

**Reprint
as at 29 November 1962**



Occupiers' Liability Act 1962

Public Act 1962 No 31
Date of assent 28 November 1962
Commencement see section 1(2)

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An Act to amend the law relating to the liability of occupiers and others for injury or damage resulting to persons or goods

Note

Changes authorised by section 17C of the Acts and Regulations Publication Act 1989 have been made in this reprint.

A general outline of these changes is set out in the notes at the end of this reprint, together with other explanatory material about this reprint.

This Act is administered by the Ministry of Justice.

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

1 Short Title and commencement

- (1) This Act may be cited as the Occupiers' Liability Act 1962.
- (2) This Act shall come into force on 1 January 1963.

2 Interpretation

In this Act, unless the context otherwise requires,—

premises includes land

structure includes any vessel, vehicle, or aircraft.

Compare: Occupiers' Liability Act 1957 s 1(3)(a) (UK)

3 Application of next 2 succeeding sections

- (1) The rules enacted by sections 4 and 5 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 his capacity as an occupier 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.
- (3) Subject to the provisions of section 9, 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; 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.

Compare: Occupiers' Liability Act 1957 s 1 (UK)

4 Extent of occupier's ordinary duty

- (1) An occupier of premises owes the same duty (in this Act referred to as the **common duty of care**) to all his visitors, except 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.
- (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.
- (5) 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.
- (6) Where damage is caused to a visitor by a danger due to the faulty execution of any work of construction, reconstruction, demolition, maintenance, repair, or other like operation 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.
- (7) 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.

- (8) Where the occupier fails or neglects to discharge the common duty of care to a visitor, and the visitor suffers damage as the result partly of that fault and partly of his own fault, the provisions of the Contributory Negligence Act 1947 shall apply.
- (9) 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.
- Compare: Occupiers' Liability Act 1957 s 2 (UK)

5 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 common 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, so far as those obligations go beyond the obligations otherwise involved in the common duty of care.
- (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, reconstruction, demolition, maintenance, repair, or other like operation by persons other than himself, his servants, and persons acting under his direction and control.
- (3) In this section the expression **stranger to the contract** 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, 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 date of the commencement of this Act, as well as to those entered into or created on or after that date; but, 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 on or after that date or which are renewed by agreement (whether expressed or implied) on or after that date.

Compare: Occupiers' Liability Act 1957 s 3 (UK)

6 Contribution between landlord and tenant as joint tortfeasors

- (1) Where a landlord is the occupier of any part of any premises that is used by a tenant, and damage is suffered by a visitor to that part of the premises as a result of the fault of the landlord and of the tenant, and the tenant would, if sued, have been liable to the visitor in respect of the damage, the landlord shall have the same right to recover contribution, under paragraph (c) of subsection (1) of section 17 of the Law Reform Act 1936, from the tenant as if the tenant were a joint occupier of that part of the premises.
- (2) Where a tenant is the occupier of any part of any premises, and damage is suffered by a visitor to that part of the premises as a result of the fault of the tenant and of the landlord, and the landlord would, if sued, have been liable to the visitor in respect of the damage, the tenant shall have the same right to recover contribution, under paragraph (c) of subsection (1) of section 17 of the Law Reform Act 1936, from the landlord as if the landlord were a joint occupier of that part of the premises.
- (3) For the purposes of this section—
landlord includes both an immediate and a superior landlord
tenant includes a person occupying premises under a statutory tenancy which does not in law amount to a tenancy, or under any contract conferring a right of occupation; and also includes a subtenant.

7 Occupier's duty to contractual visitors

- (1) Where persons enter or use, or bring or send goods to, any premises in exercise of a right conferred on them by contract with a person occupying or having control of the premises, the duty he owes them, in his capacity as occupier, in respect of dangers due to the state of the premises or to things done or omitted to be done on them shall be the common duty of care, except so far as a contrary intention is expressed in the contract; and the provisions of subsections (2) to (8) of section 4 shall apply accordingly.
- (2) In determining whether in any such case the occupier has discharged the common duty of care, so far as it is applicable, the existence and nature of the contract shall be included in the circumstances to which regard is to be had under section 4.
- (3) Subject to the provisions of section 9, this section shall apply to fixed and movable structures as it applies to premises.
- (4) This section does not apply to contracts entered into before the commencement of this Act.

Compare: Occupiers' Liability Act 1957 s 5(1), (2), (4) (UK)

8 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 subtenancy, 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 subtenancy, and for that purpose any obligation to the occupier which the subtenancy 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 subtenancy) 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 or from enforcing his objection, then no person 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** 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** shall be construed accordingly.
- (8) This section applies to tenancies created before the commencement of this Act, as well as to those created after its commencement.

Compare: Occupiers' Liability Act 1957 s 4 (UK)

9 Act not to apply to certain contracts of hire or carriage, etc

This Act shall not apply to the obligations of any person under 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 under or by virtue of any contract of bailment.

Compare: Occupiers' Liability Act 1957 s 5(3) (UK)

10 Act to bind the Crown

This Act shall bind the Crown.

Compare: Occupiers' Liability Act 1957 s 6 (UK)

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Notes

1 *General*

This is a reprint of the Occupiers' Liability Act 1962. The reprint incorporates all the amendments to the Act as at 29 November 1962, as specified in the list of amendments at the end of these notes.

Relevant provisions of any amending enactments that contain transitional, savings, or application provisions that cannot be compiled in the reprint are also included, after the principal enactment, in chronological order. For more information, see <http://www.pco.parliament.govt.nz/reprints/>.

2 *Status of reprints*

Under section 16D of the Acts and Regulations Publication Act 1989, reprints are presumed to correctly state, as at the date of the reprint, the law enacted by the principal enactment and by the amendments to that enactment. This presumption applies even though editorial changes authorised by section 17C of the Acts and Regulations Publication Act 1989 have been made in the reprint.

This presumption may be rebutted by producing the official volumes of statutes or statutory regulations in which the principal enactment and its amendments are contained.

3 *How reprints are prepared*

A number of editorial conventions are followed in the preparation of reprints. For example, the enacting words are not included in Acts, and

provisions that are repealed or revoked are omitted. For a detailed list of the editorial conventions, see <http://www.pco.parliament.govt.nz/editorial-conventions/> or Part 8 of the *Tables of New Zealand Acts and Ordinances and Statutory Regulations and Deemed Regulations in Force*.

4 Changes made under section 17C of the Acts and Regulations Publication Act 1989

Section 17C of the Acts and Regulations Publication Act 1989 authorises the making of editorial changes in a reprint as set out in sections 17D and 17E of that Act so that, to the extent permitted, the format and style of the reprinted enactment is consistent with current legislative drafting practice. Changes that would alter the effect of the legislation are not permitted. A new format of legislation was introduced on 1 January 2000. Changes to legislative drafting style have also been made since 1997, and are ongoing. To the extent permitted by section 17C of the Acts and Regulations Publication Act 1989, all legislation reprinted after 1 January 2000 is in the new format for legislation and reflects current drafting practice at the time of the reprint.

In outline, the editorial changes made in reprints under the authority of section 17C of the Acts and Regulations Publication Act 1989 are set out below, and they have been applied, where relevant, in the preparation of this reprint:

- omission of unnecessary referential words (such as “of this section” and “of this Act”)
- typeface and type size (Times Roman, generally in 11.5 point)
- layout of provisions, including:
 - indentation
 - position of section headings (eg, the number and heading now appear above the section)
- format of definitions (eg, the defined term now appears in bold type, without quotation marks)
- format of dates (eg, a date formerly expressed as “the 1st day of January 1999” is now expressed as “1 January 1999”)

- position of the date of assent (it now appears on the front page of each Act)
- punctuation (eg, colons are not used after definitions)
- Parts numbered with roman numerals are replaced with arabic numerals, and all cross-references are changed accordingly
- case and appearance of letters and words, including:
 - format of headings (eg, headings where each word formerly appeared with an initial capital letter followed by small capital letters are amended so that the heading appears in bold, with only the first word (and any proper nouns) appearing with an initial capital letter)
 - small capital letters in section and subsection references are now capital letters
- schedules are renumbered (eg, Schedule 1 replaces First Schedule), and all cross-references are changed accordingly
- running heads (the information that appears at the top of each page)
- format of two-column schedules of consequential amendments, and schedules of repeals (eg, they are rearranged into alphabetical order, rather than chronological).

5 *List of amendments incorporated in this reprint
(most recent first)*
