

# LAWS OF MALAYSIA

REPRINT

**Act 67**

## **CIVIL LAW ACT 1956**

*Incorporating all amendments up to 1 January 2006*

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## CIVIL LAW ACT 1956

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ARRANGEMENT OF SECTIONS

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PART I  
PRELIMINARY

Section

1. Short title
2. Interpretation

PART II  
GENERAL

3. Application of U.K. common law, rules of equity and certain statutes
4. Administration of insolvent estates, and winding up of companies
5. Application of English law in commercial matters
6. Immovable property

PART III  
FATAL ACCIDENTS AND SURVIVAL  
OF CAUSES OF ACTION

7. Compensation to the family of a person for loss occasioned by his death
8. Effect of death on certain causes of action

PART IV  
TORTFEASORS AND AWARD OF INTEREST

9. (*Deleted*)
10. Proceedings against, and contribution between, joint and several tortfeasors
11. Power of Courts to award interest on debts and damages

4

*Laws of Malaysia*

**ACT 67**

PART V

CONTRIBUTORY NEGLIGENCE AND  
COMMON EMPLOYMENT

Section

12. Apportionment of liability in case of contributory negligence
13. Saving for Merchant Shipping Ordinance 1952
14. Common employment

PART VI

FRUSTRATED CONTRACTS

15. Adjustment of rights and liabilities of parties to frustrated contracts
16. Provisions as to application of section 15

PART VIA

APPORTIONMENT

- 16A. Interpretation
- 16B. Rents, *etc.*, to accrue from day to day
- 16C. Apportioned part of rent, *etc.*, to be payable when next entire portion due
- 16D. Remedies for recovering apportioned parts
- 16E. Exclusion of policies of assurance
- 16F. Exclusion by express stipulation
- 16G. Validation of past apportionments

PART VII

DISPOSAL AND DEVOLUTION OF PROPERTY

17. General restrictions on accumulation of income
18. Qualification of restrictions on accumulation
19. Restriction on accumulation for the purchase of land
20. Validation of appointments where objects are excluded or take illusory shares
21. Executor deemed to be trustee for person entitled to residue on intestacy
22. Charges on property of deceased to be paid primarily out of the property charged

*Civil Law*

5

Section

- 23. Moneys payable under policy of assurance not to form part of the estate of the insured
- 24. *Bona vacantia*
- 25. Saving

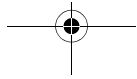
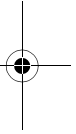
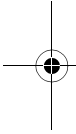
PART VIII

MISCELLANEOUS

- 26. Agreement by way of gaming or wagering to be null and void
- 27. Infants
- 28. No person chargeable with rent *bona fide* paid to holder under defective title
- 28A. Damages in respect of personal injury
- 29. Repeal

FIRST SCHEDULE

SECOND SCHEDULE



## LAWS OF MALAYSIA

### Act 67

### CIVIL LAW ACT 1956

An Act relating to the civil law to be administered in Malaysia.

*[Peninsular Malaysia—7 April 1956;  
Sabah and Sarawak—1 April 1972, P.U.(A)424/1971]*

#### PART I PRELIMINARY

##### **Short title**

1. This Act may be cited as the Civil Law Act 1956.

##### **Interpretation**

2. In this Act unless the context otherwise requires—

“Court” means any court in Malaysia of competent jurisdiction, and includes any Judge thereof whether sitting in court or in chambers;

“executor” means the executor or administrator of a deceased person, and includes, as regards any obligation, any person who takes possession of or intermeddles with the property of a deceased person;

“written law” in relation to any part of Malaysia means written law as defined in the law relating to interpretation in that part of Malaysia.

#### PART II GENERAL

##### **Application of U.K. common law, rules of equity and certain statutes**

3. (1) Save so far as other provision has been made or may hereafter be made by any written law in force in Malaysia, the Court shall—

- (a) in Peninsular Malaysia or any part thereof, apply the common law of England and the rules of equity as administered in England on the 7 April 1956;
- (b) in Sabah, apply the common law of England and the rules of equity, together with statutes of general application, as administered or in force in England on 1 December 1951;
- (c) in Sarawak, apply the common law of England and the rules of equity, together with statutes of general application, as administered or in force in England on 12 December 1949, subject however to subparagraph (3)(ii):

Provided always that the said common law, rules of equity and statutes of general application shall be applied so far only as the circumstances of the States of Malaysia and their respective inhabitants permit and subject to such qualifications as local circumstances render necessary.

(2) Subject to the express provisions of this Act or any other written law in force in Malaysia or any part thereof, in the event of conflict or variance between the common law and the rules of equity with reference to the same matter, the rules of equity shall prevail.

(3) Without prejudice to the generality of paragraphs (1)(b) and (c) and notwithstanding paragraph (1)(c)—

- (i) it is hereby declared that proceedings of a nature such as in England are taken on the Crown side of the Queen's Bench Division of the High Court by way of habeas corpus or for an order of mandamus, an order of prohibition, an order of certiorari or for an injunction restraining any person who acts in an office in which he is not entitled to act, shall be available in Sabah to the same extent and for the like objects and purposes as they are available in England;
- (ii) the Acts of Parliament of the United Kingdom applied to Sarawak under sections 3 and 4 of the Application of Laws Ordinance of Sarawak [*Cap. 2*] and specified in the Second Schedule of this Act shall, to the extent specified in the second column of the said Schedule, continue in force in Sarawak with such formal



alterations and amendments as may be necessary to make the same applicable to the circumstances of Sarawak and, in particular, subject to the modifications set out in the third column of the said Schedule.

#### **Administration of insolvent estates, and winding up of companies**

4. (1) In the administration by any Court of the assets of any deceased person whose estate proves to be insufficient for the payment in full of his debts and liabilities, and in the winding up of any company under any law from time to time in force relating to companies, whose assets prove to be insufficient for the payment of its debts and liabilities, and the costs of winding up, the same rules shall prevail and be observed, as to the respective rights of secured and unsecured creditors, and as to debts and liabilities provable, and as to the valuation of annuities and future and contingent liabilities respectively, as are in force for the time being, under the law of bankruptcy, with respect to the estates of persons adjudged bankrupt.

(2) All persons who, in any such case, would be entitled to prove for and receive dividends, out of the estate of any such deceased person, or out of the assets of any such company, may come in under the decree or order for the administration of the estate, or under the winding up of the company, and make such claims against the same as they may respectively be entitled to by virtue of this Act.

(3) Any absolute assignment, by writing, under the hand of the assignor, not purporting to be by way of charge only, of any debt or other legal chose in action, of which express notice in writing has been given to the debtor, trustee or other person from whom the assignor would have been entitled to receive or claim the debt or chose in action, shall be, and be deemed to have been, effectual in law, subject to all equities which would have been entitled to priority over the right of the assignee under the law as it existed in the State before the date of the coming into force of this Act, to pass and transfer the legal right to the debt or chose in action, from the date of the notice, and all legal and other remedies for the same, and the power to give a good discharge for the same, without the concurrence of the assignor.

**Application of English law in commercial matters**

5. (1) In all questions or issues which arise or which have to be decided in the States of Peninsular Malaysia other than Malacca and Penang with respect to the law of partnerships, corporations, banks and banking, principals and agents, carriers by air, land and sea, marine insurance, average, life and fire insurance, and with respect to mercantile law generally, the law to be administered shall be the same as would be administered in England in the like case at the date of the coming into force of this Act, if such question or issue had arisen or had to be decided in England, unless in any case other provision is or shall be made by any written law.

(2) In all questions or issues which arise or which have to be decided in the States of Malacca, Penang, Sabah and Sarawak with respect to the law concerning any of the matters referred to in subsection (1), the law to be administered shall be the same as would be administered in England in the like case at the corresponding period, if such question or issue had arisen or had to be decided in England, unless in any case other provision is or shall be made by any written law.

**Immovable property**

6. Nothing in this Part shall be taken to introduce into Malaysia or any of the States comprised therein any part of the law of England relating to the tenure or conveyance or assurance of or succession to any immovable property or any estate, right or interest therein.

## PART III

FATAL ACCIDENTS AND SURVIVAL  
OF CAUSES OF ACTION**Compensation to the family of a person for loss occasioned by his death**

7. (1) Whenever the death of a person is caused by wrongful act, neglect or default, and the act, neglect or default is such as would, if death had not ensued, have entitled the party injured to maintain an action and recover damages in respect thereof, the party 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, and although the death has been caused under such circumstances as amount in law to an offence under the Penal Code [*Act 574*].

(2) Every such action shall be for the benefit of the wife, husband, parent, and child, if any, of the person whose death has been so caused and shall be brought by and in the name of the executor of the person deceased.

(3) The damages which the party who shall be liable under subsection (1) to pay to the party for whom and for whose benefit the action is brought shall, subject to this section, be such as will compensate the party for whom and for whose benefit the action is brought for any loss of support suffered together with any reasonable expenses incurred as a result of the wrongful act, neglect or default of the party liable under subsection (1):

Provided that—

- (i) in assessing the damages there shall not be taken into account—
  - (a) any sum paid or payable on the death of the person deceased under any contract of assurance or insurance, whether made before or after the coming into force of this Act;
  - (b) any sum payable, as a result of the death, under any written law relating to employees' provident fund;
  - (c) any pension or gratuity, which has been or will or may be paid as a result of the death; or
  - (d) any sum which has been or will or may be paid under any written law relating to the payment of any benefit or compensation whatsoever, in respect of the death;
- (ii) damages may be awarded in respect of the funeral expenses of the person deceased if such expenses have been incurred by the party for whose benefit the action is brought;
- (iii) no damages shall be awarded to a parent on the ground only of his having been deprived of the services of a child; and no damages shall be awarded to a husband

on the ground only of his having been deprived of the services or society of his wife; and

- (iv) in assessing the loss of earnings in respect of any period after the death of a person where such earnings provide for or contribute to the damages under this section the Court shall—
- (a) take into account that where the person deceased has attained the age of fifty five years at the time of his death, his loss of earnings for any period after his death shall not be taken into consideration; and in the case of any other person deceased, his loss of earnings for any period after his death shall be taken into consideration if it is proved or admitted that the person deceased was in good health but for the injury that caused his death and was receiving earnings by his own labour or other gainful activity prior to his death;
  - (b) take into account only the amount relating to the earnings as aforesaid and the Court shall not take into account any prospect of the earnings as aforesaid being increased at any period after the person's death;
  - (c) take into account any diminution of any such amount as aforesaid by such sum as is proved or admitted to be the living expenses of the person deceased at the time of his death;
  - (d) take into account that in the case of a person who was of the age of thirty years and below at the time of his death, the number of years' purchase shall be 16; and in the case of any other person who was of the age range extending between thirty one years and fifty four years at the time of his death, the number of years' purchase shall be calculated by using the figure 55, minus the age of the person at the time of death and dividing the remainder by the figure 2.

(3A) An action under this section may consist of or include a claim for damages for bereavement and, subject to subsection (3D), the sum to be awarded as damages under this subsection shall be ten thousand ringgit.

(3B) A claim for damages for bereavement shall only be for the benefit—

- (a) of the spouse of the person deceased; and
- (b) where the person deceased was a minor and never married, of his parents.

(3C) Where there is a claim for damages under paragraph (3B)(b) for the benefit of the parents of the person deceased, the sum awarded shall be divided equally between them subject to any deduction likely to be made in respect of all costs and expenses including costs not recovered from the defendant.

(3D) The Yang di-Pertuan Agong may from time to time by order published in the *Gazette* vary the sum specified in subsection (3A).

(3E) An order made under subsection (3D) shall be published in the *Gazette* and as soon as possible thereafter, shall be laid before the Dewan Rakyat; and if the Dewan Rakyat passes a resolution annulling the order, it shall be void but without prejudice to the validity of anything previously done thereunder or to the making of a new order as from the date of notification in the *Gazette* of the passing of the resolution.

(4) The amount, other than the amount awarded under proviso (iii) to subsection (3) and the amount recovered under paragraph (3B)(b), so recovered after deducting all costs and expenses, including the costs not recovered from the defendant, shall be divided amongst the before-mentioned parties, or any of them in such shares as the Court by its judgment or decree directs.

(5) Not more than one action shall be brought for and in respect of the same subject matter of complaint, and every such action shall be brought within three years after the death of the person deceased.

(6) In any such action the executor of the deceased may insert a claim for and recover any pecuniary loss to the estate of the deceased occasioned by the wrongful act, neglect, or default, which sum when recovered shall be deemed part of the assets of the estate of the deceased.

(7) The plaint or writ or summons in any such action shall give full particulars of the person or persons for whom or on

whose behalf the action is brought, and of the nature of the claim in respect of which damages are sought to be recovered.

(8) If there is no executor of the person deceased or there being an executor no action as in this section mentioned has, within six calendar months after the death of the person deceased, been brought by the executor, the action may be brought by all or any of the persons, if more than one, for whose benefit the action would have been brought if it had been brought by the executor, and every action so to be brought shall be for the benefit of the same person or persons and shall be subject to the same procedure as nearly as may be as if it was brought by the executor.

(9) It shall be sufficient for any defendant in any action brought under this section to pay any money, he is advised to pay into Court as a compensation, in one sum to all persons entitled under this section for his wrongful act, neglect or default without specifying the shares into which it is to be divided.

(10) If the said sum is not accepted and an issue is taken by the plaintiff as to its sufficiency and the Court thinks the same sufficient, the defendant shall be entitled to judgment upon that issue.

(11) In this section unless the context otherwise requires—

“child” includes son, daughter, grandson, granddaughter, stepson and stepdaughter;

“parent” includes father, mother, grandfather and grandmother;

“pension” includes a return of contributions and any payment of a lump sum in respect of a person’s employment:

Provided that in deducing any relationship referred to in this subsection any illegitimate person or any person who has been adopted, or whose adoption has been registered, in accordance with any written law shall be treated as being or as having been the legitimate offspring of his mother and reputed father or, as the case may be, of his adopters.

### **Effect of death on certain causes of action**

**8.** (1) Subject to this section, on 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:

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 any 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 person, the damages recoverable for the benefit of the estate of that person—

- (a) shall not include any exemplary damages, any damages for bereavement made under subsection 7(3A), any damages for loss of expectation of life and any damages for loss of earnings in respect of any period after that person's death;
- (b) in the case of a breach of promise to marry shall be limited to such damage, if any, to the estate of that person as flows from the breach of promise to marry; and
- (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 proceedings against him in respect of that cause of action either—

- (a) were pending at the date of his death; or
- (b) are taken not later than six months after his personal representative took out representation.

(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 was suffered, there shall be deemed, for the purposes of this section, 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) The rights conferred by this section for the benefit of the estate of deceased persons shall be in addition to and not in

derogation of any rights conferred on the dependants of deceased persons by section 7 and so much of this section as relates to causes of action against the estates of deceased persons shall apply in relation to causes of action under the said section as it applies in relation to other causes of action not expressly excepted from the operation of subsection (1).

(6) In the event of the insolvency of an estate against which proceedings are maintainable by virtue of this section, any liability in respect of the cause of action in respect of which the proceedings are maintainable shall be deemed to be a debt provable in the administration of the estate, notwithstanding that it is a demand in the nature of unliquidated damages arising otherwise than by a contract, promise or breach of trust.

#### PART IV

#### TORTFEASORS AND AWARD OF INTEREST

9. (*Deleted by Ordinance No. 36 of 1957*).

#### **Proceedings against, and contribution between, joint and several tortfeasors**

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

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



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

(2) In any proceedings for contribution under this section the amount of the contribution recoverable from any person shall be such as may be found by the Court to be just and equitable having regard to the extent of that person's responsibility for the damage, and the Court shall have power to exempt any person from liability to make contribution, or to direct that the contribution to be recovered from any person shall amount to a complete indemnity.

(3) For the purpose of this section—

- (a) the expressions “parent” and “child” have the same meanings as they have for the purposes of section 7; and
- (b) the reference in paragraph (1)(b) to “the judgment first given” shall, in a case where that judgment is reversed on appeal, be construed as a reference to the judgment first given which is not so reversed and, in a case where a judgment is varied on appeal, be construed as a reference to that judgment as so varied.

(4) Nothing in this section shall—

- (a) affect any criminal proceedings against any person in respect of any wrongful act; or
- (b) render enforceable any agreement for indemnity which would not have been enforceable if this section had not been enacted.

### **Power of Courts to award interest on debts and damages**

**11.** In any proceedings tried in any Court for the recovery of any debt or damages, the Court may, if it thinks fit, order that there shall be included in the sum for which judgment is given interest

as such rate as it thinks fit on the whole or any part of the debt or damages for the whole or any part of the period between the date when the cause of action arose and the date of the judgment:

Provided that nothing in this section—

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

PART V

CONTRIBUTORY NEGLIGENCE AND  
COMMON EMPLOYMENT

**Apportionment of liability in case of contributory negligence**

**12.** (1) Where any person suffers damage as the result partly of his own fault and partly of the fault of any other person, a claim in respect of that damage shall not be defeated by reason of the fault of the person suffering the damage, but the damages recoverable in respect thereof shall be reduced to such extent as the Court thinks just and equitable having regard to the claimant's share in the responsibility for the damage:

Provided that—

- (a) this subsection shall not operate to defeat any defence arising under a contract; and
- (b) where any contract or written law providing for the limitation of liability is applicable to the claim the amount of damages recoverable by the claimant by virtue of this subsection shall not exceed the maximum limit so applicable.

(2) Where damages are recoverable by any person by virtue of the foregoing subsection subject to such reduction as is therein mentioned, the Court shall find and record the total damages which would have been recoverable if the claimant had not been at fault.

(3) Section 10 shall apply in any case where two or more persons are liable or would, if they had all been sued, be liable by virtue of subsection (1) in respect of the damage suffered by any person.

(4) Where any person dies as the result partly of his own fault and partly of the fault of any other person or persons, and accordingly if an action were brought for the benefit of the estate under section 8, the damages recoverable would be reduced under subsection (1), any damages recoverable in any action brought for the benefit of the dependants of that person under section 7 or for the benefit of the husband of that person under proviso (iii) of subsection 7(3) or of the spouse or parents under subsection 7(3B) shall be reduced to a proportionate extent.

(5) Where in any case to which subsection (1) applies, one of the persons at fault avoids liability to any other such person or his personal representative by pleading the Limitation Act 1953 [*Act 254*], or any other written law limiting the time within which proceedings may be taken, he shall not be entitled to recover any damages or contributions from that other person or representative by virtue of the said subsection.

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

### **Saving for Merchant Shipping Ordinance 1952**

**13.** (1) Section 12 shall not apply to any claims to which section 513 of the Merchant Shipping Ordinance 1952 [*Ord. No. 70 of 1952*], or the corresponding provisions of any other law apply and those provisions shall have effect as if this Act had not been passed.

(2) The provisions mentioned in subsection (1) shall not apply to any case where the acts or omissions giving rise to the claim occurred before the coming into force of this Act.

### **Common employment**

**14.** (1) It shall not be a defence to an employer who is sued in respect of personal injuries caused by the negligence of a person

employed by him, that that person was at the time the injuries were caused in common employment with the person injured.

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

(3) For the purpose of this section “personal injury” includes any disease and any impairment of a person’s physical or mental condition, and the expression “injured” shall be construed accordingly.

#### PART VI

#### FRUSTRATED CONTRACTS

#### **Adjustment of rights and liabilities of parties to frustrated contracts**

**15.** (1) Where a contract has become impossible of performance or been otherwise frustrated, and the parties thereto have for that reason been discharged from the further performance of the contract, subsections (2) to (6) shall, subject to section 16, have effect in relation thereto.

(2) All sums paid or payable to any party in pursuance of the contract before the time when the parties were so discharged (in this Act referred to as “the time of discharge”) shall, in the case of sums so paid, be recoverable from him as money received by him for the use of the party by whom the sums were paid, and, in the case of sums so payable, cease to be so payable:

Provided that, if the party to whom the sums were so paid or payable incurred expenses before the time of discharge in, or for the purpose of, the performance of the contract, the Court may, if it considers it just to do so having regard to all the circumstances of the case, allow him to retain or, as the case may be, recover the whole or any part of the sums so paid or payable, not being an amount in excess of the expenses so incurred.

(3) Where any party to the contract has, by reason of anything done by any other party thereto in, or for the purpose of, the performance of the contract, obtained a valuable benefit (other than a payment of money to which subsection (2) applies) before the time of discharge, there shall be recoverable from him by the said other party such sum (if any), not exceeding the value of the said benefit to the party obtaining it, as the Court considers just, having regard to all the circumstances of the case and, in particular—

- (a) the amount of any expenses incurred before the time of discharge by the party benefited in, or for the purpose of, the performance of the contract, including any sums paid or payable by him to any other party in pursuance of the contract and retained or recoverable by that party under subsection (2); and
- (b) the effect, in relation to the said benefit, of the circumstances giving rise to the frustration of the contract.

(4) In estimating, for the purposes of subsections (1) to (3), the amount of any expenses incurred by any party to the contract, the Court may, without prejudice to the generality of the said subsections, include such sum as appears to be reasonable in respect of overhead expenses and in respect of any work or services performed personally by the said party.

(5) In considering whether any sum ought to be recovered or retained under subsections (1) to (4) by any party to the contract the Court shall not take into account any sums which have, by reason of the circumstances giving rise to the frustration of the contract, become payable to that party under any contract of insurance unless there was an obligation to insure imposed by an express term of the frustrated contract or by or under any enactment.

(6) Where any person has assumed obligations under the contract in consideration of the conferring of a benefit by any other party to the contract upon any other person, whether a party to the contract or not, the Court may, if in all the circumstances of the case it considers it just to do so, treat for the purposes of subsection (3) any benefit so conferred as a benefit obtained by the person who has assumed the obligations as aforesaid.

**Provisions as to application of section 15**

**16.** (1) Section 15 shall apply to contracts whether made before or after the coming into force of this Act.

(2) Section 15 shall apply to contracts to which the Government is a party in like manner as to contracts between subjects.

(3) Where any contract to which section 15 applies contains any provisions which, upon the true construction of the contract, is intended to have effect in the event of circumstances arising which operate, or would but for the said provision operate, to frustrate the contract, or is intended to have effect whether those circumstances arise or not, the Court shall give effect to the said provision and shall only give effect to section 15 to such extent, if any, as appears to the Court to be consistent with the said provision.

(4) Where it appears to the Court that a part of any contract to which section 15 applies can properly be severed from the remainder of the contract, being a part wholly performed before the time of discharge, or so performed except for the payment in respect of that part of the contract of sums which are or can be ascertained under the contract, the Court shall treat that part of the contract as if it were a separate contract and had not been frustrated and shall treat section 15 as only applicable to the remainder of that contract.

(5) Section 15 shall not apply—

- (a) to any charterparty, except a time charterparty or a charterparty by way of demise, or to any contract (other than a charterparty) or the corresponding provisions of any written law for the carriage of goods by sea;
- (b) to any contract of insurance, save as is provided by subsection (5) thereof; or
- (c) to any contract to which section 7 of the Sale of Goods Act 1893 of the United Kingdom [*56 and 57 Vict.c.71*] (which avoids contracts for the sale of specific goods which perish before the risk has passed to the buyer) or the corresponding provisions of any written law applies, or to any other contract for the sale, or for the

sale and delivery, of specific goods, where the contract is frustrated by reason of the fact that the goods have perished.

PART VIA  
APPORTIONMENT

**Interpretation**

**16A.** In this Part, unless the context otherwise requires—

“annuities” includes salaries and pensions;

“dividends” includes (besides dividends strictly so called) all payments made by the name of dividend, bonus, or otherwise out of the revenue of trading or other public companies, divisible between all or any of the members of the respective companies, whether the payments are usually made or declared at any fixed times or otherwise; and all such divisible revenue shall, for the purposes of this Part, be deemed to have accrued by equal daily increment during and within the period for or in respect of which the payment of the same revenue is declared or expressed to be made, but the said word “dividends” does not include payments in the nature of a return or reimbursement of capital;

“rents” includes all periodical payments or renderings in lieu of or in the nature of rent but does not include rent payable to the State Authority (that is to say, payments of the nature included in the definition of “rent” in the National Land Code [*Act 56 of 1965*]) in respect of alienated land (as so defined).

**Rents, etc., to accrue from day to day**

**16B.** All rents, annuities, dividends, and other periodical payments in the nature of income (whether reserved or made payable under an instrument in writing or otherwise) shall, like interest on money lent, be considered as accruing from day to day, and shall be apportionable in respect of time accordingly.

**Apportioned part of rent, etc., to be payable when the next entire portion due**

**16C.** The apportioned part of any such rent, annuity, dividend, or other payment shall be payable or recoverable, in the case of a

continuing rent, annuity, or other such payment, when the entire portion of which such apportioned part forms part becomes due and payable, and not before; and in the case of a rent, annuity, or other such payment determined by re-entry, death, or otherwise, when the next entire portion of the same would have been payable if the same had not so determined, and not before.

### **Remedies for recovering apportioned parts**

**16D.** All persons and their respective executors, administrators, and assigns, and also the executors, administrators, and assigns respectively of persons whose interest determine with their own deaths, shall have such or the same remedies for recovering such apportioned parts as aforesaid when payable (allowing proportionate parts of all just allowances) as they respectively would have had for recovering such entire portions as aforesaid if entitled thereto respectively:

Provided that persons liable to pay rents reserved out of or charged on lands or tenements, and the same lands or tenements, shall not be resorted to for any such apportioned part forming part of an entire or continuing rent as aforesaid specifically, but the entire or continuing rent, including such apportioned part, shall be recovered and received by the person who, if the rent had not been apportionable under this Part or otherwise, would have been entitled to such entire or continuing rent, and such apportioned part shall be recoverable from the person by the executors or other parties entitled under this Part to the same by suit.

### **Exclusion of policies of assurance**

**16E.** Nothing in this Part shall render apportionable any annual sums made payable in policies of assurance of any description.

### **Exclusion by express stipulation**

**16F.** This Part shall not extend to any case in which it may be expressly stipulated that no apportionment shall take place.

### **Validation of past apportionments**

**16G.** No payment, composition, discharge or settlement of account made or given prior to 28 December 1928, in Malacca or



Penang, or to the commencement of this Part in other States shall be deemed invalid by reason only of the fact that it was made or given in pursuance of the apportionment of a periodical payment not lawfully apportionable, if the apportionment would have been lawful, had it been made after the aforesaid date and under this Part.

## PART VII

## DISPOSAL AND DEVOLUTION OF PROPERTY

**General restrictions on accumulation of income**

17. (1) No person may by any instrument or otherwise settle or dispose of any property in such manner that the income thereof shall, save as hereinafter mentioned, be wholly or partially accumulated for any longer period than one of the following:

- (a) the life of the grantor or settlor;
- (b) a term of eighteen years from the death of the grantor, or settlor;
- (c) the duration of the minority or respective minorities of any person living or *en ventre sa mere* at the death of the grantor or settlor; or
- (d) the duration of the minority or respective minorities only of any person who under the limitations of the instrument directing the accumulations would, for the time being, if of full age, be entitled to income directed to be accumulated.

(2) In every case where any accumulation is directed otherwise than as in subsection (1), the direction shall (save as hereinafter mentioned) be void; and the income of the property directed to be accumulated shall, so long as the same is directed to be accumulated contrary to this section, go to and be received by the person who would have been entitled thereto if the accumulation had not been directed.

(3) This section does not extend to any provision—

- (a) for payment of the debts of any grantor, settlor or other person; or
- (b) for raising portions for—

- (i) any child, children or remoter issue of any grantor or settlor; or
- (ii) any child, children or remoter issue of a person taking any interest under any settlement or other disposition directing the accumulations or to whom any interest is thereby limited,

and accordingly such provisions may be made as if no statutory restrictions on accumulation of income had been imposed.

### **Qualification of restrictions on accumulation**

**18.** Where accumulations of surplus income are made during a minority under any statutory power or under the general law, the period for which the accumulations are made is not (whether the trust was created or the accumulations were made before or after the coming into force of this Act) to be taken into account in determining the periods for which accumulations are permitted to be made by section 17, and accordingly an express trust for accumulation for any permitted period shall not be deemed to have been invalidated or become invalid, by reason of accumulations also having been made as aforesaid during the minority.

### **Restriction on accumulation for the purchase of land**

**19.** No person may settle or dispose of any property in such a manner that the income thereof shall be wholly or partially accumulated for the purchase of land only for any longer period than the duration of the minority or respective minorities of any person who, under the limitations of the instrument directing the accumulation, would for the time being, if he had attained his majority, be entitled to the income so directed to be accumulated.

### **Validation of appointments where objects are excluded or take illusory shares**

**20.** (1) No appointment made in exercise of any power to appoint any property among two or more objects shall be invalid on the ground that—

- (a) an unsubstantial, illusory, or nominal share only is appointed to or left unappointed to devolve upon any one or more of the objects of the power; or

- (b) any object of the power is thereby altogether excluded,

but every such appointment shall be valid notwithstanding that any one or more of the objects is not thereby, or in default of appointment, to take any share in the property.

(2) This section shall not affect any provision in the instrument creating the power which declares the amount of any share from which any object of the power is not to be excluded.

(3) This section shall apply to appointments made before or after the coming into force of this Act.

**Executor deemed to be trustee for person entitled to residue on intestacy**

21. When any person dies or has died, having by his will, appointed any person to be his executor, the executor shall be deemed to be a trustee for the person, if any, who would be entitled to the estate in case the person died intestate in respect of any residue not expressly disposed of, unless it appears by the will that the person so appointed executor was intended to take the residue beneficially.

**Charges on property of deceased to be paid primarily out of the property charged**

22. (1) Where a person dies possessed of, or, entitled to, or under a general power of appointment by his will disposes of, an interest in property, which at the time of his death is charged with the payment of money, whether by way of mortgage, charge or otherwise (including a lien for unpaid purchase money), and the deceased has not by will, deed or other document signified a contrary or other intention, the interest so charged, shall as between the different persons claiming through the deceased, be primarily liable for the payment of the charge; and every part of the said interest, according to its value, shall bear a proportionate part of the charge on the whole thereof.

(2) Such contrary or other intention shall not be deemed to be signified—

- (a) by a general direction for the payment of debts or of all the debts of the testator out of his personal estate,

or his residuary real and personal estate, or his residuary real estate; or

- (b) by a charge of debts upon any such estate, unless the intention is further signified by words expressly or by necessary implication referring to all or some part of the charge.

(3) Nothing in this section affects the right of a person entitled to the charge to obtain payment or satisfaction thereof either out of the other assets of the deceased or otherwise.

**Moneys payable under policy of assurance not to form part of the estate of the insured**

**23.** (1) A policy of assurance effected by any man on his own life and expressed to be for the benefit of his wife or of his children or of his wife and children or any of them, or by any woman on her own life and expressed to be for the benefit of her husband or of her children or of her husband and children or any of them, shall create a trust in favour of the objects therein named, and the moneys payable under any such policy shall not so long as any object of the trust remains unperformed form part of the estate of the insured or be subject to his or her debts.

(2) If it is proved that the policy was effected and the premiums paid with intent to defraud the creditors of the insured, they shall be entitled to receive out of the moneys payable under the policy a sum equal to the premiums so paid.

(3) The insured may by the policy or by any memorandum under his or her hand appoint a trustee or trustees of the moneys payable under the policy, and from time to time appoint a new trustee or new trustees thereof, and may make provision for the appointment of a new trustee or new trustees thereof and for the investment of the moneys payable under any such policy.

(4) In default of any such appointment of a trustee the policy immediately on its being effected shall vest in the insured and his or her legal personal representatives in trust for the purposes aforesaid.

(5) If at the time of the death of the insured or at any time afterwards there is no trustee, or it is expedient to appoint a new

trustee or new trustees, a trustee or trustees or a new trustee or new trustees may be appointed by the High Court.

(6) The receipt of a trustee or trustees duly appointed, or in default of any such appointment or in default of notice to the insurance office the receipt of the legal personal representative of the insured, shall be a discharge to the office for the sum secured by the policy or for the value thereof in whole or in part.

***Bona vacantia***

**24.** When a right to the personal estate of any person who dies intestate without next of kin has accrued to the Government, the personal estate or the proceeds thereof shall form part of the Consolidated Fund and shall be appropriated as part of the Fund to such public purposes as the Yang di-Pertuan Agong from time to time thinks proper and directs:

Provided that the Yang di-Pertuan Agong may by warrant order the transfer of the whole or any part of such personal estate or the proceeds thereof to any person who shall establish to the satisfaction of the Yang di-Pertuan Agong any equitable or moral claim thereto.

**Saving**

**25.** Nothing in this Part shall affect the disposal of any property according to Muslim law or, in Sabah and Sarawak, native law and custom.

PART VIII  
MISCELLANEOUS

**Agreement by way of gaming or wagering to be null and void**

**26.** (1) All contracts or agreements, whether by parol or in writing, by way of gaming or wagering shall be null and void.

(2) No action shall be brought or maintained in any Court for recovering any sum of money or valuable thing alleged to be won upon any wager or which has been deposited in the hands of any person to abide the event on which any wager has been made.

(3) Subsections (1) and (2) shall not be deemed to apply to any subscription or contribution, or agreement to subscribe or contribute, for or toward any plate, prize, or sum of money to be awarded to the winner of any lawful game, sport, pastime or exercise.

(4) Any promise, express or implied, to pay any person any sum of money paid by him under or in respect of any contract or agreement rendered null and void by subsections (1) and (2), or to pay any sum of money by way of commission, fee, reward or otherwise in respect of any such contract or of any services in relation thereto or in connection therewith, shall be null and void, and no action shall be brought or maintained to recover any such sum of money.

### Infants

27. In all cases relating to the custody and control of infants the law to be administered shall be the same as would have been administered in like cases in England at the date of the coming into force of this Act, regard being had to the religion and customs of the parties concerned, unless other provision is or shall be made by any written law.

### No person chargeable with rent *bona fide* paid to holder under defective title

28. (1) No person shall be chargeable with any rents or profits of any immovable property which he has *bona fide* paid over to any person of whom he *bona fide* held the same notwithstanding it afterwards appears that the person to whom the payment was made had no right to receive such rents or profits.

(2) If any person erects any building or makes an improvement upon any land held by him in the *bona fide* belief that he had an estate in fee simple or other absolute estate, and that person, his executor or assign, or his under-tenant is evicted from the land by any person having a better title, the person who erected the building or made the improvement, his executor or assign shall be entitled either to have the value of the building or improvement so erected or made while the land was held by him and in that belief estimated and paid or secured to him or at the option of the person causing the eviction to purchase the interest

of that person in the land at the value thereof but not taking into account the value of the building or improvement.

(3) The amount to be paid or secured in respect of the building or improvement shall be the estimated value of the same at the time of the eviction.

(4) (a) Every tenant holding over after the determination of his tenancy shall be chargeable, at the option of his landlord, with double the amount of his rent until possession is given up by him or with double the value during the period of detention of the land or premises so detained, whether notice to that effect has been given or not.

(b) Paragraph (a) shall have effect in Sabah subject to section 26 of the Rent Control (Business Premises) Enactment 1965 of Sabah [*En. 1 of 1966*] and in Sarawak subject to section 19 of the Rent Control Ordinance of Sarawak [*Cap. 86*].

(5) When any writ or summons issued by a landlord against a tenant for the recovery of immovable property is served on or comes to the knowledge of any subtenant of the plaintiff's immediate tenant, the subtenant being an occupier of the whole or any part of the premises sought to be recovered, he shall forthwith give notice thereof to his immediate landlord, under penalty of forfeiting three years' rack rent of the premises held by the subtenant to the person of whom he holds, to be recovered by that person by action in any Court having jurisdiction.

### **Damages in respect of personal injury**

**28A.** (1) In assessing damages recoverable in respect of personal injury which does not result in death, there shall not be taken into account—

- (a) any sum paid or payable in respect of the personal injury under any contract of assurance or insurance, whether made before or after the coming into force of this Act;
- (b) any pension or gratuity, which has been or will or may be paid as a result of the personal injury; or
- (c) any sum which has been or will or may be paid under any written law relating to the payment of any benefit or compensation whatsoever in respect of the personal injury.

- (2) In assessing damages under this section—
- (a) no damages shall be recoverable in respect of any loss of expectation of life caused to the plaintiff by the injury;
  - (b) if the plaintiff's expectation of life has been reduced by the injury, the Court, in assessing damages in respect of pain and suffering caused by the injury, shall take into account any suffering caused or likely to be caused by awareness that his expectation of life has been so reduced;
  - (c) in awarding damages for loss of future earnings the Court shall take into account—
    - (i) that in the case of a plaintiff who has attained the age of fifty-five years or above at the time when he was injured, no damages for such loss shall be awarded; and in any other case, damages for such loss shall not be awarded unless it is proved or admitted that the plaintiff was in good health but for the injury and was receiving earnings by his own labour or other gainful activity before he was injured;
    - (ii) only the amount relating to his earnings as aforesaid at the time when he was injured and the Court shall not take into account any prospect of the earnings as aforesaid being increased at some time in the future;
    - (iii) any diminution of any such amount as aforesaid by such sum as is proved or admitted to be the living expenses of the plaintiff at the time when he was injured;
  - (d) in assessing damages for loss of future earnings the Court shall take into account that—
    - (i) in the case of a person who was of the age of thirty years or below at the time when he was injured, the number of years' purchase shall be 16; and
    - (ii) in the case of any other person who was of the age range extending between thirty-one years and fifty-four years at the time when he was injured, the number of years' purchase shall be calculated by using the figure 55, minus the



age of the person at the time when he was injured and dividing the remainder by the figure 2.

## Repeal

29. The Ordinances and Enactments set out in the First Schedule to this Act are hereby repealed to the extent specified in the third column of that Schedule.

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### FIRST SCHEDULE

[Section 29]

#### REPEAL

S.S. Cap. 42	...	...	Civil Law Ordinance	...	...	The whole
S.S. Cap. 118	...	...	Conveyancing and Law of Property Ordinance			S. 73
F.M.S. No. 3 of 1937	...	...	Civil Law Enactment	...	...	The whole
F.M.S. Cap. 8	...	...	Probate and Administration Enactment			S. 93(ii)
F.M.S. Cap. 19	...	...	Executors (Powers) and Fatal Accidents Enactment			The whole
Johore Enactment No. 22			Probate and Administration Enactment			S. 82
Johore Enactment No. 99			Fatal Accidents Enactment	...		The whole
Kelantan Enactment No. 15 of 1931			Executors (Powers) and Fatal Accidents Enactment			The whole
Kedah Enactment No. 2 of 1360			Fatal Accidents Enactment 1360			The whole
Trengganu Enactment No. 22 of 1356			Probate and Administration Enactment			S. 44(ii)
F. of M. No. 49 of 1951			Civil Law (Extension) Ordinance 1949			The whole

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## SECOND SCHEDULE

[Subparagraph 3(3)(ii)]

ACTS OF PARLIAMENT OF THE UNITED KINGDOM WHICH  
CONTINUE IN FORCE IN SARAWAK

	Short title	Extent to which Act continues in force	Modifications
<i>Swk. Vol. VI page 1455 (8 and 9 Geo. 6 c. 28)</i>	Law Reform (Contributory Negligence) Act 1945	Subsection 1(7), sections 2, 3, 4 and 7	In sections 2 and 4, the references to the Workmen's Compensation Acts 1925 to 1943 and to sections thereof shall be read as references to the Workmen's Compensation Ordinance Cap. 80 of Sarawak and to the corresponding sections thereof
<i>Swk. Vol. VI page 1459 (2 and 3 Eliz. 2 c. 34)</i>	Law Reform (Enforcement of Contracts) Act 1954	The whole	None
<i>Swk. Vol. VI page 1461 (12, 13 and 14 Geo. 6 c. 100)</i>	Law Reform (Miscellaneous Provisions) Act 1949	Subsections 4(1), 7(1) and (2)	None
<i>6, Edw. 7 c. 41</i>	Marine Insurance Act 1906	The whole except section 91	None

*Civil Law*

	Short title	Extent to which Act continues in force	Modifications
<i>21, Geo. 5 c. 2</i>	Marine Insurance (Gambling Policies) Act 1909	The whole	In subsection 1(3) the reference to the consent in England of the Attorney General, in Scotland of the Lord Advocate, and in Ireland of the Attorney General for Ireland shall be construed as referring to the consent of the Public Prosecutor, Malaysia.

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**LAWS OF MALAYSIA****Act 67****CIVIL LAW ACT 1956****LIST OF AMENDMENTS**

Amending law	Short title	In force from
Ord. 36/1957	Married Women Ordinance 1957	15-08-1957
L.N. 332/1958	Federal Constitution (Modification of Laws) (Ordinances and Proclamations) Order 1958	13-11-1958
Act 30/1966	Civil Law (Amendment) Act 1966	14-04-1966
P.U. (A)424/1971	Civil Law Ordinance (Extension) Order 1971	01-04-1972
P.U. (A)16/1975	Revision of Laws (Civil Law Act) Order 1975	01-04-1972
Act A308	Civil Law (Amendment) Act 1975	30-05-1975
Act A602	Civil Law (Amendment) Act 1984	01-10-1984

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**LAWS OF MALAYSIA****Act 67****CIVIL LAW ACT 1956****LIST OF SECTIONS AMENDED**

Section	Amending authority	In force from
3	L.N. 332/1958	13-11-1958
5	L.N. 332/1958	13-11-1958
6	L.N. 332/1958	13-11-1958
7	Act 30/1966	14-04-1966
	Act A308	30-05-1975
	Act A602	01-10-1984
8	Act A602	01-10-1984
9	Ord. 36/1957	15-08-1957
12	Act A602	01-10-1984
16A	Act 30/1966	14-04-1966
16B	Act 30/1966	14-04-1966
16C	Act 30/1966	14-04-1966
16D	Act 30/1966	14-04-1966
16E	Act 30/1966	14-04-1966
16F	Act 30/1966	14-04-1966
16G	Act 30/1966	14-04-1966
23	P.U.(A)16/1975	01-04-1972

Section	Amending authority	In force from
24	L.N. 332/1958	13-11-1958
28A	Act A308	30-05-1975
	Act A602	01-10-1984

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