

## CHAPTER 64

### THE OCCUPIERS LIABILITY ACT

[PRINCIPAL LEGISLATION]

#### ARRANGEMENT OF SECTIONS

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## CHAPTER 64

### THE OCCUPIERS LIABILITY ACT

An Act to prescribe 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 on such land or property.

[1<sup>st</sup> December, 1968]

Act No.  
54 of 1968

Short title      **1.** This Act may be cited as the Occupiers Liability Act.

Preliminary      **2.**—(1) 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 respect of dangers due to the state of premises or to things done or omitted to be done on them.

(2) The Act 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 that person gives or is to be treated as giving, to another person to enter or use the premises, but the Act does 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 this Act, 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) The provisions of this Act relating to an occupier of premises and his visitors, shall also apply in like manner and to the same extent as the principles applicable at common law to an occupier of premises and his invitees or licensees would apply, to regulate the obligations of a person occupying or having control over any-

- (a) fixed or movable structure, including any vessel, vehicle or aircraft; and
- (b) any premises or structure in respect of damage to property, including the property of persons who are not themselves his visitors.

Extent of  
occupier's  
ordinary duty

3.-(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 in proper cases such as-

- (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 risks ordinarily incidental to the risk, so far as the occupier in leaves the person 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-

- (a) where damage is caused to a visitor by a danger of which the visitor 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 the occupier 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 by the visitor as the visitor's own risks, and 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 that permission or not.

Effect of contract  
on occupier's  
liability to third  
party

4.-(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 the occupier 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, the contract shall include the duty to perform the 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 the occupier, his servants and persons acting under his direction and control.

(3) In this section “stranger to the contract” means a person not for the time being entitled to the benefit of the contract as a party to the contract or as the successor by assignment or otherwise of a party to the contract, and includes a party to the contract who has ceased to be so entitled.

(4) Whereby 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 the landlord or tenant 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 Act, as well as to those entered into or created after its commencement; but, in so far as it enlarges the duty owed by any 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.

Landlord's  
liability by virtue  
of obligation to  
repair

5.-(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 be lawfully on the premises, the same duty in respect of dangers arising from any default by the landlord in carrying out that obligation, as if the landlord 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 putting but 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 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 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 duty of an 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 the landlord owes other than under apart from this section.

(7) For the purposes of this section, obligations imposed by any enactment by 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.

Implied term in contracts

6.-(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 which the person occupying or having control of the premises owes them in respect of dangers due to the state of the premises or to things done or omitted to be done on the premises, 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 virtue of any contract of bailment.

(4) This section does not apply to contracts entered into before the commencement of this Act.

Act to bind Republic

Cap. 5

7. This Act shall bind the Republic, but as regards the Republic's liability in tort, it shall not bind the Republic further than the Republic is made liable in tort by the Government Proceedings Act, and that Act and in particular section 3 of the Act shall apply in relation to duties under sections 3, 4 and 5 of this Act as statutory duties.

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