

CHAPTER 108

STATE (LIABILITY IN DELICT)

Act
No. 22 of 1969.

AN ACT TO AMEND THE LAW RELATING TO THE CIVIL LIABILITIES AND RIGHTS OF THE STATE, AND FOR PURPOSES CONNECTED THEREWITH OR INCIDENTAL THERETO.

[2nd December. 1969.]

Short title.

1. This Act may be cited as the State (Liability In Delict) Act..

liabilities of the State in respect of the delict shall be such as they would have been if those functions had been conferred or imposed solely by virtue of instructions lawfully given by the State.

PART I

SUBSTANTIVE LAW

Liability of the
State in delict.

2. (1) Subject to the provisions of this Act, the State shall be subject to all those liabilities in delict to which, if it were a private person of full age and capacity, it would be subject in respect of delicts committed by its officers or agents:

(4) Any written law which negatives or limits the amount of the liability of any officer of the State in respect of any delict committed by that officer shall, in case of proceedings against the State under this section in respect of a delict committed by that officer, apply in relation to the State as it would have applied in relation to that officer if the proceedings against the State had been proceedings against that officer.

Provided that no proceedings shall lie against the State by virtue of the preceding provisions of this subsection in respect of any act or omission of an officer or agent of the State, unless the act or omission would apart from the provisions of this Act have given rise to a cause of action in delict against that officer or agent or his estate.

(5) No proceedings shall lie against the State by virtue of this section in respect of anything done or omitted to be done by any person while discharging or purporting to discharge any responsibilities of a judicial or quasi-Judicial nature vested in him, or any responsibilities which he has in connection with the execution of judicial process, or any responsibilities vested in him in his capacity as a member or delegate of the Public Service Commission or the Judicial Service Commission.

(2) Where the State is bound by a statutory duty which is binding also upon persons other than the State and its officers, then, subject to the provisions of this Act, the State shall, in respect of a failure to comply with that duty, be subject to all those liabilities in delict (if any) to which it would be subject if it were a private person of full age and capacity.

3. (1) Where after the coming into operation of this Act any officer or aent of the State infringes a patent, or infringes a registered trade mark, or infringes any copyright and the infringement is committed with the authority of the State then, subject to the provisions of this Act, civil proceedings in respect of the infringement shall lie against the State. Provisions as to industrial property.

(3) Where any functions are conferred or imposed upon an officer of the State as such by or under any written law, and that officer commits a delict while performing or purporting to perform those functions, the

* (3) Save as expressly provided by this section, no proceedings shall lie against the State by virtue of this Act in respect of the infringement of a registered trade mark, or in respect of the infringement of any such copyright as is mentioned in subsection (1) of this section.

4. (1) Where the State is subject to any liability by virtue of this Part of this Act, the law relating to indemnity and contribution shall be enforceable by or against the State in respect of the liability to which it is so subject as if the State were a private person of full age and capacity.

(2) Without prejudice to the effect of the preceding subsection, the Law Reform (Contributory Negligence and Joint Wrongdoers) Act shall bind the State.

5. (1) Subject to the provisions of the Post Office Ordinance and the Telecommunications Ordinance, no proceedings in delict shall lie against the State for anything done or omitted to be done in relation to a postal article by any person while employed as an officer or agent of the State, or for anything done or omitted to be done in relation to a telephonic message of the State whilst so employed, nor shall any officer of the State be subject, except at the suit of the State, to any civil liability for any of the matters aforesaid.

(2) In this section, the terms "postal article" and "message" shall have the same meanings as in the Post Office Ordinance and the Telecommunications Ordinance, respectively.

6. (1) Nothing done or omitted to be done by a member of the Armed Forces of the State while on duty as such shall subject either him or the State to liability in delict for causing the death of another person or causing personal injury to another person, in so far as the death or personal injury is due to anything suffered by that other person while he is a member of the Armed Forces of the State if —

(a) at the time when that thing is suffered by that other person, he is either on duty as a member of the Armed Forces of the State or is, though not on duty as such, on any land, premises, ship, aircraft or vehicle for the time being used for the purposes of the Armed Forces of the State; and

(b) the Minister in charge of the subject of Defence certifies that his suffering that thing has been or will be treated as attributable to service for the purposes of entitlement to an award from the State :

Provided, however, that this subsection shall not exempt a member of the said Forces from liability in delict in any case in which the court is satisfied that the act or omission was not connected with the execution of his duties as a member of those Forces.

(2) No proceedings in delict shall lie against the State for death or personal injury due to anything suffered by a member of the Armed Forces of the State, if —

(a) that thing is suffered by him in consequence of the nature or condition of any such land, premises, ship, aircraft or vehicle as aforesaid, or in consequence of the nature or condition of any equipment or supplies used for the purposes of those Forces ; and

(b) the Minister in charge of the subject of Defence certifies as mentioned in the preceding subsection.

(3) No act or omission of an officer of the State shall subject him to liability in delict for death or personal injury in so far as the death or personal injury is due to anything suffered by a member of the Armed Forces of the State, being a thing as to which the conditions aforesaid are satisfied.

(4) The Minister in charge of the subject of Defence, if satisfied that it is the fact —

* Subsection (2) is omitted as the Patents Ordinance, to which this subsection refers, has been repealed by Act No. 52 of 1979.

Application of law as to indemnity contribution, joint and several wrongdoers and contributory negligence.

Liability in connexion with postal articles.

Provisions relating to Armed Forces.

(a) that a person was or was not on any particular occasion on duty as a member of the Armed Forces of the State; or

(b) that at any particular time any land, premises, ship, aircraft, vehicle, equipment or supplies was, or was not, or were or were not, used for the purposes of the said forces,

may issue a certificate certifying that to be the fact; and any such certificate shall, for the purposes of this section, be conclusive as to the fact which it certifies.

ship, aircraft, cargo or other property did not belong to the State, order that the proceedings shall be treated as if they were *in personam* duly instituted against the State or duly instituted against any other person whom the court regards as the proper person to be sued in the circumstances, and that the proceedings shall continue accordingly.

Any such order may be made upon such terms, if any, as the court thinks just; and where the court makes any such order it may make such consequential orders as the court thinks expedient.

Saving in respect of acts done under powers conferred on the State by written law.

* 7. (1) Nothing in this Part of this Act shall extinguish or abridge any powers or authorities which, if this Act had not been passed, would have been exercisable by virtue of any powers or authorities conferred on the State or any of its officers by any written law, and, in particular, nothing in this Part of this Act shall extinguish or abridge any powers or authorities exercisable by the State or any of its officers, whether in time of peace or war, for the purposes of the defence of Sri Lanka, or of the exercise of emergency powers, or of training, or maintaining the efficiency of, any of the Armed Forces of the State.

9. (1) Subject to the provisions of subsection (2), this Act shall not prejudice the right of the State to take advantage of the provisions of any written law although not named therein ; and it is hereby declared that in any civil proceedings against the State the provisions of any written law which could, if the proceedings were between subjects, be relied upon by the defendant as a defence to the proceedings, whether in whole or in part, or otherwise, may, subject to any express provision to the contrary, be so relied upon by the State.

Application to the State of certain provisions of written law.

(2) No court shall refuse to entertain any action brought by virtue of this Act on the ground that the provisions of section 461 of the Civil Procedure Code have not been complied with-

PART II

MISCELLANEOUS AND SUPPLEMENTAL

Exclusion of proceedings *in rem* against the State.

8. (1) Nothing in this Act shall authorize proceedings *in rem* in respect of any claim against the State, or the arrest, detention or sale of any ship, aircraft, cargo or other property belonging to the State, or give to any person any lien on any such ship, aircraft, cargo or other property.

(3) Where the provisions of section A1 of the Civil Procedure Code have not been complied with in respect of an action brought by virtue of this Act, the court shall direct the plaintiff to comply with such directions as the court may deem necessary to make good the omission and shall refuse to entertain the action if the plaintiff fails to comply with such directions.

(2) Where proceedings *in rem* have been instituted in any court against any such ship, aircraft, cargo or other property, the court may, if satisfied, either on an application by the plaintiff for an order under this subsection or an application by the State to set aside the proceedings, that the proceedings were so instituted by the plaintiff in the reasonable belief that the

10. Save as otherwise expressly provided, the provisions of this Act shall not affect proceedings by or against the State which have been instituted before the coming into operation of this Act.

Pending proceedings.

11. (1) Nothing in this Act shall apply to proceedings in delict brought by the President in his private capacity.

Savings.

* Subsection (2) is omitted as the prerogative of the Crown to which it refers no longer exists.

* (2) Except as otherwise expressly provided, nothing in this Act shall —

(a) affect any rules of evidence or any presumption relating to the extent to which the State is bound by any written law; or

(6) affect any right of the State to control or otherwise intervene in proceedings affecting its rights, property or profits.

(d) all matters connected with or incidental to the matters aforesaid.

(3) Any regulation made under this Act may be of general application, or may be limited in its application to any specified purpose or purposes.

(4) No regulation made by the Minister under this Act shall have effect until it is approved by Parliament, nor until notification of such approval is published in the Gazette.

Regulations.

12. (1) The Minister may make regulations under this Act for such purpose or purposes as may be necessary to give full force and effect to the principles and provisions of this Act.

(2) In particular, but without prejudice to the generality of the powers conferred by subsection (1), the Minister may make regulations for or in respect of all or any of the following matters:—

(a) the determination or adjustment of any question or matter relating to the State, or to proceedings by or against the State, or matters connected therewith or incidental thereto for the determination or adjustment of which no provision, or adequate or effective provision, is made by this Act;

(b) the removal or adjustment of any conflict or inconsistency between the provisions of this Act and any other written law;

(c) the removal or adjustment of any difficulties which may arise in first giving effect to the provisions of this Act in relation to the State, or to proceedings by or against the State;

(5) Every regulation made by the Minister under this Act shall, upon the publication in the Gazette of a notification of the approval of that regulation as provided in subsection (4), be deemed to be as valid and effectual as though it were herein enacted.

13. In this Act, unless the context otherwise requires — Interpretation.

" agent ", in relation to the State does not include an independent contractor employed by the State ;

" Armed Forces of the State " means the Sri Lanka Army, the Sri Lanka Navy and the Sri Lanka Air Force;

" officer ", in relation to the State means any person who holds a paid office in the service of the State in respect of the Government of the Republic of Sri Lanka, and includes a Minister of the State;

" proceedings against the State " includes a claim by way of set-off or counter-claim raised in proceedings by the State;

" statutory duty " means any duty imposed by or under any written law.

* Subsection (3) is omitted as the references to Her Majesty's Government in Ceylon and the Crown therein has no meaning under the Constitution of the Democratic Socialist Republic of Sri Lanka.