

**THE LAW OF OCCUPIERS LIABILITY IN MALAYSIA
A COMPARATIVE STUDY WITH NEW ZEALAND, UNITED KINGDOM
AND AUSTRALIA**

BY

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ABSTRACT

The principle of this study is to analyze the law of Occupiers' liability in Malaysia. Currently, Malaysia does not have their own Act regarding the law of Occupiers' liability as we adopted the Common Law principle of Occupiers' liability.

This research paper will focus on the current state of law of occupiers' liability in Malaysia, in comparison to other Commonwealth countries that are equipped with their very own Occupiers Liability Act such as New Zealand, United Kingdom, and Australia.

In addition, we will lay down the strengths and weaknesses of the Occupiers Liability Act of these three countries.

At the end of the paper, we will also provide some recommendation so that it will act as a guideline to the law makers in enacting a specific statute relating to occupiers' liability.

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CHAPTER ONE

INTRODUCTION

1.0 BACKGROUND OF THE RESEARCH

This research is about the law governing the Occupiers' liability in Malaysia. The first chapter of this research contains the background of this research, research questions, research objectives, research methodology, scope, limitation, and significance of the research.

An occupier is the one who has the right to possession of the premise and the right to exclude there from all except those who comes by his invitation or permission.¹ An occupier can be defined as anyone who occupies, has possession of, or has a sufficient degree of control of, premises, or an area within the premises. There can be more than one "occupier".²

In the case of *Wilkinson v Downtown*,³ it has laid down a rule where the plaintiff may claim for remedies if a plaintiff suffers injury due to a dangerous state of affairs or activity on the premises of the defendant (occupier) and the plaintiff can prove that the occupier had the intention to cause injury to him. However, if the intention cannot be proved, the claim may be made under negligence. In England, before the existence of Occupiers Liability Act 1957, the plaintiff was said to have had the

¹ Clerk JF, Lindsell WHB, and Armitage AL, *Clerk and Lindsell on Torts* (Sweet & Maxwell London 12th edn 1961)

² "An Occupiers' Liability : An Overview Following Harvey v Plymouth Country Council and other recent cases" in <http://www.morgancole.com/9538.file.dld>. accessed on 19 November 2013.

³ (1897) 2 QB 57