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CHAPTER 5

Parties

ARTICLE 1

General Provisions

**SECTION 15‑5‑45.** Capacity of partnerships to sue and be sued; effect of judgment.

Any partnership formed under the laws of this State or of another jurisdiction shall have the capacity with or without the joinder of one or more of its partners to sue and be sued in the courts and agencies of this State as a separate entity under the name specified in any recorded certificate of partnership, or, if the partnership conducts business under an assumed name or there is no recorded certificate, under the name by which it does business. All judgments and executions against any such partnership shall bind its real and personal property. Its partners shall also be liable for judgment and be subject to execution to the extent and in the manner provided by law.

HISTORY: 1986 Act No. 533, Section 4.

**SECTION 15‑5‑90.** Survival of right of action.

Causes of action for and in respect to any and all injuries and trespasses to and upon real estate and any and all injuries to the person or to personal property shall survive both to and against the personal or real representative, as the case may be, of a deceased person and the legal representative of an insolvent person or a defunct or insolvent corporation, any law or rule to the contrary notwithstanding.

HISTORY: 1962 Code Section 10‑209; 1952 Code Section 10‑209; 1942 Code Section 419; 1932 Code Section 419; Civ. P. ‘22 Section 375; Civ. C. ‘12 Section 3963; Civ. C. ‘02 Section 2859; R.S. 2323; 1892 (21) 18; 1905 (24) 945.

**SECTION 15‑5‑100.** Damages under Sections 15‑5‑90 or 15‑51‑10 may include funeral expenses.

Damages recoverable under either Sections 15‑5‑90 or 15‑51‑10 may include reasonable funeral expenses, but such funeral expenses shall be sought in only one action.

HISTORY: 1962 Code Section 10‑209:1; 1962 (52) 1946.

**SECTION 15‑5‑110.** Executors’ or administrators’ actions against trespassers.

Executors or administrators in cases of trespass done to their decedents, as of the goods and chattels of the decedents carried away in their life, shall have an action against the trespassers and may recover their damages in like manner as they, whose executors or administrators they are, should have had it if they were alive.

HISTORY: 1962 Code Section 10‑210; 1952 Code Section 10‑210; 1942 Code Section 415; 1932 Code Section 415; Civ. P. ‘22 Section 371; Civ. C. ‘12 Section 3959; Civ. C. ‘02 Section 2855; G.S. 2187; R.S. 2319; 4 Ed. 3c. 7; 1712 (2) 425; 1972 (57) 2485.

**SECTION 15‑5‑120.** Actions against executors or administrators when one or more is out of State.

In cases in which there are two or more executors or administrators to any estate and any one or more of them has withdrawn or shall withdraw or shall reside out of the State, any creditor or person having a right or cause of action against such estate may commence his action against all the executors or administrators, naming and setting forth therein the executor or administrator, one or more, who is out of the State. In such case if the summons be served in the usual form upon those who are within the State the suit shall be deemed to be good and effectual in law to all intents and purposes, saving only that the judgment in such cases shall not extend to work any devastavit upon the person so absent or to affect him in his private right.

HISTORY: 1962 Code Section 10‑211; 1952 Code Section 10‑211; 1942 Code Section 417; 1932 Code Section 417; Civ. P. ‘22 Section 373; Civ. C. ‘12 Section 3961; Civ. C. ‘02 Section 2857; G.S. 2189; R.S. 2321; 1793 (7) 282.

**SECTION 15‑5‑130.** Representative of deceased nonresident motor vehicle operator.

In the event a nonresident who shall have operated a motor vehicle on the public highways or streets of any incorporated municipality of this State causing injuries or death shall have died, any person who may have an interest therein may apply to the probate court of the county of residence of such party so interested or of the county in which such wrong may have been inflicted for the appointment of a personal representative of such deceased wrongdoer and, upon such appointment, action may be commenced against such personal representative of such nonresident deceased and service of such process shall be made upon such personal representative and a copy of such process mailed to the address of such deceased person as provided in Section 15‑9‑370.

HISTORY: 1962 Code Section 10‑212; 1952 Code Section 10‑212; 1949 (46) 342.

**SECTION 15‑5‑140.** Representative of deceased nonresident motor vehicle operator; substitution of other representative.

The foreign personal representative of any such deceased wrongdoer or any other person interested in defending such action may within sixty days after service as provided in Section 15‑9‑370 apply to the court in which such action may be pending for an order staying such action for a reasonable period of not exceeding sixty days and during such time may apply to the probate court and procure the appointment of some other suitable person to act as personal representative of such deceased person. Upon such appointment such personal representative shall be forthwith made a party defendant on motion of plaintiff without further service of process. If no such application for a stay be made the personal representative so originally appointed shall answer such process within sixty days from the date of such service upon him or be adjudged in default.

HISTORY: 1962 Code Section 10‑213; 1952 Code Section 10‑213; 1949 (46) 342.

**SECTION 15‑5‑150.** Foreign corporations as defendants.

An action against a corporation created by or under the laws of any other state, government or country may be brought in the circuit court:

(1) By any resident of this State for any cause of action; or

(2) By a plaintiff not a resident of this State when the cause of action shall have arisen or the subject of the action shall be situated within this State.

HISTORY: 1962 Code Section 10‑214; 1952 Code Section 10‑214; 1942 Code Section 826; 1932 Code Section 826; Civ. P. ‘22 Section 774; Civ. P. ‘12 Section 461; Civ. P. ‘02 Section 423; 1870 (14) 522 Section 442.

**SECTION 15‑5‑160.** By what name unincorporated associations may be sued.

All unincorporated associations may be sued and proceeded against under the name and style by which they are usually known without naming the individual members of the association.

HISTORY: 1962 Code Section 10‑215; 1952 Code Section 10‑215; 1942 Code Section 7796; 1932 Code Section 7796; Civ. C. ‘22 Section 5070; Civ. C. ‘12 Section 3336; Civ. C. ‘02 Section 2229; G.S. 1410; R.S. 1776; 1865 (13) 315.

**SECTION 15‑5‑170.** Action by and against married woman.

A married woman may sue and be sued as if she were unmarried. When the action is between herself and her husband she may likewise sue or be sued alone.

HISTORY: 1962 Code Section 10‑216; 1952 Code Section 10‑216; 1942 Code Section 400; 1932 Code Section 400; Civ. P. ‘22 Section 357; Civ. P. ‘12 Section 163; Civ. P. ‘02 Section 135; 1870 (14) Section 137; 1925 (34) 263.

**SECTION 15‑5‑210.** Unemancipated child as party to motor vehicle accident action.

An unemancipated child may sue and be sued by his parents in an action for personal injuries arising out of a motor vehicle accident. In any such action there shall be appointed a guardian ad litem as provided by law for such child.

HISTORY: 1962 Code Section 46‑802.2; 1974 (58) 2718.