

[AS REPORTED FROM THE STATUTES REVISION COMMITTEE]
House of Representatives, 15 August 1962

Words struck out by the Statutes Revision Committee are shown in italics within bold round brackets, or with black rule at beginning and after last line of struck out matter; words inserted are shown in roman underlined with a double rule, or with double rule before first line and after last line of new matter.

Hon. Mr Hanan

OCCUPIERS' LIABILITY

ANALYSIS

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A BILL INTITULED

5 **An Act to amend the law relating 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**

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:

10 **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 the first day of January, nineteen hundred and sixty-three.

2. Interpretation—In this Act, unless the context otherwise requires,—

“Premises” includes land:

“Structure” includes any vessel, vehicle, or aircraft.

Cf. Occupiers' Liability Act 1957, s. 1 (3) (a) (U.K.) 5

3. Application of next two succeeding sections—(1) The rules enacted by sections 4 and 5 of this Act 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. 10

(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. 15

(3) Subject to the provisions of section 8 of this Act, 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— 20

(a) The obligations of a person occupying or having control over any fixed or movable structure; and 30

(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. 35

Cf. Occupiers' Liability Act 1957, s. 1 (U.K.)

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. 40

5 (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.

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10 [so that (for example) in proper cases—

- (a) An occupier must be prepared for children to be less careful than adults; and
- 15 (b) An occupier may expect that a person, in the exercise of his calling, will appreciate and guard against any special risks ordinarily incident to it, so far as the occupier leaves him free to do so.

20 (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.

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[so that (for example)—

- 25 (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
- 30 (b) 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
- 35 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
- 40 done.

New

(4A) 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.

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(4B) 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.

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(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.

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The question whether a risk was so accepted shall be decided on the same principles as in other cases in which one person owes a duty of care to another.

New

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(5A) 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.

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(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.

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Cf. Occupiers' Liability Act 1957, s. 2 (U.K.)

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.

Cf. Occupiers' Liability Act 1957, s. 3 (U.K.)

New

5A. 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) 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.

6. 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 ((5)) (5A) of section 4 of this Act 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 of this Act.

(3) Subject to the provisions of section 8 of this Act, 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.

Cf. Occupiers' Liability Act 1957, s. 5 (1), (2), (4) (U.K.)

7. 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
5 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
10 invitation or permission but without any contract.

(2) Where premises are occupied under a sub-tenancy, subsection (1) of this section 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
15 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
20 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
25 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 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
30 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
35 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
45 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. 5

(8) This section applies to tenancies created before the commencement of this Act, as well as to those created after its commencement.

Cf. Occupiers' Liability Act 1957, s. 4 (U.K.) 10

8. 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. 15

Cf. Occupiers' Liability Act 1957, s. 5 (3) (U.K.)

9. Act to bind the Crown—This Act shall bind the Crown.

Cf. Occupiers' Liability Act 1957, s. 6 (U.K.)