



BERMUDA

OCCUPIERS' AND HIGHWAY AUTHORITIES' LIABILITY ACT 1978

1978 : 54

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*[preamble and words of enactment omitted]*

Interpretation

1 In this Act—

- (a) “common duty of care” means the duty of care of an occupier of premises to his visitors provided for in section 4;
- (b) “entrant as of right” means a person who is empowered or permitted by law to enter premises without the permission of the occupier of those premises;

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- (c) "highway" means a highway maintained by virtue of the Public Lands Act 1984 or by either Municipality;
- (d) "occupier" means—
  - (i) a person who is in physical possession of premises; or
  - (ii) a person who has responsibility for and control over the conditions of premises, the activities on those premises and the persons allowed to enter those premises; or
  - (iii) in the case of a highway or right of way the Government or a Municipality or other person responsible for its upkeep,and for the purposes of this Act there may be more than one occupier of the same premises;
- (e) "premises" includes—
  - (i) staging, scaffolding and similar structures erected on land whether affixed to the land or not;
  - (ii) poles, standards, pylons and wires used for the purpose of transmission of electric power or communications or transportation of passengers, whether or not they are used in conjunction with the supporting land;
  - (iii) ships; and
  - (iv) trailers used for, or designed for use as, residences, shelters or offices, but does not include aircraft, motor vehicles or other vehicles or vessels except those mentioned in subclause (iii) or any portable derrick or other equipment or moveable things except those mentioned in sub-clauses (i) and (iv);
- (f) "right of way" means any road or footpath over which the public has a right to pass and repass or any road or footpath over which any person has a right to pass or repass in respect of such person;
- (g) "visitor" means—
  - (i) an entrant as of right; or
  - (ii) a person who is lawfully present on premises by virtue of an express or implied term of a contract; or
  - (iii) any other person whose presence on premises is lawful; or
  - (iv) a person whose presence on premises becomes unlawful after his entry on those premises and who is taking reasonable steps to leave those premises.

*[Section 1(c) amended by BR 5 / 2011 para. 3 effective 25 February 2011]*

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### Effective date

2 This Act applies only in cases where the cause of action arose after its coming into force.

### Liability of employer not affected

3 This Act does not apply to or affect the liability of an employer in respect of his duties to his employees.

### Duty of care to visitors

4 An occupier of premises owes a duty to every visitor on his premises 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 or is permitted by law to be there.

### When common duty of care applies

5 The common duty of care applies in relation to—

- (a) the condition of the premises;
- (b) activities on the premises; and
- (c) the conduct of third parties on the premises.

### Risks willingly accepted by visitors

6 An occupier is not under an obligation to discharge the common duty of care to a visitor in respect of risks willingly accepted by the visitor as his.

### Variation of duty of care

7 (1) The liability of an occupier under this Act may be extended, restricted, modified or excluded by express agreement or express notice but no restriction, modification or exclusion of that liability is effective unless reasonable steps were taken to bring it to the attention of the visitor.

(2) This section does not apply with respect to a visitor who is an entrant as of right.

### Effect of warning

8 A warning, without more, shall not be treated as absolving an occupier from discharging the common duty of care to his visitor unless in all the circumstances the warning is enough to enable the visitor to be reasonably safe.

### Contract not to affect strangers

9 Where an occupier of premises is bound by a contract to permit strangers to the contract to enter or use the premises, the liability of the occupier under this Act to a stranger to the contract may not be extended, restricted, modified or excluded by that contract.

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### Liability of independent contractor

10 (1) An occupier is not liable under this Act where the damage is due to the negligence of an independent contractor engaged by the occupier if—

- (a) the occupier exercised reasonable care in the selection and supervision of the independent contractor; and
- (b) it was reasonable in all the circumstances that the work that the independent contractor was engaged to do should have been under taken.

(2) Subsection (1) does not operate to abrogate or restrict the liability of an occupier for the negligence of his independent contractor imposed by any other Act.

### Liability in respect of highways and rights of way

11 (1) Notwithstanding any rule of law an occupier responsible for the upkeep of a highway or right of way shall have the same liability towards persons lawfully using the same as an occupier of premises has to a visitor.

(2) In an action against a person in respect of damage resulting from his failure to maintain a highway or right of way it shall be a defence, without prejudice to any other defence, to prove that the occupier had taken such care as in all the circumstances was reasonably required to secure that the part of the highway or right of way to which the action relates was not dangerous.

(3) For the purposes of a defence under subsection (2), the court shall in particular have regard to the following matters—

- (a) the character of the highway or right of way, and the traffic or persons which ought reasonably to be expected to use it;
- (b) the standard of maintenance appropriate for a highway or right of way of that character and used by such traffic or persons;
- (c) the state of repair in which a reasonable person would have expected to find the highway or right of way;
- (d) whether the occupier knew, or could reasonably have been expected to know, that the condition of the part of the highway or right of way to which the action relates was likely to cause danger to users of the highway;
- (e) where the occupier could not reasonably have been expected to repair that part of the highway or right of way before the cause of action arose, what warning notices of its condition had been displayed,

but for the purposes of such a defence it shall not be relevant to prove that the occupier had arranged for a competent person to carry out or supervise the maintenance of the part of the highway or right of way to which the action relates unless it is also proved that the occupier had given him proper instructions with regard to the maintenance of the highway or right of way and that he had carried out the instructions.

(3) For the purpose of this section where any person is breaking, or opening up or boring under or carrying out any other works on part of a highway or right of way by virtue

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of an agreement with the occupier that person and not the occupier shall be liable towards persons using that part of the highway or right of way and not the occupier until such time as the highway or right of way has been reinstated or made good to the satisfaction of the occupier.

### Trespassers

12 (1) Subject to subsection (2) and section 13, an occupier does not owe a duty of care to a trespasser on his premises.

(2) An occupier is liable to a trespasser for damages for the death of or for the injury to a trespasser that results from the occupier's wilful or reckless conduct.

(3) For the purpose of this section a person shall be deemed to be guilty of wilful or reckless conduct if he acts with the deliberate intention of doing harm, or at least acts with reckless disregard of the presence of another person.

### Child trespassers

13 (1) Where an occupier knows or has reason to know—

- (a) that a child trespasser is on the premises; and
- (b) that the condition of, or activities on the premises create a danger of death or serious bodily harm to that child,

the occupier owes a duty to that child to take such care as in all the circumstances of the case is reasonable to see that the child will be reasonably safe from danger.

(2) In determining whether the duty of care under subsection (1) has been discharged consideration shall be given to—

- (a) the age of the child;
- (b) the temptation the danger would have for a normal child; and
- (c) whether the occupier has taken all reasonable steps to eliminate the danger.

(3) For the purpose of subsection (1), the occupier has reason to know that child trespassers are on his premises if he has knowledge of facts from which a reasonable man would infer that children are present in that their presence is so probable that the occupier should conduct himself on the assumption that they are present.

(4) For the purpose of this section a child means a person under the age of sixteen years.

### Liability for personal property

14 (1) Subject to subsections (2) to (4), the liability of an occupier under this Act to a visitor or trespasser extends to destruction or loss of, or damage to, property brought on to the occupier's premises by the visitor or trespasser, as the case may be, whether or not it is owned by the visitor or trespasser or by any other person.

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(2) An occupier is not liable under this Act in respect of the destruction of or a loss of or damage to property of any person resulting by reason of the act of a third party.

(3) Where a person in an action under this Act claims damages in respect of the destruction or loss of, or damage to, property of which he is the owner and which was brought on to the occupier's premises by some other person either as a visitor or trespasser on those premises, the occupier is entitled to raise any defence to the claim that he would be entitled to raise if the claimant were the visitor or trespasser, as the case may be.

(4) This Act does not apply to or affect any liability of an occupier of premises in respect of personal property arising by virtue of—

- (a) a contract of carriage; or
- (b) a bailment; or
- (c) The Hotel Keepers Act 1905 [*title 17 item 35*].

### Application of other Acts

15 (1) Where the occupier does not discharge the common duty of care to a visitor and the visitor suffers damage partly as a result of the fault of the occupier and partly as a result of his own fault, section 3 of the Law Reform (Liability in Tort) Act 1951 [*title 8 item 67*] applies.

(2) Where an occupier is liable under section 12(2) or section 13, and the trespasser or child trespasser, as the case may be, suffers damage partly as a result of the fault of the occupier and partly as a result of his own fault, section 3 of the Law Reform (Liability in Tort) Act 1951 applies.

(3) Where in any action brought under this Act two or more occupiers of the same premises are each found to be at fault, section 5 of the Law Reform (Liability in Tort) Act 1951 applies.

### Application to Crown

16 This Act 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 Act 1966 [*title 8 item 105*].

[Assent Date: 1 August 1978]

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[Amended by:

BR 5 / 2011]