

**BOOK REVIEW**

“THE CIVIL LIABILITIES ACTS” (3<sup>rd</sup> Ed.)

(Thomson Round Hall, 2005)

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Civil Liability is one of the most case-laden domains of the common law. Personal injury claims have become part of what is now considered to be our litigious culture; a phenomenon which has seen much discussion over the past 10 years, both in the media and in academic discourse.<sup>1</sup> The overwhelming volume of litigation over the past twenty years and the consequential increase in insurance premiums have led to some recent reform of this area. This is manifested in the Personal Injuries Assessment Board Act in 2003, which was part of the reform that was seen as necessary to change the culture that is seen as being now ingrained in our society. It was also an attempt by the government to reduce costs and, thus, the insurance bills that have been rocketing recently. Over the past 45 years, the Civil Liability Act has been the central focus of development of the law in this area and clear guidance on how the Act has been interpreted and used by the courts is a necessity if any future reform is to be carried out. This seems to be the author’s objective in the newest edition of *The Civil Liabilities Acts*.

The need for clear guidance in this area of the law is evident. As the myriad of cases has added to the already complex statute and its amendments, the complexity and the need for assistance in ascertaining the current position of the law is obvious. This would be of use to the student, the academic, the practitioner and the judge. It seems particularly useful for the

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<sup>1</sup> “‘Compensatitit’ is our worst disease,” *The Irish Times*, 11 December 1997; “Law Society proposes the use of a scale of damages for injury awards,” *The Irish Times*, 19 October 2002. See also Nugent, “Reform of Personal Injuries Actions,” (1997) 2 (8) *Bar Review* 365.

latter two, as this area tends to provide a large amount of their workload.

The introduction of the Civil Liability Acts, first in 1961, was intended to update and consolidate the myriad of jurisprudence which had built up in this dense area of the law. This initial reform is now over 40 years old; amendments coming in 1964 and, after a hiatus, 1996 and 2004. The Act and its amendments have themselves generated a plethora of case law and whether, taken together, they have succeeded in simplifying the law is not without question. The Act, which was an attempt by the legislature to consolidate and clarify the law of civil liability and to update its content, is not without its critics and a plain, lucid commentary is required.

This book is an in-depth account of the Act and its amendments. It is the third edition of the book and Kerr has added some very pertinent information to this updated version, including the most recent amendment in 2004. It also very helpfully includes references to pertinent cases and commentary not only of the court system, but includes other bodies, such as the Employment Appeals Tribunal, as well as the Law Reform Commission Reports of Ireland and other jurisdictions. There is also a comparative element to the book as it references case law from several other common law jurisdictions, including England and Wales, Canada, New Zealand and Australia. It also details the observations of academics and other treatises in this area. As this is done on a section by section basis, it aids the practitioner or researcher in finding quickly what is sought. The book's straightforward layout makes the location of the pertinent sections, as well as the relevant cases and articles, simple. The section by section approach, rather than a broader scope, enables the reader to find the precise information she requires without having to trawl through a volume of material.

In the Appendices, the author includes several important materials, including an excerpt from *Dennehy v. Nordic Cold Storage Ltd.*,<sup>2</sup> the pertinent District Court Rules,<sup>3</sup> the Circuit Court Rules 2001<sup>4</sup> and the Superior Court Rules.<sup>5</sup> The impact

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<sup>2</sup> *Dennehy v. Nordic Cold Storage Ltd.*, Unreported, High Court, 8 May 1991.

<sup>3</sup> District Court Rules 1997, Order 42, Third Party Procedure.

<sup>4</sup> Circuit Court Rules 2001, Order 7, Third Party Procedure.

these rules may have upon a case should not be underestimated and it is of the utmost importance to practitioners, in particular, that they be read in conjunction with the Civil Liability Acts. Consequently, locating these rules in the same volume, as is done here, facilitates this reading. The book follows the form of the statute itself, addressing each section in a comprehensive and complete manner. Having guidance on the law and the practicalities of Civil Liability in one place is particularly useful for the practitioner and the judge.

Before delving into the statute and its sections, Kerr provides a history of the statute to date, including very helpful insights from both academic commentators and the Dáil debates that accompanied its original enactment. He also gives a general overview of the statute and the manner in which it is divided up. He then considers the Act.

Part II of the Act deals with law regarding the survival of causes of action after death, amending the law to permit the cause of action to be sustained if the deceased person was either the wrongdoer or the injured party. In this section, an account is given of the relevant academic commentary on the area, as well as the pertinent Law Reform Commission Report<sup>6</sup> from 2000 on the reform of exemplary damages. The relevant proposals of the Law Reform Commission are contrasted with the existent provisions of the Act and its content, acknowledging the possible deficiencies therein. This is followed by an account of its effect on other pieces of legislation on the Act. Each of the provisions is carefully analysed in a clear and concise manner.

Part III of the Act has regard to concurrent fault. This incorporates the Liability for Defective Products Act 1991. One of the most important innovations of the Act was to eliminate the distinction which had existed in law between joint and several tortfeasors. Kerr goes into this in great detail tracing the case law. He points particularly to the key interpretations of this provision in a number of cases, including *Boyles v. O'Connor*.<sup>7</sup> His is a

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<sup>5</sup> Rules of the Superior Courts, Order 58, Rule 22 Appeals to the Supreme Courts, Rules of the Superior Courts Order 16, Third Party Procedure.

<sup>6</sup> Law Reform Commission, *Exemplary and Restitutionary Damages*, (L.R.C. 60-2000).

<sup>7</sup> *Boyles v. O'Connor*, Unreported, High Court, 21 February 1964.

careful and well-organised review of this important section. The author also deals quite extensively with s. 27 (1), examining the case law from *Cullen v. Clein*<sup>8</sup> to *McCarthy v. Pillay*.<sup>9</sup> The complicated history of interpretation of this section is thoroughly examined in an erudite and lucid manner, aiding the reader to gain a clearer picture of how the law stands, despite the density of judicial scrutiny of this section.

The author examines s. 34 (1) on Contributory Negligence in some depth. This is one of the most important defences available in the statute. Though it is a relatively short section of the Act, it has generated a great deal of case law. He deals with two of the most important cases, *O'Sullivan v. Dwyer*<sup>10</sup> and *Carroll v. Clare County Council*,<sup>11</sup> giving the reader a clear understanding of the *dicta* of both cases and how they have impacted on the interpretation of this section of the statute since they were decided. There is also comprehensive overview of the law on contributory negligence in other jurisdictions, e.g., England, Canada and New Zealand. This comparative consideration paints a fuller picture of the development of this area of the law.

Part IV of the Act deals with the reform of the Fatal Injuries Act of 1956, itself a consolidation of previous law. Again the author gives an overview of the history and development of this section through the case law in this area, but also examines the case law that preceded the enactment of the section. Kerr gives particular care to s. 49 on Damages, analysing the subsections in some depth, as well as giving a comparative analysis of the applicable case law from New Zealand, Australia and England. The Law Reform Commission Report on Exemplary and Restitutionary Damages<sup>12</sup> in 2000 and the suggested changes it made to the law of damages in this area,

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<sup>8</sup> *Cullen v. Clein* [1970] I.R. 146.

<sup>9</sup> *McCarthy v. Pillay*, Unreported, Supreme Court, 24 March 2003.

<sup>10</sup> *O'Sullivan v. Dwyer* [1971] I.R. 275.

<sup>11</sup> *Carroll v. Clare County Council* [1975] I.R. 221.

<sup>12</sup> Law Reform Commission, *Exemplary and Restitutionary Damages*, (L.R.C. 60-2000).

particularly in the case of wrongful death situations, is also considered.

Also in this section, the abolition of defences in s. 57 is given a clear and constructive scrutiny, including the provisions in s. 57 (1) that it will not be a defence to show that the plaintiff was in breach of civil or criminal law and in s. 57 (2) that it will not be a defence that for breach of statutory duty that the defendant delegated it to the plaintiff. The author examines the effect this has had on the law in a succinct and clear manner.

This book is a valuable and welcome addition to the field of tort law in Ireland. Its complete, accurate and effective coverage of the Civil Liabilities Acts is accomplished in a definitive manner. The inclusion of materials from other jurisdictions, supplementing the Irish coverage, is a particularly insightful complement to this commentary on the law. While it is not a complete study of the Civil Liability Acts, and the layout, in which the text follows that of the Act, may initially be off-putting, it is very useful, both as a starting point for those interested in the area and as a quick reference tool for judges and practitioners.