



AN BILLE UM DHLITEANAS SIBHIALTA, 1960
CIVIL LIABILITY BILL, 1960

Mar a leasaíodh ar Thuarascáil
As amended on Report

ARRANGEMENT OF SECTIONS

PART I

PRELIMINARY AND GENERAL

Section

1. Short title and collective citation.
2. Interpretation generally.
3. Adaptation of references to repealed Acts.
4. Savings.
5. Repeals.

PART II

SURVIVAL OF CERTAIN CAUSES OF ACTION ON DEATH

Preliminary

6. Definition (*Part II*).

Causes of action vested in deceased person

7. Survival of certain causes of action vested in deceased person.

Causes of action subsisting against deceased person

8. Survival of certain causes of action subsisting against deceased person.
9. Time limit in respect of causes of action which survive against estate of deceased person.
10. Insolvency of estate against which proceedings are maintainable.

PART III

CONCURRENT FAULT

CHAPTER I

Liability of concurrent wrongdoers

11. Persons who are concurrent wrongdoers.
12. Extent of liability.
13. Joinder of defendants.
14. Judgments to be several.
15. Judgment by default.
16. Discharge and estoppel by satisfaction.
17. Release of, or accord with, one wrongdoer.
18. Judgment against one wrongdoer.
19. Judgment in favour of one alleged wrongdoer.
20. Limitation of actions against one of concurrent wrongdoers.

CHAPTER II

Contribution between concurrent wrongdoers

Section

21. Contribution in respect of damages.
22. Contribution claimed by settling tortfeasor.
23. Enforcement of judgment for contribution.
24. Contribution in respect of costs.
25. One wrongdoer omitted from claim for contribution ;
contribution in respect of contribution.
26. Contribution where property is restored to its owner.
27. Procedure for claiming contribution.
28. Distribution of loss on failure to obtain satisfaction.
29. Estoppel when contribution is claimed.
30. Legal incidents of claim for contribution.
31. Limitation of actions for contribution.
32. Evidence and appeals.
33. Contribution to be regarded as damages.

CHAPTER III

Contributory negligence

34. Apportionment of liability in case of contributory
negligence.
35. Identification.
36. Set-off of claims.
37. Estoppel in case of contributory negligence.
38. Liability of concurrent wrongdoers where plaintiff guilty
of contributory negligence.
39. Bankruptcy of one wrongdoer.
40. Special findings.
41. Courts of limited jurisdiction.
42. Costs in cases of contributory negligence.

CHAPTER IV

General

43. Application to breaches of strict duty.
44. One-sided periods of limitation.
45. Restitution.
46. Maritime cases.

PART IV

FATAL INJURIES

47. Definitions (*Part IV*).
48. Action where death caused by wrongful act, neglect or
default.
49. Damages.
50. Sums not to be taken into account in assessing damages.
51. Adaptation of references to Fatal Accidents Acts, 1846
to 1908.

PART V

AMENDMENTS OF THE WORKMEN'S COMPENSATION ACTS, 1934 TO 1955

52. Definitions (*Part V*).
53. Amendments of section 60 of the Act of 1934.
54. Amendment of section 61 of the Act of 1934.

PART VI

AMENDMENT OF THE AIR NAVIGATION AND TRANSPORT ACT, 1936

Section

55. Re-enactment, with amendments, of section 18 of the Act of 1936.

PART VII

MISCELLANEOUS

56. Abolition of last opportunity rule.
57. Abolition of defences.
58. Wrongs to unborn child.
59. Liability of Minister for Finance for negligent use of mechanically propelled vehicle.
60. Liability of road authority for failure to maintain public road.
61. Proof of claims for damages or contribution in bankruptcy.
62. Application of moneys payable under certain policies of insurance.
63. Costs in certain actions in which plaintiff is an infant.

SCHEDULE

ENACTMENTS REPEALED



AN BILLE UM DHLITEANAS SIBHIALTA, 1960
CIVIL LIABILITY BILL, 1960

BILL

entitled

AN ACT TO REFORM THE LAW RELATING TO CIVIL 5
LIABILITY, PROVIDING IN PARTICULAR FOR THE
SURVIVAL OF CAUSES OF ACTION ON DEATH, FOR
PROCEEDINGS AGAINST AND CONTRIBUTION
BETWEEN CONCURRENT WRONGDOERS AND FOR
LIABILITY IN CASES OF CONTRIBUTORY NEGLIGENCE, TO PROVIDE FOR DAMAGES FOR THE
BENEFIT OF THE DEPENDANTS OF ANY PERSON
FATALLY INJURED BY THE WRONGFUL ACT,
NEGLECT OR DEFAULT OF ANOTHER, AND TO
PROVIDE FOR OTHER MATTERS CONNECTED WITH 15
THE FOREGOING.

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS :—

PART I

PRELIMINARY AND GENERAL

Short title and
collective
citation.

1.—(1) This Act may be cited as the Civil Liability Act, 1961. 20

(2) The Air Navigation and Transport Acts, 1936 to 1959, and
Part VI of this Act may be cited together as the Air Navigation
and Transport Acts, 1936 to 1961.

Interpretation
generally.

1936, No. 40.

1957, No. 6.

2.—(1) In this Act, save where the context otherwise requires—

“ the Act of 1936 ” means the Air Navigation and Transport Act, 25
1936;

“ the Statute of Limitations ” means the Statute of Limitations,
1957;

“ act ” includes default or other omission ;

“ action ” includes counterclaim and proceedings by way of 30
arbitration ;

“ any other limitation enactment ” includes *sections 31, 46 and*
48;

“ bankrupt ” includes an arranging debtor;

“ bankruptcy ” includes an arrangement under an order of the 35
court for protection ;

“ concurrent wrongs ” means wrongs committed by persons in
respect of which they are concurrent wrongdoers ;

“ contract ” means a contract under seal or by parol ;

“ contributor ” means a person who is liable or alleged to be liable 40
to make contribution ;

"court" means, in relation to any claim, the court or arbitrator by or before whom the claim falls to be determined;

"damage" includes loss of property, loss of life and personal injury;

5 "damages", except in *Part IV*, includes compensation for breach of trust;

"defendant" includes defendant to a counterclaim;

"injured person" means a person against whom a wrong is committed;

10 "liable" refers to legal liability whether or not enforceable by action;

"negligence" includes breach of statutory duty;

"personal injury" includes any disease and any impairment of a person's physical or mental condition, and "injured" shall be
15 construed accordingly;

"plaintiff" includes a defendant counterclaiming and a defendant claiming against a co-defendant by notice or otherwise;

"third party" includes fourth party and subsequent party;

"wrong" means a tort, breach of contract or breach of trust,
20 whether the act is committed by the person to whom the wrong is attributed or by one for whose acts he is responsible, and whether or not the act is also a crime, and whether or not the wrong is intentional;

"wrong of the defendant" includes, where the defendant is a
25 personal representative, a wrong of the deceased for which the defendant is liable as personal representative;

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

(2) Any reference in this Act to any other enactment shall be
30 construed as a reference to that enactment as amended or applied by any subsequent enactment, including this Act.

3.—A reference in any enactment to any Act repealed by this Act shall be construed as a reference to this Act. Adaptation of references to repealed Acts.

4.—(1) Nothing in this Act shall have effect in relation to any
35 cause of action which accrued before the passing of this Act. Savings.

(2) Nothing in this Act shall—

(a) render enforceable any agreement for indemnity which would not have been enforceable if this Act had not been passed, or

40 (b) affect the power of the court to stay proceedings that are an abuse of the process of the court.

5.—The enactments mentioned in the Schedule are hereby
repealed to the extent specified in column (3), except in respect of cases saved by *section 4*. Repeals.

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PART II

SURVIVAL OF CERTAIN CAUSES OF ACTION ON DEATH

Preliminary

6.—In this Part "excepted cause of action" means—

Definition
(Part II).

50 (a) a cause of action for breach of promise to marry or for defamation or for seduction or for inducing one spouse

to leave or remain apart from the other or for criminal conversation, or

1934, No. 9.

(b) any claim for compensation under the Workmen's Compensation Act, 1934.

Causes of action vested in deceased person

5

Survival of certain causes of action vested in deceased person.

7.—(1) On the death of a person on or after the date of the passing of this Act all causes of action (other than excepted causes of action) vested in him shall survive for the benefit of his estate.

(2) Where, by virtue of *subsection (1)* of this section, a cause of action survives for the benefit of the estate of a deceased person, 10 the damages recoverable for the benefit of the estate of that person shall not include exemplary damages, or damages for any pain or suffering or personal injury or for loss or diminution of expectation of life or happiness.

(3) Where—

15

(a) a cause of action survives by virtue of *subsection (1)* of this section for the benefit of the estate of a deceased person, and

(b) the death of such person has been caused by the circumstances which gave rise to such cause of action, 20

the damages recoverable for the benefit of his estate shall be calculated without reference to any loss or gain to his estate consequent on his death, except that a sum in respect of funeral expenses may be included.

(4) The rights conferred by this section 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 of the Act of 1936 and *Part IV* of this Act. 25

Causes of action subsisting against deceased person

Survival of certain causes of action subsisting against deceased person.

8.—(1) On the death of a person on or after the date of the passing of this Act all causes of action (other than excepted causes of action) subsisting against him shall survive against his estate. 30

(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)* of this section, 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. 35 40

Time limit in respect of causes of action which survive against estate of deceased person.

9.—(1) In this section "the relevant period" means the period of limitation prescribed by the Statute of Limitations or any other limitation enactment.

(2) No proceedings shall be maintainable in respect of any cause 45

of action whatsoever which has survived against the estate of a deceased person unless either—

- 5 (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.

- 10 10.—In the event of the insolvency of an estate against which proceedings are maintainable, any liability in respect of the cause of action in respect of which the proceedings are maintainable shall be deemed to 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 or promise.
- 15
- Insolvency of estate against which proceedings are maintainable.

PART III

CONCURRENT FAULT

CHAPTER I

20 *Liability of concurrent wrongdoers*

- 11.—(1) For the purpose of this Part, two or more persons are concurrent wrongdoers when both or all are wrongdoers and are responsible to a third person (in this Part called the injured person or the plaintiff) for the same damage, whether or not judgment has been recovered against some or all of them.
- 25
- Persons who are concurrent wrongdoers.

(2) Without prejudice to the generality of subsection (1) of this section—

- 30 (a) persons may become concurrent wrongdoers as a result of vicarious liability of one for another, breach of joint duty, conspiracy, concerted action to a common end or independent acts causing the same damage;

(b) the wrong on the part of one or both may be a tort, breach of contract or breach of trust, or any combination of them;

- 35 (c) it is immaterial whether the acts constituting concurrent wrongs are contemporaneous or successive.

- (3) Where two or more persons are at fault and one or more of them is or are responsible for damage while the other or others is or are free from causal responsibility, but it is not possible to establish which is the case, such two or more persons shall be deemed to be concurrent wrongdoers in respect of the damage.
- 40

- (4) Where there is a joint libel in circumstances normally protected by the defences of qualified privilege or fair comment upon a matter of public interest, the malice of one person shall not defeat the defence for the other, unless that other is vicariously liable for the malice of the first.
- 45

- (5) Where the same or substantially the same libel or slander or injurious falsehood is published by different persons, the court shall take into consideration the extent to which it is probable that the statement in question was published directly or indirectly to the same persons, and to that extent may find the wrongdoers to be concurrent wrongdoers.
- 50

(6) For the purpose of any enactment referring to a specific tort, an action for a conspiracy to commit that tort shall be deemed to be an action for that tort.

Extent of liability.

12.—(1) Subject to the provisions of *sections 14, 38 and 46*, concurrent wrongdoers are each liable for the whole of the damage in respect of which they are concurrent wrongdoers. 5

(2) Where the acts of two or more persons who are not concurrent wrongdoers cause independent items of damage of the same kind to a third person or to one of their number, the court may apportion liability between such persons in such manner as may be justified by the probabilities of the case, or where the plaintiff is at fault may similarly reduce his damages; and if the proper proportions cannot be determined the damages may be apportioned or divided equally. 10

(3) *Subsection (2)* of this section shall apply to two or more persons whose acts taken together constitute a nuisance, even though the act of any one of them taken alone would not constitute a nuisance, not being unreasonable in degree. 15

Joinder of defendants.

13.—An action may be brought against all of concurrent wrongdoers or against any of them without joining the other or others, but the court shall have power— 20

(a) in an action for the execution of trusts, to require the trust estate to be properly represented;

(b) in an action where the title to property is in question, to require the joinder of all those interested or claiming to be interested in the property. 25

Judgments to be several.

14.—(1) Where judgment is given against concurrent wrongdoers who are sued together, the court may give judgment against the defendants together or against the defendants separately and, if the judgment is given against the defendants together, it shall take effect as if it were given against them separately. 30

(2) Subject to *subsections (3) and (6)* of this section and to *sections 38 and 46*, each of the said judgments shall be for the full amount of the plaintiff's damages in respect of which the defendants are concurrent wrongdoers, together with any further damages in respect of which the particular defendant against whom judgment is given is individually liable and, if the same jury has in its verdict apportioned damages between the defendants on the basis that the total of the damages awarded is meant to be equivalent to the plaintiff's loss resulting from the concurrent wrongs, the plaintiff shall be entitled to judgment against the defendants for the aggregate of such damages. 35 40

(3) The plaintiff may agree to accept an apportionment of his damages among the defendants according to their degrees of fault and, in this event, the following provisions shall take effect— 45

(a) satisfaction of one judgment shall not operate as satisfaction of the others;

(b) the defendants shall have no right of contribution among themselves; 50

(c) the plaintiff, at any time within the period limited by

5 law for the enforcement of judgments and upon proof that, after taking reasonable steps, he has failed to obtain satisfaction of any judgment in whole or in part, shall have liberty to apply for secondary judgments having the effect of distributing the deficiency among the other defendants in such proportions as may be just and equitable.

(4) Where the court would be prepared to award punitive damages against one of concurrent tortfeasors, punitive damages
10 shall not be awarded against another of such tortfeasors merely because he is a concurrent tortfeasor, but a judgment for an additional sum by way of punitive damages may be given against the first-mentioned tortfeasor.

(5) The judgment mentioned in subsection (4) of this section
15 may specify that such additional sum is awarded by way of punitive damages, and no contribution shall be payable in respect thereof by a tortfeasor against whom such judgment could not properly have been given.

(6) Where, in an action for libel or slander, one of concurrent
20 tortfeasors would have been entitled to a mitigation of the damages payable by him had he been a single tortfeasor, but another of the said tortfeasors would not have been so entitled, the first-mentioned tortfeasor shall be entitled to the said mitigation of damages and shall not be compellable to make contribution
25 except in respect of the amount of damages payable by him ; and the judgment against him may be given accordingly.

15.—(1) Where one of concurrent wrongdoers who are sued together makes default of appearance or defence, the plaintiff may obtain an interlocutory judgment against him and damages shall
30 be assessed against him—

Judgment by default.

(a) at the same time as damages are assessed at the trial against the other defendants who appear;

(b) if the plaintiff fails against such other defendants or discontinues his action against them, separately under the
35 interlocutory judgment.

(2) If the plaintiff fails against the defendants who appear for a reason that goes to the liability of all, the interlocutory judgment shall be discharged.

(3) If the plaintiff's damages against the defendants who appear
40 are reduced under subsection (1) of section 34 on account of the plaintiff's contributory negligence, damages shall be assessed under the interlocutory judgment as if the defendant had appeared.

(4) This section shall not apply to any head of damage in respect of which the defendant who makes default and the
45 defendants who appear are not concurrent wrongdoers.

16.—(1) Where damage is suffered by any person as a result of concurrent wrongs, satisfaction by any wrongdoer shall discharge the others whether such others have been sued to judgment or not.

Discharge and estoppel by satisfaction.

(2) Satisfaction means payment of damages, whether after judgment or by way of accord and satisfaction, or the rendering of any agreed substitution therefor.

(3) If the payment is of damages, it must be of the full damages agreed by the injured person or adjudged by the court as the
55 damages due to him in respect of the wrong; otherwise it shall operate only as partial satisfaction.

(4) An injured person who has accepted satisfaction from one alleged to be a wrongdoer, whether under a judgment or otherwise, shall, in any subsequent proceeding against another wrongdoer in respect of the same damage, be estopped from denying that the person who made the satisfaction was liable to him; and the liability of such person shall be conclusively assumed for the purpose of the said proceeding: but the injured person may litigate in the said proceeding any question of law or fact relative to the liability of the defendant to such proceeding, other than the question whether or not the said satisfaction was made by one liable to the injured person.

Release of, or
accord with, one
wrongdoer.

17.—(1) The release of, or accord with, one concurrent wrongdoer shall discharge the others if such release or accord indicates an intention that the others are to be discharged.

(2) If no such intention is indicated by such release or accord, the other wrongdoers shall not be discharged but the injured person shall be identified with the person with whom the release or accord is made in any action against the other wrongdoers in accordance with *paragraph (h) of subsection (1) of section 35*; and in any such action the claim against the other wrongdoers shall be reduced in the amount of the consideration paid for the release or accord, or in any amount by which the release or accord provides that the total claim shall be reduced, or to the extent that the wrongdoer with whom the release or accord was made would have been liable to contribute if the plaintiff's total claim had been paid by the other wrongdoers, whichever of those three amounts is the greatest.

(3) For the purpose of this Part, the taking of money out of court that has been paid in by a defendant shall be deemed to be an accord and satisfaction with him.

Judgment against
one wrongdoer.

18.—(1) Where damage is suffered by any person as a result of concurrent wrongs—

(a) judgment recovered against any wrongdoer 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 concurrent wrongdoer in respect of the same damage;

(b) if more than one 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 his estate, or for the benefit of his dependants, against wrongdoers liable in respect of the damage, 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: but this paragraph shall not apply where the judgment first given was an apportioned judgment given in pursuance of *section 14, section 38 or section 46*.

(2) The reference in this section 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.

19.—(1) Where the injured person sues one or more of alleged concurrent wrongdoers and judgment is given for one defendant, the injured person shall be bound by the findings of fact in favour of such defendant in the injured person's present or subsequent
5 action against another or others of the alleged concurrent wrongdoers.

Judgment in
favour of one
alleged wrongdoer.

10 (2) (a) For the purpose of subsection (1) of this section, where judgment is given for the said defendant on the ground of the injured person's discontinuance, the injured person shall be bound by the allegations and denials in the said defendant's defence as if they had been found in favour of the said defendant, so far as they are relevant to the defence of that defendant.

15 (b) Paragraph (a) of this subsection shall not apply unless, on the facts, the injured person is barred by his discontinuance from bringing a second action against the said defendant.

(3) Where an action is brought against concurrent wrongdoers and judgment is given against one and for another for a reason
20 that goes to the liability of all, the first-mentioned judgment shall be discharged.

(4) Where an action is brought against concurrent wrongdoers and judgment is given against one without reduction of damages and against another subject to a reduction of damages under
25 subsection (1) of section 34 on account of the plaintiff's contributory negligence, the damages under the first-mentioned judgment shall be assessed subject to the same proportionate reduction, and the provisions of section 38 shall apply.

20.—For the purpose of the Statute of Limitations or any other
30 limitation enactment concealed fraud by one of concurrent wrongdoers shall not suspend time for another or others.

Limitation of
actions against
one of concurrent
wrongdoers.

CHAPTER II

Contribution between concurrent wrongdoers

21.—(1) Subject to the provisions of this Part, a concurrent
35 wrongdoer (for this purpose called the claimant) may recover contribution from any other wrongdoer who is, or would if sued at the time of the wrong have been, liable in respect of the same damage (for this purpose called the contributor), so, however, that no person shall be entitled to recover contribution under this Part
40 from any person entitled to be indemnified by him in respect of the liability in respect of which the contribution is sought.

Contribution
in respect of
damages.

(2) In any proceedings for contribution under this Part, the amount of the contribution recoverable from any contributor shall be such as may be found by the court to be just and equitable
45 having regard to the degree of that contributor's fault, 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 contributor shall amount to a complete indemnity.

22.—(1) Where the claimant has settled with the injured person
50 in such a way as to bar the injured person's claim against the other concurrent wrongdoers, the claimant may recover contribution in the same way as if he had suffered judgment for damages, if he satisfies the court that the amount of the settlement was reasonable;

Contribution
claimed by
settling
tortfeasor.

and, if the court finds that the amount of the settlement was excessive, it may fix the amount at which the claim should have been settled.

(2) Where the claimant has settled with the injured person without barring the injured person's claim against the other concurrent wrongdoers or has paid to the injured person a sum on account of his damages, the claimant shall have the same right of contribution as aforesaid, and for this purpose the payment of a reasonable consideration for a release or accord shall be regarded as a payment of damages for which the claimant is liable to the injured person: but the contributor shall have the right to claim repayment of the whole or part of the sum so paid if the said contributor is subsequently compelled to pay a sum in settlement of his own liability to the injured person and if the circumstances render repayment just and equitable.

Enforcement of judgment for contribution.

23.—(1) Where, in accordance with the provisions of this Part, judgment is given for contribution in respect of damages for which the claimant is or has been liable to the injured person, execution shall not be issued on such judgment until after satisfaction by the claimant in whose favour it is given before or after the said judgment of the whole or part of the damages for which he is liable to the injured person, and execution shall then issue only in respect of the amount by which the sum paid by him exceeds his just proportion of that particular amount, as such proportion is determined by the court in accordance with this Part.

(2) Notwithstanding anything in subsection (1) of this section, execution may be issued on such judgment as aforesaid after satisfaction by the claimant in whose favour it is given of his just proportion of the damages for which he is liable to the injured person, provided that in this case the court makes provision, by obtaining the personal undertaking of the claimant's solicitor or otherwise, for applying the sum received under the said judgment towards satisfaction of the damages due to the injured person.

(3) In this section "damages for which he is liable to the injured person" means damages for which the claimant is liable at the time when satisfaction is made to the injured person or his representatives or lawful assignees.

(4) A payment of damages by the claimant at a time when the injured person's cause of action against the claimant is barred by the Statute of Limitations or any other limitation enactment shall not found a claim to levy execution under a judgment for contribution: but such a payment shall found such a claim if, at the time when it was made, the injured person's cause of action against the contributor was not barred.

Contribution in respect of costs.

24.—A judgment for contribution may be given in respect of costs payable to the injured person or incurred by the claimant: but, where the injured person has sued the claimant and the contributor together and has recovered judgment for costs against both of them, the provisions of section 23 shall apply, with the substitution of the word "costs" for the word "damages" wherever it there appears.

One wrongdoer omitted from claim for contribution; contribution in respect of contribution.

25.—Where, of three or more concurrent wrongdoers, one is omitted from the claim for contribution, contribution shall be awarded to the claimant on the basis that responsibility for the damage is to be borne by the claimant and the contributor or contributors without regard to the responsibility of the omitted wrong-

doer, and, in such a case, a claimant whose net remaining liability is increased or a contributor whose contribution is increased by reason of the fact that judgment has not been given against the omitted wrongdoer may claim contribution from such omitted
5 wrongdoer in accordance with the provisions of this Part: but, where such last-mentioned claim for contribution is made by a contributor in respect of his own liability to make contribution and judgment is given in such contributor's favour, execution shall not be issued on that judgment—

10 (a) except in accordance with the provisions of *section 23*, with the substitution of "contribution" for "damages" and of "original claimant for contribution" for
15 "injured person" wherever they there appear, and "just proportion" in the said section being understood to mean for this purpose just proportion as between the contributor in whose favour judgment for contribution is now given and the wrongdoer against whom the said judgment is given, and in any case

20 (b) to an amount greater than the sum that, when added to the amount (if any) still due to the injured person, will equal the just proportion of the damages payable by the wrongdoer against whom the said judgment is given.

26.—For the purpose of a claim for contribution—

25 (a) a person who restores property to its true owner shall be deemed to be a concurrent wrongdoer with one through whom he originally claimed the property and who was a wrongdoer in respect of it towards the true owner, and

Contribution where property is restored to it owner.

30 (b) such restoration of property shall, as against such wrongdoer, be deemed to be a payment of damages to the extent of the value of the property.

35 **27.—(1)** A concurrent wrongdoer who is sued for damages or for contribution and who wishes to make a claim for contribution under this Part—

Procedure for claiming contribution.

40 (a) shall not, if the person from whom he proposes to claim contribution is already a party to the action, be entitled to claim contribution except by a claim made in the said action, whether before or after judgment in the action; and

45 (b) shall, if the said person is not already a party to the action, serve a third-party notice upon such person as soon as is reasonably possible and, having served such notice, he shall not be entitled to claim contribution except under the third-party procedure. If such third-party notice is not served as aforesaid, the court may in its discretion refuse to make an order for contribution against the person from whom contribution is claimed.

50 (2) The provisions of *subsection (1)* of this section shall not apply to any contribution claim where the parties to the claim are precluded by agreement or otherwise from disputing any earlier determination by a court of the amount of the injured person's damages and the proportion in which contribution should be made.

55 (3) Where it is sought to serve a third-party notice making a claim for contribution, or making a claim for damages in respect

of a wrong committed to the third-party plaintiff, such claim for damages having arisen in whole or in part out of the same facts as the facts giving rise to the principal plaintiff's claim, leave to serve a third-party notice shall not be refused merely because the issue between the third-party plaintiff and the third party will involve a difficult question of law. 5

(4) Where a concurrent wrongdoer makes a payment to the injured person without action in settlement of the injured person's claim against himself and subsequently claims contribution in accordance with *section 22*, the contributor shall have the right to have the injured person joined as co-defendant for the purpose of binding him by the determination of the proportions of contribution, unless the injured person is co-plaintiff in the action or the injured person has effectively agreed to be bound by such determination or the injured person has no claim against the contributor or the injured person has already sued the contributor to judgment. 10 15

Distribution
of loss on
failure to
obtain
satisfaction.

28.—Where, of three or more concurrent wrongdoers, judgment for contribution is given in favour of one against two or more, the claimant, at any time within the period limited by law for the enforcement of judgments and upon proof that, after taking reasonable steps, he has failed to obtain satisfaction of any judgment in whole or in part, shall have liberty to apply for secondary judgments having the effect of distributing the deficiency among the other defendants in such proportions as may be just and equitable. 25

Estoppel when
contribution
is claimed.

29.—(1) In any proceeding for contribution, the contributor shall not be entitled to resist the claim on the ground that the claimant who has paid the injured person was not liable to such person; but, subject to this section and to the general law of estoppel, he may resist the claim on the ground that he himself is not liable to such person and, for this purpose, may dispute any question of law or fact even though that question arises also on the liability of the claimant to the injured person; and the contributor may in the same way dispute the amount of the damage suffered by the injured person. 30 35

(2) Where a claim for contribution is made by third-party notice in the injured person's action and the third party is given leave to defend the main action, he shall be bound by the finding of the court upon the questions that he is given leave to defend.

(3) Where the contributor had knowledge of an action brought by the injured person against the claimant, and unreasonably failed to make a proposal for assisting the claimant in the defence of the action, and the injured person obtained judgment against the claimant, the contributor shall, in any proceeding brought against him by the claimant, be estopped from disputing the propriety or amount of the judgment obtained by the injured person or any question of law or fact common to the claimant's liability to the injured person and the contributor's liability to the injured person: but the contributor shall not be so estopped where the claimant submitted to judgment in fraud of the contributor. 40 45 50

(4) In any proceeding for contribution the claimant shall be bound by any finding of law or fact in the injured person's action against him that was necessary to establish his liability to the injured person.

(5) Where the injured person has sued the claimant and contributor together and failed against the contributor, the claimant shall, in any proceeding for contribution, be bound by any finding 55

of law or fact that was necessary to negative the contributor's liability to the injured person: provided that—

5 (a) the claimant shall not be so bound where the injured person submitted to judgment in fraud of the claimant;

10 (b) this subsection shall not apply where the injured person's action was brought in a court outside the State, unless by the law of the court the claimant had an opportunity of presenting evidence against the contributor, of appealing against a judgment in his favour and of contesting an appeal by him.

15 (6) (a) A decision on the proportion of fault between claimant and contributor on a claim for contribution shall be binding upon the same persons in a subsequent claim in respect of damage suffered by one or both of them arising out of the same facts, and, conversely, such a decision in a claim in respect of such damage shall be binding upon the same persons in a subsequent claim for contribution.

20 (b) *Paragraph (a)* of this subsection shall apply between two parties notwithstanding that one of them is party to the two actions in different capacities.

25 (7) A concurrent wrongdoer who makes a payment to the injured person without action in settlement of the injured person's claim against himself and who subsequently claims contribution under *section 22* shall, where the injured person has sued the contributor, be bound by the apportionment made by the court in the injured person's action in accordance with *paragraph (h)* of *subsection (1)* of *section 35*.

30 (8) It shall not be a defence to a claim for contribution merely to show that the injured person has failed in an action against the contributor to which the claimant was not a party.

35 30.—The right to ask the court for an award of contribution shall be deemed to be in the nature of a quasi-contractual right which shall pass to the personal representatives of the claimant for the benefit of his estate, and shall avail against the personal representatives of the contributor; and the right to contribution shall be deemed to be a cause of action within *section 9*.

Legal incidents of claim for contribution.

40 31.—An action may be brought for contribution within the same period as the injured person is allowed by law for bringing an action against the contributor, or within the period of two years after the liability of the claimant is ascertained or the injured person's damages are paid, whichever is the greater.

Limitation of actions for contribution.

45 32.—(1) Where an action is brought against two or more persons as concurrent wrongdoers, each defendant shall have the right to present evidence against the other or others.

Evidence and appeals.

50 (2) Where an action is brought against two or more persons as concurrent wrongdoers and the plaintiff obtains judgment and the judgment is satisfied by one of such wrongdoers, another of such wrongdoers may appeal against the judgment notwithstanding that it has been satisfied.

55 (3) Where an action is brought against two or more persons as concurrent wrongdoers and the plaintiff obtains judgment and one defendant appeals against the judgment, another defendant may, upon giving such notice as may be required by rules of court, contest the appeal as respondent.

(4) Where an action is brought against two or more persons as concurrent wrongdoers and the plaintiff succeeds against one and fails against another, the unsuccessful defendant may appeal against the judgment in favour of the successful defendant.

Contribution
to be regarded
as damages.

33.—(1) For the purpose of a contract insuring against liability 5
for a wrong or against a liability to pay damages, the liability of
a wrongdoer to make contribution under this Part to a concurrent
wrongdoer shall be deemed to be a liability to pay damages for a
wrong, unless the contrary intention appears from the contract.

(2) Where a claim for contribution between wrongdoers is made 10
under a contract for contribution between them, the provisions of
subsection (1) of this section shall apply to the extent that the
claim could have been made under the provisions of this Part
instead of under the contract for contribution.

CHAPTER III

15

Contributory negligence

Apportionment
of liability in case
of contributory
negligence.

34.—(1) Where, in any action brought by one person in respect 20
of a wrong committed by any other person, it is proved that the
damage suffered by the plaintiff was caused partly by the negligence
or want of care of the plaintiff or of one for whose
acts he is responsible (in this Part called contributory negligence)
and partly by the wrong of the defendant, the damages recoverable
in respect of the said wrong shall be reduced by such amount as
the court thinks just and equitable having regard to the degrees
of fault of the plaintiff and defendant : provided that— 25

(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 subsection shall not operate to defeat any defence
arising under a contract or the defence that the plaintiff 30
before the act complained of agreed to waive his legal
rights in respect of it, whether or not for value; but,
subject as aforesaid, the provisions of this subsection
shall apply notwithstanding that the defendant might,
apart from this subsection, have the defence of volun- 35
tary assumption of risk;

(c) where any contract or enactment providing for the
limitation of liability is applicable to the claim, the
amount of damages awarded to the plaintiff by virtue
of this subsection shall not exceed the maximum limit 40
so applicable.

(2) For the purpose of *subsection (1)* of this section—

(a) damage suffered by the plaintiff may include damages
paid by the plaintiff to a third person who has suffered
damage owing to the concurrent wrongs of the plaintiff 45
and the defendant, and the period of limitation for
claiming such damages shall be the same as is provided
by *section 31* for actions for contribution;

(b) a negligent or careless failure to mitigate damage shall be
deemed to be contributory negligence in respect of the 50
amount by which such damage exceeds the damage that
would otherwise have occurred;

(c) the plaintiff's failure to exercise reasonable care for his
own protection shall not amount to contributory negli-

5 gence in respect of damage unless that damage results from the particular risk to which his conduct has exposed him, and the plaintiff's breach of statutory duty shall not amount to contributory negligence unless the damage of which he complains is damage that the statute was designed to prevent;

10 (d) the plaintiff's failure to exercise reasonable care in the protection of his own property shall, except to the extent that the defendant has been unjustly enriched, be deemed to be contributory negligence in an action for conversion of the property;

15 (e) damage may be held to be caused by the wrong of the defendant notwithstanding any rule of law by which the scope of the defendant's duty is limited to cases where the plaintiff has not been guilty of contributory negligence: but this paragraph shall not render the defendant liable for any damage in respect of which he or a person for whose acts he is responsible has not been careless in fact;

20 (f) where an action is brought for negligence in respect of a thing that has caused damage, the fact that there was a reasonable possibility or probability of examination after the thing had left the hands of the defendant shall not, by itself, exclude the defendant's duty, but may be taken as evidence that he was not in the circumstances negligent in parting with the thing in its dangerous state.

30 (3) 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.

35.—(1) For the purpose of determining contributory negligence—

35 (a) a plaintiff shall be responsible for the acts of a person for whom he is, in the particular circumstances, vicariously liable;

40 (b) a plaintiff in an action brought for the benefit of the dependants of a deceased person under *Part IV* (whether such plaintiff is the personal representative or a dependant of the deceased) shall be deemed to be responsible for the acts of the deceased;

45 (c) a plaintiff suing as personal representative of the person suffering the damage shall be deemed to be responsible for the acts of such person;

50 (d) a plaintiff suing on behalf of another (in this section called a nominal plaintiff) shall be deemed to be responsible for the acts of that other (in this section called the beneficiary) and, in particular, a person suing as personal representative of a deceased person shall be deemed to be responsible for the acts of those who would profit by success in the action, including the dependants of the deceased where the action is brought under *Part IV*: provided that—

(i) where a nominal plaintiff is suing on behalf of more than one beneficiary and one beneficiary has been guilty of contributory negligence while another beneficiary has not, the provisions of subsection (1) of section 34 shall apply only in respect of the share of the beneficiary guilty of contributory negligence; and the provisions of section 21 shall apply in favour of the defendant against the beneficiary so guilty of contributory negligence, in respect of the sum payable by the defendant for the benefit of the beneficiary not guilty of contributory negligence;

(ii) where it is found to be more convenient, the court may allow a nominal plaintiff to recover in full notwithstanding the contributory negligence of a beneficiary, and the provisions of section 21 shall then apply in favour of the defendant against the beneficiary so guilty of contributory negligence;

(e) a plaintiff suing as assignee of another, whether by operation of law or otherwise, shall be deemed to be responsible for the acts of that other;

(f) where the plaintiff's damage was caused by two or more persons and such persons would have been concurrent wrongdoers were it not for a contract by the plaintiff with one of such persons before the occurrence of the damage exempting that person from liability, the plaintiff shall be deemed to be responsible for the acts of that person;

(g) where the plaintiff's damage was caused by concurrent wrongdoers and before the occurrence of the damage the liability of one of such wrongdoers was limited by contract with the plaintiff to a sum less than that wrongdoer's just share of liability between himself and the other wrongdoer as determined under section 21 apart from such contract, the plaintiff shall be deemed to be responsible for the acts of that wrongdoer;

(h) where the plaintiff's damage was caused by concurrent wrongdoers and after the occurrence of the damage the liability of one of such wrongdoers is discharged by release or accord made with him by the plaintiff, while the liability of the other wrongdoers remains, the plaintiff shall be deemed to be responsible for the acts of the wrongdoer whose liability is so discharged;

(i) where the plaintiff's damage was caused by concurrent wrongdoers and the plaintiff's claim against one wrongdoer has become barred by the Statute of Limitations or any other limitation enactment, the plaintiff shall be deemed to be responsible for the acts of such wrongdoer;

(j) where the plaintiff's damage was caused by concurrent wrongdoers and, in an action against one of such wrongdoers, judgment is given for the defendant and the plaintiff then brings an action against another of such wrongdoers, the plaintiff shall be deemed to be responsible for the acts of the successful defendant if the defendant now sued can prove that he and the successful defendant were in fact concurrent wrongdoers;

(k) a plaintiff who is responsible for the acts of another under paragraphs (a) to (j) of this subsection shall be responsible also for the acts of any other persons for whose acts the said other person would be responsible under the said paragraphs if he were plaintiff in the action.

(2) For the purpose of subsection (1) of section 34, the contributory negligence—

(a) of a nominal plaintiff, or

5 (b) (where the action is brought for the loss of the consortium or services of a wife or for the loss of the services of a child or servant) of a wife, child or servant,

shall neither bar recovery nor reduce the damages awarded; but the provisions of section 21 shall apply in favour of the defendant against the said nominal plaintiff, wife, child or servant, as the
10 case may be.

(3) Nothing in subsection (1) of this section shall affect the rights of the plaintiff against, or render the plaintiff liable in damages for the acts of, a person for whose acts he is deemed by the said subsection to be responsible.

15 (4) Where a plaintiff is held to be responsible for the acts of another under this section and his damages are accordingly reduced under subsection (1) of section 34, the defendant shall not be entitled to contribution under section 21 from the person for whose acts the plaintiff is responsible.

20 **36.**—(1) When judgment is given for the plaintiff on a claim and for the defendant on a counterclaim under subsection (1) of section 34, the one judgment shall be set off against the other and only the balance found owing shall be recoverable. Set-off of claims.

(2) This section shall apply notwithstanding that one party is a
25 bankrupt or (where a personal representative is party to an action) that the estate administered by him is insolvent.

(3) This section, and also section 251 of the Irish Bankrupt and Insolvent Act, 1857, in so far as it applies to a set-off of judgment debts owing by and to a bankrupt, shall operate only in relation
30 to the satisfaction of debts, and, for all purposes (including the construction of policies of insurance) other than that aforesaid, a judgment shall be treated as creating a debt, duty, obligation and liability for the full amount of the judgment as if there were no set-off, and for such other purposes a debt (whether by judgment
35 or otherwise) shall be deemed to be paid by the judgment debtor to the extent of a debt set off against it. 1857, c. 60.

(4) Notwithstanding anything in section 62, where a claim is made against a person who is insured in respect of a liability alleged in that claim and the claim is paid by the insurer with a
40 deduction in respect of a sum owed to the insured by the person making such claim, the insured or any person representing or deriving title under him shall be entitled to recover from the insurers the amount of the said deduction.

37.—(1) Where a plaintiff has his damages reduced under subsection (1) of section 34 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. Estoppel in case of contributory negligence.

50 (2) Subsection (1) of this section shall apply between two parties notwithstanding that one of them is party to the two actions in different capacities.

38.—(1) Where an action is brought against one or more of concurrent wrongdoers by an injured person who is found in such
55 action to have been guilty of contributory negligence and it is held to be just and equitable that the plaintiff's damages should be reduced under subsection (1) of section 34 having regard to his contributory negligence, the judgment against one wrongdoer Liability of concurrent wrongdoers where plaintiff guilty of contributory negligence.

shall not be for the whole of the plaintiff's recoverable damages but the court shall determine the respective degrees of fault of the plaintiff and of all the defendants to the plaintiff's claim at the time of judgment, leaving out of account the degrees of fault of persons who are not such defendants, and shall give the plaintiff 5 a several judgment against each defendant for such apportioned part of his total damages as the court thinks just and equitable having regard to that defendant's degree of fault determined as aforesaid.

(2) The plaintiff, at any time within the period limited by 10 law for the enforcement of judgments and upon proof that, after taking reasonable steps, he has failed to obtain satisfaction of any judgment in whole or in part, shall have liberty to apply for secondary judgments having the effect of distributing the deficiency 15 among the other defendants in such proportions as may be just and equitable.

(3) This section shall not apply where one of the defendant wrongdoers is responsible for the acts of another ; such wrongdoers shall, subject to subsection (1) of section 34, be liable to the plaintiff for a single portion of his damages. 20

(4) After judgment has been given in accordance with subsection (1) of this section, the plaintiff shall not be entitled to bring a second or subsequent action against a concurrent wrongdoer against whom judgment has not been given, unless he satisfies the court in such action that it was not reasonably possible for him 25 to join such wrongdoer as co-defendant in the first action.

(5) The plaintiff, when commencing such second or subsequent action, shall be under a duty to the wrongdoers already successfully sued who have a right of contribution against the wrongdoer now sued or proposed to be sued to take reasonable steps to notify them 30 of such second or subsequent action at least fourteen days before the institution of proceedings in such action or as soon as is reasonably possible after the commencement of such period.

(6) A wrongdoer receiving such notice shall have the right to become co-plaintiff in the action if the proceedings have not been 35 instituted and otherwise to apply to the court for leave to be joined as co-plaintiff or for consolidation of actions; and a wrongdoer who unreasonably fails to take any of those steps as aforesaid shall be barred from his right of contribution.

(7) If the plaintiff is successful in such second or subsequent 40 action, he shall be entitled to the difference between the total of the damages awarded to him in the previous judgment or judgments and the total of damages that in the view of the court would have been awarded if the said wrongdoer had been joined with the previous defendant or defendants as co-defendant in the earlier 45 action or actions ; and he shall be entitled in addition to the provision mentioned in subsection (2) of this section : provided that—

(a) nothing in this subsection shall entitle a plaintiff to recover from such wrongdoer more than he could have 50 recovered had he not brought such previous action or actions;

(b) nothing in this subsection shall preclude such wrongdoer from disputing any issue that he is otherwise entitled to dispute and, if the plaintiff's damages are found to 55 be less than they were held to be by the court in the earlier action or actions, such wrongdoer shall not be liable for more than his due proportion as between himself, the plaintiff and the previous defendant or defendants of the damages so found ; 60

(c) such wrongdoer may at his option avail himself of any matter decided against the plaintiff in such previous

action or actions as though such matter were *res judicata* between them.

(8) Where damages are awarded against a wrongdoer in accordance with the provisions of this section, such wrongdoer may recover contribution from any other wrongdoer not sued at the same time where such recovery is just and equitable subject to the provisions of *Chapter II* of this Part.

(9) A wrongdoer, when commencing such action for contribution, shall be under a duty to the injured person who has a right of action against the contributor and to the other wrongdoers already successfully sued by the injured person who have a right of contribution against the contributor to take reasonable steps to notify them of such action for contribution at least fourteen days before the institution of proceedings in such action or as soon as is reasonably possible after the commencement of such period.

(10) The injured person or a wrongdoer receiving such notice shall have the rights specified in *subsection (6)* of this section, and if he unreasonably fails to take advantage of his rights he shall be barred from his right of action for damages or for contribution as the case may be.

(11) Where the injured person brings a second or subsequent action in accordance with the provisions of this section, and where a wrongdoer brings an action for contribution as provided in *subsection (8)* of this section, the parties to the action shall be bound by the apportionment of fault made in the earlier action or actions: but the defendant shall not be bound by such apportionment if provision comes to be made for distributing any deficiency caused by the failure to obtain satisfaction of any judgment in whole or in part from one of the wrongdoers already sued.

(12) Where—

(a) the plaintiff sues one wrongdoer and either because he obtains judgment by default or because the court negatives contributory negligence the plaintiff recovers judgment in respect of the whole of his damages against such wrongdoer, and

(b) the plaintiff subsequently sues another wrongdoer who is held to have been a concurrent wrongdoer with the first, the plaintiff also being held to have been guilty of contributory negligence as regards both wrongdoers,

the defendant secondly sued shall be entitled to credit for the same proportion of the sum received from the defendant first sued as the proportion of the damage adjudged to be borne by the plaintiff as between himself and the defendant secondly sued, and in the event of overpayment shall be entitled to repayment.

39.—Where it is made to appear to the court that—

Bankruptcy of one wrongdoer.

(a) one wrongdoer in whose favour judgment is given is or may become a bankrupt, 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.

40.—(1) Where damages are awarded to any person by virtue of *subsection (1)* of *section 34*, the jury or if there is no jury then the judge or arbitrator shall find and record—

Special findings.

(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 subsection, the proportion of such damages that shall not be awarded to the plaintiff and the proportion that shall be payable by the defendant, or the 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 or defendants;

(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 judge or arbitrator to make the requisite calculations following upon such findings.

Courts of limited jurisdiction.

41.—Where an action is brought in a court of limited jurisdiction, the court may award damages up to the limit of its jurisdiction, even though such damages have first been reduced under subsection (1) of section 34 on account of the plaintiff's contributory negligence.

Costs in cases of contributory negligence.

42.—As a general principle, but not so as to limit the judge in the exercise of his discretion, where damages are awarded on claim and counterclaim subject in each case to a reduction for contributory negligence under subsection (1) of section 34, costs shall be awarded in the same proportions as damages.

CHAPTER IV

25

General

Application to breaches of strict duty.

43.—In determining the amount of contribution or of reduction of damages under subsection (1) of section 34 for contributory negligence the court may take account of the fact that the negligence or wrong of one person consisted only in a breach of strict statutory or common-law duty without fault, and may accordingly hold that it is not just and equitable to cast any part of the damage upon such person.

One-sided periods of limitation.

44.—Where, in any claim for contribution between wrongdoers, or in any case to which subsection (1) of section 34 applies, the defendant avoids liability to the plaintiff by pleading the Statute of Limitations or any other limitation enactment, neither he nor any other person responsible for his acts shall be entitled to recover any damages or contribution from the plaintiff.

Restitution.

45.—(1) Where, in cases falling within sections 16 or 17 or within subsection (1) of section 35, the defendant owing to ignorance of the facts omits to claim the benefit of the provisions therein contained, the defendant, notwithstanding that judgment has been given in the plaintiff's favour, shall have a right to repayment by the plaintiff of such sum as the plaintiff should not have recovered in virtue of the said provisions.

(2) Where, as a result of the failure to obtain satisfaction of any judgment in whole or in part from one wrongdoer, other concurrent wrongdoers are compelled to bear a larger part of the plaintiff's damage than they would otherwise have borne, or are compelled to pay a larger sum by way of contribution than they would otherwise have paid, they shall have a right of recoupment against such wrongdoer to the extent of the difference.

Maritime cases.

46.—(1) (a) Where, by the fault of two or more vessels, damage is caused to one or more of those vessels or to another

5 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—

10 (i) 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;

15 (ii) 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.

20 (b) For the purposes of *paragraph (a)* of this subsection the liability of a vessel for damage shall mean the liability of those responsible for the proper navigation and management of the vessel.

(c) *Paragraph (a)* of this subsection shall not apply to a claim for loss of life or personal injuries.

25 (2) 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 (3)* of this section, no action shall be maintainable to enforce a claim for
30 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
35 or personal injuries unless proceedings are commenced within one year from the date of payment.

(3) Any court having jurisdiction to deal with an action to which *subsection (2)* of this section relates may, subject to any rules of court, extend the period referred to in that subsection to
40 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 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
45 the plaintiff resides or has his principal place of business, extend any such period to an extent sufficient to give such reasonable opportunity.

(4) For the purposes of *subsections (1) and (2)* of this section, 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.

55 (5) 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.

60 (6) This section shall be construed as one with the Merchant Shipping Acts, 1894 to 1952.

PART IV

FATAL INJURIES

Definitions (Part IV).

47.—(1) In this Part—

“dependant”, in relation to a person whose death is caused by a wrongful act, means any member of the family of the deceased 5 who suffers injury or mental distress;

“member of the family” means wife, husband, father, mother, grandfather, grandmother, stepfather, stepmother, son, daughter, grandson, granddaughter, stepson, stepdaughter, brother, sister, half-brother, half-sister; 10

“wrongful act” includes a crime.

(2) In deducing any relationship for the purposes of this Part—

1952, No. 25.

(a) a person adopted under the Adoption Act, 1952, shall be considered the legitimate offspring of the adopter or 15 adopters;

(b) subject to *paragraph (a)* of this subsection, an illegitimate person shall be considered the legitimate offspring of his mother and reputed father;

(c) a person *in loco parentis* to another shall be considered 20 the parent of that other.

Action where death caused by wrongful act, neglect or default.

48.—(1) Where the death of a person is caused by the wrongful act 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 25 be liable to an action for damages for the benefit of the dependants of the deceased.

(2) Only one action for damages may be brought against the same person in respect of the death.

(3) The action may be brought by the personal representative 30 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 35 of all the dependants.

(5) The plaintiff shall furnish the defendant with particulars of the person or 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. 40

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

Damages.

49.—(1) (a) The damages under *section 48* shall be—

(i) the total of such amounts (if any) as the jury or the judge, as the case may be, shall consider pro- 45 portioned to the injury resulting from the death

to each of the dependants, respectively, for whom or on whose behalf the action is brought, and

5 (ii) subject to *paragraph (b)* of this subsection, the total of such amounts (if any) as the judge shall consider reasonable compensation for mental distress resulting from the death to each of such dependants.

(b) The total of any amounts awarded by virtue of *sub-paragraph (ii)* of *paragraph (a)* of this subsection shall not exceed one thousand pounds.

10 (c) Each amount awarded by virtue of *paragraph (a)* of this subsection shall be indicated separately in the award.

15 (d) *Subparagraph (ii)* of *paragraph (a)* of this subsection shall have effect only in respect of a death occurring within three years after the date of the passing of this Act.

(2) In addition, damages may be awarded in respect of funeral and other expenses actually incurred by the deceased, the dependants or the personal representative by reason of the wrong-
20 ful act.

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

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

50.—In assessing damages under this Part account shall not be taken of—

Sums not to be taken into account in assessing damages.

30 (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 statute or otherwise in consequence of the death of the deceased.

51.—A reference in any enactment to the Fatal Accidents Acts, 1846 to 1908, or to any of them shall be construed as a reference
35 to this Part.

Adaptation of references to Fatal Accidents Acts, 1846 to 1908.

PART V

AMENDMENTS OF THE WORKMEN'S COMPENSATION ACTS, 1934 TO 1955

52.—In this Part—

40 "the Act of 1934" means the Workmen's Compensation Act, 1934;

Definitions
(Part V).
1934, No. 9.

"the Act of 1953" means the Workmen's Compensation (Amendment) Act, 1953;

1953, No. 25.

"employer" and "workman" have the same meaning as in the Workmen's Compensation Acts, 1934 to 1955.

45 53.—(1) In this section "section 60" means section 60 of the Act of 1934.

Amendments of section 60 of the Act of 1934.

(2) Section 60 is hereby amended by the insertion therein, after subsection (3), of the following new subsection—

“ (3A) Where—

(a) within the time limited by this Act for taking proceedings under this Act, an action is instituted to 5
recover damages independently of this Act in
respect of an injury or disease or a death giving
rise to a claim for compensation under this Act,
and

(b) it is determined in the action that— 10

(i) damages are recoverable independently of this
Act subject to such reduction as is mentioned
in *subsection (1) of section 34* of the Civil
Liability Act, 1961, and

(ii) the employer would have been liable to pay 15
compensation under this Act,

the plaintiff may apply to the court in which the action is
tried or, if the determination is the determination (on appeal
by either party) of an appellate tribunal, to that appellate
tribunal to assess and award such compensation, and if he does 20
so the following provisions shall apply—

(I) that court or appellate tribunal (as the case may
be) shall proceed to assess such compensation, but
may deduct therefrom all or any of the costs which
in its judgment have been caused by the plaintiff 25
bringing the action instead of proceedings under
this Act,

(II) no damages shall be recovered in the action.”

(3) In subsection (4) of section 60, “ subsection (3) or subsection
(3A) of this section ” shall be substituted for “ the foregoing sub- 30
section ”.

(4) In subsection (5) of section 60, “ or (3A)” shall be inserted
after “ subsection (3) ”.

(5) Section 60 is hereby amended by the insertion therein after
subsection (5) of the following new subsection— 35

“ (5A) Subsection (3A) of this section shall apply with the
necessary adaptations in any case where compensation is
recoverable under a scheme certified or made under this Act,
if the scheme applies this section or contains any provision
similar thereto.” 40

(6) In subsection (6) of section 60 (being the subsection added
to that section by section 6 of the Act of 1953) the reference to
damages shall be construed as including a reference to damages
subject to such reduction as is mentioned in *subsection (1) of*
section 34. 45

(7) The amendments effected by the preceding subsections of
this section shall not apply to any case where the accident giving
rise to the claim happened before the date of the passing of this
Act.

Amendment of
section 61 of the
Act of 1934.

54.—(1) Where a workman or his personal representative or 50
his dependant or other person has recovered compensation
under the Workmen's Compensation Acts, 1934 to 1955, or
under any scheme certified under the Act of 1934 in respect
of an injury caused in circumstances which would give a
right to recover reduced damages in respect thereof by virtue of 55
subsection (1) of section 34 from some person other than the
employer (in this subsection referred to as the third party), any

right conferred by section 61 of the Act of 1934, on the person by whom the compensation was paid or on any person called upon to pay an indemnity under section 19 of the Act of 1934, 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 so paid or payable by the said person as bears to the total of the sum so paid or payable the same proportion as the said reduced damages bears to the total damages which would have been recoverable if the workman had not been negligent.

(2) In subparagraph (ii) of paragraph (aa) of section 61 of the Act of 1934 (being the paragraph added to that section by section 7 of the Act of 1953), the reference to damages shall be construed as including a reference to damages subject to such reduction as is mentioned in subsection (1) of section 34.

(3) The amendments effected by the preceding subsections of this section shall not apply to any case where the accident happened before the date of the passing of this Act.

PART VI

AMENDMENT OF THE AIR NAVIGATION AND TRANSPORT ACT, 1936

55.—The following section shall be substituted for section 18 of the Act of 1936—

Re-enactment,
with amendments,
of section 18 of
the Act of 1936.

“Liability of
carrier in the
event of the
death of a
passenger.

18.—(1) (a) In this section—

‘dependant’, in relation to a passenger in respect of whose death a liability is imposed on a carrier by Article 17 of the First Schedule to this Act, means any member of the family of the deceased who suffers injury or mental distress;

‘member of the family’ means wife, husband, father, mother, grandfather, grandmother, stepfather, stepmother, son, daughter, grandson, granddaughter, stepson, stepdaughter, brother, sister, half-brother, half-sister.

(b) In deducing any relationship for the purposes of this section—

(i) a person adopted under the Adoption Act, 1952, shall be considered the legitimate offspring of the adopter or adopters;

1952, No. 25.

(ii) subject to subparagraph (i) of this paragraph, an illegitimate person shall be considered the legitimate offspring of his mother and reputed father;

(iii) a person *in loco parentis* to another shall be considered the parent of that other.

(2) Any liability to pay damages imposed by Article 17 of the First Schedule to this Act on a carrier in respect of the death of a passenger shall be in substitution for any liability of the carrier in respect of the death of that passenger under any statute (including *Part IV* of the Civil Liability Act, 1961) or at common law, and the following provisions

shall have effect in relation to the action to enforce the liability so imposed—

- (a) the liability shall be enforceable for the benefit of the dependants of the passenger;
- (b) only one action for damages may be brought 5 in the State against the same person in respect of the death;
- (c) the action may be brought by the personal representative of the passenger or, if at the expiration of six months from the 10 death there is no personal representative or no action has been brought by the personal representative, by all or any of the dependants;
- (d) the action, by whomsoever brought, shall be 15 for the benefit of all the dependants who are either resident in the State or, not being resident there, express a desire to take the benefit of the action;
- (e) the plaintiff shall furnish the defendant with 20 particulars of the persons for whom and on whose behalf the action is brought;
- (f) subject to paragraph (n) of this subsection—
 - (i) the damages shall be the total of such amounts (if any) as the jury or the 25 judge, as the case may be, shall consider proportioned to the injury resulting from the death to each of the dependants, respectively, for whom or on whose behalf the action is 30 brought, and
 - (ii) subject to paragraph (g) of this subsection, the total of such amounts (if any) as the judge shall consider 35 reasonable compensation for mental distress resulting from the death to each of such dependants;
- (g) the total of any amounts awarded by virtue of subparagraph (ii) of paragraph (f) of this subsection shall not exceed one 40 thousand pounds;
- (h) each amount awarded by virtue of paragraph (f) of this subsection shall be indicated separately in the award;
- (i) subparagraph (ii) of paragraph (f) of this 45 subsection shall have effect only in respect of a death occurring within three years after the date of the passing of the Civil Liability Act, 1961;
- (j) in addition, damages may be awarded in 50 respect of funeral and other expenses actually incurred by the passenger, the dependants or the personal representative as a result of the accident which caused the death of the passenger; 55
- (k) it shall be sufficient for the defendant in paying money into court in the action to pay it in one sum as damages for all the dependants without apportioning it 60 between them;
- (l) 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 jury

or the judge, as the case may be, may have determined;

5 (m) in assessing the damages account shall not be taken of any sum payable on the death of the passenger under any contract of insurance, or of any pension, gratuity or other like benefit payable under statute or otherwise in consequence of the death of the deceased;

10 (n) 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 the provisions of the First Schedule to this Act limiting the liability of the carrier and of any proceedings which have, or are likely to be, commenced outside the State in respect of the death of the passenger."

PART VII

20 MISCELLANEOUS

56.—For the purposes of subsection (1) of section 34 and subsection (1) of section 46, the fact that any person—

Abolition of last opportunity rule.

25 (a) had an opportunity of avoiding the consequences of the act of any other person 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,

30 shall not, by itself, be a ground for holding that the damage was not caused by the act of such other person.

57.—(1) It shall not be a defence in an action of tort merely to show that the plaintiff is in breach of the civil or criminal law.

Abolition of defences.

35 (2) It shall not be a defence in an action for breach of statutory duty merely to show that the defendant delegated the performance of the duty to the plaintiff.

58.—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 the child is subsequently born alive.

Wrongs to unborn child.

59.—(1) Where a wrong is committed by the use of a mechanically propelled vehicle belonging to the State, the Minister for Finance shall be liable to an action for damages in respect of damage resulting from the wrong in like manner as if the Minister for Finance were the owner of the vehicle, and the person using the vehicle shall, for the purposes of such liability, be deemed to be the servant of the Minister for Finance in so far as such person was acting in the course of his duty or employment.

Liability of Minister for Finance for negligent use of mechanically propelled vehicle.

50 (2) Proceedings may be brought against the Minister for Finance by virtue of this section without obtaining the fiat of the Attorney General.

(3) Nothing in this section shall operate to relieve any person from liability in respect of damage resulting from his own wrong.

(4) For the purposes of this section, a mechanically propelled vehicle not belonging to the State shall—

(a) while being used when it is under seizure by a person in the service of the State in the course of his duty or employment, or

5

(b) while being used by a member of the Garda Síochána or an officer of any Minister for the purpose of a test, removal or disposition of the vehicle pursuant to the Road Traffic Act, 1961, or any regulation thereunder,

be deemed to belong to the State.

10

(5) In this section—

“mechanically propelled vehicle” means a vehicle intended or adapted for propulsion by mechanical means, including—

(a) a bicycle or triicycle, with an attachment for propelling it by mechanical power, whether or not the attachment is being used,

15

(b) a vehicle the means of propulsion of which is electrical or partly electrical and partly mechanical;

“use” includes keeping or leaving stationary.

Liability of
road authority
for failure
to maintain
public road.

60.—(1) A road authority shall be liable for damage caused as a result of their failure to maintain adequately a public road.

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(2) In proceedings under this section, it shall be a defence for the road authority to prove that—

(a) they had given sufficient warning that the road was a danger to traffic, or

25

(b) they had taken reasonable precautions to secure that the road was not a danger to traffic, or

(c) they had not a reasonable opportunity to give such warning or take such precautions, or

(d) the damage resulted from a wrong committed by any person other than the road authority.

30

(3) In determining whether a road was adequately maintained, regard shall be had in particular to—

(a) the construction of the road and the standard of maintenance appropriate to a road of such construction,

35

(b) the traffic using the road,

(c) the condition in which a reasonable person would have expected to find the road.

(4) In determining whether a road authority had a reasonable opportunity to give warning that a road was a danger to traffic or had taken reasonable precautions to secure that a road was not such a danger, regard shall be had to the standard of supervision reasonable for a road of such character.

40

(5) In this section—

“road authority” means the council of a county, the corporation of a county or other borough and the council of an urban district;

45

“public road” means a road the responsibility for the maintenance of which lies on a road authority and includes any bridge, pipe, arch, gully, footway, pavement, fence, railing or wall which forms part of such road and which it is the responsibility of the road authority to maintain.

50

(6) This section shall not apply to damage arising from an event which occurred before the coming into operation of this section.

(7) This section shall come into operation on such day, not

55

earlier than the 1st day of April, 1967, as may be fixed therefor by order made by the Government.

61.—(1) Notwithstanding any other enactment or any rule of law, a claim for damages or contribution in respect of a wrong shall be provable in bankruptcy where the wrong out of which the liability to damages or the right to contribution arose was committed before the time of the bankruptcy.

Proof of claims for damages or contribution in bankruptcy.

(2) Where the damages or contribution have not been and cannot be otherwise liquidated or ascertained, the court may make such order as to it seems fit for the assessment of the damage or contribution, and the amount when so assessed shall be provable as if it were a debt due at the time of the bankruptcy.

(3) Where a claim for contribution or in respect of a judgment debt for contribution is provable in bankruptcy, no such proof shall be admitted except to the extent that the claimant has satisfied the debt or damages of the injured person, unless the injured person does not prove in respect of the wrong or debt.

62.—Where a person (hereinafter referred to as the insured) who has effected a policy of insurance in respect of liability for a wrong, if an individual, becomes a bankrupt or dies or, if a corporate body, is wound up or, if a partnership or other unincorporated association, is dissolved, moneys payable to the insured under the policy shall be applicable only to discharging in full all valid claims against the insured in respect of which those moneys are payable, and no part of those moneys shall be assets of the insured or applicable to the payment of the debts (other than those claims) of the insured in the bankruptcy or in the administration of the estate of the insured or in the winding-up or dissolution, and no such claim shall be provable in the bankruptcy, administration, winding-up or dissolution.

Application of moneys payable under certain policies of insurance.

63.—(1) Where a sum of money has been lodged in court by the defendant in an action for a wrong in which the plaintiff is an infant, an application may be made to the judge by the plaintiff to decide whether that sum of money should be accepted or the action should go to trial and—

Costs in certain actions in which the plaintiff is an infant.

(a) if, on any such application, the judge decides that the action should go to trial, and

(b) an amount by way of damages is awarded to the plaintiff which does not exceed the sum so lodged,

then, notwithstanding any rule of court or practice to the contrary, the costs in the action shall be at the discretion of the judge.

(2) An appeal shall lie from the order of the judge in relation to the costs in such action.

SCHEDULE

ENACTMENTS REPEALED

Section 5.

PART I

Acts of the Parliament of England applied to Ireland by the Act of the Parliament of Ireland (10 Henry 7. c. 22 (Ir.)) passed in the year 1495 and entitled "An Act confirming all Statutes made in England"

Session and Chapter (1)	Title (2)	Extent of Repeal (3)
13 Edw. 1 (Stat. Westm. sec.). c. 23.	Writ of accompt for executors (1285).	The whole chapter.
4 Edw. 3. c. 7.	Executors shall have an action of trespass for a wrong done to their testator (1330).	The whole chapter.

PART II

Act of the Parliament of Ireland

Session and Chapter (1)	Title (2)	Extent of Repeal (3)
10 Chas. 1. sess. 2. c. 5 (Ir.).	An Act for the recovery of arrearages of rents by executors of tenant in fee simple (1634).	The whole Act so far as unrepealed.

PART III

Acts of the Parliament of the late United Kingdom of Great Britain and Ireland

Session and Chapter (1)	Short Title (2)	Extent of Repeal (3)
3 & 4 Vic. c. 105.	Debtors(Ireland) Act, 1840.	Section 31.
51 & 52 Vic. c. 64.	Law of Libel Amendment Act, 1888.	Section 5.
1 & 2 Geo. 5. c. 57.	Maritime Conventions Act, 1911.	Sections 1, 2, 3, 8 and 9.

PART IV

Act of the Oireachtas of Saorstát Éireann

Number and Year (1)	Short Title (2)	Extent of Repeal (3)
No. 40 of 1936.	Air Navigation and Transport Act, 1936.	Section 23.

PART V

Acts of the Oireachtas

Number and Year (1)	Short Title (2)	Extent of Repeal (3)
No. 1 of 1951.	Tortfeasors Act, 1951.	The whole Act.
No. 3 of 1956.	Fatal Injuries Act, 1956.	The whole Act.
No. 6 of 1957.	Statute of Limitations, 1957.	Subsection (3) of section 2, and subparagraph (iii) of paragraph (e) of subsection (1) and subsection (3) of section 11.
No. 1 of 1959.	Air Navigation and Transport Act, 1959.	Section 4.
No. of 1961.	Road Traffic Act, 1961.	Subsection (4) of section 76 and sections 116 and 117.

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BILLE

(mar a leasaíodh ar Thuarascáil)

dá ngairtear

Acht d'athchóiriú an dlí a bhaineann le dliteanas sibhialta, do dhéanamh socrú go sonrach faoi mhaireachtáil cúiseanna caingne tar éis báis, faoi imeachtaí i gcoinne éagóirí-theoirí comhthráthacha agus ranníoc eatarthu, agus faoi dhliteanas i gcásanna faillí rannpháirteach, do dhéanamh socrú le haghaidh damáistí chun tairbhe do chleithiúnaithe aon duine dá ndéanfar díobháil mharfach trí ghníomh éagórach, faillí nó mainneachtain ag duine eile, agus do dhéanamh socrú i dtaobh ábhar eile a bhaineann leis na nithe sin roimhe seo.

An tAire Dlí agus Cirt a thug isteach

*Ordaíodh ag Dáil Éireann a chlóbhualadh,
27 Iúil, 1961*

BAILE ÁTHA CLIATH:
ARNA FHOILSIÚ AG OIFIG AN tSOLÁTHAIR

L3 ceannach díreach ón Oifig Díolta Foilseachán Rialtais,
An Stuaire, Árd Oifig an Phoist, Baile Átha Cliath, nó trí
aon díoltóir leabhar.

Cló-bhuailte ag CAHILL & Co., Ltd

[*Luach : Dhá Scilling agus Réal Glan*]

BILL

(as amended on Report)

entitled

An Act to reform the law relating to civil liability, providing in particular for the survival of causes of action on death, for proceedings against and contribution between concurrent wrongdoers and for liability in cases of contributory negligence, to provide for damages for the benefit of the dependants of any person fatally injured by the wrongful act, neglect or default of another, and to provide for other matters connected with the foregoing.

Introduced by the Minister for Justice

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