

《佔用人法律責任條例》
(第 314 章)
Occupiers Liability Ordinance
(Cap. 314)

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制定史

本為 1959 年第 36 號 —— 1964 年編正版，1996 年第 (C)112 號法律公告 (中文真確本)，2018 年第 4 號編輯修訂紀錄

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《佔用人法律責任條例》

(第 314 章)

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Occupiers Liability Ordinance

(Cap. 314)

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本條例旨在就由於任何土地上或其他物業上的物業狀況所產生的危險或由於在該處作出或遺漏作出的事所產生的危險，以致對合法在該土地上或該其他物業上的人或物品造成傷害或損害，而使佔用人及其他人對該等傷害或損害負上法律責任的法律作出修訂，以及為與該等事項相關的目的訂定條文。

[1960 年 4 月 1 日]

(編輯修訂——2018 年第 4 號編輯修訂紀錄)

1. 簡稱

本條例可引稱為《佔用人法律責任條例》。

侵權法下的法律責任

2. 導言

- (1) 由第 3 及 4 條所制定的規則代替普通法規則，具有效力規管處所佔用人由於處所的狀況所產生的危險或由於在處所作出或遺漏作出的事所產生的危險，而須對其訪客負上的責任。
- (2) 如此制定的規則，對由於某人佔用或控制處所和由於他邀請或准許（或被視為邀請或准許）他人進入或使用該處所而由法律所施加的責任的性質，加以規管，但該等規則並不改變關於何人被如此施加責任或須向何人負上責任的普通法規則；據此，就如此制定的規則而言，被視為佔用人及其訪客的人，與根據普通法被視為佔用人及獲其邀請的人或獲其特許的人相同。
- (3) 如此制定的規則中關於處所佔用人及其訪客的規則，亦適用於規管以下的義務，而適用的方式及程度，與根據普通法而適用於處所佔用人及獲其邀請的人或獲其特許的人的原則一樣——

To amend the law as to the liability of occupiers and others for injury or damage resulting to persons or goods lawfully on any land or other property from dangers due to the state of the property or to things done or omitted to be done there, and for purposes connected therewith.

[1 April 1960]

(Format changes—E.R. 4 of 2018)

1. Short title

This Ordinance may be cited as the Occupiers Liability Ordinance.

Liability in Tort

2. Preliminary

- (1) The rules enacted by sections 3 and 4 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.
- (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.

- (a) 佔用或控制包括任何船隻、車輛或飛機的任何固定構築物或活動構築物的人所負的義務；及
- (b) 佔用或控制任何處所或構築物的人對於財產受損害方面所負的義務，而財產包括並非其訪客的財產。

[比照 1957 c. 31 s. 1 U.K.]

3. 佔用人的通常責任範圍

- (1) 處所佔用人對其所有訪客負有同樣責任，即**一般謹慎責任**，但如處所佔用人有自由而又確實憑協議或其他方式擴大、限制、修改或豁除其對一位或多於一位訪客的責任，則屬例外，但僅以其有自由而又確實擴大、限制、修改或豁除的範圍為限。
- (2) 一般謹慎責任即採取在有關個案中所有情況下屬合理謹慎的措施的責任，以確保訪客為獲佔用人邀請或准許該訪客到處所的目的而使用該處所時是合理地安全。
- (3) 就現時目的而言，有關情況包括通常預期上述訪客會具備的謹慎程度，以及欠缺謹慎的程度，以致（例如）在適當的個案中——
 - (a) 佔用人必須防備兒童不及成年人謹慎；及
 - (b) 佔用人可預期任何人在從事他本身職業時，在佔用人讓他自由行事的範圍內，會意識到並提防該職業通常附帶的任何特別風險。

- (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.

[cf. 1957 c. 31 s. 1 U.K.]

3. Extent of occupier's ordinary duty

- (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

- (4) 在決定處所佔用人是否已經對訪客履行一般謹慎責任時，須顧及所有情況，以致（例如）——
- (a) 對訪客所造成的損害如是由佔用人已向其發出警告的任何危險所引致，則除非在所有情況下，該警告足以使訪客合理地安全，否則不得僅以該警告而視佔用人的法律責任已獲免除；及
 - (b) 對訪客所造成的損害如是由佔用人所僱用的獨立承辦商在進行的任何建造、保養或修葺工程中有過失而產生的危險所致，而佔用人委託工程予獨立承辦商時，已在所有情況下合理地行事，並已採取佔用人合理地應採取的步驟（如有的話），以令其本身信納該承辦商是合乎資格的以及該項工程已適當地完成，則不得僅因此產生危險而將佔用人視為須對該項危險負責。
- (5) 就訪客已自願接受的風險而言，一般謹慎責任並不向佔用人施加其對訪客須負的任何義務（在決定風險是否已予如此接受的問題時所採取的原則，與在其他情況下任何人須對他人負上謹慎責任的原則一樣）。
- (6) 就本條而言，任何人行使由法律所授予的權利而為任何目的進入處所，則該人須被視為已獲得佔用人准許為該目的而在該處，不論事實上該人是否已獲得佔用人准許。

[比照 1957 c. 31 s. 2 U.K.]

- 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.

[cf. 1957 c. 31 s. 2 U.K.]

4. 合約在佔用人對第三者的法律責任方面的效力

- (1) 凡處所佔用人受合約約束而須准許合約的局外人進入或使用其處所，則處所佔用人對作為其訪客的該等局外人所須負的謹慎責任，不得藉該合約而限制或豁除，但該項謹慎責任（除合約條文另有相反規定外），就佔用人在合約下有責任履行的義務超出該項謹慎責任所涉及的義務的範圍來說，須包括該合約下的責任，不論該等有責任履行的義務是否為保護該等局外人而承擔。
- (2) 除非合約內另有明文訂定，否則任何合約不得憑藉本條而產生效力，使佔用人在已採取所有合理的謹慎的措施後，仍須就並非由其本人、並非由其僱用的人及並非由受其指示與控制的人在進行的任何建造、保養或修葺工程或其他類似行動中有過失所產生的危險，而對合約的局外人負責。
- (3) 在本條中，**合約的局外人** (stranger to the contract) 指當其時無權以合約一方的身分享有合約利益的人，或以藉轉讓或其他方式成為合約一方繼承人的身分享有合約利益的人，據此亦包括已不再有權享有合約利益的合約一方。
- (4) 凡管限任何租賃（包括在法律上並不構成租賃的法定租賃）的條款或條件使業主或租客受到約束（但並非受合約所約束）而須准許任何人進入或使用業主或租客是佔用人的處所，則本條適用，猶如該項租賃是業主與租客之間的合約一樣。
- (5) 在本條防止一般謹慎責任受到限制或豁除的範圍內，本條適用於在本條例生效日期前所訂立的合約與所設定的租賃，亦適用於在本條例生效日期後所訂立或設定者；但就本條將佔用人的責任擴展至超出一般謹慎責任的範圍來說，本條只對在本條例生效日期後所承擔的義務，或在本條例生效日期後藉協議（不論是明示或隱含的）而重新承擔的義務，具有效力。

[比照 1957 c. 31 s. 3 U.K.]

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

- (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.
- (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** (合約的局外人) 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 commencement of this

5. 業主由於修葺的義務而負上的法律責任

- (1) 凡任何處所由任何人根據一項租賃而佔用，而該項租賃使業主對該人負上保養或修葺該處所的義務，則業主須對所有不時合法地在該處所或有物品在該處所的人，就他在履行該義務時有過失而引致的危險，負上同樣責任，猶如他是處所的佔用人，而該等人或他們的物品是獲他邀請或准許（但無任何合約）而在該處所一樣。
- (2) 凡任何處所根據一項分租租賃而被佔用，則第(1)款適用於因該項分租租賃而須向佔用人負上保養或修葺該處所義務的處所業主（不論是直接業主或上一級業主），而為該目的，該項分租租賃使該處所的中間業主對佔用人負上任何義務，或憑藉本條文而視任何義務為任何中間業主須對佔用人負上者，而該中間業主的租賃使另一業主對該中間業主負上同樣的義務，則該中間業主的該等義務，須視為亦由該項分租租賃使該另一業主負上。
- (3) 就本條而言，任何租賃所包含的處所（不論該處所是根據該項租賃或根據一項分租租賃而佔用），如被用作非該項租賃所准許的用途，而在該項租賃下的該處所的業主並無因默許或其他情況以致受阻而不能提出反對或強制執行其反對，則純粹由於用該處所作上述用途而在該處所的任何人或物品，對該處所的該業主或任何上一級業主而言，不得當作合法地在該處所，而不論對下一級業主而言，該人或物品是否合法地在該處所。
- (4) 就本條而言，除非業主在履行義務時的過失是佔用人可就過失提出起訴的，否則業主不得被當作在履行其對處

Ordinance, as well as to those entered into or created after its commencement; 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 that commencement or which are renewed by agreement (whether express or implied) after that commencement.

[cf. 1957 c. 31 s. 3 U.K.]

5. Landlord's liability in virtue of obligation to repair

- (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 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

所佔用人的任何義務時有過失；或如屬上一級業主須對下一級業主負上實際義務的情況，則除非上一級業主在履行義務時的過失是下一級業主可就該過失提出起訴的，否則上一級業主不得被當作在履行其對處所佔用人的任何義務時有過失。

- (5) 如任何人或其物品僅因通道權的行使而合法地在任何處所，則本條並不使該處所的業主對該等人或物品負上較佔用人為大的責任。
- (6) 本條並不解除業主根據除本條以外的其他規定亦須執行的任何責任。
- (7) 就本條而言，憑藉某項租賃而由任何成文法則施加的義務，須視為由該項租賃所施加，而**租賃** (tenancy) 包括在法律上並不構成租賃的法定租賃，並包括授予佔用權的任何合約，而**業主** (landlord) 亦須據此解釋。
- (8) 本條適用於在本條例生效日期之前及之後所設定的租賃。

[比照 1957 c. 31 s. 4 U.K.]

合約下的法律責任

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) This section shall not put a landlord of premises under a greater duty than the occupier to persons who or whose goods are lawfully on the premises by reason only of the exercise of a right of way.
- (6) Nothing in this section shall relieve a landlord of any duty which he is under apart from this section.
- (7) 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** (租賃) 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** (業主) shall be construed accordingly.
- (8) This section applies to tenancies created before the commencement of this Ordinance, as well as to those created after its commencement.

[cf. 1957 c. 31 s. 4 U.K.]

Liability in Contract

6. 合約內的隱含條款

- (1) 凡任何人行使其與佔用或控制任何處所的人所訂立的合約內所授權利而進入或使用該處所，或攜帶或運送物品到該處所，則只要佔用或控制該處所的人由於該處所的狀況所產生的危險或由於在該處所作出或遺漏作出的事所產生的危險而對該等人負上的責任是有賴於合約內一項隱含條款，而該條款是由於合約授予該權利而隱含在合約內的，則該責任即為一般謹慎責任。
- (2) 第 (1) 款適用於固定構築物及活動構築物，一如其適用於處所。
- (3) 由或憑藉任何車輛、船隻、飛機或其他交通工具的任何租用合約或為收取報酬而以車輛、船隻、飛機或其他交通工具運載人或物品的合約而施加於任何人的義務，或由或憑藉任何委託保管合約而施加於任何人的義務，不受本條影響。
- (4) 本條不適用於在本條例生效日期前所訂立的合約。

[比照 1957 c. 31 s. 5 U.K.]

一般規定

7. 對官方的適用

本條例對官方具約束力，但至於官方在侵權法方面所負的法律責任，其所受的約束並不較《官方法律程序條例》(第 300 章)使官方在侵權法方面所負的法律責任為大，而該條例，尤其是第 4 條的規定，須就屬法定責任的本條例第 3 至 5 條所訂的責任而適用。

(由 1997 年第 255 號法律公告修訂)

[比照 1957 c. 31 s. 6 U.K.]

6. Implied term in contracts

- (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 its conferring that right, shall be the common duty of care.
- (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 or by virtue of any contract of bailment.
- (4) This section does not apply to contracts entered into before the commencement of this Ordinance.

[cf. 1957 c. 31 s. 5 U.K.]

General

7. Application to Crown

This Ordinance 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 Ordinance (Cap. 300) and that Ordinance and in particular section 4 of it shall apply in relation to duties under sections 3 to 5 of this Ordinance as statutory duties.

[cf. 1957 c. 31 s. 6 U.K.]