

CONTRACT AND TORT ACT

Principal Act

Act. No. 1960-04	<i>Commencement</i>	18.3.1960
	<i>Enactment</i>	17.3.1960

With which are incorporated	Relevant current provisions
Acts. 1972-04	s. 41
1972-05	
1972-09	
1978-18	s. 40
1978-03	
1978-05	

Amending enactments	Relevant current provisions	Commencement date
Acts. 1960-31	ss. 4 and 12	
1960-42	s. 7(1)	
1961-09	ss. 5(1) and (3), 6 and 15-27	
1966-02	s. 4(1)	
1972-01	s. 6(6A)	
1975-22	–	
1983-12	ss. 12(1) and 26(2)	
1990-08	Part XIV	1.3.1990

English sources:

- Fatal Accidents Act 1846 (9 & 10 Vict. c.93)
- Fatal Accidents Act 1864 (27 & 28 Vict. c.95)
- Law of Property Act 1925 (15 Geo. 5 c.20)
- Law Reform (Miscellaneous Provisions) Act 1934 (24 & 25 Geo. 5 c. 41)
- Law Reform (Married Women and Tortfeasors) Act 1935 (25 & 26 Geo. 5 c. 30)
- Law Reform (Frustrated Contracts) Act 1943 (6 & 7 Geo. 6 c.40)
- Law Reform (Contributory Negligence) Act 1945 (8 & 9 Geo. 6 c. 28)
- Law Reform (Personal Injuries) Act 1948 (11 & 12 Geo. 6 c.41)
- Disposal of Uncollected Goods Act 1952 (15 & 16 Geo. 6 & 1 Eliz. 2 c.43)
- Occupiers' Liability Act 1957 (5 & 6 Eliz. 2 c.31)
- Fatal Accidents Act 1959 (7 & 8 Eliz. 2 c.65)
- Corporate Bodies' Contracts Act 1960 (8 & 9 Eliz. 2 c.46)
- Married Women's Property Act 1964 (1964 c.19)

Misrepresentation Act 1967 (1967 c.7)

Criminal Law Act 1967 (1967 c. 58)

Law Reform (Miscellaneous Provisions) Act 1970 (1970 c.33)

Matrimonial Proceedings and Property Act 1970 (1970 c.45)

Law Reform (Miscellaneous Provisions) Act 1971 (1971 c.43)

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AN ACT TO AMEND THE LAW RELATING TO CONTRACT AND TORT AND FOR MATTERS CONNECTED THEREWITH.

Short title.

1. This Act may be cited as the Contract and Tort Act.

PART I.
FRUSTRATED CONTRACTS.

Adjustment of rights and liabilities of parties to frustrated contracts.

(1943 c.40, s.1). 2. (1) Where a contract governed by the law of Gibraltar has become impossible of performance or been otherwise frustrated, and the parties thereto have for that reason been discharged from the further performance of the contract, the following provisions of this section shall, subject to the provisions of section 3, have effect in relation thereto.

(2) All sums paid or payable to any party in pursuance of the contract before the time when the parties were so discharged (in this section and in section 3 referred to as “the time of discharge”) shall, in the case of sums so paid, be recoverable from him as money received by him for the use of the party by whom the sums were paid, and, in the case of sums so payable, cease to be so payable:

Provided that, if the party to whom the sums were so paid or payable incurred expenses before the time of discharge in, or for the purpose of, the performance of the contract, the court may, if it considers it just to do so having regard to all the circumstances of the case, allow him to retain or, as the case may be, recover the whole or any part of the sums so paid or payable, not being an amount in excess of the expenses so incurred.

(3) Where any party to the contract has, by reason of anything done by any other party thereto in, or for the purpose of, the performance of the contract, obtained a valuable benefit (other than a payment of money to which subsection (2) applies) before the time of discharge, there shall be recoverable from him by the other party such sum (if any) not exceeding the value of the benefit to the party obtaining it, as the court considers just, having regard to all the circumstances of the case, and, in particular—

- (a) the amount of any expenses incurred before the time of discharge by the benefited party in, or for the purpose of, the performance of the contract, including any sums paid or payable by him to any other party in pursuance of the contract and retained or recoverable by that party under subsection (2); and

(b) the effect, in relation to the benefit, of the circumstances giving rise to the frustration of the contract.

(4) In estimating, for the purposes of the foregoing provisions of this section, the amount of any expenses incurred by any party to the contract, the court may, without prejudice to the generality of those provisions, include such sums as appear to be reasonable in respect of overhead expenses and in respect of any work or services performed personally by that party.

(5) In considering whether any sum ought to be recovered or retained under the foregoing provisions of this section by any party to the contract, the court shall not take into account any sums which have, by reason of the circumstances giving rise to the frustration of the contract, become payable to that party under any contract of insurance unless there was an obligation to insure imposed by an express term of the frustrated contract or by or under any enactment.

(6) Where any person has assumed obligations under the contract in consideration of the conferring of a benefit by any other party to the contract upon any other person, whether a party to the contract or not, the court may, if in all the circumstances of the case it considers it just to do so, treat for the purposes of subsection (3) any benefit so conferred as a benefit obtained by the person who has assumed the obligations.

Application of section 2.

3. (1) The provisions of section 2 shall apply to contracts, whether made before or after the commencement of this Act. *(1943 c.40, s.2).*

(2) This section and section 2 shall apply to contracts to which the Crown is a party in like manner as to contracts between subjects.

(3) Where any contract to which this section and section 2 apply contains any provision which, upon the true construction of the contract, is intended to have effect in the event of circumstances arising which operate, or would, but for such provision operate, to frustrate the contract, or is intended to have effect whether such circumstances arise or not, the court shall give effect to such provision and shall only give effect to section 2 to such extent, if any, as appears to the court to be consistent with that provision.

(4) Where it appears to the court that a part of any contract to which this section and section 2 apply can properly be severed from the remainder of the contract, being a part wholly performed before the time of discharge, or

so performed except for the payment in respect of that part of the contract of sums which are or can be ascertained under the contract, the court shall treat that part of the contract as if it were a separate contract and had not been frustrated and shall treat section 2 as only applicable to the remainder of that contract.

- (5) This section and section 2 shall not apply—
- (a) to any charterparty, except a time charterparty or a charterparty by way of demise, or to any contract (other than a charterparty) for the carriage of goods by sea; or
 - (b) to any contract of insurance, save as is provided by section 2(5); or
 - (c) to any contract to which section 9 of the Sale of Goods Act¹ (which avoids contracts for the sale of specific goods which perish before the risk has passed to the buyer) applies, or to any other contract for the sale, or for the sale and delivery of specific goods, where the contract is frustrated by reason of the fact that the goods have perished.

PART II.

CONTRACTS REQUIRING WRITING.

Contracts of guarantee, etc., to be in writing.

4. (1) No action shall be brought whereby to charge a defendant upon any special promise, whether made before or after the commencement of this section, to answer for the debt, default or miscarriage of another person, or upon any contract or sale of lands, tenements or hereditaments, or any interest in or concerning them, unless the agreement upon which such action shall be brought or some memorandum or note thereof shall be in writing and signed by the party to be charged therewith or by some other person thereunto by him lawfully authorized.

- (2) *Omitted.*

PART III.

TORTFEASORS.

Proceedings against, and contribution between joint and several tortfeasors.

¹ 1895-20

5. (1) Where damage is suffered by any person as a result of a tort (whether a crime or not)– *(1935 c.30, s.6).*

- (a) judgment recovered against any tortfeasor 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 a joint tortfeasor 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 the estate, or of the dependants, of that person, against tortfeasors liable in respect of the damage (whether as joint tortfeasors or otherwise) the sum 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 these 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;
- (c) any tortfeasor liable in respect of that damage may recover contribution from any other tortfeasor who is or would if sued have been liable in respect of the same damage, whether as a joint tortfeasor or otherwise, so however, that no person shall be entitled to recover contribution under this section from any person entitled to be indemnified by him in respect of the liability in respect of which the contribution is sought.

(2) In any proceedings for contribution under this section the amount of the contribution recoverable from any person shall be such as may be found by the court to be just and equitable having regard to the extent of that person's responsibility for the damage; 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 person shall amount to a complete indemnity.

- (3) For the purposes of this section–
 - (a) the expression “dependants” means the persons for whose benefit actions may be brought under Part IV;
 - (b) 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.

- (4) Nothing in this section shall—
- (a) affect any criminal proceedings against any person in respect of any wrongful act; or
 - (b) render enforceable any agreement for indemnity which would not have been enforceable if this section had not been passed.

PART IV.
FATAL ACCIDENTS.

Action to be maintainable where death is caused by neglect, etc.

*(1846 c.93, s.1;
1934 c.41, s.2;
1959 c.65, ss.1
and 2;
1971 c.43, s.4).*

6. (1) Where the death of a person is caused by wrongful act, neglect or default, and the act, neglect or default is such as would (if death had not ensued) have entitled the party injured to maintain an action and recover damages in respect thereof, the person or persons or body of persons incorporated who would have been liable if death had not ensued shall be liable to an action for damages notwithstanding the death of the person injured, and although the death was caused under such circumstances as amount in law to an offence.

(2) Every such action shall be brought for the benefit of the dependants of the person whose death has been so caused.

(3) Every such action shall be brought by and in the name of the executor or administrator of the deceased person, and the court may give to the parties respectively for whom and for whose benefit the action was brought such damages as are considered proportioned to the injury resulting from the death.

(4) In assessing damages in respect of a person's death in any action under this Part or under the Carriage by Air (Overseas Territories) Order 1967, there shall not be taken into account any insurance money, benefit, pension or gratuity which has been or will or may be paid as a result of the death.

(5) The amount so recovered, after deducting the costs not recovered from the defendant, shall be divided amongst the before-mentioned parties in such shares as the court may determine.

(6) In any such action damages may be awarded in respect of the funeral expenses of the deceased person if such expenses have been incurred by the parties for whose benefit the action is brought.

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(6A) In assessing damages payable to a widow in respect of the death of her husband in any action under this Part there shall not be taken into account the remarriage of the widow or her prospects of remarriage.

(7) For the purposes of this section—

“adopted” means adopted in pursuance of an adoption order made under the Adoption Act or any previous law in force in Gibraltar relating to the adoption of children;

“benefit” means benefit under the Social Security (Employment Injuries Insurance) Act, the Social Security (Non-Contributory and Unemployment Benefits) Act or the Social Security (Insurance) Act and any payment by a friendly society or trade union for the relief or maintenance of a member’s dependants;

“child” includes son and daughter and grandson and grand-daughter;

“dependants” means wife, husband, parent, child and any person who is, or is the issue of, a brother, sister, uncle or aunt;

“insurance money” includes a return of premiums;

“parent” includes father and mother and grandfather and grandmother;

“pension” includes a return of contributions and any payment of a lump sum in respect of a person’s employment.

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

(a) an adopted person shall be treated as the child of the person or persons by whom he was adopted and not as the child of any other person; and, subject thereto;

(b) any relationship by affinity shall be treated as a relationship by consanguinity, any relationship of the half blood as a relationship of the whole blood, and the stepchild of any person as his child; and

(c) an illegitimate person shall be treated as the legitimate child of his mother and reputed father.

Only one action shall lie.

Plaintiff to deliver full particulars of claim made.

(1846 c.93, s.3).

7. (1) Not more than one action shall lie under section 6 for the same subject-matter of complaint, and every such action shall be commenced within three years after the death of the person deceased.

(1846 c.93, s.4). (2) In every action the plaintiff on the record shall be required to deliver to the defendant or his solicitor, together with the statement of claim, full 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.

Action may in certain cases be brought by persons beneficially interested.

(1864 c.95, s.1). 8. (1) Where in any of the cases provided for by section 6 it happens that there is no executor or administrator of the deceased person, or that there being such executor or administrator no action is within six months after the death of the deceased person brought by and in the name of his executor or administrator, then such action may be brought by and in the name or names of all or of any of the persons, if more than one, for whose benefit such action would have been if it had been brought by and in the name of the executor or administrator.

(2) Every action so brought shall be for the benefit of the same person or persons and shall be subject to the same procedure as nearly as may be as if it were brought by and in the name of the executor or administrator.

Money paid into court may be paid in one sum.

(1864 c.95, s.2). 9. If the defendant is advised to pay money into court it shall be sufficient that he pays it in one sum to all persons entitled under section 6 as a compensation for his wrongful act, neglect or default without specifying the shares into which it is to be divided by the court or jury, as the case may be, and if the said sum is not accepted, and an issue is taken by the plaintiff as to its sufficiency, and the court or jury find the same sufficient, the defendant shall be entitled to judgment on that issue.

**PART V.
CONTRIBUTORY NEGLIGENCE.**

Apportionment of liability in case of contributory negligence.

(1945 c.28, ss.1 and 4). 10. (1) Where any person suffers damage as the result partly of his own fault and partly of the fault of any other person or persons; a claim in respect of that damage shall not be defeated by reason of the fault of the person suffering the damage, but the damages recoverable in respect thereof shall

be reduced to such extent as the court thinks just and equitable having regard to the claimant's share in the responsibility for the damage:

Provided that—

- (a) this subsection shall not operate to defeat any defence arising under a contract;
- (b) where any contract or enactment providing for the limitation of liability is applicable to the claim, the amount of damages recoverable by the claimant by virtue of this subsection shall not exceed the maximum limit so applicable.

(2) Where damages are recoverable by any person by virtue of subsection (1) subject to such reduction as is therein mentioned, the court shall find and record the total damages which would have been recoverable if the claimant had not been at fault.

(3) Section 5 (which relates to proceedings against, and contribution between, joint and several tortfeasors), shall apply in any case where two or more persons are liable or would, if they had all been sued, be liable by virtue of subsection (1) of this section in respect of the damage suffered by any person.

(4) Where any person dies as the result partly of his own fault and partly of the fault of any other person or persons, and accordingly if an action were brought for the benefit of the estate under section 6, the damages recoverable would be reduced under subsection (1) of this section, any damages recoverable in an action brought for the benefit of the dependants of that person under section 6, shall be reduced to a proportionate extent.

(5) Where, in any case to which subsection (1) of this section applies, one of the persons at fault avoids liability to any other such person or his personal representative by pleading any enactment limiting the time within which proceedings may be taken, he shall not be entitled to recover any damages or contributions from that other person or representative by virtue of that subsection.

(6) *Omitted.*

(7) Article 21 of the Convention contained in the First Annex to Schedule 1 to the Carriage by Air (Overseas Territories) Order, 1967 (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 section.

(8) For the purposes of this section—

“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 life and personal injury;

“dependant” means any person for whose benefit an action could be brought under section 6;

“fault” means negligence, breach of statutory duty or other act or omission which gives rise to a liability in tort or would, apart from this section, give rise to the defence of contributory negligence.

Saving for Maritime Conventions Act, 1911.

(1945 c.28, s.3). 11. Section 10 shall not apply to any claim to which section 1 of the Maritime Conventions Act, 1911, applies.

Effect of death on certain causes of action.

(1934 c.41, s.1). 12. (1) Subject to the provisions of this section, on the death of any person all causes of action subsisting against or vested in him shall survive against, or, as the case may be, for the benefit of, his estate:

Provided that this subsection shall not apply to causes of action for defamation.

(2) Where a cause of action survives for the benefit of the estate of a deceased person, the damages recoverable for the benefit of the estate of that person—

(a) shall not include any exemplary damages;

(b) *Deleted*;

(c) where the death of that person has been caused by the act or omission which gives rise to the cause of action, 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.

(3) *Repealed*.

(4) Where damage has been suffered by reason of any act or omission in respect of which a cause of action would have subsisted against any person

if that person had not died before or at the same time as the damage was suffered, there shall be deemed, for the purposes of this section, to have been subsisting against him before his death such cause of action in respect of that act or omission as would have subsisted if he had died after the damage was suffered.

(5) The rights conferred by this section for the benefit of the estates of deceased persons shall be in addition to and not in derogation of any rights conferred on the dependants of deceased persons by section 6, or the Carriage by Air (Overseas Territories) Order, 1967, and so much of this section as relates to causes of action against the estates of deceased persons shall apply in relation to causes of action under the said section and Order as it applies in relation to other causes of action not expressly excepted from the operation of subsection (1) of this section.

(6) In the event of the insolvency of an estate against which proceedings are maintainable by virtue of this section, 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, promise or breach of trust.

PART VI. COMMON EMPLOYMENT.

Common employment.

13. (1) It shall not be a defence to an employer who is sued in respect of personal injuries caused by the negligence of a person employed by him, that that person was at the time the injuries were caused in common employment with the person injured. *(1948 c.41, s.1).*

(2) Any provision contained in a contract of service or apprenticeship, or in an agreement collateral thereto, (including a contract or agreement entered into before the commencement of this Act) shall be void in so far as it would have the effect of excluding or limiting any liability of the employer in respect of personal injuries caused to the person employed or apprenticed by the negligence of persons in common employment with him.

(3) Subsection (2) shall bind the Crown.

PART VII. DAMAGES.

Power of court to award interest on debts and damages.

(1934 c.41, s.3). 14. In any proceedings for the recovery of any debt or damages, the court may, if it thinks fit, order that there shall be included in the sum for which judgment is given interest at such rate as it thinks fit on the whole or any part of the debt or damages for the whole or any part of the period between the date when the cause of action arose and the date of the judgment:

Provided that nothing in this section—

- (a) shall authorize the giving of interest upon interest; or
- (b) shall apply in relation to any debt upon which interest is payable as of right whether by virtue of any agreement or otherwise; or
- (c) shall affect the damages recoverable for the dishonour of a bill of exchange.

Measure of damages.

(1948 c.41, s.2). 15. (1) In an action for damages for personal injuries (including any such action arising out of a contract), there shall in assessing those damages be taken into account, against any loss of earnings or profits which has accrued or probably will accrue to the injured person from the injuries, one half of the value of any rights which have accrued or probably will accrue to him therefrom in respect of any benefits under the Social Security (Employment Injuries Insurance) Act during the five years beginning with the time when the cause of action accrued.

This subsection shall not be taken as requiring both the gross amount of the damages before taking into account the said rights and the net amount after taking them into account to be found separately.

(2) The reference in subsection (1) to assessing the damages for personal injuries shall, in cases where the damages otherwise recoverable are subject to reduction under the law relating to contributory negligence or are limited by or under any law or by contract, be taken as referring to the total damages which would have been recoverable apart from the reduction or limitation.

(3) In this section, “personal injuries” includes any disease and any impairment of a person’s physical or mental condition, and “injured,” shall be construed accordingly.

PART VIII. CORPORATE BODIES CONTRACTS.

Cases where contracts need not be under seal.

16. (1) Contracts may be made on behalf of any body corporate, wherever incorporated, as follows:– *(1960 c.46, s.1).*

- (a) a contract which if made between private persons would be by law required to be in writing, signed by the parties to be charged therewith, may be made on behalf of the body corporate in writing signed by any person acting under its authority, express or implied; and
- (b) a contract which if made between private persons would by law be valid although made by parol only, and not reduced into writing, may be made by parol on behalf of the body corporate by any person acting under its authority, express or implied.

(2) A contract made according to this section shall be effectual in law, and shall bind the body corporate and its successors and all other parties thereto.

(3) A contract made according to this section may be varied or discharged in the same manner in which it is authorized by this section to be made.

(4) Nothing in this section shall be taken as preventing a contract under seal from being made by or on behalf of a body corporate.

(5) *Omitted.*

Saving of Companies Act.

17. This Part shall not apply to any company formed and registered under the Companies Act, or an existing company as defined in that Act. *(1960 c.46, s.2).*

PART IX. OCCUPIER'S LIABILITY.

Liability in Tort.

Preliminary.

18. (1) The rules enacted by sections 19 and 20 shall have effect, in place of the rules of the common law, to regulate the duty which an occupier of premises owes to his visitors in respect of dangers due to the state of the premises or to things done or omitted to be done on them. *(1957 c.31, s.1).*

(2) The rules so enacted shall regulate the nature of the duty imposed by law in consequence of a person's occupation or control of premises and of

any invitation or permission he gives (or is to be treated as giving) to another to enter or use the premises, but they shall not alter the rules of the common law as to the persons on whom a duty is so imposed or to whom it is owed; and accordingly for the purpose of the rules so enacted the persons who are to be treated as an occupier and as his visitors are the same as the persons who would at common law be treated as an occupier and as his invitees or licensees.

(3) The rules so enacted in relation to an occupier of premises and his visitors shall also apply, in like manner and to the like extent as the principles applicable at common law to an occupier of premises and his invitees or licensees would apply, to regulate—

- (a) the obligations of a person occupying or having control over any fixed or movable structure, including any vessel, vehicle or aircraft; and
- (b) the obligations of a person occupying or having control over any premises or structure in respect of damage to property, including the property of persons who are not themselves his visitors.

Extent of occupier's ordinary duty.

(1957 c.31, s.2). 19. (1) An occupier of premises owes the same duty, the “common duty of care,” to all his visitors, except in so far as he is free to and does extend, restrict, modify or exclude his duty to any visitor or visitors by agreement or otherwise.

(2) The common duty of care is a duty to take such care as in all the circumstances of the case is reasonable to see that the visitor will be reasonably safe in using the premises for the purposes for which he is invited or permitted by the occupier to be there.

(3) The circumstances relevant for the present purpose include the degree of care, and of want of care, which would ordinarily be looked for in such a visitor, so that (for example) in proper cases—

- (a) an occupier must be prepared for children to be less careful than adults; and
- (b) an occupier may expect that a person, in the exercise of his calling, will appreciate and guard against any special risks ordinarily incident to it, so far as the occupier leaves him free to do so.

(4) In determining whether the occupier of premises has discharged the common duty of care to a visitor, regard is to be had to all the circumstances, so that (for example)–

- (a) where damage is caused to a visitor by a danger of which he had been warned by the occupier, the warning is not to be treated without more as absolving the occupier from liability, unless in all the circumstances it was enough to enable the visitor to be reasonably safe; and
- (b) where damage is caused to a visitor by a danger due to the faulty execution of any work of construction, maintenance or repair by an independent contractor employed by the occupier, the occupier is not to be treated without more as answerable for the danger if in all the circumstances he had acted reasonably in entrusting the work to an independent contractor and had taken such steps (if any) as he reasonably ought in order to satisfy himself that the contractor was competent and that the work had been properly done.

(5) The common duty of care does not impose on an occupier any obligation to a visitor in respect of risks willingly accepted as his by the visitor (the question whether a risk was so accepted to be decided on the same principles as in other cases in which one person owes a duty of care to another).

(6) For the purposes of this section, persons who enter premises for any purpose in the exercise of a right conferred by law are to be treated as permitted by the occupier to be there for that purpose, whether they in fact have his permission or not.

Effect of contract on occupier's liability to third party.

20. (1) Where an occupier of premises is bound by contract to permit persons who are strangers to the contract to enter or use the premises, the duty of care which he owes to them as his visitors cannot be restricted or excluded by that contract, but (subject to any provision of the contract to the contrary) shall include the duty to perform his obligations under the contract, whether undertaken for their protection or not, in so far as those obligations go beyond the obligations otherwise involved in that duty. *(1957 c.31, s.3).*

(2) A contract shall not by virtue of this section have the effect, unless it expressly so provides, of making an occupier who has taken all reasonable care answerable to strangers to the contract for dangers due to the faulty execution of any work of construction, maintenance or repair or other like

operation by persons other than himself, his servants and persons acting under his direction and control.

(3) In this section “stranger to the contract” means a person not for the time being entitled to the benefit of the contract as a party to it or as the successor by assignment or otherwise of a party to it, and accordingly includes a party to the contract who has ceased to be so entitled.

(4) Where by the terms or conditions governing any tenancy (including a statutory tenancy which does not in law amount to a tenancy) either the landlord or the tenant is bound, though not by contract, to permit persons to enter or use premises of which he is the occupier, this section shall apply as if the tenancy were a contract between the landlord and the tenant.

(5) This section, in so far as it prevents the common duty of care from being restricted or excluded, applies to contracts entered into and tenancies created before the 1st day of July, 1961, as well as to those entered into or created after the 30th day of June, 1961; but, in so far as it enlarges the duty owed by an occupier beyond the common duty of care, it shall have effect only in relation to obligations which are undertaken after the 30th day of June, 1961, or which are renewed by agreement (whether express or implied) after the 30th day of June, 1961.

Landlord’s liability in virtue of obligation to repair.

(1957 c.31, s.4). 21. (1) Where premises are occupied by any person under a tenancy which puts on the landlord an obligation to that person for the maintenance or repair of the premises, the landlord shall owe to all persons who or whose goods may from time to time be lawfully on the premises the same duty, in respect of dangers arising from any default by him in carrying out that obligation, as if he were an occupier of the premises and those persons or their goods were there by his invitation or permission (but without any contract).

(2) Where premises are occupied under a sub-tenancy, subsection (1) shall apply to any landlord of the premises (whether the immediate or a superior landlord) on whom an obligation to the occupier for the maintenance or repair of the premises is put by the sub-tenancy, and for that purpose any obligation to the occupier which the sub-tenancy puts on a mesne landlord of the premises, or is treated by virtue of this provision as putting on a mesne landlord, shall be treated as put by it also on any landlord on whom the mesne landlord’s tenancy puts the like obligation towards the mesne landlord.

(3) For the purposes of this section, where premises comprised in a tenancy (whether occupied under that tenancy or under a sub-tenancy) are

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put to a use not permitted by the tenancy, and the landlord of whom they are held under the tenancy is not debarred by his acquiescence or otherwise from objecting or from enforcing his objection, then no persons or goods whose presence on the premises is due solely to that use of the premises shall be deemed to be lawfully on the premises as regards that landlord or any superior landlord of the premises, whether or not they are lawfully there as regards an inferior landlord.

(4) For the purposes of this section, a landlord shall not be deemed to have made default in carrying out any obligation to the occupier of the premises unless his default is such as to be actionable at the suit of the occupier or, in the case of a superior landlord whose actual obligation is to an inferior landlord, his default in carrying out that obligation is actionable at the suit of the inferior landlord.

(5) Nothing in this section shall relieve a landlord of any duty which he is under apart from this section.

(6) For the purposes of this section, obligations imposed by any enactment in virtue of a tenancy shall be treated as imposed by the tenancy, and “tenancy” includes a statutory tenancy which does not in law amount to a tenancy, and includes also any contract conferring a right of occupation, and “landlord” shall be construed accordingly.

(7) This section applies to tenancies created before the 1st day of July, 1961, as well as to those created after the 30th day of June, 1961.

Liability in contract.

Implied terms in contracts.

22. (1) Where persons enter or use, or bring or send goods to, any premises in exercise of a right conferred by contract with a person occupying or having control of the premises, the duty he owes them in respect of dangers due to the state of the premises or to things done or omitted to be done on them, in so far as the duty depends on a term to be implied in the contract by reason of his conferring that right, shall be the common duty of care. *(1957 c.31, s.5).*

(2) Subsection (1) shall apply to fixed and movable structures as it applies to premises.

(3) This section does not affect the obligations imposed on a person by or by virtue of any contract for the hire of, or for the carriage for reward of persons or goods in any vehicle, vessel, aircraft or other means of transport, or by virtue of any contract of bailment.

(4) This section does not apply to contracts entered into before the 1st day of July, 1961.

General.

Application to Crown.

(1957 c.31, s.7). 23. This Part shall bind the Crown, but as regards the Crown's liability in tort shall not bind the Crown further than the Crown is made liable in tort by the Crown Proceedings Act², and that Act and in particular section 4 of it shall apply in relation to duties under sections 19, 20 and 21 of this Act as statutory duties.

PART X.

DISPOSAL OF UNCOLLECTED GOODS.

Right of bailees to sell goods accepted for repair or other treatment but not re-delivered.

(1952 c.43, s.1). 24. (1) This Part shall apply in relation to the bailment of any goods accepted by the bailee, in the course of a business, for repair or other treatment on the terms (express or implied) that they will be re-delivered to the bailor or in accordance with the bailor's directions when the repair or other treatment has been carried out and on payment to the bailee of such charges as may be agreed between the parties or as may be reasonable.

(2) Where goods accepted as aforesaid are ready for re-delivery but the bailor fails both—

(a) to pay or tender to the bailee his charges in relation to the goods; and

(b) to take delivery of the goods or, if the terms of the bailment so provide, to give directions as to their delivery,
the bailee shall, subject to the provisions of any agreement between him and the bailor and to the following provisions of this Part, be entitled, while the failure continues, to sell the goods.

(3) The bailee shall not be entitled by virtue of subsection (2) to sell goods accepted by him for repair or other treatment unless the following provisions are complied with, that is to say:—

(a) at all premises used or appropriated by the bailee for accepting for repair or other treatment goods of the class to which the

² 1951-10

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goods accepted belong, there is, at the time of the acceptance (whether or not the goods are accepted at any such premises), conspicuously displayed in the part of the premises so used or appropriated a notice indicating that the acceptance by the bailee of goods of that class for repair or other treatment is subject to the provisions of this Part and that this Part confers on the bailee a right of sale exercisable in certain circumstances after an interval of not less than twelve months from the date on which the goods are ready for re-delivery;

- (b) after the goods are ready for re-delivery, the bailee gives to the bailor a notice that the goods are ready for re-delivery, being a notice complying with the requirements of subsection (7);
- (c) after the expiration of the period of twelve months beginning with the date of the giving of the notice that the goods are ready for re-delivery and not less than fourteen days before the sale of the goods, the bailee gives to the bailor a notice of his intention to sell the goods, being a notice complying with the requirements of subsection (7),

and the bailee shall not be so entitled to sell the goods in a lot in which goods not accepted by him from the bailor are included or to sell them otherwise than by public auction:

Provided that—

- (i) *Omitted;*
- (ii) where the notice of the bailee's intention to sell the goods states, in addition to the matters required to be contained therein by subsection (7), the lowest price which he is prepared to accept on a sale of the goods by virtue of this section, he may sell the goods for not less than that price otherwise than by public auction.

(4) Where, at any time before the giving of the notice of the bailee's intention to sell the goods, a dispute arises between the bailor and the bailee by reason of the bailor's refusal to pay the sum which the bailee claims to be due to him by way of his charges in relation to the goods, or to take delivery thereof or give directions as to their delivery on the ground that the charges are excessive or that the bailor is not satisfied that the repair or other treatment of the goods has been properly carried out, the bailee's right to sell the goods shall be suspended until the dispute is determined.

(5) Without prejudice to any other mode of determining a dispute, it shall be treated for the purposes of this Part as having been determined if the bailee, at any time after the dispute has arisen, gives to the bailor a notice (hereafter in this Part referred to as a “notice to treat the dispute as determined”)–

- (a) stating that unless, within the period of one month beginning with the date of the giving of the notice, the bailor objects thereto, the dispute will be treated for the purposes of this Part as having been determined; and
- (b) in other respects complying with the requirements of subsection (7),

and within the said period of one month the bailor does not object to the notice; and where the dispute is so treated as having been determined, the date on which it shall be so treated as having been determined shall be the date of the giving of the notice.

(6) Where a dispute in relation to any goods is determined (whether by virtue of subsection (5) or otherwise) subsection (3) shall have effect in relation to those goods as if paragraph (b) thereof were omitted and as if for the reference in paragraph (c) thereof to the date of the giving of the notice that the goods are ready for re-delivery there were substituted a reference to the date on which the dispute is determined.

(7) A notice required or authorized by this section to be given by the bailee to the bailor must contain a sufficient description of the goods to which the notice relates and a statement of the sum which the bailee claims to be due to him by way of his charges in relation to the goods, together with–

- (a) in the case of a notice that the goods are ready for re-delivery or a notice to treat the dispute as determined, a statement that if the bailor fails, within the period of twelve months beginning with the date of the giving of the notice, both to pay the said sum and to take delivery of the goods or give directions as to their delivery they are liable to be sold in accordance with the provisions of this Part;
- (b) in the case of a notice of the bailee’s intention to sell the goods, a statement of the date of the giving of the notice that the goods are ready for re-delivery or, where there has been a dispute between the bailor and bailee, the date on which the dispute was determined, and a statement that if the bailor fails, within the period of fourteen days beginning with the date of the giving of

the notice of the bailee's intention to sell the goods, both to pay the said sum and to take delivery of the goods or give directions as to their delivery they are liable to be sold in accordance with the provisions of this Part.

Notices.

25. (1) In this Part the expression "notice" means a notice in writing. *(1952 c.43, s.2).*

(2) A notice required or authorized by this Part to be given by a bailee to a bailor shall, where the bailor is a corporation, be duly given if it is given to the secretary or clerk of the corporation.

(3) A notice required or authorized by this Part to be given by a bailee to a bailor of the bailee's intention to sell the goods, shall be given by sending it by post in a registered letter.

(4) A notice required or authorized by this Part to be given by a bailee to a bailor, other than a notice of the bailee's intention to sell the goods, may be given either—

- (a) by delivering it to the bailor; or
- (b) by leaving it at his proper address; or
- (c) by post.

(5) For the purposes of this section, and of section 5 of the Interpretation and General Clauses Act³, in its application to this section, the proper address of a person to whom a notice falling within the provisions of subsection (3) or (4) is required or authorized to be given shall, in the case of the secretary or clerk of a corporation, be that of the registered or principal office of the corporation, and, in any other case, be the last known address of the person to whom the notice is to be given.

Procedure after sale.

26. (1) Where goods are sold by virtue of the provisions of this Part, any amount by which the gross proceeds of the sale exceed the charges of the bailee in relation to the goods shall be recoverable by the bailor from the bailee and any amount by which charges exceed the gross proceeds of the sale shall be recoverable by the bailee from the bailor. *(1952 c.43, s.3).*

³ 1962-08

(2) Where goods are so sold, the bailee shall, before the expiration of the period of seven days beginning with the date of the sale of the goods, prepare a record in relation to the goods containing the following particulars, that is to say—

- (a) a sufficient description of the goods;
- (b) the method, date and place of the sale;
- (c) where the goods are sold by public auction, the name and principal place of business of the auctioneer, and where they are sold otherwise than by public auction and the gross proceeds of the sale thereof are not less than £10 the name and address of the buyer;
- (d) the amount of the gross proceeds of the sale; and
- (e) a statement of each item of the charges of the bailee in relation to the goods and the transaction to which each item relates,

and shall, during the period of six years beginning with the date on which the record is prepared, keep the record together with a copy of the notice of the bailee's intention to sell the goods and the certificate of posting of the letter in which the notice was sent, and shall at any reasonable time during the said period of six years, if so requested by or on behalf of the bailor, produce the record, copy and certificate, or any of them, for inspection by the bailor or a person nominated in that behalf by him.

(3) A person who fails to comply with the provisions of subsection (2) or who produces a document kept for the purposes thereof which is to his knowledge false in a material particular is guilty of an offence and is liable on summary conviction to imprisonment for three months and to a fine of £100.

Supplemental provisions.

(1952 c.43, s.4). 27. (1) References in this Part to goods accepted by a bailee in the course of a business for repair or other treatment shall, in relation to goods of any class, be construed as references to goods of that class accepted by him for repair or other treatment in the course of a business consisting of or comprising the acceptance by him of goods of that class for repair or other treatment (whether or not the repair or other treatment is effected by him) wholly or mainly from persons who deliver to him, otherwise than in the course of a business, goods of that class for repair or other treatment.

(2) References in this Part to the charges of the bailee in relation to any goods shall, subject to the provisions of any agreement between the bailor and the bailee, be construed as references to the amount agreed between them as the charge for the repair or other treatment of the goods or, if no amount has been so agreed, a reasonable charge therefor and, in a case where the goods have been sold, the following additional amounts that is to say—

- (a) a reasonable charge for storing the goods during the period beginning with the date of the giving of the notice that the goods are ready for re-delivery, or, where there has been a dispute between the bailor and bailee, the date on which the dispute was determined, and ending with the date of the sale;
- (b) any costs of or in connection with the sale; and
- (c) the cost if any of insuring the goods.

(3) References in this Part to a bailor or bailee of goods shall, as respects a period during which his rights and obligations in relation to the goods are vested in any other person, be construed as references to that other person.

(4) The powers conferred on a bailee by this Part shall be in addition to and not in derogation of any powers exercisable by him independently of this Part.

28. Omitted.

PART XI. MATRIMONIAL MATTERS.

Engagements to marry not enforceable at law.

29. (1) An agreement between two persons to marry one another shall not under the law of Gibraltar have effect as a contract giving rise to legal rights and no action shall lie in Gibraltar for breach of such an agreement, whatever the law applicable to the agreement. *(1970 c.33, s.1).*

(2) *Omitted.*

Property of engaged couples.

30. (1) Where an agreement to marry is terminated, any rule of law relating to the rights of husbands and wives in relation to property in which either or both has or have a beneficial interest, shall apply, in relation to any property in which either or both of the parties to the agreement had a beneficial

interest while the agreement was in force, as it applies in relation to property in which a husband or wife has a beneficial interest.

(2) Where an agreement to marry is terminated, section 10 of the Married Women Act⁴ and section 44 of the Matrimonial Causes Act⁵ (which sections confer power on the Chief Justice or the Judge of the Court of First Instance to settle disputes between husband and wife about property) shall apply, as if the parties were married, to any dispute between, or claim by, one of them in relation to property in which either or both had a beneficial interest while the agreement was in force; but an application made by virtue of this section under section 10, as originally enacted or as extended by section 44, shall be made within three years of the termination of the agreement.

Gifts between engaged couples.

(1970 c.33, s.3). 31. (1) A party to an agreement to marry who makes a gift of property to the other party to the agreement on the condition (express or implied) that it shall be returned if the agreement is terminated shall not be prevented from recovering the property by reason only of his having terminated the agreement.

(2) The gift of an engagement ring shall be presumed to be an absolute gift; this presumption may be rebutted by proving that the ring was given on the condition, express or implied, that it should be returned if the marriage did not take place for any reason.

Abolition of right to claim damages for adultery.

(1952 c.43, s.4). 32. No person shall be entitled to petition any court for, or include in a petition a claim for, damages from any other person on the ground of adultery with the wife of the first mentioned person.

Abolition of actions for enticement, seduction and harbouring of spouse or child.

(1952 c.43, s.5). 33. No person shall be liable in tort under the law of Gibraltar—

(a) to any other person on the ground only of his having induced the wife or husband of that other person to leave or remain apart from the other spouse;

⁴ 1962-06

⁵ 1962-09

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- (b) to a parent (or person standing in the place of a parent) on the ground only of his having deprived the parent (or other person) of the services of his or her child by raping, seducing or enticing that child; or
- (c) to any other person for harbouring the wife or child of that other person.

34. *Transferred to Act. 1977-15 as s.4A.*

Contributions by spouse in money or money's worth to the improvement of property.

35. It is hereby declared that where a husband or wife contributes in money or money's worth to the improvement of real or personal property in which or in the proceeds of sale of which either or both of them has or have a beneficial interest, the husband or wife so contributing shall, if the contribution is of a substantial nature and subject to any agreement between them to the contrary express or implied, be treated as having then acquired by virtue of his or her contribution a share or an enlarged share, as the case may be, in that beneficial interest of such an extent as may have been then agreed or, in default of such agreement, as may seem in all the circumstances just to any court before which the question of the existence or extent of the beneficial interest of the husband or wife arises (whether in proceedings between them or in any other proceedings). *(1970 c.45, s.37).*

Money and property derived from house-keeping allowance.

36. If any question arises as to the right of a husband or wife to money derived from any allowance made by the husband for the expenses of the matrimonial home or for similar purposes, or to any property acquired out of such money, the money or property shall, in the absence of any agreement between them to the contrary, be treated as belonging to the husband and the wife in equal shares. *(1964 c.19, s.1).*

PART XII. MISREPRESENTATION.

Removal of certain bars to rescission for innocent misrepresentation.

37. Where a person has entered into a contract after a misrepresentation has been made to him, and— *(1967 c.7, s.1).*

- (a) the misrepresentation has become a term of the contract; or
- (b) the contract has been performed,

or both, then, if otherwise he would be entitled to rescind the contract without alleging fraud, he shall be so entitled, subject to the provisions of this Act, notwithstanding the matters mentioned in paragraphs (a) and (b) of this section.

Damages for misrepresentation.

(1967 c.7, s.2). 38. (1) Where a person has entered into a contract after a misrepresentation has been made to him by another party thereto and as a result thereof he has suffered loss, then, if the person making the misrepresentation would be liable to damages in respect thereof had the misrepresentation been made fraudulently, that person shall be so liable notwithstanding that the misrepresentation was not made fraudulently, unless he proves that he had reasonable ground to believe and did believe up to the time the contract was made that the facts represented were true.

(2) Where a person has entered into a contract after a misrepresentation has been made to him otherwise than fraudulently, and he would be entitled, by reason of the misrepresentation, to rescind the contract, then, if it is claimed, in any proceedings arising out of the contract, that the contract ought to be or has been rescinded, the court or arbitrator may declare the contract subsisting and award damages in lieu of rescission, if of opinion that it would be equitable to do so, having regard to the nature of the misrepresentation and the loss that would be caused by it if the contract were upheld, as well as to the loss that rescission would cause to the other party.

(3) Damages may be awarded against a person under subsection (2) whether or not he is liable to damages under subsection (1), but where he is so liable any award under subsection (2) shall be taken into account in assessing his liability under subsection (1).

Avoidance of certain provisions excluding liability for misrepresentation.

(1967 c.7, s.3). 39. If any agreement (whether made before or after the commencement of this part) contains a provision which would exclude or restrict—

- (a) any liability to which a party to a contract may be subject by reason of any misrepresentation made by him before the contract was made; or
- (b) any remedy available to another party to the contract by reason of such a misrepresentation,

that provision shall be of no effect except to the extent (if any) that, in any proceedings arising out of the contract, the court or arbitrator may allow reliance on it as being fair and reasonable in the circumstances of the case.

PART XIII. MISCELLANEOUS.

Legal assignment of things in action.

40. Any absolute assignment by writing under the hand of the assignor (not purporting to be by way of charge only) of any debt or other legal thing in action, of which express notice in writing has been given to the debtor, trustee or other person from whom the assignor would have been entitled to claim such debt or thing in action, is effectual in law (subject to equities having priority over the right of the assignee) to pass and transfer from the date of such notice— *(1925 c.20, s.136).*

- (a) the legal right to such debt or thing in action;
- (b) all legal and other remedies for the same; and
- (c) the power to give a good discharge for the same without the concurrence of the assignor:

Provided that, if debtor, trustee or other person liable in respect of such debt or thing in action has notice—

- (a) that the assignment is disputed by the assignor or any person claiming under him; or
- (b) of any other opposing or conflicting claims to such debt or thing in action,

he may, if he thinks fit, either call upon the persons making claim thereto to interplead concerning the same, or pay the debt or other thing in action into court under the provisions of the Trustee Act.

Civil rights in respect of maintenance and champerty.

41. (1) No person shall be liable in tort for any conduct on account of its being maintenance or champerty as known to the common law, except in the case of a cause of action accruing before the appointed day. *(1967 c.58, s.14).*

(2) The abolition of criminal and civil liability under the law of Gibraltar for maintenance and champerty shall not affect any rule of that law

as to the cases in which a contract is to be treated as contrary to public policy or otherwise illegal.

PART XIV.

CONTRACTS CONCLUDED AWAY FROM BUSINESS PREMISES.

Application of EEC Directive 85/577.

42.(1) Subject to the provisions of subsection (2) of this section, on any occasion on which the circumstances covered by the terms of the European Economic Community Directive 85 /577 occur, the provisions of that Directive shall apply so far as the respective rights and obligations of the consumer and trader, as defined by such Directive, are concerned.

(2) Articles 3.1 and Article 3.3 of the Directive shall not operate to limit the provisions of subsection (1) of this section.

(3) The national laws referred to in Article 7 of the Directive are the appropriate provisions of this Act.

43.(1) Reference in this Part to the Directive shall include any Directive of the European Economic Community amending or replacing Directive 85/577 in so far as such amendment or replacement is published in the Gazette.

(2) Any such amendment or replacement as is referred to in subsection (1) shall take effect from the date of its publication in the Gazette.