



SAMOA

CONTRIBUTORY NEGLIGENCE ACT 1964

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CONTRIBUTORY NEGLIGENCE ACT 1964

1964

No.6

AN ACT to amend the law relating to contributory negligence.

[Assent and commencement date: 31 July 1964]

1. Short title – This Act may be cited as the Contributory Negligence Act 1964.

2. Interpretation – In this Act, unless the context otherwise requires:

“Court” in relation to any claim, means the Court or arbitrator by or before whom the claim falls to be determined;

“damage” includes loss of life and personal injury;

“dependant” means a person for whose benefit an action could be brought under the Fatal Accidents Act 1974;

“employer” and “worker” have the same meaning as in the Accident Compensation Act 1989;

“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.

3. Apportionment of liability in case of contributory negligence – (1) Where a person suffers damage as the result partly of his or her own fault and partly of the fault of any other person or persons, a claim in respect of that damage is not defeated by reason of the fault of the person suffering the damage, but the damages recoverable in respect thereof are to be reduced to such extent as the Court thinks just and equitable having regard to the claimant's share in the responsibility for the damages:

PROVIDED THAT:

- (a) this subsection does not operate to defeat a defence arising under a contract;
- (b) where a 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 this subsection shall not exceed the maximum limit so applicable.

(2) Where damages are recoverable by a person under 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) Section 8 of the Law Reform Act 1964 (which relates to proceedings against, and contribution between, joint and several tortfeasors) applies 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 a person dies as the result partly of his or her own fault and partly of the fault of any other person or persons, and accordingly if an action were brought for the benefit of the estate under Part I of the Law Reform Act 1964 the damages recoverable would be reduced under subsection (1), any damages recoverable in an action brought for the benefit of the dependants of that person under the Fatal Accidents Act 1974 are to 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 or her personal representative by pleading any enactment limiting the time within which proceedings may be taken, he or she is not entitled to recover any damages or contributions from that other person or representative by virtue of that subsection.

4. Provisions as to workers and employers – (1) Where, within the time limited for the taking of proceedings under the Accident Compensation Act 1989, an action is brought to recover damages independently of that Act in respect of an injury or disease giving rise to a claim for compensation under that Act, and it is determined in that action that:

- (a) damages are recoverable independently of that Act subject to such reduction as is mentioned in section 3(1); and
- (b) the employer would have been liable to pay compensation under the section 21 of the Accident Compensation Act 1989 (which enables the Court, on the dismissal of an action to recover damages independently of that Act, to assess and award compensation under that Act) shall apply in all respects as if the action had been dismissed, and, if the claimant chooses to have compensation assessed and awarded under section 21,–

no damages is recoverable in the action.

(2) Where a worker or his personal representative or dependant has recovered compensation under the Accident Compensation Act 1989 in respect of an injury caused under circumstances which would give a right to recover reduced damages in respect thereof by virtue of section 3 from some person other than the employer (hereinafter referred to as the third party), any right conferred by Accident Compensation Act 1989 on the person by whom the compensation was paid to be indemnified by the third party shall be limited to a right to be indemnified in respect of such part only of the sum paid or payable by the person as bears to the total sum so paid or payable the same proportion as the reduced damages bear to the total damages which would have been recoverable if the worker had not been at fault.

5. Saving for past cases – This Act does not apply to any case where the acts or omissions giving rise to the claim occurred before the passing of this Act.

REVISION NOTES 2008 – 2022

This is the official version of this Act as at 31 December 2022.

This Act has been revised by the Legislative Drafting Division from 2008 to 2022 respectively under the authority of the Attorney General given under the *Revision and Publication of Laws Act 2008*.

The following general revisions have been made:

- (a) Insertion of the commencement date
- (b) Other minor editing has been done in accordance with the lawful powers of the Attorney General.
 - (i) “any” changed to “a” where appropriate
 - (ii) “shall be” changed to “is” and
 - (iii) “pursuant to” or “in accordance with” changed to “under”
 - (iv) “of this Act” has been deleted.

There were no amendments made to this Act since the publication of the *Consolidated and Revised Statutes of Samoa 2007*.

*This Act is administered by
the Ministry of Justice and Courts Administration.*