

ACT 176
CIVIL LIABILITY ACT, 1963

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ACT 176
CIVIL LIABILITY ACT, 1963(1)

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, and to provide for related matters.

Contributory Negligence

1. Apportionment of liability in case of contributory negligence

(1) Where a person suffers damage as the result partly of the fault of any other person and partly of the fault of that person or the fault of someone for whom that person is responsible, 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 shall be reduced to the extent that the Court thinks just and equitable having regard to the plaintiff's share in the responsibility for the damage.

(2) For the purposes of subsection (1),

(a) if, having regard to 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 a defence arising under a contract;
- (c) where a contract or an 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.

(3) Article 21 of the Warsaw Convention (which empowers a court to exonerate wholly or partly a carrier who proves that the damages were caused by or contributed to by the negligence of the injured person) shall have effect subject to this Act.

2. Finding under section 1

Where damages are awarded to a person by virtue of section 1, 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 section 1, the proportion of the damages that is not awarded to the plaintiff and the proportion that is payable by the defendant, or respective proportion that is payable by each of the defendants if more than one, expressed in each case in percentage of the total fault of the plaintiff and the defendant;
- (c) whose negligence, want of care or caution, or wrong contributed to whose or what damage, and in what respects.

3. Estoppel in case of contributory negligence

(1) Where the damages of a plaintiff are reduced under section 1 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 is binding between the parties in the second action.

(2) Subsection (1) applies between two parties although one of them is party to the two actions in different capacities.

Concurrent Wrongdoers

4. Definitions

For the purposes of sections 5 to 14,

“**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.

5. Judgment against wrongdoer

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

6. Limitation of damages, more than one action

(1) Where judgments are obtained in respect of the same damage in separate actions against concurrent wrongdoers the sums of money 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 is not entitled to costs in any of the actions other than in the action in which judgment is first given unless the Court is of the opinion that there was reasonable ground for bringing the action as a separate action.

7. Right of contribution

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

8. Determination of contribution in action for damages

(1) Where in an action for damages two or more concurrent wrongdoers are before the Court, 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 having regard to 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.

(4) An apportionment may confer a complete indemnity on one or more of the concurrent wrongdoers.

(5) An apportionment shall not be made unless the Court is satisfied that all the concurrent wrongdoers are before the Court.

9. Recovery of contribution

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

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

10. Claim for contribution

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

(2) The amount of the contribution shall be the amount determined by the Court having regard to the

circumstances and, in particular,

- (a) to the extent to which the claimant, the concurrent wrongdoer and any other concurrent wrongdoers were respectively responsible for the damage, and
- (b) to a sum of money which the concurrent wrongdoer has already paid in respect of the damage and costs whether directly or by way of contribution.

(3) Where a sum of money paid by the claimant was paid on proof of a settlement with the injured party and the Court is of the opinion that the settlement was excessive, the contribution shall be estimated on the basis of that sum of money which in the opinion of the Court, would have been a reasonable settlement.

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

(5) A contribution is not recoverable against a person who is entitled to be indemnified by the claimant in respect of the damage.

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 the terms determined by the Court, give leave to the defendant to issue and serve on that person a third party notice.

12. Limitation of actions against one of concurrent wrongdoers

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

13. Limitation of actions for contribution

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

14. Agreement for indemnity

A provision of sections 4 to 13 does not render enforceable an agreement for indemnity which would not have been enforceable if this Act had not been passed.

Fatal Injuries

15. Definitions

For the purposes of sections 16 to 22,

“dependent”, in relation to a person whose death is caused by a wrongful act, includes

- (a) a member of the family of the deceased, and
- (b) any other person who that member was, by reason of adoption under the relevant law on adoption 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, any one of those persons mentioned in the First Schedule

as the family, based on the paternal or maternal system;

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

16 Action where death caused by wrongful act

(1) Where the death of a person is caused by the fault of another that would have entitled the party injured, but for the death, to maintain an action and recover damages the person who would have been so liable is 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, a person representative has not taken office or an action has not been brought by the personal representative of all or any of the dependants.

(4) An action brought under subsection (3) is 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.

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 the 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) section 16 of this Act shall apply to an action brought in the Republic to enforce the liability, and
- (b) the liability shall be in substitution for any other liability imposed by law.

18. Damages

(1) The damages under section 16 shall be

- (a) the total of the amounts that 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 the amounts that the Court shall consider reasonable compensation for mental distress resulting from the death of those dependants.

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

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

(4) *Spent.2(2)*

(5) In addition, damages may be awarded in respect of expenses actually incurred by the deceased

before the death and in respect of funeral and any other expenses incurred by the dependants or the personal representative by reason of the wrongful act.

(6) It is sufficient for a defendant, in paying money into court in the action, to pay it in one sum of money 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 the shares that the Court may have determine.

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 an appropriate order that is just and equitable in view of those provisions and of any proceedings which have, or are likely to be, commenced outside the Republic in respect of the death of the passenger.

20. Sums not to be taken into account in assessing damages

In assessing damages, account shall not be taken of

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

21. Reduction of damages

Where 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 sections 1 to 3.

Survival of Causes of Action on Death

22. Survival of cause of action vested in deceased person

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

23. Survival of cause of action subsisting against deceased person

(1) A cause of action subsisting against a person shall on the death survive against the estate of that person.

(2) Where damage is suffered by reason of an act in respect of which a cause of action would have subsisted against a person if that person had not died before or at the same time that the damage was suffered, there shall be deemed, for the purposes of subsection (1), to have been subsisting against that person before that person's death a cause of action in respect of that act as would have subsisted if that person had died after the damage was suffered.

24. Non-application of sections 22 and 23

Sections 22 and 23 do 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 Act, 1987.3(3)

25. Additional rights of dependants

The rights conferred by sections 22 to 28 for the benefit of the estate of a deceased person are in addition to the rights conferred on the dependants of a deceased person by sections 15 to 21.

26. Limitation of action against estate

(1) In this section, "**relevant period**" means the period prescribed by an enactment of limitations of actions.

(2) Proceedings shall not be maintainable in respect of a cause of action which has survived against the estate of a deceased person unless

- (a) proceedings against that person in respect of that cause of action were commenced within the relevant period and were pending at the date of the 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 the death, whichever period first expires.

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 a loss or gain to the estate, consequent on the death, except that a sum of money for funeral expenses may be added.

28. Insolvency of estate

Where an estate is insolvent, a liability in respect of a cause of action which survives against it shall be a debt provable in the administration of the estate although it is a demand in the nature of unliquidated damages arising otherwise than by a contract or promise.

Miscellaneous Provisions

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 the part of that person,

shall not free that other person from responsibility for those consequences.

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 of the results of the injury.

(2) A provision in a contract, whenever made, relieving the common employer from responsibility or limiting the liability of the common employer is void.

31. Plea of statute of limitation a bar to cross-action

Where, in an action for damages or in a claim for contribution under sections 4 to 14, the defendant avoids liability to the plaintiff by pleading an enactment limiting the time within which proceedings may be brought, neither the defendant nor any other person responsible for the acts is entitled to recover damages or contribution from the plaintiff or from a person responsible for those acts in respect of the matters in issue.

32. Maritime cases

(1) Despite 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 property on board, and an action is brought for the damages, the liability of each vessel in respect of the damage shall be in proportion to the degree in which the vessel was in fault and accordingly a right of contribution in respect of the apportioned liability does not exist.

(2) For the purposes of subsection (1),

- (a) if having regard to 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 subsection (1) shall affect the liability of a person under a contract of carriage or a contract, or shall be construed as imposing a liability on a person from which that person is exempted by a contract or by a provision of law, or as affecting the right of a person to limit the liability of that person in the manner provided by law.

(3) For the purposes of subsection (1), the liability of a vessel for damage means the liability of those responsible for the proper navigation and management of the vessel.

(4) Subsection (1) does not apply to a claim for loss of life or personal injuries.

(5) Where, by the sole or concurrent fault of a vessel damage is caused to that or another vessel or to the cargo or property on board either vessel, or loss of life or personal injury is suffered by a person on board either vessel, then, subject to subsection (6), an action is not maintainable to enforce a claim for damages or lien in respect of the damage, loss of life or injury unless proceedings are commenced within two years from the date when the damage, loss of life or injury was caused; and an action is not maintainable to enforce a claim for contribution in respect of an overpaid proportion of the damages for loss of life or personal injuries unless proceedings are commenced within one year from the date of payment.

(6) A Court having jurisdiction to deal with an action to which subsection (5) relates may, subject to the rules of court, extend the period referred to in that subsection to the extent and subject to the conditions as it thinks fit, and shall, if satisfied that there has not during that period been a 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 the principal place of business, extend the period to an extent sufficient to give a reasonable opportunity.

(7) For purposes of subsections (1), (2), (3), (4) and (5) references to damage caused by the fault of a vessel shall be construed as including references to salvage or any other expenses, consequent on that fault, recoverable at law by way of damages and the expenses shall be deemed to be a damage caused when they are incurred.

(8) This section shall be applied in all cases heard and determined in a Court having jurisdiction to deal with the case and in whatever waters the damage in question was caused or the salvage services or any other expenses in question were rendered or incurred.

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

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 the first-mentioned wrongdoer or that estate, shall be deprived or 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.

34. Wrongs to unborn child

The law relating to wrongs shall apply to an unborn child for the protection of that child as if the child were born, provided that the child is subsequently born alive.

35. Interpretation

In this Act, unless the context otherwise requires,

“**action**” includes counterclaim and arbitration;

“**an enactment on limitations of actions**” includes sections 13, 16 and 32;

“**citizen**” means a citizen of Ghana;

“**contributory negligence**” includes the fault of the person who suffers a damage as the result of any other person’s fault;

“**Court**” includes a court of competent jurisdiction and an arbitrator;

“**defendant**” includes a 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 a wrongful act or is otherwise responsible for a wrong.

36. Statutes ceasing to apply

A statute mentioned in the Second Schedule shall, to the extent specified in the third column of that Schedule, cease to apply in the Republic.

37. Repeal

Spent.4(4)

38. Savings for past cases

(1) Sections 1 to 14 shall apply only where the cause of action accrues after the commencement of this Act.

(2) Sections 15 to 28 shall apply only where death occurs after the commencement of this Act.

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 specified 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 RELATIONSHIPS

[Section 15]

Paternal System

Mother, father
Wife, son, daughter
Brother, sister
Father’s brother

Maternal System

Mother, father
Wife, son, daughter
Brother, sister
Mother’s mother
Mother’s brother
Mother’s sister
Sister’s son, sister’s daughter
Mother’s sisters son,
Mother’s sister’s daughter

Second Schedule
STATUTES CEASING TO APPLY
[Section 36]

<i>Section 7</i> (1)	<i>Subject-matter</i> (2)	<i>Extent of cesser</i> (3)
9 & 10 Vic. 93 (1846)	Fatal accidents	The whole Act.
1 & 2 Geo. 5. c. 57 (1911)	*Maritime Cases	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.

Endnotes

1 (Popup - Footnote)

1. The Act was assented to on 19th April, 1963.

2 (Popup - Footnote)

2. The subsection provided that

“(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.”

3 (Popup - Footnote)

3. [P.N.D.C.L. 187](#).

4 (Popup - Footnote)

4. The section provides for the repeal of the Law Reform (Civil Wrongs) Act, 1959 (No. 12).