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UITGAWE OP GESAG.

VAN SUIDWES - AFRIKA.

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No. 34, 1956.]

WET

Tot wysiging van die reg op bydraende nalatigheid en die reg op die aanspreeklikheid van persone wat gesamentlik of afsonderlik vir dieselfde skade uit delik aanspreeklik is, en om vir daarmee in verband staande aangeleenthede voorsiening te maak.

(Engelse teks deur die Goewerneur-generaal geteken.)
(Goedgekeur op 16 Mei 1956.)

DIT WORD BEPAAL deur Haar Majesteit die Koningin, die Senaat en die Volksraad van die Unie van Suid-Afrika, soos volg:—

HOOFSTUK I.**BYDRAENDE NALATIGHEID.**

Verdeling van aanspreeklikheid in geval van bydraende nalatigheid.

1. (1) (a) Waar iemand skade ly wat deels aan sy eie skuld en deels aan die skuld van 'n ander persoon te wyte is, word 'n vordering ten opsigte van bedoelde skade nie ten gevolge van die skuld van die eiser verydeld nie, maar word die skadevergoeding wat ten opsigte daarvan verhaalbaar is, in so 'n mate deur die hof verminder as wat die hof, met inagneming van die mate van die eiser se skuld met betrekking tot die skade, regverdig en billik ag.
- (b) By die toepassing van paragraaf (a) word skade geag aan iemand se skuld te wyte te wees ondanks die feit dat 'n ander persoon 'n geleentheid gehad het om die gevolge daarvan te vermy en nalatiglik versuim het om dit te doen.
- (2) Waar in 'n geval waarop die bepaling van sub-artikel (1) van toepassing is, een van die persone wat skuld het, aanspreeklikheid teenoor 'n eiser ontduik deur te pleit en te bewys dat die tydperk waarbinne ingevolge een of ander wetsbepaling 'n geding ingestel moes gewees het of kennis in verband met so 'n geding gegee moes gewees het, oorskry is, is so 'n persoon nie ingevolge die bepaling van bedoelde sub-artikel geregtig om skadevergoeding op bedoelde eiser te verhaal nie.
- (3) By die toepassing van hierdie artikel beteken „skuld” ook 'n handeling of versuim waaruit, as dit nie vir die bepaling van hierdie artikel was nie, die verweer van bydraende nalatigheid sou ontstaan het.

HOOFSTUK II.**GESAMENTLIKE OF AFSONDERLIKE DADERS.**

Gedinge teen en bydraes tussen gesamentlike en afsonderlike daders.

2. (1) Waar dit beweer word dat twee of meer persone gesamentlik of afsonderlik uit delik aanspreeklik is teenoor 'n derde persoon (hieronder die eiser genoem) vir dieselfde skade, kan sulke persone (hieronder mededaders genoem) in dieselfde aksie aangespreek word.
- (2) Kennis van 'n aksie kan te eniger tyd voor die sluiting van pleitstukke in bedoelde aksie—
(a) deur die eiser;
(b) deur 'n mededader wat in bedoelde aksie aangespreek word,
aan 'n mededader wat nie in bedoelde aksie aangespreek word nie, gegee word en bedoelde mededader kan daarop as 'n verweerder tot die aksie toetree.
- (3) Die hof kan op aansoek van die eiser of 'n mededader in 'n aksie beveel dat afsonderlike verhore plaasvind, of die ander bevel in hierdie verband uitreik wat die hof regverdig en dienstig ag.
- (4) (a) Indien 'n mededader nie in 'n aksie wat teen 'n ander mededader ingestel word, aangespreek word nie, en daar geen kennis ingevolge paragraaf (a) van sub-artikel (2) aan hom gegee word nie, kan die eiser hom daarna nie aanspreek nie behalwe met verloop van die hof verleen op aanvoering van grondige redes waarom kennis soos voormeld nie gegee is nie.
- (b) Indien geen kennis ingevolge paragraaf (a) of (b) van sub-artikel (2) aan 'n mededader wat nie deur die eiser aangespreek word, gegee word nie, word geen

No. 34, 1956.]

ACT

To amend the law relating to contributory negligence and the law relating to the liability of persons jointly or severally liable in delict for the same damage, and to provide for matters incidental thereto.

(English text signed by the Governor-General.)
(Assented to 16th May, 1956.)

BE IT ENACTED by the Queen's Most Excellent Majesty, the Senate and the House of Assembly of the Union of South Africa, as follows:—

CHAPTER I.

CONTRIBUTORY NEGLIGENCE.

1. (1) (a) Where any person suffers damage which is caused partly by his own fault and partly by the fault of any other person, a claim in respect of that damage shall not be defeated by reason of the fault of the claimant but the damages recoverable in respect thereof shall be reduced by the court to such extent as the court may deem just and equitable having regard to the degree in which the claimant was at fault in relation to the damage.
- (b) Damage shall for the purpose of paragraph (a) be regarded as having been caused by a person's fault notwithstanding the fact that another person had an opportunity of avoiding the consequences thereof and negligently failed to do so.
- (2) Where in any case to which the provisions of sub-section (1) apply, one of the persons at fault avoids liability to any claimant by pleading and proving that the time within which proceedings should have been instituted or notice should have been given in connection with such proceedings in terms of any law, has been exceeded, such person shall not by virtue of the provisions of the said sub-section, be entitled to recover damages from that claimant.
- (3) For the purposes of this section "fault" includes any act or omission which would, but for the provisions of this section, have given rise to the defence of contributory negligence.

Apportionment of liability in case of contributory negligence.

CHAPTER II.

JOINT OR SEVERAL WRONGDOERS.

2. (1) Where it is alleged that two or more persons are jointly or severally liable in delict to a third person (hereinafter referred to as the plaintiff) for the same damage, such persons (hereinafter referred to as joint wrongdoers) may be sued in the same action.
- (2) Notice of any action may at any time before the close of pleadings in that action be given—
- (a) by the plaintiff;
- (b) by any joint wrongdoer who is sued in that action, to any joint wrongdoer who is not sued in that action, and such joint wrongdoer may thereupon intervene as a defendant in that action.
- (3) The court may on the application of the plaintiff or any joint wrongdoer in any action order that separate trials be held, or make such other order in this regard as it may consider just and expedient.
- (4) (a) If a joint wrongdoer is not sued in an action instituted against another joint wrongdoer and no notice is given to him in terms of paragraph (a) of sub-section (2), the plaintiff shall not thereafter sue him except with the leave of the court on good cause shown as to why notice was not given as aforesaid.
- (b) If no notice is under paragraph (a) or (b) of sub-section (2) given to a joint wrongdoer who is not sued by the plaintiff, no proceedings for a contribution

Proceedings against and contributions between joint and several wrongdoers.

geding vir 'n bydrae deur 'n mededader kragtens sub-artikel (6) of (7) teen hom ingestel nie behalwe met verloop van die hof verleen op aanvoering van grondige redes waarom kennis nie ingevolge paragraaf (b) van sub-artikel (2) aan hom gegee is nie.

(5) In enige daaropvolgende aksie teen 'n ander mededader, word 'n bedrag wat op 'n mededader in 'n vorige aksie verhaal is, geag aangewend te gewees het ter betaling van die koste wat in die vorige aksie toegeken is voor vereffening van die in bedoelde aksie toegekende skadevergoeding.

(6) (a) Indien vonnis in 'n aksie teen 'n mededader gegee word vir die volle bedrag van die skade wat die eiser gely het, kan bedoelde mededader, indien die vonnisskuld ten volle betaal is, behoudens die bepalings van paragraaf (b) van sub-artikel (4), op enige ander mededader 'n bydrae ten opsigte van sy verantwoordelikheid vir bedoelde skade verhaal van so 'n bedrag as wat die hof, met inagneming van die mate van bedoelde ander mededader se skuld met betrekking tot die skade wat die eiser gely het en van die toegekende skadevergoeding, regverdig en billik ag.

(b) Die tydperk van bevrydende verjaring ten opsigte van 'n vordering van 'n bydrae is twaalf maande bereken vanaf die datum van die vonnis ten opsigte waarvan 'n bydrae gevorder word of, waar teen so 'n vonnis geappelleer word, die datum van die finale vonnis op appél: Met dien verstande dat indien, in die geval van 'n mededader, die tydperk van bevrydende verjaring met betrekking tot 'n aksie wat teen hom deur die eiser ingestel mag word, deur 'n wetsbepaling beheers word wat 'n tydperk van minder as twaalf maande voorskryf as die tydperk waarbinne geregtelike stappe teen hom ingestel moet word of waarbinne kennis gegee moet word dat stappe teen hom ingestel gaan word, die bepalings van so 'n wetsbepaling *mutatis mutandis* van toepassing is met betrekking tot 'n aksie vir 'n bydrae deur 'n mededader, en die betrokke tydperk of tydperke bereken word vanaf die datum van die vonnis soos voormeld in stede van die datum van die oorspronklike eiseroorsaak.

(c) 'n Mededader van wie 'n bydrae gevorder word, kan teen die mededader wat die bydrae vorder enige verweer opwerp wat laasgenoemde teen die eiser kon opgewerp het.

(7) (a) Indien vonnis in 'n aksie teen een of meer mededaders gegee word ten opsigte van die skade wat die eiser gely het, kan daar, behoudens die bepalings van paragraaf (b) van sub-artikel (4), deur 'n mededader wat ingevolge so 'n vonnis 'n hoër bedrag ten opsigte van sy verantwoordelikheid vir bedoelde skade aan die eiser betaal as die bedrag (hieronder genoem die bedrag aan eersbedoelde mededader toegedeel) wat die hof, met inagneming van die mate van sy skuld met betrekking tot die skade wat die eiser gely het en van die volle bedrag van die skadevergoeding wat aan die eiser toegeken is, regverdig en billik ag, op 'n ander mededader 'n bydrae ten opsigte van laasbedoelde se verantwoordelikheid vir bedoelde skade verhaal word van 'n bedrag van hoogstens soveel van die bedrag wat die hof, met inagneming van die mate van daardie ander mededader se skuld met betrekking tot die skade wat die eiser gely het en van die volle bedrag van die skadevergoeding wat aan die eiser toegeken is, regverdig en billik ag, as wat nie deur daardie ander mededader aan die eiser of 'n ander mededader betaal is nie, of soveel van die bedrag deur eersbedoelde mededader betaal as wat die aan hom toegedeelde bedrag te bowe gaan, na gelang van watter bedrag minder is.

(b) Die bepalings van paragrawe (b) en (c) van sub-artikel (6) is *mutatis mutandis* van toepassing op 'n vordering van 'n bydrae kragtens paragraaf (a) van hierdie sub-artikel.

(8) (a) Indien vonnis in 'n aksie ten gunste van die eiser teen twee of meer mededaders gegee word, kan die hof—

(i) beveel dat bedoelde mededaders die bedrag van die toegekende skadevergoeding gesamentlik en afsonderlik betaal, sodat as die een betaal die ander bevry word;

shall be instituted against him under sub-section (6) or (7) by any joint wrongdoer except with the leave of the court on good cause shown as to why notice was not given to him under paragraph (b) of sub-section (2).

- (5) In any subsequent action against another joint wrongdoer, any amount recovered from any joint wrongdoer in a former action shall be deemed to have been applied towards the payment of the costs awarded in the former action in priority to the liquidation of the damages awarded in that action.
- (6) (a) If judgment is in any action given against any joint wrongdoer for the full amount of the damage suffered by the plaintiff, the said joint wrongdoer may, if the judgment debt has been paid in full, subject to the provisions of paragraph (b) of sub-section (4), recover from any other joint wrongdoer a contribution in respect of his responsibility for such damage of such an amount as the court may deem just and equitable having regard to the degree in which that other joint wrongdoer was at fault in relation to the damage suffered by the plaintiff, and to the damages awarded.
- (b) The period of extinctive prescription in respect of a claim for a contribution shall be twelve months calculated from the date of the judgment in respect of which a contribution is claimed or, where an appeal is made against such judgment, the date of the final judgment on appeal: Provided that if, in the case of any joint wrongdoer, the period of extinctive prescription in relation to any action which may be instituted against him by the plaintiff, is governed by a law which prescribes a period of less than twelve months as the period within which legal proceedings shall be instituted against him or within which notice shall be given that proceedings will be instituted against him, the provisions of such law shall apply *mutatis mutandis* in relation to any action for a contribution by a joint wrongdoer, the period or periods concerned being calculated from the date of the judgment as aforesaid instead of from the date of the original cause of action.
- (c) Any joint wrongdoer from whom a contribution is claimed may raise against the joint wrongdoer who claims the contribution any defence which the latter could have raised against the plaintiff.
- (7) (a) If judgment is in any action given against one or more joint wrongdoers in respect of the damage suffered by the plaintiff, any joint wrongdoer who in pursuance of such judgment pays to the plaintiff in respect of his responsibility for such damage an amount in excess of the amount (hereinafter referred to as the amount apportioned to the firstmentioned joint wrongdoer) which the court deems just and equitable having regard to the degree in which he was at fault in relation to the damage suffered by the plaintiff and to the full amount of the damages awarded to the plaintiff, may, subject to the provisions of paragraph (b) of sub-section (4), recover from any other joint wrongdoer a contribution in respect of the latter's responsibility for such damage of an amount not exceeding so much of the amount which the court deems just and equitable having regard to the degree in which such other joint wrongdoer was at fault in relation to the damage suffered by the plaintiff and to the full amount of the damages awarded to the plaintiff, as has not been paid by such other joint wrongdoer to the plaintiff or to any other joint wrongdoer, or so much of the amount paid by the firstmentioned joint wrongdoer as exceeds the amount apportioned to him, whichever is less.
- (b) The provisions of paragraphs (b) and (c) of sub-section (6) shall apply *mutatis mutandis* to any claim for a contribution under paragraph (a) of this sub-section.
- (8) (a) If judgment is in any action given in favour of the plaintiff against two or more joint wrongdoers, the court may—
- (i) order that such joint wrongdoers pay the amount of the damages awarded jointly and severally, the one paying the other to be absolved;

- (ii) indien die hof oortuig is dat al die mededaders in die aksie saamgevoeg is, die toegekende skadevergoeding tussen bedoelde mededaders verdeel in die verhouding wat die hof, met inagneming van die mate van iedere mededader se skuld met betrekking tot die skade wat die eiser gely het, regverdig en billik ag, en 'n afsonderlike vonnis teen iedere mededader gee vir die aan hom toegeedele bedrag: Met dien verstande dat enige bedrag wat die eiser nie op een of ander mededader uit hoofde van so 'n vonnis kan verhaal nie (met inbegrip van enige koste deur die eiser aangegaan in 'n poging om bedoelde bedrag te verhaal en nie op bedoelde mededader verhaal nie), hetsy as gevolg van bedoelde mededader se insolvensie of andersins, kan deur die eiser verhaal word op die ander mededader of, indien daar twee of meer ander mededaders is, op bedoelde ander mededaders in die verhouding wat die hof, met inagneming van die mate van iedereen van bedoelde ander mededaders se skuld met betrekking tot die skade wat die eiser gely het, regverdig en billik ag;
- (iii) waar die hof vonnis teen die mededaders gesamentlik en afsonderlik soos voormeld gee, op versoek van engeen van die mededaders, vir die doeleindes van paragraaf (b), die skadevergoeding wat deur die mededaders *inter se* betaalbaar is, tussen die mededaders verdeel in die verhouding wat die hof, met inagneming van die mate van iedere mededader se skuld met betrekking tot die skade wat die eiser gely het, regverdig en billik ag;
- (iv) die bevel met betrekking tot koste uitreik wat die hof regverdig ag, met inbegrip van 'n bevel dat die mededaders teen wie die hof vonnis gee, die eiser se koste gesamentlik en afsonderlik moet betaal, sodat as die een betaal die ander bevry word, en dat indien een van die onsuksesvolle mededaders meer as sy *pro rata* deel van die eiser se koste betaal, hy geregtig sal wees om op iedereen van die ander onsuksesvolle mededaders sy *pro rata* deel van sodanige oorbetalings te verhaal.
- (b) 'n Mededader wat meer betaal as die bedrag wat kragtens sub-paragraaf (iii) van paragraaf (a) aan hom toegeedele is, kan op 'n mededader wat minder as of niks van die bedrag wat aldus aan hom toegeedele is, betaal het, 'n bydrae verhaal van 'n bedrag van hoogstens soveel van die bedrag aldus aan laasgenoemde mededader toegeedele as wat hy nie betaal het nie, of soveel van die bedrag deur eersgenoemde mededader betaal as wat die aldus aan hom toegeedele bedrag te bowe gaan, na gelang van watter bedrag minder is.
- (c) Die bepalings van paragraaf (b) van sub-artikel (6) is *mutatis mutandis* van toepassing op 'n vordering van 'n bydrae kragtens paragraaf (b) van hierdie sub-artikel.
- (9) Indien vonnis ten gunste van 'n mededader gegee word of indien 'n mededader van die instansie vrygestel word, kan die hof die bevel met betrekking tot koste uitreik wat hy regverdig ag, met inbegrip van 'n bevel—
- (a) dat die eiser bedoelde mededader se koste betaal; of
- (b) dat die onsuksesvolle mededaders die koste van die suksesvolle mededader gesamentlik en afsonderlik moet betaal, sodat as die een betaal die ander bevry word, en dat indien een van die onsuksesvolle mededaders meer as sy *pro rata* deel van die suksesvolle mededader se koste betaal, hy geregtig sal wees om op iedereen van die ander onsuksesvolle mededaders sy *pro rata* deel van sodanige oorbetalings te verhaal, en dat indien die suksesvolle mededader nie in staat is om die geheel of 'n gedeelte van sy koste op die onsuksesvolle mededaders te verhaal nie, hy geregtig sal wees om die deel van sy koste wat hy nie in staat is om op die onsuksesvolle mededaders te verhaal nie, op die eiser te verhaal.
- (10) Indien ten gevolge van die bepalings van 'n ooreenkoms tussen 'n mededader en die eiser, eersgenoemde vrygestel is van

- (ii) if it is satisfied that all the joint wrongdoers have been joined in the action, apportion the damages awarded against the said joint wrongdoers in such proportions as the court may deem just and equitable having regard to the degree in which each joint wrongdoer was at fault in relation to the damage suffered by the plaintiff, and give judgment separately against each joint wrongdoer for the amount so apportioned: Provided that any amount which the plaintiff is unable to recover from any joint wrongdoer under a judgment so given (including any costs incurred by the plaintiff in an attempt to recover the said amount and not recovered from the said joint wrongdoer) whether by reason of the said joint wrongdoer's insolvency or otherwise, may be recovered by the plaintiff from the other joint wrongdoer or, if there are two or more other joint wrongdoers, from those other joint wrongdoers in such proportions as the court may deem just and equitable having regard to the degree in which each of those other joint wrongdoers was at fault in relation to the damage suffered by the plaintiff;
 - (iii) where it gives judgment against the joint wrongdoers jointly and severally as aforesaid, at the request of any one of the joint wrongdoers, apportion, for the purposes of paragraph (b), the damages payable by the joint wrongdoers *inter se*, amongst the joint wrongdoers, in such proportions as the court may deem just and equitable having regard to the degree in which each joint wrongdoer was at fault in relation to the damage suffered by the plaintiff;
 - (iv) make such order as to costs as it may consider just, including an order that the joint wrongdoers against whom it gives judgment shall pay the plaintiff's costs jointly and severally, the one paying the other to be absolved, and that if one of the unsuccessful joint wrongdoers pays more than his *pro rata* share of the plaintiff's costs, that he shall be entitled to recover from each of the other unsuccessful joint wrongdoers his *pro rata* share of such excess.
- (b) Any joint wrongdoer who pays more than the amount apportioned to him under sub-paragraph (iii) of paragraph (a) may recover from any joint wrongdoer who has paid less than or nothing of the amount so apportioned to him, a contribution of an amount not exceeding so much of the amount so apportioned to the lastmentioned joint wrongdoer as has not been paid by him, or so much of the amount paid by the firstmentioned joint wrongdoer as exceeds the amount so apportioned to him, whichever is less.
 - (c) The provisions of paragraph (b) of sub-section (6) shall apply *mutatis mutandis* to any claim for a contribution under paragraph (b) of this sub-section.
- (9) If judgment is given in favour of any joint wrongdoer or if any joint wrongdoer is absolved from the instance, the court may make such order as to costs as it may consider just, including an order—
- (a) that the plaintiff pay such joint wrongdoer's costs; or
 - (b) that the unsuccessful joint wrongdoers pay the costs of the successful joint wrongdoer jointly and severally, the one paying the other to be absolved, and that if one of the unsuccessful joint wrongdoers pays more than his *pro rata* share of the costs of the successful joint wrongdoer, that he shall be entitled to recover from each of the other unsuccessful joint wrongdoers his *pro rata* share of such excess, and that if the successful joint wrongdoer is unable to recover the whole or any part of his costs from the unsuccessful joint wrongdoers, that he shall be entitled to recover from the plaintiff such part of his costs as he is unable to recover from the unsuccessful joint wrongdoers.
- (10) If by reason of the terms of an agreement between a joint wrongdoer and the plaintiff the former is exempt from

aanspreeklikheid vir die skade wat die eiser gely het of sy aanspreeklikheid daarvoor tot 'n ooreengekome bedrag beperk is, is soveel van daardie gedeelte van die skadevergoeding wat, as dit nie vir bedoelde ooreenkoms en die bepaling van paragraaf (c) van sub-artikel (6) of paragraaf (b) van sub-artikel (7) was nie, ingevolge sub-artikel (6) of (7) op bedoelde mededader verhaal sou kon geword het, of ingevolge sub-paragraaf (ii) of (iii) van paragraaf (a) van sub-artikel (8) aan hom toegedeel sou kon geword het, as wat die bedrag, indien daar is, waarvoor hy ingevolge bedoelde ooreenkoms aanspreeklik is, te bowe gaan, nie deur die eiser op enige ander mededader verhaalbaar nie.

(11) (a) Wanneer 'n mededader wat kragtens een of ander bepaling van hierdie artikel geregtig is om 'n bydrae op 'n ander mededader te verhaal, nie in staat is om bedoelde bydrae of 'n bedrag daarvan op daardie ander mededader te verhaal nie, hetsy as gevolg van laasgenoemde se insolvensie of andersins, kan hy op enige ander mededader so 'n gedeelte van daardie bydrae of daardie bedrag daarvan verhaal as wat die hof, met inagneming van die mate van daardie ander mededader se skuld met betrekking tot die skade wat die eiser gely het en van die volle bedrag van bedoelde bydrae of bedoelde bedrag daarvan, na gelang van die geval, regverdig en billik ag.

(b) Koste wat deur 'n mededader aangegaan word in 'n poging om 'n bydrae op 'n ander mededader te verhaal, en wat nie op daardie mededader verhaal word nie, word by die toepassing van paragraaf (a), by die bedrag van bedoelde bydrae gevoeg.

(12) Indien 'n mededader ooreenkoms om aan die eiser 'n som geld in volle vereffening van eiser se vordering te betaal, is die bepaling van sub-artikel (6) *mutatis mutandis* van toepassing asof vonnis deur 'n bevoegde hof teen bedoelde mededader vir bedoelde som geld, of, indien die hof oortuig is dat bedoelde som geld die volle bedrag van die skade wat die eiser werklik gely het, te bowe gaan, vir die som geld wat volgens bepaling van die hof gelykstaan aan die volle bedrag van die skade wat die eiser werklik gely het, gegee was, en by die toepassing van die bepaling van paragraaf (b) van genoemde sub-artikel (6), word 'n verwysing daarin na die datum van die vonnis uitgelê as 'n verwysing na die datum van die ooreenkoms.

(13) Wanneer vonnis in 'n aksie teen 'n mededader gegee word vir die volle bedrag van die skade wat die eiser gely het, of wanneer 'n mededader ooreengekom het om aan die eiser 'n som geld in volle vereffening van eiser se vordering te betaal, en die vonnisskuld of bedoelde som geld ten volle betaal is, word iedere ander mededader ook daardeur van enige verdere aanspreeklikheid teenoor die eiser bevry.

(14) By die toepassing van hierdie artikel word iemand as 'n mededader beskou ondanks die feit dat 'n ander persoon 'n geleentheid gehad het om die gevolge van sy onregmatige daad te vermy en nalatiglik versuim het om dit te doen.

3. Die bepaling van artikel twee is ook van toepassing met betrekking tot enige aanspreeklikheid wat ingevolge die Motorvoertuigassuransiewet, 1942 (Wet No. 29 van 1942), aan die Staat of 'n persoon ten opsigte van verlies of skade wat veroorsaak is deur of voortvloei uit die bestuur van 'n motorvoertuig, opgelê word.

HOOFSTUK III.

ALGEMEEN.

Toepassing van bepaling van artikel 2 op aanspreeklikheid ingevolge Wet 29 van 1942 opgelê.

Voorbehoude.

4. (1) Die bepaling van hierdie Wet—

(a) is nie van toepassing ten opsigte van 'n onregmatige daad wat voor die inwerkingtreding van hierdie Wet gepleeg is nie;

(b) het nie die uitwerking om 'n verweer wat uit hoofde van 'n kontrak ontstaan, te verydél nie;

(c) het nie die uitwerking om die bedrag van skadevergoeding bo enige maksimum wat in 'n ooreenkoms of 'n wetsbepaling wat ten opsigte van 'n vordering vir skadevergoeding van toepassing is, te verhoog nie.

(2) Geen bepaling van hierdie Wet doen op enigerlei wyse afbreuk aan die bepaling van enige wet betreffende botsings of ongelukke ter see of van enige hoërreël wat voor die inwerkingtreding van hierdie Wet kragtens artikel honderdeen-*en-agi* van die „Zuid-Afrika Wet, 1909” of kragtens artikel

liability for the damage suffered by the plaintiff or his liability therefor is limited to an agreed amount, so much of that portion of the damages which, but for the said agreement and the provisions of paragraph (c) of sub-section (6) or paragraph (b) of sub-section (7), could have been recovered from the said joint wrongdoer in terms of sub-section (6) or (7) or could have been apportioned to him in terms of sub-paragraph (ii) or (iii) of paragraph (a) of sub-section (8), as exceeds the amount, if any, for which he is liable in terms of the said agreement, shall not be recoverable by the plaintiff from any other joint wrongdoer.

(11) (a) Whenever a joint wrongdoer who is entitled under any provision of this section to recover a contribution from another joint wrongdoer, is unable to recover that contribution or any amount thereof from that other joint wrongdoer, whether by reason of the latter's insolvency or otherwise, he may recover from any other joint wrongdoer such portion of that contribution or that amount thereof as the court may deem just and equitable having regard to the degree in which that other joint wrongdoer was at fault in relation to the damage suffered by the plaintiff and to the full amount of the said contribution or the said amount thereof, as the case may be.

(b) Any costs incurred by a joint wrongdoer in an attempt to recover any contribution from any other joint wrongdoer, and not recovered from that joint wrongdoer, shall for the purpose of paragraph (a), be added to the amount of that contribution.

(12) If any joint wrongdoer agrees to pay to the plaintiff a sum of money in full settlement of the plaintiff's claim, the provisions of sub-section (6) shall apply *mutatis mutandis* as if judgment had been given by a competent court against such joint wrongdoer for that sum of money, or, if the court is satisfied that the full amount of the damage actually suffered by the plaintiff is less than that sum of money, for such sum of money as the court determines to be equal to the full amount of the damage actually suffered by the plaintiff, and in the application of the provisions of paragraph (b) of the said sub-section (6), any reference therein to the date of the judgment shall be construed as a reference to the date of the agreement.

(13) Whenever judgment is in any action given against any joint wrongdoer for the full amount of the damage suffered by the plaintiff, or whenever any joint wrongdoer has agreed to pay to the plaintiff a sum of money in full settlement of the plaintiff's claim, and the judgment debt or the said sum of money has been paid in full, every other joint wrongdoer shall thereby also be discharged from any further liability towards the plaintiff.

(14) A person shall for the purposes of this section be regarded as a joint wrongdoer notwithstanding the fact that another person had an opportunity of avoiding the consequences of his wrongful act and negligently failed to do so.

3. The provisions of section two shall apply also in relation to any liability imposed in terms of the Motor Vehicle Insurance Act, 1942 (Act No. 29 of 1942), on the State or any person in respect of loss or damage caused by or arising out of the driving of a motor vehicle.

Application of provisions of section 2 to liability imposed in terms of Act 29 of 1942.

CHAPTER III.

GENERAL.

4. (1) The provisions of this Act shall not—

Savings.

- (a) apply in respect of any wrongful act committed before the commencement of this Act;
- (b) operate to defeat any defence arising under a contract;
- (c) operate to increase the amount of damages beyond any maximum prescribed in any agreement or any law applicable in respect of any claim for damages.

(2) Nothing in this Act contained shall derogate in any manner from the provisions of any law relating to collisions or accidents at sea, or of any rule of court promulgated before the commencement of this Act under section one hundred and eight of the South Africa Act, 1909, or under section three

drie van die „Rechtsbedeling Proklamatie, 1919” (Proklamasie No. 21 van 1919), van die gebied Suidwes-Afrika, afgekondig is nie.

Hierdie Wet bind die Staat.

5. Hierdie Wet bind die Staat.

Toepassing van Wet in Suidwes-Afrika.

6. Hierdie Wet is ook in die gebied Suidwes-Afrika van toepassing.

Kort titel.

7. Hierdie Wet heet die Wet op Verdeling van Skadevergoeding, 1956.

of the Administration of Justice Proclamation, 1919 (Proclamation No. 21 of 1919), of the territory of South-West Africa.

5. This Act binds the State.

This Act binds the State.

6. This Act shall apply also in the territory of South-West Africa. Act applies in South-West Africa.

7. This Act shall be called the Apportionment of Damages Act, 1956. Short title.