties by fire arising from such operation.

Liability of an occupier

Provided that the occupier shall not be liable for fire caused by a dangerous operation carried out by persons lawfully on his land purely for their own purposes and outside any authority given to them by him.

282. Any person lawfully on the premises who is injured by fire, the owner of a building damaged by fire or the owner of a chattel so damaged and which was lawfully on the premises, shall be entitled to maintain an action against the person liable for the fire.

Who can sue for fire

283. Subject to this Law and to any law in force in the State, any person who stores gas or electricity in bulk in mains and the like, shall, if it escapes and causes damage be liable for the damage:

Escape of gas and electricity

Provided that if such gas or electricity was installed for ordinary domestic use, a person shall not be liable for any damage which results therefrom unless negligence is proved against him.

284. Subject to this Law, and to any law in force in the State, any person who owns or manufactures any explosive or poison, shall, if it escapes and causes damage be liable for the damage so caused.

PART XVII. —LIABILITY FOR DAMAGE DONE BY ANIMALS

Classes of animals
285. (1) For the purposes of this Part of this the Law, animals are divided into two classes namely ----

(a) tame animals which include—

(i) domestic animals (or animate *mansuetae naturae*);

(ii) animals which are harmless by their very nature as rabbits, hares, pheasants, partridges;

(iii) animals shown by long experience to be harmless, such as sheep, goats, horses, oxen, dogs;

(b) animals dangerous by nature (or animals *ferae naturae*) which include lions, elephants, snakes

(2) It shall be a question of law whether a particular kind of animal falls into the dangerous class or the tame class:

Provided that the harmfulness of the offending animal shall be judged not by reference to its particular training and habits but by reference to the general habits of the specie to which it belongs.

Dangerous animals

286. (I) Any person who keeps an animal of the dangerous class does so at his peril, and shall be liable for any damage done by it.

(2) It shall not be open to any person sued under this section to plead—

(a) that he was ignorant of the dangerous nature of the offending animal or its particular propensities; or

(b) that the damage resulted from its being frightened and not from a vicious nature; or

(c) that he was not in any way negligent.

(3) The liability created under this section shall not be confined to damage to the person, and shall be independent of whether the offending animal was trespassing at the time or not.

287. (I) Any person who keeps an animal which belongs to the class of tame animals under section 285 of this Law, but which he knows has a propensity to do a particular kind of mischief shall be liable for any damage due to that propensity, without proof of negligence.

Animals with mischievous propensities

(2) it shall be no defence to plead that the immediate cause of the damage was the voluntary act of a third person

(3) Where an animal with a mischievous propensity injures a servant whose duty it is to look after it, the owner, as master, shall not be liable if he has taken reasonable care not to subject the servant to unnecessary risk.

288. (1) To succeed in an action under section 287 of this Law, it shall be necessary for one alleging damage by a mischievous animal to prove *scienter* on the part of the owner or keeper of the animal:

Proof of *scienter*

Provided that it shall not be sufficient to show that animals of that kind have a natural propensity to do the damage in question, although it shall be material—

(a) that the individual animal has a propensity which is common in animals of that kind.

(b) that such propensity to the keeper's knowledge is to do the kind of damage in question;

(c) that the animal has previously done the kind of damage in question: or

(d) that the owner warned people to keep away from the animal.

(2) It shall not be necessary to prove *scienter* when the cause of action is trespass or breach of contract.

(3) Notwithstanding it has been proved, the injured party who has interfered with the animal may have his damages reduced under section 284 of this Law (by contributory negligence).

289. To impose liability upon the keeper or the owner of animal, it shall be necessary to prove actual knowledge on the part of the owner or the keeper or of some servant or agent taking care of the animal concerned on his behalf, and it shall not be permissible to presume such knowledge.

290. (1) Where cattle trespass upon the land of another person and he suffers damages thereby, or even without trespassing on his land, consume produce which, by being severed from the land, has become his chattel, the person in possession of the cattle is liable for the consequence of those acts irrespective of whether his conduct be intentional, negligent or accidental.

(2) Liability for damage under this section is not confined to damage to grass and crops; it extends to injury inflicted on human beings or on another animals by cattle.

(3) For the purpose of this section, the work "cattle" includes horses, bulls, cows, sheep, swine, asses, goats, fowls geese, ducks, turkeys and peacocks, but does not include cats and dogs and other animals of a species regarded as wild and those not normally the object of ownership.

291. Any person who has sufficient possession of land to maintain an action for trespass shall be entitled to sue for cattle trespass; and a reversioner shall have a right of action if, but only if the trespassing cattle do permanent damage to the reversion: no other person has an remedy for this tort in the absence of proof of *scienter* or negligence.

292. Where an owner of land is bound as between himself and his neighbour to maintain the fence between their lands and owing to his neglect, his neighbour's cattle trespass upon his hand, he shall have no right of action.

293. No owner of a trespassing dog or cat shall be held liable for any damage thereby occasioned unless *scienter* is proved:

Provided that such owner shall be so liable if he incites his dog or cat to commit the trespass.

294. Where a dog or a pigeon is trespassing in pursuit of cattle, poultry, sheep, or goat, the occupier of the land or possessor of such animals is justified in shooting the dog or pigeon if—

- (a) it was actually attacking them or was likely to renew the attack so that the animals were in real and imminent danger: and
- (b) there was no practicable means, other than shooting, of stopping the attack or preventing a renewal of it; or

Scienter of servants

Definition of cattle trespass

Who can sue

Effect of agreement to maintain fences

Exception to dogs and cats

Right to shoot trespassing dogs

- (c) the owner acted reasonably in regarding the shooting as necessary for the protection of the animals against attack.

295. Any person who leads or drives an animal along the highway which trespasses into the adjoining land shall not be liable (for cuttle trespass) in the absence of negligence on his part.

296. Subject io this Law, a landowner is not liable for damage done to his neighbour's crop by a wild animal which breeds on his land.

297. (I) Any person who keeps an animal of the tame class shall be liable for any damage caused by it if the fails to take reasonable care to manage and control the animal when the circumstances are such that it is likely to cause damage to the person or property of another.

(2) The damage mentioned under this section shall include damage due to any mischievous propensity of which the owner of the animals is aware.

298. (I) There shall be no duty on the occupier of land in a rural area adjoining the highway to fence off his cattle from the highway:

Provided that where the animal is known to have some mischievous propensity to attack and harm beings, or animals, and the owner knows of such propensity there shall be a duty of care on the owner to prevent it from doing damage, and such owner shall be liable for any damage it does unless he shows that he has taken every reasonable care to prevent such damage.

(2) Notwithstanding the provisions of this section, the presence of a horse, goat or sheep unattended on the highway in an urban area is *prima facie* evidence of negligence, on the part of the owner or drover.

(3) Where an animal does not stray but is brought or accompanied onto the highway, the owner or the drover shall be liable if it causes any damage.

299. (1) The owner of a dog shall be liable in damages for injury done to any cattle or poultry by that dog; and it shall not be necessary for the person claiming such damages to show a previous mischievous propensity in the dog, or the owner's knowledge of such previous propensity or to show that the injury was attributable to neglect on the part of the owner.

(2) Where any such injury has been done by a dog the occupier of any house or premises where the dog was kept or permitted to live or remain at the time of the injury shall be presumed to be the owner of the dog, and shall be liable for the injury unless he proves that he was not the owner of the dog at that time:

Provided that where there are more occupiers than one in any house or premises let in separate apartments, or lodgings or otherwise, the occupier of that particular part of the house or premises in which the dog has been kept or permitted to live or remain at the time of the injury shall be presumed to be the owner of the dog.

(3) In this section, the expression "cattle' includes horses, mules, asses, sheep, goats and swine

300. Every owner, or person who is in possession or control of dangerous animals or animals which are known to have a mischievous propensity and whose animals have committed

Trespass
from
highway

Trespass by
wild
animals

Liability for
negligence

Highway
cases

Liability of
owner of
dog for
injury to
cattle or
poultry

Persons
liable

trespass shall be liable for damage caused by such animals, in accordance with the provisions of this Part of this Law.

Provided that where the owner has actual control of an animal, the occupier of the premises where the animal is kept shall not be Liable.

301. Where, in the case of tame or domestic animals when liability depends on negligence, the person who has been negligent, either by his own acts or by those of his servants, shall be liable for damage caused by the animals.

Where liability is due to negligence

302. Where a dangerous animal or a tame animal with a mischievous propensity escape, as the case may be, the owner of such animal remains liable until he has duly transferred his ownership to another person.

Length of time liability remains

PART XVIII. —BREACH OF STATUTORY DUTY

303. Where a person suffers damage as a result of a breach of a statutory duty, an action may lie against the person or persons who by such breach caused the damage, if—

Injury contemplated by the statute

- (a) the person who seeks to sue comes within the class of persons whom the statute is designed to protect; and
- (b) the damage suffered is within the scope of injury contemplated by the statute; or
- (c) there is otherwise an intention to be gathered from the words of the statute, to give a remedy to such claimant.

Where penalty is prescribed

304. Where a statute is designed to protect a class of the public, and in particular their physical safety, it shall be presumed that a right of action exists notwithstanding that a penalty is prescribed.

305. It shall be the duty of the court trying an action for a breach of statutory duty to determine whether such duty imposes an absolute liability or whether liability is dependent on negligence, and in doing so the court shall be guided by the facts of the particular case and all circumstances surrounding the issue.

Determining the mixture of the duty

306. Unless the statute shows a contrary intention, it shall be necessary to prove damage in an action for breach of statutory duty.

Damage

Delegation

307. Where a duty is cast upon a person, he cannot escape liability for any damage arising from a breach of it by delegating it to an independent contractor, unless upon a true construction of the statute delegation can be regarded as a fulfilment of the obligation;

Provided that notwithstanding such delegation the court may still treat the issue as one of causation and find against the party who was at fault.

Defences

308. In an action for breach of statutory duty, the person sued may avail himself of one or more of the defences to an action in tort in accordance with the provisions of this Law.

PART XIX. —MALICIOUS PROSECUTION

Elements of the wrong

309. (1) A private person who initiates or procures criminal proceedings against another person who is not guilty of the offence charged shall be liable to such other person in an action for malicious prosecution.

(2) No action brought under this section shall succeed unless it is shown to the satisfaction of the court trying it, that the proceedings complained of ---

- (a) were initiated or procured as a result of malice on the part of the person initiating or procuring them,
- (b) were initiated or procured without reasonable and probable cause; and
- (c) terminated in favour of the person against whom they were initiated or procured.

310. A private person who fairly states the facts to a police officer, a magistrate, a judicial officer or a tribunal, and makes no specific charge against anyone, will not be liable, in an action for malicious prosecution, to a person against whom the police, magistrate, judicial officer or tribunal issues a warrant of arrest or prosecutes.

311 For the purposes of sections 309 and 310, a person initiates or procures the institution of criminal proceedings if—
A person who procures the institution of criminal proceedings

initiates if—
procures a third person, either a private or a public prosecutor to commence such proceedings;

- (b) prevails upon a public officer to institute them by filing an information; or
- (c) otherwise sets in motion any process which leads naturally to the arrest or prosecution of a person.

312. Criminal proceedings are instituted within the meaning of sections 309 and 313 when

- a) process is issued for the purpose of bringing the person against whom such proceedings are initiated before a judicial officer or tribunal whose function is to determine whether such person—
 - (i) shall be tried, or
 - (ii) is guilty to the offence charged; or
- b) without the issuance of such process, an information is filed by the appropriate officer against the person against whom such proceedings are initiated.

313. A private person who initiates criminal proceedings against another in circumstances that do not amount to malicious prosecution but thereafter takes an active part in pressing the proceedings after he has discovered or ought reasonably to have discovered that there is no reasonable and probable cause therefor shall be liable to the person against whom such proceedings were initiated.

314. A public prosecutor acting in his official capacity is absolutely privileged to initiate or continue criminal proceedings.

315. The fact that a person against whom criminal proceedings are instituted is guilty of the offence charged against him is a complete defence against liability for initiating or procuring such proceedings.

316. For avoidance of doubt, to subject a person to liability under the provisions of section 309 of this Law, the criminal proceedings, which he has initiated, must have terminated in favour of the person against whom such proceedings were initiated.

Institution
of criminal
proceedings

Continuing
criminal
proceedings

Privilege of
public
prosecutor

Plaintiff's guilt
as bar to
recovery

A person who
fairly states the
fact not liable
for malicious
prosecution

Termination
of
proceedings

Manner of
Termination

317. Except as provided in sections 318 and 319 of this Law, criminal proceedings are terminated in favour of the person against whom they are initiated by—

- (a) a discharge by a Magistrate where the record of the proofs of evidence does not in the opinion of the Attorney-General disclose sufficient evidence to support a charge against the accused person.
- (b) a formal discontinuance of the proceedings by the prosecutor;
- (c) the quashing of an indictment or information;
- (d) an acquittal; or
- (e) a final order by a trial court in favour of the person against whom such proceedings were initiated.

318. A termination of criminal proceedings in favour of the person against whom they were initiated is not such a termination as will support a cause of action under section 313 of this Law, if—

- (a) it results from the withdrawal of the charge or the discontinuance of the proceedings—
 - (i) pursuant to an agreement of compromise between the person against whom the proceedings were initiated and the complainant or the prosecutor; or
 - (ii) because of the suppression of evidence or other act done by the person against whom the proceedings were initiated or on his behalf for the purpose of preventing his conviction;
- (b) new proceedings for the same offence have been properly instituted and have not been terminated in favour of such person.

319. The formal discontinuance of proceedings by a prosecutor is not sufficient termination in favour of the person against whom such proceedings were initiated if the discontinuance is due to the impossibility or impracticability of bringing such person to trial.

Impossibility of bringing the accused to trial

320. Notwithstanding the provisions of section 316 and 317 of this Law, where it is not possible to show that the proceedings ended in favour of the person against whom they were initiated because such proceedings did not proceed to trial for want of evidence, it shall not be necessary in an action under section 307 of this Law to show that the proceedings ended in favour of the person against whom they were initiated:

Where proceedings abandoned

Provided that this section shall not apply where the want of evidence was caused by interference by the person against whom the proceedings were initiated with possible exhibits or sources of evidence.

321. One who initiates criminal proceedings against another has reasonable and probable cause for so doing if he reasonably believes that the person against whom such proceedings are initiated has acted or failed to act in a particular manner, and either—

Existence of reasonable and probable cause

- (a) correctly believes that such act or omission constitutes under the law in force in the State the offence charged against such person, or
- (b) mistakenly so believes in reliance on the advice of his counsel.

The effect of discharge commitment or information

Unsuccessful termination of proceedings

322. (1) In the absence of evidence to the contrary on the face of the records, a discharge by a Magistrate on the ground that in the opinion in writing of the Attorney-General the record of proofs of evidence does not disclose sufficient evidence to support a charge against an accused person, or refusal by the appropriate officer to file an information on the said ground shall be conclusive evidence of absence of a reasonable and probable cause unless, it shall appear that discharge or refusal, as the case may be, was—

- (a) not based upon all available evidence; or
- (b) due to misconduct on the part of the Magistrate or the appropriate officer.

(2) The commitment of the accused by a Magistrate, or the filing of information against the accused by the appropriate officer is evidence that the person initiating the proceedings had reasonable and probable cause.

(3) "Appropriate officer" for the purposes of section 312 and this section means the person charged with responsibility for filing information against accused persons after proof of evidence has been prepared or otherwise in accordance with the provisions of the Criminal Procedure Law.

323. (1) Unless otherwise explained, the termination of the proceedings in favour of the person against whom they were initiated at the instance of a private prosecutor who initiated them or because of his failure to press the prosecution, is evidence of absence of reasonable and probable cause

(2) The discontinuance of proceedings by a public prosecutor acting on his own initiative after the prosecution has passed into his control in only *prima facie* evidence that the private prosecutor acted without reasonable and probable cause.

324. (1) The advice of 3 legal practitioner in the State in which criminal proceedings are initiated, and whom the person initiating such proceedings has no reason to believe to be an interested party is conclusive evidence of the existence of reasonable and probable cause for initiating such proceedings if it is shown that such proceedings were initiated in reliance upon that advice, and that the advice was—

- (a) sought in good faith; and
- (b) given after a full disclosure of the facts within the knowledge and information of the person initiating the proceedings.

(2) The acquittal of such person by a Magistrate or trial court is not conclusive evidence of absence of reasonable and probable cause.

326. To subject a person to liability under the provisions of section 309, the proceedings must have been initiated maliciously, for the purpose of this section proceedings are deemed to be initiated if—

- (a) the person initiating the proceedings does not believe in the guilt of the person against whom they are initiated;
- (b) the proceedings are initiated primarily because of hostility or ill-will towards the person against whom they are initiated: or

The effect of
discontinuance
of proceedings.

The effect of
advice of
counsel

Malice

- (c) the proceedings are initiated for the purpose of obtaining a private advantage even if such advantage might legitimately have been obtained in civil proceedings

327. Absence of reasonable and probable Cause for the initiation of criminal proceedings insofar as it tends to show that the person initiating the proceedings did not believe in the guilt of the person against whom they are initiated is evidence that he initiated the proceedings maliciously.

Absence of reasonable and probable cause as evidence of malice

328. Where the essential elements of malicious prosecution as provided under section 309 of this Law have been established, a person bringing the action is entitled, without proof of actual loss or damage, to recover damages for—

General damages

- (a) the harm to his reputation which would normally result from such accusation as that brought against him, and
- (b) the distress which would normally result from the initiation of such proceedings.

329. When the essential elements of malicious prosecution as provided under section 309 have been established, the person bringing the action is entitled to recover for—

Special damages

- (a) the harm resulting from any arrest or imprisonment suffered by him during the course of the proceedings:
- (b) the expense which he has reasonably incurred in defending himself against the accusation; and
- (c) any specific pecuniary loss which resulted from the initiation of the proceedings against him;

Provided that this Section shall not affect the provisions of section 328.

330. (1) In an action brought under the provisions of section 309, the Proof plaintiff has a burden of proving, when the issue is properly raised, that —

- (a) the defendant initiated criminal proceedings against him;
- (b) the proceedings were terminated in his favour;
- (c) the defendant did not have reasonable and probable cause for initiating the proceedings:
- (d) the proceedings were initiated against him maliciously

(2) Where the plaintiff wishes to recover special or exemplary damages, he has a burden of proving—

- (a) that he suffered special damage and the extent thereof; or
- (b) that the conditions were otherwise such as to permit the recovery of exemplary damages.

(3) In an action brought under the provisions of section 309, if the defendant shows that he had reasonable and probable cause for initiating the criminal proceedings complained of, he shall not be found liable, whether or not he acted with malice.

Burden of proof

(4) "Malice" in this section means an improper and indirect motive, or any motive other than a desire to secure the ends of justice.

Functions of
the court

331. In an action under the provisions of section 309 the court shall determine whether—

- (a) the proceedings of which the plaintiff complained were criminal in character;
- (b) the proceedings were terminated in favour of the plaintiff;
- (c) the defendant had reasonable and probable cause for initiating the proceedings;
- (d) the proceedings were initiated meticulously.
- (e) the harm (if any) suffered by the plaintiff is a proper element to consider in assessing damages.

PART XX—INJURIOUS FALSEHOOD

332 (1) Any person who falsely and maliciously—

- (a) disparages the title of an owner of property, real or personal;
- (b) disparages the quality of any merchandise manufactured or sold by another person or
- (c) subject to subsection (3) makes any other disparaging statement, oral or written.

Slander of title;
slander of goods
or other
malicious
falsehood.

whereby the person or persons to whom such statement is made are induced to act in a manner which causes pecuniary damage to the person against whose property or goods such statement is directed; shall be liable to that person in an action for injurious falsehood.

(2) Notwithstanding the provisions of subsection (1), 'no action shall lie for any statement, however false and malicious, which is nothing more than—

- (a) a statement by one person that his goods or other property are better than those of a rival; or
- (b) a statement that causes inconvenience or annoyance by introducing a risk of confusion of two properties belonging to different owners.

(3) For the purposes of this section, "disparagement" includes allegation that the owner has no title or has a defective or limited title to the property or has no right or a limited right to deal with it.

(4) The disparagement may be either oral or in writing and words broadcast by wireless telegraphy are treated for the purposes of dispensing with the need to prove special damage, as published in permanent form.

(5) "Malice" as used under this section means besides the untruth of a statement and its injurious character, that the maker has no bon fides in making the statement or puts forward a claim which he in fact knows to be unfounded.

(6) In any action under this section of this Law, the burden shall be on the plaintiff to prove—

- (a) that the publication complained of was false;

- (b) that it was made in disparagement of the plaintiff title or interest in property or goods;
- (c) that it was published maliciously, and
- (d) subject to section 333 of this Law, that the plaintiff has suffered special damage.

333. (1) In an action for slander of title, slander of goods, or other malicious falsehood, it shall not be necessary to allege or prove damage—

- (a) if the words upon which, the action is founded are calculated to cause pecuniary damage to the plaintiff and are published in writing or other permanent form; or
- (b) if such words are calculated to cause pecuniary' damage to the plaintiff in respect of any office, profession, calling, trade or business held or carried on by him at the time of the publication.

(2) Except as provided under subsection (1), damage shall he expressly pleaded and proved.

PART XXL—PASSING OFF

334. Any person who sells merchandise or carries on business under such a name, mark, description, or, otherwise in such a manner as to lead the public into believing that the merchandise or business is that of another person, is liable at the suit of that other for the civil wrong of passing-off

335. The civil wrong of passing-off may be committed in any of the following ways—

- (a) a statement that the merchandise or business of one person is that of another.
- (b) trading under a name so closely resembling that of another person as to be mistaken for it by the public;
- (C) selling goods under a trade name already appropriated for goods of that kind by another person or under any name so similar thereto as to be mistaken for it;
- (d) selling goods with the trade mark of another person or any deceptive imitation attached thereto;
- (e) imitating the get-up or appearance of another person's goods so as to deceive the public;
- (f) selling second-hand goods as new goods manufactured by the plaintiffs.

336. (1) In an action for passing-off, it shall not be necessary to prove—

- (a) actual deception or an intention to deceive:

Provided that it shall be necessary' to prove that a false representation has in fact been made whether fraudulently or otherwise, and that damage may probably ensue:

Provided further that the innocence of the party making it may be a reason for limiting the account of profits to the period subsequent to the date at which he becomes aware of the true facts;

Actual deception or damage not necessary.

Special damage.

Paistng-Off

Different aspects of passing-off.

- (b) actual damage. The court shall presume that if the goodwill of a man's business has been interfered with by passing-off another person's goods as his, damage is to result therefrom.

(2) Where the conduct complained of has been going on for some time the court may presume, in the absence of proof of actual deception that no deception is likely to occur

(3) A trade description shall be presumed to be calculated to deceive if it is sent forth, attached to or impressed on the goods in a manner likely to mislead those members of the public who may ultimately become purchasers.

(4) It shall be no defence under this section that an observant person who made careful examination would not be misled.

337. In an action for passing-off it shall be the duty of the plaintiff to prove that his trade mark, trade name or set-up which he alleges to have been used or imitated has an established reputation in the trade concerned or among the general public.

338. Subject to the provisions of the Trade Marks Act, an action for using or imitating a trade mark under which another person's goods are known to the public shall be maintainable, although such trade mark is not registered or is unregistrable where it can be shown that the reputation of the use the defendant has made of it is in fact deceptive:

Provided that where the words complained of are prima facie descriptive expressions or constitute ordinary use of the English Language, the plaintiff's onus of proving that such words are likely to cause confusion shall be higher than mere preponderance of evidence.

339. It shall be actionable for any person to affix such person's name to a literary, dramatic, musical or artistic work of which he is not the author, so as to imply that the work is his or is adapted from a work of his.

340. In an action for passing-off the court may grant an injunction and may, in addition, either award damages, or make an order for an account of profits, in favour of the plaintiff.

341. For purposes of this Part of this Law "mark" includes device, brand, heading, label ticket, name signature, word, letter, numeral, or any combination thereof; "trade mark" means a mark used or proposed to be used upon or in connection with goods of the proprietor of such trade mark by virtue of manufacture, selection, certification, dealing with or offering for sale.

PART XXII. GENERAL

342. All proceedings in torts covered by this Law in respect of any cause or matter pending at the date of the coming into force of this Law in which the court's jurisdiction at common law or by virtue of any written Law shall be valid and effectual as though they were instituted, or commenced, or taken under this Law, and such proceedings shall continue before the court under the provisions of this Law.

343. Without prejudice to the generality of section 4 of this Law as regards all torts whether at common law or under any written law-, the courts shall, after the commencement of this Law, continue to exercise due jurisdiction and entertain such actions as the courts used to do before commencement of this Law notwithstanding the provisions of this Law.

344. In this Law,—

"civil wrong" has the same meaning as tort;

"Constitution" mean the Constitution of the Federal Republic of Nigeria from time to time in force in the State;

"State" means Enugu State of Nigeria.

"written law" means any written law- in force in the State from time to time