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CHAPTER 51

Death by Wrongful Act and Lynching

ARTICLE 1

Death by Wrongful Act

**SECTION 15‑51‑10.** Civil action for wrongful act causing death.

 Whenever the death of a person shall be caused by the wrongful act, neglect or default of another 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 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, although the death shall have been caused under such circumstances as make the killing in law a felony. In the event of the death of the wrongdoer, such cause of action shall survive against his personal representative.

HISTORY: 1962 Code Section 10‑1951; 1952 Code Section 10‑1951; 1942 Code Section 411; 1932 Code Section 411; Civ. P. ‘22 Section 367; Civ. C. ‘12 Section 3955; Civ. C. ‘02 Section 2851; G. S. 2183; R. S. 2315; 1859 (12) 706; 1949 (46) 270.

**SECTION 15‑51‑20.** Beneficiaries of action for wrongful death; by whom brought.

 Every such action shall be for the benefit of the wife or husband and child or children of the person whose death shall have been so caused, and, if there be no such wife, husband, child or children, then for the benefit of the parent or parents, and if there be none such, then for the benefit of the heirs of the person whose death shall have been so caused. Every such action shall be brought by or in the name of the executor or administrator of such person.

HISTORY: 1962 Code Section 10‑1952; 1952 Code Section 10‑1952; 1942 Code Section 412; 1932 Code Section 412; Civ. P. ‘22 Section 368; Civ. C. ‘12 Section 3956; Civ. C. ‘02 Section 2852; G. S. 2184; R. S. 2316; 1859 (12) 706; 1898 (22) 788; 1901 (23) 743; 1902 (23) 1071; 1990 Act No. 521, Section 97.

**SECTION 15‑51‑30.** Effect of illegitimacy.

 In the event of the death of an illegitimate child or the mother of an illegitimate child by the wrongful or negligent act of another, such illegitimate child or the mother or father or the heirs at law or the distributees of such illegitimate child shall have the same rights and remedies in regard to such wrongful or negligent act as though such illegitimate child had been born in lawful wedlock.

HISTORY: 1962 Code Section 10‑1953; 1952 Code Section 10‑1953; 1942 Code Section 8913; 1932 Code Section 8913; Civ. C. ‘22 Section 5334; Civ. C. ‘12 Section 3562; 1906 (25) 156; 1920 (31) 1039; 1927 (35) 242; 1934 (38) 1419; 1986 Act No. 539, Section 3(1)(D).

**SECTION 15‑51‑40.** Damages; amount and to whom payable.

 In every such action the jury may give damages, including exemplary damages when the wrongful act, neglect, or default was the result of recklessness, wilfulness, or malice, as they may think proportioned to the injury resulting from the death to the parties respectively for whom and for whose benefit such action shall be brought. The amount so recovered shall be divided among the before‑mentioned parties in those shares as they would have been entitled to if the deceased had died intestate and the amount recovered had been personal assets of his or her estate. However, upon motion by either parent or any other party of potential interest based upon the decedent having died intestate, the probate court may deny or limit either or both parent’s entitlement for a share of the proceeds if the court determines, by a preponderance of the evidence, that the parent or parents failed to reasonably provide support for the decedent as defined in Section 63‑5‑20 and did not otherwise provide for the needs of the decedent during his or her minority.

HISTORY: 1962 Code Section 10‑1954; 1952 Code Section 10‑1954; 1942 Code Section 412; 1932 Code Section 412; Civ. P. ‘22 Section 368; Civ. C. ‘12 Section 3956; Civ. C. ‘02 Section 2852; G. S. 2184; R. S. 2316; 1859 (12) 706; 1898 (22) 788; 1901 (23) 743; 1902 (23) 1071; 1994 Act No. 470, Section 2; 1996 Act No. 370, Section 3.

Code Commissioner’s Note

At the direction of the Code Commissioner, the reference to Section 20‑7‑40 was changed to Section 63‑5‑20 in accordance with 2008 Act No. 361 (Children’s Code).

**SECTION 15‑51‑41.** Court approval required for settlement of wrongful death or survival action.

 Any settlement of a wrongful death or survival action must be approved by either a probate court, circuit court, or United States District Court, as provided in Section 15‑51‑42.

HISTORY: 1992 Act No. 475, Section 1.

**SECTION 15‑51‑42.** Approval of settlements of wrongful death or survival actions.

 (A) Only a duly appointed personal representative, as defined in Section 62‑1‑201(30), shall have the authority to settle wrongful death or survival actions.

 (B) If no action is pending, the personal representative shall petition either the probate or the circuit court of this State seeking approval of a proposed settlement. The petition must be verified by the personal representative and shall set forth, in terms satisfactory to the court in which the petition is filed, the basic facts surrounding the death of the decedent, the pertinent facts surrounding the liability of the alleged wrongdoer, the amount of insurance available to pay for damages, the terms of the proposed settlement, the statutory beneficiaries of the wrongful death or survival action, the heirs at law or appropriate devisees of the estate, the appropriate creditors, the amount of their claims, and, if the personal representative has retained legal counsel, the terms and provisions of the agreement with respect to attorney’s fees and costs.

 It is not necessary that a personal representative be represented by legal counsel for the court to consider the petition and approve the settlement. If the personal representative is represented by legal counsel, the counsel shall sign a certificate attesting to the fact that he is of the opinion that the settlement is fair and reasonable and in the best interests of the statutory beneficiaries and, in a survival action, the estate of the decedent.

 The court shall schedule a hearing and receive into evidence those facts that the court considers necessary and proper to evaluate the settlement. After conducting this inquiry, the court shall issue its order either approving or disapproving the proposed settlement. If the settlement is approved by the court, the personal representative has the power to conclude the settlement, including the execution of those documents as the settlement terms contemplate.

 (C) If a wrongful death or survival action has been filed in state court and:

 (1) the settlement agreement between the parties is reached before the matters reach trial, the personal representative shall petition the court in which the wrongful death or survival action has been filed and follow the procedure for settlement as provided in (B) above;

 (2) the settlement agreement is reached during the trial, or after trial but before notice of appeal is filed, of either the wrongful death or survival action, then no petition is necessary, and the court shall conduct a hearing, at which the parties may present to the court the pertinent facts and information, including that information required in subsection (B) above, which the court may require in order to consider whether to approve or disapprove the settlement. If the court finds the settlement is fair and reasonable and in the best interests of the statutory beneficiaries and, in a survival action, the estate of the decedent, then the court shall issue its order approving the settlement;

 (3) the settlement agreement is reached after notice of appeal is filed, the personal representative shall petition the appellate court before which the matter is pending to remand the case to the circuit court for consideration of the settlement agreement in accordance with the procedure outlined in (2) above.

 (D) For any actions pending in the federal courts, the same procedure may be followed, but the federal court, at its discretion, may issue an order transferring the case to state court for consideration of the proposed settlement.

 (E) Once a settlement agreement has been approved by an appropriate court, the person paying the settlement proceeds and all those on whose behalf the payment is made and any other persons who could be responsible because of the actions on whose behalf the settlement proceeds are being paid, are relieved and discharged from further liability and shall have no obligation or legal duty to see to the appropriate or proper distribution of the settlement proceeds among either the wrongful‑death beneficiaries or those entitled to the proceeds of the settlement of the survival action. Once payment has been made to the personal representative, the obligations of the person making the payment and those on whose behalf the payment is being made, and all those who could be responsible for the actions of these persons, are fully and completely released and finally and forever discharged from any further responsibility in connection with the action or actions.

 (F) Any person bringing a wrongful death or survival action in a court other than the probate court must notify the probate court of this action within ten days after the filing of the action. The provisions of this subsection apply to wrongful death or survival actions filed after the effective date of this section.

 (G) When the administration of an estate is final except for the administration of survival action proceeds because of the pendency of a survival action brought on behalf of the estate, the probate court may issue, upon petition by the personal representative, a special order providing that no accountings are required until the survival action is settled or verdict rendered in a trial. The attorney for the personal representative must notify the probate court immediately upon completion of the survival action and furnish the court with a copy of the order approving settlement or a copy of the judgment, whichever is appropriate.

HISTORY: 1992 Act No. 475, Section 1; 1999 Act No. 55, Section 21; 2002 Act No. 362, Section 2.

**SECTION 15‑51‑50.** Liability for costs.

 The executor or administrator, plaintiff in the action, shall be liable to costs in case there be a verdict for the defendant or nonsuit or discontinuance, out of the goods, chattels and lands of the testator or intestate, if any.

HISTORY: 1962 Code Section 10‑1955; 1952 Code Section 10‑1955; 1942 Code Section 413; 1932 Code Section 413; Civ. P. ‘22 Section 369; Civ. C. ‘12 Section 3957; Civ. C. ‘02 Section 2853; 1903 (24) 96.

**SECTION 15‑51‑60.** Effect of action prior to death.

 The provisions of this article shall not apply to any case in which the person injured has, for such injury, brought action, which has proceeded to trial and final judgment before his or her death.

HISTORY: 1962 Code Section 10‑1956; 1952 Code Section 10‑1956; 1942 Code Section 414; 1932 Code Section 414; Civ. P. ‘22 Section 370; Civ. C. ‘12 Section 3958; Civ. C. ‘02 Section 2854; G. S. 2186; R. S. 2318; 1859 (12) 706.

ARTICLE 3

Liability of County for Lynching

**SECTION 15‑51‑210.** When county is liable for damages for lynching.

 In all cases of lynching when death ensues the county in which such lynching takes place shall, without regard to the conduct of the officers, be liable in exemplary damages of not less than two thousand dollars, to be recovered by action instituted in any court of competent jurisdiction by the legal representatives of the person lynched, and they are hereby authorized to institute such action for the recovery of such exemplary damages. A county against which a judgment has been obtained for damages in any case of lynching shall have the right to recover in any court of competent jurisdiction the amount of such judgment from the parties engaged in such lynching and is hereby authorized to institute such action.

HISTORY: 1962 Code Section 10‑1961; 1952 Code Section 10‑1961; 1942 Code Section 3041; 1932 Code Section 3041; Civ. C. ‘22 Section 5601; Civ. C. ‘12 Section 3947; Civ. C. ‘02 Section 2844; 1896 (22) 214.