

CIVIL LIABILITY ACT, 1963 (ACT 176)

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REPUBLIC OF GHANA

**THE HUNDRED AND SEVENTY-SIXTH
ACT
OF THE PARLIAMENT OF THE REPUBLIC OF GHANA
ENTITLED
THE CIVIL LIABILITY ACT, 1963**

AN ACT to reform the law relating to civil liability, providing, in particular, for the amendment of the law relating to contributory negligence, contribution between concurrent wrongdoers, liability for fatal injuries, survival of causes of action on death and the abolition of the defence of common employment.

DATE OF ASSENT: 19th April, 1963

BE IT ENACTED by the President and the National Assembly in this present Parliament assembled as follows—

PART I—CONTRIBUTORY NEGLIGENCE

Section 1—Apportionment of Liability in Case of Contributory Negligence.

(1) Where any person suffers damage as the result partly of the fault of any other person and partly of his own fault or the fault of someone for whom he is responsible (in this Part referred to as contributory negligence), a claim in respect of that damage shall not be defeated by reason of the fault of the person suffering 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 plaintiff's share in the responsibility for the damage:

Provided that—

- (a) if, having regard to all the circumstances of the case, it is not possible to establish different degrees of fault, the liability shall be apportioned equally;
- (b) this section shall not operate to defeat any defence arising under a contract;
- (c) where any contract or enactment providing for the limitation of liability is applicable to the claim, the amount of damages recoverable by the plaintiff by virtue of this section shall not exceed the maximum limit so applicable.

(2) Article 21 of the Warsaw Convention (which empowers a court to exonerate wholly or partly a carrier who proves that the damage was caused by or contributed to by the negligence of the injured person) shall have effect subject to the provisions of this Part.

Section 2—Finding Under Section 1 of this Act.

(1) Where damages are awarded to any person by virtue of section 1 of this Act, the court shall find and record—

(a) the total damages that would have been awarded if there had not been contributory negligence;

(b) where the plaintiff's damages are reduced under the said section, the proportion of such damages that shall not be awarded to the plaintiff and the proportion that shall be payable by the defendant, or respective proportions that shall be payable by each of the defendants if more than one, expressed in each case in percentage of the total fault of the plaintiff and defendant;

(c) whose negligence, want of care or caution, or wrong contributed to whose or what damage, and in what respects.

(2) It shall be the duty of the court to make the requisite calculations following upon such findings.

Section 3—Estoppel in Case of Contributory Negligence.

(1) Where a plaintiff has his damages reduced under section 1 of this Act on account of contributory negligence, and the defendant subsequently brings an action against the plaintiff in respect of damage arising out of the same facts, the determination of liability and the apportionment of fault in the first action shall be binding between the parties in the second action.

(2) This section shall apply between two parties notwithstanding that one of them is party to the two actions in different capacities.

PART II—CONCURRENT WRONGDOERS

Section 4—Definitions.

In this Part—

"concurrent wrongs" means the wrongs of two or more persons which result in the same damage to another person;

"concurrent wrongdoers" means wrongdoers who are responsible for the same damage to another person whether by reason of the same or several wrongs.

Section 5—Judgment Against Wrongdoers.

Judgment recovered against a wrongdoer shall not be a bar to an action against any concurrent wrongdoer in respect of the same damage.

Section 6—Limitation of Damages where More Than One Action is Brought.

(1) If judgments are obtained in respect of the same damage in separate actions against concurrent wrongdoers the sums recoverable under the judgments by way of damages shall not exceed in the aggregate the amount of damages awarded by the judgment first given.

(2) In this section the reference to "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.

(3) The plaintiff shall not be entitled to costs in any of the actions other than in the action in which judgment is first given unless the court is of opinion that there was reasonable ground for bringing the action as a separate action.

Section 7—Right of Contribution.

A wrongdoer may recover contribution in accordance with this Act from any concurrent wrongdoer in respect of the same damage.

Section 8—Determination of Contribution in Action for Damages.

(1) Where in an action for damages two or more concurrent wrongdoers are before the court, either as defendants or in pursuance of a third-party notice, this section shall have effect for the purpose of determining the contribution recoverable from each of them.

(2) The court may, on the application of a defendant, apportion the damages awarded in the action amongst them as it thinks fit having regard to all the circumstances and, in particular, to the extent to which they were respectively responsible for the damage.

(3) The court may, in any case, apportion the costs awarded to the plaintiff as it thinks fit.

(4) An apportionment may be such as to confer a complete indemnity on any one or more of the concurrent wrongdoers.

(5) No apportionment shall be made unless the court is satisfied that all the concurrent wrongdoers are before the court.

Section 9—Recovery of Contribution Determined in Action for Damages.

(1) A wrongdoer who has paid, whether to the judgment creditor or by way of contribution awarded to concurrent wrongdoers, an aggregate sum in excess of the amount apportioned to him under section 8 of this Act shall be entitled to recover contribution from any concurrent wrongdoer who is not entitled to indemnity or who has not already paid as aforesaid a sum equal to that apportioned to him.

(2) The contribution shall be the amount of the excess or the amount by which the sum which the concurrent wrongdoer has so paid falls short of that apportioned to him, whichever is the less.

Section 10—Claim for Contribution.

(1) Where an apportionment under section 8 of this Act has not been made, a wrongdoer who has paid any sum in respect of the damage and costs shall be entitled to recover contribution against a concurrent wrongdoer in accordance with this section.

(2) The amount of the contribution shall be such amount as the court thinks fit having regard to all the circumstances and, in particular, to the extent to which the claimant, the concurrent wrongdoer and any other concurrent wrongdoers were respectively responsible for the damage and to any sum which the concurrent wrongdoer has already paid in respect of the damage and costs whether directly or by way of contribution.

(3) Where any sum so paid by the claimant was paid on foot of a settlement with the injured party and the court is of opinion that the settlement was excessive, the contribution shall be estimated on the basis of such sum as, in the opinion of the court, would have been a reasonable settlement.

(4) The amount of the contribution may be such as to afford to the claimant a complete indemnity.

(5) No contribution shall be recoverable against a person who is entitled to be indemnified by the claimant in respect of the damage.

Section 11—Third Party Notice.

Where, in an action for damages for a wrong, a defendant claims that a person not a party to the action is wholly or partly responsible as a wrongdoer, the court may on such terms as the court thinks proper, give leave to the defendant to issue and serve upon that person a third party notice.

Section 12—Limitation of Actions against One of Concurrent Wrongdoers.

For the purpose of any enactment on limitation of actions concealed fraud by one of concurrent wrongdoers shall not suspend time for another or others.

Section 13—Limitation of Actions for Contribution.

An action to recover contribution shall not be brought after the expiration of two years from the date on which the cause of action accrued.

Section 14—Agreement for Indemnity.

Nothing in this Part shall render enforceable any agreement for indemnity which would not have been enforceable if this Act had not been passed.

PART III—FATAL INJURIES

Section 15—Definitions.

In this Part—

"Dependant", in relation to a person whose death is caused by a wrongful act, includes—

(a) any member of the family of the deceased, and

(b) any other person whom he was by reason of adoption under the Adoption Act, 1962 (Act 104) or otherwise obliged to maintain and who suffers loss or mental distress as a result of the death;

"Member of the Family" means—

(a) when used in relation to a citizen of Ghana anyone of those persons mentioned in the First Schedule according as the family is based on the paternal or maternal system;

(b) when used in relation to a person who is not a citizen of Ghana, the wife, husband, father, mother, grandfather, grandmother, stepfather, stepmother, son, daughter, grandson, grand-daughter, stepson, step-daughter, brother, sister, half-brother or half-sister.

Section 16—Action where Death Caused by Wrongful Act.

(1) Where the death of a person is caused by the fault of another such as would have entitled the party injured, but for his death, to maintain an action and recover damages in respect thereof, the person who would have been so liable shall be liable to an action for damages for the benefit of the dependants of the deceased.

(2) Only one action may be brought in respect of the death.

(3) The action may be brought by the personal representative of the deceased or if, at the expiration of six months from the death, there is no personal representative or no action has been brought by the personal representative, by all or any of the dependants.

(4) The action, by whomsoever brought, shall be for the benefit of all the dependants.

(5) The plaintiff shall furnish the defendant with particulars of the persons for whom and on whose behalf the action is brought and of the nature of the claim in respect of which damages are sought to be recovered.

(6) The action shall be commenced within three years after the death.

Section 17—Action in Event of Death of Passenger in Air Accident.

In the event of the death of a passenger in international carriage to which the Warsaw Convention applies, for which a carrier is liable under Article 17 of the Convention for damages sustained in such death, if the accident which caused the damage took place on board the aircraft or in the course of any of the operations of embarking or disembarking—

(a) the provisions of section 16 of this Act shall apply to an action brought in Ghana to enforce the liability;

(b) the liability shall be in substitution for any other liability imposed by law.

Section 18—Damages.

(1) The damages under section 16 of this Act shall be—

(a) the total of such amounts (if any) as the court considers proportionate to the loss resulting from the death to each of the dependants, respectively, for whom or on whose behalf the action is brought, and

(b) subject to subsection (2), the total of such amounts (if any) as the court shall consider reasonable compensation for mental distress resulting from the death of such dependants.

(2) The total of any amounts awarded by virtue of paragraph (b) of subsection (1) shall not exceed one thousand pounds.

(3) Each amount awarded by virtue of subsection (1) shall be indicated separately in the award.

(4) Paragraph (b) of subsection (1) shall have effect only in respect of a death occurring within three years after the date of the passing of this Act.

(5) In addition, damages may be awarded in respect of expenses actually incurred by the deceased before his death and in respect of funeral and other expenses incurred by the dependants or the personal representative by reason of the wrongful act.

(6) It shall be sufficient for a defendant, in paying money into court in the action, to pay it in one sum as compensation for all the dependants without apportioning it between them.

(7) The amount recovered in the action shall, after deducting the costs not recovered from the defendant, be divided among the persons entitled in such shares as the court may have determined.

Section 19—Powers of Court in Action Relating to Air Accident.

In the case of an air accident section 18 of this Act is subject to the provisions of the Warsaw Convention limiting the liability of the carrier and the court before which the action is brought may at any stage of the proceedings make such order as appears to the court to be just and equitable in view of those provisions and of any proceedings which have, or are likely to be, commenced outside Ghana in respect of the death of the passenger.

Section 20—Sums Not to be taken into Account in Assessing Damages.

In assessing damages account shall not be taken of—

- (a) any sum payable on the death of the deceased under any contract of insurance;
- (b) any pension, gratuity or other like benefit payable under any enactment or otherwise in consequence of the death of the deceased.

Section 21—Reduction of Damages Under Part I.

If the death was caused partly by the fault of the defendant and partly by the deceased's contributory negligence the damages recoverable in the action may be reduced under Part I.

PART IV—SURVIVAL OF CAUSES OF ACTION ON DEATH

Section 22—Survival of Cause of Action Vested in Deceased Person.

A cause of action vested in a person shall on his death survive for the benefit of his estate.

Section 23—Survival of Cause of Action Subsisting Against Deceased Person.

- (1) A cause of action subsisting against a person shall on his death survive against his estate.
- (2) Where damage has been suffered by reason of any act in respect of which a cause of action would have subsisted against any person if he had not died before or at the same time as the damage was suffered, there shall be deemed, for the purposes of subsection (1), to have been subsisting against him before his death such cause of action in respect of that act as would have subsisted if he had died after the damage was suffered.

Section 24—Non-application of Sections 22 and 23 of this Act.

The provisions of sections 22 and 23 of this Act shall not apply to —

- (a) a cause of action for breach of promise to marry or seduction or for inducing one spouse to leave or remain apart from the other or for damages for adultery; or
- (b) a claim for compensation under the Workmen's Compensation Ordinance (Cap. 94).

Section 25—Additional Rights of Dependants.

The rights conferred by this Part for the benefit of the estate of a deceased person are in addition to the rights conferred on the dependants of deceased persons by Part III.

Section 26—Limitation of Action Against Estate.

- (1) In this section "relevant period" means the period prescribed by any enactment on limitations of actions.
- (2) No proceedings shall be maintainable in respect of any cause of action which has survived against the estate of a deceased person unless either—
 - (a) proceedings against him in respect of that cause of action were commenced within the relevant period and were pending at the date of his death; or
 - (b) proceedings are commenced in respect of that cause of action within the relevant period or within the period of two years after his death, whichever period first expires.

Section 27—Measure of Damages for Benefit of Estate.

- (1) Damages recoverable for the benefit of the estate by virtue of this Act shall not include exemplary damages.
- (2) Where the death of the deceased was caused by the act which gives rise to the cause of action for the benefit of the estate, the damages shall be calculated without regard to any loss or gain to the estate consequent on the death, except that a sum for funeral expenses may be added.

Section 28—Insolvency of Estate.

If an estate is insolvent, any liability in respect of a cause of action which survives against it shall 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 of promise.

PART V—MISCELLANEOUS PROVISIONS

Section 29—Abolition of Last Opportunity Rule.

The fact that a person—

- (a) had an opportunity of avoiding the consequences of the act of another but negligently or carelessly failed to do so; or
- (b) might have avoided those consequences by the exercise of care; or
- (c) might have avoided those consequences but for previous negligence or want of care on his part, shall not free that other from responsibility for such consequences.

Section 30—Abolition of Doctrine of Common Employment.

(1) The fact that a person causing and a person suffering injury are fellow workmen engaged in a common employment and under a common employer shall not relieve the employer from responsibility for the results of the injury.

(2) Any provision in a contract, whenever made, relieving him from responsibility or limiting his liability is void.

Section 31—Plea of Statute of Limitation, a Bar to Cross-action.

Where, in any action for damages or in any claim for contribution under Part II, the defendant avoids liability to the plaintiff by pleading any enactment limiting the time within which proceedings may be brought, neither he nor any other person responsible for his acts shall be entitled to recover any damages or contribution from the plaintiff or from any person responsible for his acts in respect of the matters in issue.

Section 32—Maritime Cases.

(1) Notwithstanding anything in this Act, where, by the fault of two or more vessels, damage is caused to one or more of those vessels or to another vessel or to the cargo of any of those vessels or any property on board, and an action is brought for such damage, the liability of each vessel in respect of such damage shall be in proportion to the degree in which such vessel was in fault and accordingly there shall be no right of contribution in respect of such apportioned liability:

Provided that—

(a) if, having regard to all the circumstances of the case, it is not possible to establish different degrees of fault, the liability shall be apportioned equally among the vessels in fault;

(b) nothing in this subsection shall affect the liability of any person under a contract of carriage or any contract, or shall be construed as imposing any liability upon any person from which he is exempted by any contract or by any provision of law, or as affecting the right of any person to limit his liability in the manner provided by law.

(2) For the purposes of subsection (1) the liability of a vessel for damage shall mean the liability of those responsible for the proper navigation and management of the vessel.

(3) The provisions of subsection (1) shall not apply to a claim for loss of life or personal injuries.

(4) Where, by the sole or concurrent fault of a vessel damage is caused to that or another vessel or to the cargo or any property on board either vessel, or loss of life or personal injury is suffered by any person on board either vessel, then, subject to subsection (5), no action shall be maintainable to enforce a claim for damages or lien in respect of such damage, loss of life or injury unless proceedings are commenced within two years from the date when such damage, loss of life or injury was caused; and an action shall not be maintainable to enforce any claim for contribution in respect of an overpaid proportion of any damages for loss of life or personal injuries unless proceedings are commenced within one year from the date of payment.

(5) Any court having jurisdiction to deal with an action to which subsection (4) relates may, subject to any rules of court, extend the period referred to in that subsection to such extent and subject to such conditions as it thinks fit, and shall, if satisfied that there has not during such

period been any reasonable opportunity of arresting the defendant's vessel within the jurisdiction of the court or within the territorial waters of the country to which the plaintiff's vessel belongs or in which the plaintiff resides or has his principal place of business, extend any such period to an extent sufficient to give such reasonable opportunity.

(6) For purposes of subsections (1), (2), (3) and (4), references to damage caused by the fault of a vessel shall be construed as including references to any salvage or other expenses, consequent upon that fault, recoverable at law by way of damages and such expenses shall be deemed to be a damage caused when they are incurred.

(7) The provisions of this section shall be applied in all cases heard and determined in any court having jurisdiction to deal with the case and in whatever waters the damage in question was caused or the salvage services or other expenses in question were rendered or incurred.

(8) This section shall be construed as one with the Merchant Shipping (Transitory Provisions) Act, 1957 (No. 23) as subsequently amended.

Section 33—Insolvency of One Wrongdoer.

Where it is made to appear to the court that—

(a) one wrongdoer in whose favour judgment is given is or may be insolvent; or

(b) the estate of one wrongdoer for the benefit of which judgment is given is or may be insolvent, provision shall be made to ensure that such first-mentioned wrongdoer or such estate, as the case may be, shall be deprived of recovery to the extent that the wrongdoer or estate is liable to another party or in the aggregate to other parties as a result of the same accident, occurrence or transaction; and for that purpose judgment in favour of the wrongdoer or for the benefit of the estate shall, where necessary, be attached in whole or in part for the benefit of another party in whose favour judgment is given.

Section 34—Wrongs to Unborn Child.

For the avoidance of doubt it is hereby declared that the law relating to wrongs shall apply to an unborn child for his protection in like manner as if the child were born, provided that child is subsequently born alive.

Section 35—Interpretation Generally.

In this Act unless the context otherwise requires:—

"action" includes counterclaim and arbitration;

"any enactment on limitations of actions" includes sections 13, 16 and 32 of this Act;

"court" includes arbitrator;

"defendant" includes defendant to a counterclaim;

"fault" means a wrongful act;

"negligence" includes breach of statutory duty;

"Warsaw Convention" means the Convention having the force of law by virtue of Article 40 of the Constitution which continues in force the Carriage by Air, (Colonies, Protectorates and Trust Territories) Order, 1953 (No. 1474) and set out in the First Schedule to that Order;

"wrong" means a tort (including a tort which is a crime), breach of contract or breach of trust;

"wrongdoer" means a person who commits or is otherwise responsible for a wrong.

Section 36—Statutes Ceasing to Apply.

Each statute mentioned in the Second Schedule to this Act shall, to the extent specified in the third column of that Schedule, cease to apply in Ghana.

Section 37—Repeal.

The Law Reform (Civil Wrongs) Act, 1959 (No. 12) is hereby repealed.

Section 38—Savings for Past Cases.

(1) Parts I and II shall apply only where the cause of action accrues after the commencement of this Act.

(2) Parts III and IV shall apply only where death occurs after the commencement of this Act.

Section 39—Amendment of Carriage by Air Order.

In paragraph 1 of the Second Annex to the First Schedule to the Carriage by Air Order referred to in section 35 of this Act (which specifies the persons for whose benefit actions in respect of a passenger's death may be brought under that Order) there shall be substituted for the words from "In this paragraph" to the end of the paragraph, the provisions of section 15 of this Act.

FIRST SCHEDULE

(Section 15)

Paternal System Maternal System Mother, father, Mother, father, wife, son, daughter, wife, son, daughter, brother, sister, brother, sister, father's brother, mother's mother, other's sister, sister's son, sister's daughter, mother's sister's son, mother's sister's daughter.

SECOND SCHEDULE

(Section 36)

STATUTES CEASING TO APPLY

Section 7 Chapter

(1) Subject-matter

(2) Extent of cesser

(3)

9 & 10 Vic. 93 (1846)

1 & 2 Geo. 5. c. 57 (1911). Fatal Accidents

*Maritime Cases The whole Act

Sections 1, 2, 3, 8 and 9

* Applied to Ghana by section 9 of that Act which is continued in force by Article 40 of the Constitution.