

Queensland



**LAW REFORM
(TORTFEASORS
CONTRIBUTION,
CONTRIBUTORY
NEGLIGENCE, AND
DIVISION OF CHATTELS)
ACT 1952**

**Reprinted as in force on 9 December 1994
(includes amendments up to Act No. 85 of 1994)**

Reprint No. 1

**This reprint is prepared by
the Office of the Queensland Parliamentary Counsel
Warning—This reprint is not an authorised copy**

Information about this reprint

This Act is reprinted as at 9 December 1994. The reprint—

- shows the law as amended by all amendments that commenced on or before that day
- incorporates all necessary consequential amendments, whether of punctuation, numbering or another kind.

The reprint includes a reference to the law by which each amendment was made—see List of legislation and List of annotations in Endnotes.

Minor editorial changes allowed under the provisions of the Reprints Act 1992 mentioned in the following list have also been made to—

- update citations and references (Pt 4, Div 2)
- express gender specific provisions in a way consistent with current legislative drafting practice (s 24)
- use expressions consistent with current legislative drafting practice (s 29)
- relocate marginal or cite notes (s 34)
- use aspects of format and printing style consistent with current legislative drafting practice (s 35)
- omit provisions that are no longer required (ss 36 and 39)
- omit unnecessary referential words (s 41)
- omit the enacting words (s 42A)
- number and renumber certain provisions and references (s 43).

Also see Endnotes for information about—

- **when provisions commenced**
- **provisions that have not commenced and are not incorporated in the reprint**
- **editorial changes made in the reprint, including—**
 - **Table of changed citations and remade laws**
 - **Table of obsolete and redundant provisions**
 - **Table of renumbered provisions.**

Queensland



LAW REFORM (TORTFEASORS CONTRIBUTION, CONTRIBUTORY NEGLIGENCE, AND DIVISION OF CHATTELS) ACT 1952

TABLE OF PROVISIONS

Section		Page
	PART 1—PRELIMINARY	
1	Short title	3
2	Commencement of Act	3
4	Interpretation	3
	PART 2—PROCEEDINGS AGAINST, AND CONTRIBUTION BETWEEN, TORTFEASORS	
5	Proceedings against, and contribution between, joint and several tortfeasors	4
6	Amount of contribution and power of the court	5
8	Construction for the purposes of Pt 2	5
9	Savings	5
	PART 3—CONTRIBUTORY NEGLIGENCE	
10	Apportionment of liability in case of contributory negligence	6
11	Provisions as to workers and employers	7
12	Saving	8
	ENDNOTES	
1	Index to Endnotes	9
2	Date to which amendments incorporated	9
3	List of legislation	9
4	List of annotations	10

*Law Reform (Tortfeasors Contribution,
Contributory Negligence, and Division of
Chattels) Act 1952*

5	Table of changed citations and remade laws	11
6	Table of obsolete and redundant provisions	11
7	Table of renumbered provisions	11
8	Transitional and savings provisions	11

*Law Reform (Tortfeasors Contribution,
Contributory Negligence, and Division of
Chattels) Act 1952*

**LAW REFORM (TORTFEASORS
CONTRIBUTION, CONTRIBUTORY
NEGLIGENCE, AND DIVISION OF
CHATTELS) ACT 1952**

[as amended by all amendments that commenced on or before 9 December 1994]

An Act to amend the law relating to proceedings against, and contribution between, tortfeasors, to amend the law relating to contributory negligence, and to amend the law relating to the division of chattels belonging to persons jointly or in undivided shares, and for purposes connected therewith

PART 1—PRELIMINARY

Short title

1. This Act may be cited as the *Law Reform (Tortfeasors Contribution, Contributory Negligence, and Division of Chattels) Act 1952*.

Commencement of Act

2. This Act shall come into operation on a date to be fixed by the Governor in Council by proclamation published in the Gazette, which date is herein referred to as the commencement of this Act.

Interpretation

4. In this Act—

“**court**” means, in relation to any claim, the court or arbitrator by or before

*Law Reform (Tortfeasors Contribution,
Contributory Negligence, and Division of
Chattels) Act 1952*

whom the claim falls to be determined.

“damage” includes loss of life and personal injury.

“dependant” means any person for whose benefit an action could be brought under section 12 of the *Common Law Practice Act 1867*.

“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.

PART 2—PROCEEDINGS AGAINST, AND CONTRIBUTION BETWEEN, TORTFEASORS

Proceedings against, and contribution between, joint and several tortfeasors

5. 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 1 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 spouse, 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

*Law Reform (Tortfeasors Contribution,
Contributory Negligence, and Division of
Chattels) Act 1952*

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 the person in respect of the liability in respect of which the contribution is sought.

Amount of contribution and power of the court

6. In any proceedings for contribution under this Part 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.

Construction for the purposes of Pt 2

8. For the purposes of this Part—

- (a) the expressions “**spouse**”, “**parent**” and “**child**” shall have the same meanings as they have for the purposes of the *Common Law Practice Act 1867*; and
- (b) the reference in this Part 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.

Savings

9. Nothing in this Part shall—

- (a) apply with respect to any tort committed before the commencement of this Act; or
- (b) affect any criminal prosecution against any person in respect of any wrongful act; or

*Law Reform (Tortfeasors Contribution,
Contributory Negligence, and Division of
Chattels) Act 1952*

- (c) except as provided in section 7, render enforceable any agreement for indemnity which would not have been enforceable if this Act had not been passed.

PART 3—CONTRIBUTORY NEGLIGENCE

Apportionment of liability in case of contributory negligence

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

(1A) However—

- (a) subsection (1) shall not operate to defeat any defence arising under a contract;
- (b) where any contract or enactment providing for the limitation of liability is applicable to the claim—the amount of damages recoverable by the claimant by virtue of subsection (1) shall not exceed the maximum limit so applicable.

(2) Where damages are recoverable by any 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.

(3) Part 2 shall apply in any case where 2 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 or her 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 15D of the *Common Law Practice Act 1867* the damages recoverable would be

*Law Reform (Tortfeasors Contribution,
Contributory Negligence, and Division of
Chattels) Act 1952*

reduced under subsection (1), any damages recoverable in an action brought for the benefit of the dependants of that person under section 12 of the said the *Common Law Practice Act 1867* shall be reduced to a proportionate extent.

(5) Where, in any case to which subsection (1) applies, 1 of the persons at fault avoids liability to any other such person or the person's personal representative by pleading the *Statute of Frauds and Limitations 1867* or any other enactment limiting the time within which proceedings may be taken, the person shall not be entitled to recover any damages or contributions from that other person or representative by virtue of the said subsection.

(6) Where any case to which subsection (1) applies is tried with a jury, the jury shall determine the total damages which would have been recoverable if the claimant had not been at fault and the extent to which those damages are to be reduced.

Provisions as to workers and employers

11.(1) Where, within the time limited by the *Workers' Compensation Act 1916* for making application for compensation under that Act, an action is brought to recover damages independently of the Act in respect of an injury giving rise to a claim for such compensation, and it is determined in that action that—

- (a) damages are recoverable independently of the Act subject to such reduction as is mentioned in section 10(1); and
- (b) there is a liability to pay compensation under the Act;

section 23(1) of the Schedule to the Act (which enables the court, on the dismissal of an action to recover damages independently of the Act, to assess and award compensation under the Act) shall apply in all respects as if the action had been dismissed, and, if the claimant chooses to have compensation assessed and awarded in accordance with section 23(1) of the Schedule, no damages shall be recoverable in the said action.

(2) Where a worker or the worker's dependant has recovered compensation under the *Workers' Compensation Act 1916* in respect of an

*Law Reform (Tortfeasors Contribution,
Contributory Negligence, and Division of
Chattels) Act 1952*

injury caused under circumstances which would give a right to recover reduced damages in respect thereof by virtue of section 10 from some person other than the employer (“**the third party**”), any right conferred by section 24 of the Schedule to the Act on the Insurance Commissioner to be indemnified by the third party shall be limited to a right to be indemnified in respect of such part only of the compensation recovered by the worker or the worker’s dependant as bears to the total amount of compensation so recovered the same proportion as the said reduced damages bear to the total damages which would have been recoverable if the worker had not been at fault.

Saving

12. Part 3 shall not apply to any case where the acts or omissions giving rise to the claim occurred before the commencement of this Act.

ENDNOTES

1 Index to Endnotes

		Page
2	Date to which amendments incorporated	9
3	List of legislation	9
4	List of annotations	10
5	Table of changed citations and remade laws	11
6	Table of obsolete and redundant provisions	11
7	Table of renumbered provisions	11
8	Transitional and savings provisions	11

2 Date to which amendments incorporated

This is the reprint date mentioned in the Reprints Act 1992, section 5(c). Accordingly, this reprint includes all amendments that commenced operation on or before 9 December 1994. Future amendments of the Law Reform (Tortfeasors Contribution, Contributory Negligence, and Division of Chattels) Act 1952 may be made in accordance with this reprint under the Reprints Act 1992, section 49.

3 List of legislation

Law Reform (Tortfeasors Contribution, Contributory Negligence, and Division of Chattels) Act 1952 1 Eliz 2 No. 42

date of assent 4 December 1952

commenced 12 January 1953 (proc pubd Gaz 10 January 1953 p 223)

as amended by—

Law Reform (Husband and Wife) Act 1968 No. 15 s 5 Sch

date of assent 19 April 1968

commenced 1 June 1968 (proc pubd Gaz 25 May 1968 p 510)

Property Law Act 1974 No. 76 s 3(2) Sch 6 Pt 3

date of assent 1 November 1974

commenced 1 December 1975 (see s 1(2))

*Law Reform (Tortfeasors Contribution,
Contributory Negligence, and Division of
Chattels) Act 1952*

Common Law Practice and Workers' Compensation Amendment Act 1994

No. 85 s 12 Sch

date of assent 2 December 1994

commenced 17 October 1992 (see s 2)

4 List of annotations

Key to abbreviations in list of annotations

amd	=	amended
Ch	=	Chapter
cl	=	clause
def	=	definition
Div	=	Division
exp	=	expires/expired
hdg	=	heading
ins	=	inserted
om	=	omitted
prec	=	preceding
pres	=	present
prev	=	previous
(prev)	=	previously
prov	=	provision
Pt	=	Part
R1	=	Reprint No. 1
RA	=	Reprints Act 1992
renum	=	renumbered
Sdiv	=	Subdivision
sub	=	substituted

Provisions not included in reprint, or amended by
amendments not included in reprint, are underlined

Parts of Act

s 3 om R1 (see RA s 36)

Proceedings against, and contribution between, joint and several tortfeasors

s 5 amd 1994 No. 85 s 12 Sch

Contribution from joint tortfeasor spouse

s 7 om 1968 No. 15 s 5 Sch

Construction for the purposes of Pt 2

s 8 amd 1994 No. 85 s 12 Sch

PART 4—DIVISION OF CHATTELS

Pt hdg om 1974 No. 76 s 3(2) Sch 6

Power to direct division of chattels

s 13 om 1974 No. 76 s 3(2) Sch 6

*Law Reform (Tortfeasors Contribution,
Contributory Negligence, and Division of
Chattels) Act 1952*

5 Table of changed citations and remade laws

TABLE OF CHANGED CITATIONS AND REMADE LAWS
under the Reprints Act 1992 ss 21A and 22

Old	New	Reference provision
Workers' Compensation Act 1916	Workers' Compensation Act 1990	Workers' Compensation Act 1990 s 11.13

6 Table of obsolete and redundant provisions

TABLE OF OBSOLETE AND REDUNDANT PROVISIONS
under the Reprints Act 1992 s 39

Omitted provision	Provision making omitted provision obsolete/redundant
definitions to be read in context	Acts Interpretation Act 1954 s 32A

7 Table of renumbered provisions

TABLE OF RENUMBERED PROVISIONS
under of the Reprints Act 1992 s 43

Previous	Renumbered as
10(1), proviso	10(1A)

8 Transitional and savings provisions

Law Reform (Husband and Wife) Act 1968 s 5 Sch provides—

Section seven is repealed but notwithstanding the repeal of that section the provisions of the said section seven shall continue to apply to and in relation to a claim for contribution where the act or omission giving rise to the claim occurred prior to the coming into operation of “*The Law Reform (Husband and Wife) Act of 1968*” and for the purposes of such a claim for

*Law Reform (Tortfeasors Contribution,
Contributory Negligence, and Division of
Chattels) Act 1952*

contribution and any liability arising out of such a claim the said section seven shall be deemed to remain in full force.