

THE HIGH COURT

[2000 No. 8232P]

BETWEEN

PADRAIC KEANE

PLAINTIFF

AND

THE WESTERN HEALTH BOARD AND ANN MEEHAN

DEFENDANTS

Addendum delivered on the 22nd day of November, 2006 to the judgment of the Hon. Mr. Justice Quirke, previously delivered on the 2nd day of October 2006.

1. I have received further written submissions from the defendants in relation to the possible effect of the provisions of s. 31 of the Civil Liability Act, 1961 on the issue of contribution and indemnity in these proceedings.
2. On behalf of the first named defendant it is contended that the Health Board's claim against the estate of Dr. Meehan for indemnity and contribution differs fundamentally from the plaintiff's claim against the defendants.
3. Mr. Keane S.C. argues that the Board's claim is for an order protecting the Board from liability for alleged negligence on the part of the late Dr. Meehan. He contends that, as such, it cannot be categorised as a "*proceeding*" within the meaning ascribed to that word by the provisions of subsection (2) of s. 9 of the Act of 1961.
4. He claims that the Board's claim comprises "*an action... for contribution*" within the meaning ascribed to that term by the provisions of s. 31 of the Act which expressly permits the Board's claims to be commenced "*within the period of two years after the liability of the claimant is ascertained or the injured person's damages are paid, whichever is the greater*".
5. Mr. McGrath S.C., on behalf of the estate of Dr. Meehan, contends that s. 31 of the Act has no express application to the facts of this case. He points to the fact that the s. 30 of the Act provides that the right to contribution is expressly "*deemed to be a cause of action within s. 9*" of the Act. He argues that a claim for contribution must accordingly be categorised as a "*proceeding*" within the meaning of that section and must be deemed to be regulated by the statutory time limit prescribed by the section.
6. Additionally Mr McGrath invoked the maxim "*generalia specialibus non derogant*". He contended that the express provisions of s 9 should be preferred to the more general provisions of s 31.
7. The Rule of statutory construction known as "*generalia specialibus non derogant*" is defined as a rule which requires that "*general things do not derogate from special things*". (See Murdoch's Dictionary of Irish Law, 4th Ed.)
8. In summary the rule provides that where an earlier statute deals expressly and precisely with a particular issue, a later statute, enacted in general terms, will not repeal the earlier instrument unless the contrary intention is indicated within the legislation.
9. The Rule has been considered in this jurisdiction on a number of occasions (see *D.P.P. v. Scott Grey* [1986] I.R. 317, *The National Authority for Occupational Safety and Health v. Fingal County Council* [1997] 2 I.R. 547 and others). In summary it has been argued, approved and accepted by the Irish courts as a maxim of legislative interpretation. However, most of the cases reported in this jurisdiction concerned conflicts between the provisions of two separate instruments. No specific authority can be readily found which relates to conflict between two sections of the same statute.
10. In the instant case it is undeniable that the provisions of s. 9 of the Act of 1961 are clear, precise and unambiguous. As indicated earlier the provisions of that section were upheld as constitutionally valid by the Supreme Court in *Moynihan v. Greensmyth* [1977] I.R. 55. The intention of the legislature and the reasons which gave rise to the enactment of the section were expressly considered and identified by the Supreme Court in that judgment.
11. The relevant provisions of s 31 of the Act appear *prima facie* to be inconsistent with the provisions of s 9, (2). It cannot be contended that the provisions of s. 31 of the Act are wholly general in nature. The section, *inter alia* prescribes precise time limits within which claims for contribution may be brought.
12. The provisions of s. 31 of the Act are, however, more general in nature than the provisions of s. 9(2). The latter expressly provide that, unless commenced within the precise periods prescribed by the section, no proceedings whatever are maintainable against the estate of a deceased person such as Dr. Meehan.
13. For the reasons identified by Mr. McGrath I am satisfied that the Board's claim against the estate of Dr. Meehan comprises a "*proceeding*" within the meaning of s.9 of the Act.
14. Applying the rule "*generalia specialibus non derogant*" and having regard to the purpose of the legislation and the intention of the legislature as identified by the Supreme Court in *Moynihan v. Greensmyth* I am satisfied also that the provisions of s. 9, (2) of the Act apply to the Board's claim for contribution against Dr. Meehan's estate.
15. Accordingly the Board's claim against Dr. Meehan's estate is dismissed.