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Walking into Danger: The Urgent Need for a Malaysian Occupiers' Liability Act

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ABSTRACT

Public premises are integral to everyday life, yet they often pose hidden dangers due to poor maintenance and unclear legal responsibilities. In Malaysia, the absence of a specific legislative framework governing occupiers' liability has led to legal uncertainty and inconsistent application of duties by those in control of public spaces. This paper critically examines the concept of occupiers' liability, focusing on the duty of care owed by occupiers including owners, managers, and those exercising control over premises to lawful visitors. It highlights the importance of awareness and legal clarity in ensuring public safety, particularly in light of several recent incidents involving injuries caused by hazardous premises conditions. The study adopts a qualitative, library-based research methodology, supported by a comparative legal analysis of the Occupiers' Liability Acts in the United Kingdom and Australia. These jurisdictions provide clear legislative models that Malaysia can learn from. The findings suggest that the current reliance on common law is inadequate to protect the public or guide occupiers effectively. Based on the findings, this paper firmly advocates for the urgent introduction of a specific Occupiers' Liability Act in Malaysia to establish clear legal duties, enhance occupier accountability, and better safeguard public safety in commonly accessed premises.

Keywords: Occupiers' liability; Public premises; Duty of care; Statutory reform; Malaysia



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1. Introduction

Occupiers' liability in public places is an essential but often overlooked area of tort law. It concerns the legal duty of those who occupy or control premises such as building owners, managers, tenants, or public authorities to ensure that visitors are reasonably safe when using those premises (Mat Nor, & Wasli, 2023). Unlike general negligence, which focuses on wrongful acts or omissions, occupiers' liability focuses on the condition and safety of physical spaces. This is particularly relevant in public places like shopping malls, recreational parks, government buildings, and transport hubs, where the public has a legitimate expectation of safety.

Importantly, the term 'occupier' is not limited to legal ownership. This includes any individual or entity that exercises a degree of control over the premises and is therefore capable of preventing harm. In practice, this includes building managers, contractors, municipal councils, and private corporations responsible for public infrastructures. The scope of the duty owed varies depending on the type of entrant (invitee, licensee, or trespasser), but the overarching principle remains: occupiers must take reasonable steps to maintain safe conditions and prevent foreseeable harm (Mondaq, 2022).

Occupiers, as the controllers of premises, owe a duty of care to ensure that the premises are maintained in safe condition. This duty includes the obligation to conduct regular maintenance and safety inspections, as well as to provide adequate warning signs in the presence of hidden dangers such as wet and slippery floors, uneven staircases, exposed electrical wiring, loose tiles, falling debris from construction areas, or improperly secured chemical storage facilities. In addition, in high-risk areas such as swimming pools, elevators, and escalators, occupiers are expected to provide adequate supervision. For instance, the presence of a certified lifeguard on duty at a swimming pool. These preventive measures are essential to avoid accidents before they occur, rather than merely offering legal remedies after the incident. The enactment of a specific Occupiers' Liability Act would ensure a fair balance by imposing a statutory obligation on occupiers to exercise reasonable care while also recognising their legitimate interests.

However, Malaysia currently has no specific Act or legislation that clearly governs the duties and responsibilities of occupiers. The legal framework relies heavily on English common law principles, resulting in uncertainty, inconsistent interpretations, and a lack of awareness among occupiers (Humaira, 2024). In contrast, countries such as the United Kingdom and Australia have enacted Occupiers' Liability Acts, which define legal duties in statutory form and promote consistency and accountability.

The urgency of enacting similar legislation in Malaysia is increasingly evident. Several recent incidents have highlighted the risks associated with poor maintenance and ineffective safety oversight in public places. For example, a four-year-old child was injured in 2016 when his leg became trapped in an escalator at a shopping mall in Kuala Lumpur (Mokhtar,

2016). In 2022, two individuals were hurt when an elevator in Brickfields plummeted from the eighth floor. More recently, in 2024, an Indian tourist fell into a sinkhole on Jalan Masjid India, drawing attention to inadequate infrastructure monitoring (Hassan, 2025). These incidents reflect not only operational failures but also a deeper legal gap, where the absence of clear statutory duties allows risks to persist unaddressed.

Such events illustrate that the awareness and understanding of occupiers' responsibilities in Malaysia remain alarmingly low, particularly in public spaces where large numbers of people are at risk ('Bencana lubang benam di Malaysia: Contohi Singapura', 2024). Without a dedicated legal framework, those in control of the premises may neglect their responsibilities, either unknowingly or without fear of legal consequences. This endangers public safety and undermines the very purpose of tort law to provide redress, deterrence, and protection. In response, this study argues that Malaysia urgently needs a dedicated Occupiers' Liability Act to clearly define responsibilities, promote preventive safety practices, and ensure that members of the public do not walk into danger when they enter public premises.

1.1 Literature Review

H. L. Dickstein (1974) highlights in the article "Occupier's Liability, Law Reform and *Donoghue v. Stevenson*: A Malayan Trilogy?" that Malaysia's tort law governing occupiers' liability is largely based on outdated English common law, which is no longer compatible with the requirements of a current legal system. He argues that, especially in the context of rising litigation and rapid urbanisation, the current framework is insufficient for Malaysia's evolving social and legal environment. Dickstein suggests that the existing dependence on case-by-case common law interpretation be replaced with a statutory reform based on public policy and tailored to Malaysian needs.

Kumaralingam Amirthalingam (2013) discusses the conflict between the broad common law principles of negligence and the particular occupiers' liability rules in the Singaporean case of *See Toh Siew Kee v. Ho Ah Lam Ferrocement (Pte) Ltd.*¹ He points out that in order to encourage consistency and clarity in the way occupiers' legal obligations are established, the Singaporean courts have rationalised the occupier's duty of care, relying on Lord Atkin's neighbour principle in *Donoghue v. Stevenson*.² This change makes the law more comprehensible and predictable by moving away from strict entrant classifications and towards a more consistent application of negligence principles.

In the UK, occupiers have a statutory duty of care to legitimate visitors on their premises, which is established by the Occupiers' Liability Act 1957. M. C. Atkinson (1968) makes the case in his paper 'Occupiers' Liability Law: Some Developments and Criticism' that the 1957 Act's enactment and the Law Reform Committee's Third Report indicated an

¹ *See Toh Siew Kee v. Ho Ah Lam Ferrocement (Pte) Ltd* [2013] 3 Singapore Law Review 284 (Court of Appeal, Singapore).

² *Donoghue v. Stevenson* [1932] Appeal Cases 562 (House of Lords).

ideal time to reconsider the necessity of more statutory reform. According to Atkinson (1968), the long-held belief that English common law was sufficient in places like Australia needs to be contested. Additionally, he recommends reviewing the liability requirements for every type of visitor as well as court rulings that have altered or deviated from traditional principles.

The Occupiers' Liability Act of 1957, which was later expanded by the Occupiers' Liability Act of 1984, now regulates occupiers' obligations to both trespassers and lawful visitors.³ The law in this area is still unclear and complicated, especially when applied to real-world situations involving different visitor categories and different premises conditions, as noted by E. C. Harris (1963), in his article "Some Trends in the Law of Occupiers' Liability" responded to this evolution. In Australia, the rigid entry classifications used to determine an occupier's obligation have been replaced by the general principles of negligence. The criteria used by the courts now depend on whether the occupier used reasonable care considering the foreseeable risks. According to McDonald and Leigh (1965), Canada's continuous use of entrance classification (invitees, licensees, trespassers) is also outdated. They believe that since the UK's Report on Occupiers' Liability to Invitees, Licensees, and Trespassers was published nine years ago and the UK Occupiers' Liability Act 1957 was passed six years ago, it is time for Canada to have a look at legislative change that is based on the English approach.⁴

Alastair Mullis and Ken Oliphant (1997) also argue that the complicated common law system that formerly controlled occupiers' liability has been effectively replaced by the UK's Occupiers' Liability Acts of 1957 and 1984 (Mullis & Oliphant, 1997). Depending on whether the visitor was a contractor, invitee, or trespasser, the occupier's obligation changed under the previous system. A general, consistent duty of care was established by these Acts, marking a change from liability based on visitor status to a standardised negligence-based approach that guarantees more equitable and predictable litigation results.

According to Mat Nor and Wasli (2023), tort law in Malaysia emphasises that even trespassers, including minors, are entitled to a minimal duty of humanity, especially when the occupier is aware or ought to be aware of their presence. They highlight how crucial it is to differentiate between adult and child trespassers, and they point out that when it comes to child protection, occupiers may need to take extra safety measures, especially in premises with known hazards or visually appealing nuisances. According to the author, acknowledging these differences in Malaysian law will promote a more equitable and contemporary responsibility framework, particularly in situations where public access to private premises is necessary and frequent.

In contrast to other common law jurisdictions, Malaysia does not have a specific statutory framework to govern occupiers' responsibilities. The Occupational Safety and Health Act of 1994 (OSHA) now governs workplace safety and health requirements, which

³ Occupiers' Liability Act 1984.

⁴ Occupiers' Liability Act 1957.

are the responsibility of employers.⁵ Involving stakeholders like the National Institute for Occupational Safety and Health (NIOSH) and the Department of Occupational Safety and Health (DOSH) is essential to the successful implementation of workplace safety (Beevi, 2013). The welfare of employees is covered by OSHA, but occupiers' obligations to third parties, including visitors or members of the public, are not legislated, and liability must still be proven through common law tort claims like negligence.⁶

Malaysia lacks specific legislation outlining occupiers' obligations to certain visitor categories or discussing the repercussions of neglecting to maintain safe premises, in contrast to the UK and Australia. Despite the existence of common law and OSHA regulations, they are insufficient to address the growing complexity of public safety concerns in both public and commercial areas. As a result, it is advised that Malaysia enact particular occupiers' liability laws that are tailored to the local needs. This should include codified negligence standards, legal recognition of visitor classifications, and clearly defined responsibilities for occupiers. The creation of a monitoring organisation to examine the safety of premises and provide industry-specific rules is also suggested as a way to improve public safety and the legal system.

1.2 Research Methodology

This study adopts a qualitative doctrinal legal research methodology, focusing on the systematic analysis of legal rules, principles, and authorities relevant to occupiers' liability, particularly in the context of public premises. The doctrinal method involves interpreting and critically evaluating the law as it stands by examining primary and secondary legal sources to construct a coherent understanding of the existing legal position and its practical implications.

The primary sources used in this research include Malaysian statutes such as the Civil Law Act 1956, which incorporates English common law principles, and reported court decisions that interpret occupiers' obligations in the absence of a dedicated statutory framework. Judicial decisions from both Malaysian and comparative common law jurisdictions are analysed to explore how courts determine the duty of care, liability standards, and available defences in cases involving injuries on public premises. Relevant regulatory guidelines from government agencies and local authorities were also reviewed to understand the administrative context of public safety obligations. Secondary sources consulted include legal textbooks, peer-reviewed journal articles, law reform commission reports, and legal commentaries that offer critical insights into the historical development, theoretical underpinnings, and practical shortcomings of occupiers' liability law in Malaysia. These materials help situate the discussion within broader academic debates and provide evaluative perspectives on potential reforms.

⁵ Occupational Safety and Health Act 1994.

⁶ Occupational Safety and Health Act 1994.

In addition, this study conducts a comparative legal analysis, focusing on the United Kingdom and Australia, jurisdictions that have codified occupiers' liability through specific legislation such as the Occupiers' Liability Acts 1957 and 1984 (UK). The comparison aims to identify best practices in how occupiers' duties are defined, applied, and enforced, particularly concerning public premises such as parks, shopping malls, and government buildings. These comparative insights help assess whether similar legislative developments are viable and necessary in the Malaysian context.

Furthermore, an empirical element is incorporated through the analysis of reported Malaysian case law involving accidents or injuries on public premises. This allowed the study to identify patterns in litigation, judicial reasoning, and enforcement issues. Although this is not a statistical study, reviewing relevant case outcomes contributes to a better understanding of how the absence of statutory guidance affects consistency and fairness in judicial decisions. By combining doctrinal legal research, comparative analysis, and limited empirical case review, this study aims to critically evaluate the suitability and effectiveness of Malaysia's current legal approach to occupiers' liability. It further seeks to recommend legal and policy reforms that would introduce a clear, unified statutory framework, aligned with international standards and better equipped to safeguard public safety and ensure legal accountability.

2. Findings

2.1 Examining the Legal Framework Governing Occupiers' Liability in Malaysia

The first objective of this study is to examine the legal framework governing occupiers' liability in Malaysia. The findings indicate a substantial absence of statutory regulation, as Malaysia currently lacks a specific Occupiers' Liability Act. As allowed by Section 3 of the Civil Law Act 1956, Malaysia continues to rely on common law principles, particularly pre-1956 English common law, in contrast to nations like the United Kingdom and Australia, both of which have enacted clear statutes.⁷ The approach to occupiers' liability in Malaysia has become fragmented and inconsistent due to its reliance on imported common law, particularly pre-1956 English principles applied through Section 3 of the Civil Law Act 1956 (Dickstein, 1974). Because there is currently no Occupiers' Liability Act, Malaysia's legal framework remains largely uncodified. Key concepts such as who qualifies as an 'occupier,' what constitutes a visitor, and how the duty of care should be calibrated are left to the case-by-case discretion of judges. As a result, liability is determined inconsistently, making it challenging for injured parties to obtain compensation. Researchers have long argued that this piecemeal adoption of foreign common law results in fragmented and uncertain standards (Dickstein, 1974).

The same issue is highlighted by more recent comparative research, which shows that Malaysia lags behind countries like the UK and Australia that have enacted clear statutory

⁷ Civil Law Act 1956.

frameworks to clarify liability, simplify litigation, and make defences more understandable (Hussain & Abdullah, 2013). Sokol (2020) further supports this concern by demonstrating that common-law development tends to fragment in the absence of a unifying statutory or governance framework, ultimately undermining the legal system's efficiency. Collectively, these academic and professional sources underscore the urgent need for Malaysia to enact a modern, comprehensive occupiers' liability statute.

Both academics and professionals have criticised this legal ambiguity. According to H.L. Dickstein (1974), the tort law in Malaysia that governs occupiers' liability is out of date and unsuitable for the country's contemporary legal and urban development. He argued for public policy-based reforms that better reflect Malaysia's socio-legal requirements. In a similar vein, M. C. Atkinson (1968) emphasised the necessity of legislative reform after the UK enacted the Occupiers' Liability Act 1957, which addressed complex and often unclear common law rules.

Recent academic discussions further reinforce the growing concern over the inadequacy of Malaysia's legal framework on occupiers' liability. Legal experts point out that because there is no statutory norm that explicitly defines the amount of reasonable care required of visitors, the lack of particular legislation poses an uncertain and inconsistent responsibility on occupiers (MahWengKwai, 2020). Because of this ambiguity, courts frequently have to make decisions on an individual basis, which produces uneven results. The subjective test of whether the premises were as safe as a reasonable occupier would have kept them, which varies based on judicial interpretation and case circumstances, is often the basis for claims in practice (Mondaq, 2022).

Furthermore, comparative studies demonstrate that Malaysia remains well behind other common law countries that have modernised their occupiers' liability frameworks. While nations such as Australia, the United Kingdom, and New Zealand have enacted statutes or judicial reforms to clarify duties of care and provide consistent protection for entrants, Malaysia has yet to move beyond reliance on pre-1956 English principles. This failure to codify occupiers' liability has created uncertainty in litigation, as seen in Malaysian case law, where courts continue to struggle with outdated doctrines and rigid classification. In *Qi Qiaoxian & Anor v. Sunway Putra Hotel Sdn Bhd*, the Court of Appeal had to determine whether the hotel was liable for the drowning of a guest in its swimming pool. The Sessions Court and High Court had previously dismissed the claim, finding that the plaintiffs lacked locus standi and that the hotel was not liable under either negligence or occupiers' liability. However, the Court of Appeal reversed these decisions, ruling that the plaintiffs had standing and that the hotel had breached its duty of care by failing to provide adequate supervision and safety measures. Although the court found the hotel liable under general negligence, it dismissed the occupiers' liability claim, holding that the swimming pool did not constitute an 'unusual danger.' This case illustrates the challenges that plaintiffs face in satisfying the threshold for liability under current common law rules in the absence of clear

statutory guidance.⁸ Similar to this, the court upheld the use of English common law classifications of visitors, such as invitees, licensees, and trespassers, in *Datuk Bandar Dewan Bandaraya v. Ong Kok Peng & Anor*, underscoring Malaysia's continued reliance on outdated legal doctrines and the absence of a contemporary legislative framework.⁹

Outdated legal doctrines that continue to shape Malaysian occupiers' liability include rigid entrant classifications of invitees, licensees, and trespassers, each of whom is owed a different standard of care. Courts also apply the 'unusual danger' test, which restricts liability to hazards considered extraordinary or unexpected, thereby excluding many foreseeable risks. In addition, liability often turns on the subjective 'reasonable occupier' test, where judges assess whether the premises were as safe as a reasonable occupier would have kept them. These doctrines, inherited from pre-1956 English common law, create uncertainty and inconsistency in judicial decisions and illustrate the urgent need for statutory reform to replace archaic principles with clearer, more modern standards of liability.

Given Malaysia's expanding urban population and the rising number of injuries that take place in public areas, this ambiguity is particularly worrisome. The severity of this problem is demonstrated by many documented occurrences, including the injury of a child on a Kuala Lumpur shopping mall escalator, the injuries of two people in a condominium lift crash, and the fall of a foreign visitor into a sinkhole on Jalan Masjid India (Mokhtar, 2016). These examples demonstrate obvious systemic safety flaws and highlight the inadequacy of the current legal framework for apportioning blame. Because no explicit legal requirements governed occupiers' responsibilities, the victims in each of these cases faced considerable challenges in demonstrating negligence (Hassan, 2025).

The Occupational Safety and Health Act 1994 (OSHA), which was enacted in Malaysia, only regulates employer-employee relations in official workplace environments.¹⁰ It does not apply to the general public or impose legal obligations on occupiers regarding the safety of members of the public or casual visitors. For example, while OSHA requires a factory owner to maintain safe machinery and provide protective equipment for employees, it does not require a shopping mall owner to ensure that escalators, lifts, or staircases are safe for customers. Similarly, landlords of condominiums or operators of hotels have no statutory duty under OSHA to safeguard residents, guests, or casual visitors, even though such premises are frequently accessed by the public. Public spaces are therefore not covered by this law, creating a serious legal loophole that leaves visitors vulnerable to violence without adequate legal protection. This limitation highlights the pressing need for a specific Occupiers' Liability Act that extends safety obligations beyond the workplace to all premises accessible to the public.

⁸ *Qi Qiaoxian (claiming as the mother and dependent of Qi Xiangqing, deceased) and Anor v. Sunway Putra Hotel Sdn Bhd* [2024] Malayan Law Journal Unreported 732 (Court of Appeal, Malaysia).

⁹ *Datuk Bandar Dewan Bandaraya v. Ong Kok Peng & Anor* [1993] 2 Malayan Law Journal 234 (Supreme Court, Malaysia).

¹⁰ Occupational Safety and Health Act 1994.

The Occupiers' Liability Acts of 1957 and 1984 in the United Kingdom, on the other hand, establish a precise and structured duty of care that applies to both trespassers and legitimate visitors in certain situations.¹¹ Mullis and Oliphant (1997) claim that these Acts established a more unified and consistent general duty of care in place of the common law's fragmented status-based methodology (Mullis & Oliphant, 1997). Similar reforms have been made in Australia, which has abandoned strict entrant classifications in favour of a reasonableness criterion that is usually incorporated into state-level laws. For instance, in *See Toh Siew Kee v. Ho Ah Lam Ferrocement (Pte) Ltd*, the Singaporean courts illustrated how occupiers' duties can be rationalised to improve legal clarity, providing Malaysia with insightful information from a comparative perspective.¹² Likewise, McDonald and Leigh (1965) advocated for statutory reform in Canada, drawing inspiration from the structured and effective UK model.

According to the study's findings, Malaysia's current legal system is insufficient to handle occupiers' liability in public places. It has unclear statutes, inconsistent enforcement, and ineffective victim remedies. For instance, in *Qi Qiaoxian & Anor v. Sunway Putra Hotel Sdn Bhd*, the lack of statutory guidance forced the Court of Appeal to rely on general negligence principles rather than occupiers' liability, resulting in an inconsistent application of the law. Beyond case law, real-life incidents such as the Kuala Lumpur shopping mall escalator accident that injured a child, the condominium lift crash that left two people seriously hurt, and the Jalan Masjid India sinkhole that swallowed a tourist demonstrate the serious consequences of leaving occupiers' duties undefined. In each of these examples, victims encountered significant barriers in proving negligence because no statute clearly outlined the occupiers' responsibilities. Inadequate disincentives against carelessness in property management, uneven court decisions, and restricted access to justice have therefore become recurring problems. In order to improve public safety, Malaysia must immediately enact a specific Occupiers' Liability Act that outlines responsibilities, creates legal guidelines, and conforms to international best practices.

2.2 Analysing Key Legal Decisions Related to Liability in Public Premises

The research examines how Malaysian courts have interpreted and applied occupiers' liability rules, especially in public areas, and how victims have frequently received uneven and unsatisfactory results due to the lack of a specific statute. Instead of codifying a clear statutory framework like those found in the UK or Australia, Malaysia continues to rely on common law negligence, which is drawn from English law through Section 3 of the Civil Law Act 1956.¹³

The court upheld the usage of common law types of entrants (invitees, licensees, and trespassers), each of whom owed a different degree of care, in *Datuk Bandar Dewan*

¹¹ Occupiers' Liability Acts of 1957 and 1984.

¹² *See Toh Siew Kee v. Ho Ah Lam Ferrocement (Pte) Ltd and others* [2013] SGCA 29 (Court of Appeal, Singapore).

¹³ Civil Law Act 1956.

Bandaraya v. Ong Kok Peng & Anor, one of the most often cited local cases.¹⁴ The actual realities of contemporary public places, where millions of people visit malls, parks, and buildings daily, are not reflected in this outdated status-based approach. The ruling illustrates the rigidity of common law categories and the challenge of obtaining justice for those who were injured within such a strict framework.

In *Qi Qiaoxian & Anor v. Sunway Putra Hotel Sdn Bhd*, the Court of Appeal highlighted the weaknesses of Malaysia's current occupiers' liability framework.¹⁵ While the hotel was held liable under general negligence for failing to provide adequate safety measures, the occupiers' liability claim was dismissed because the swimming pool was not considered an 'unusual danger.' This outcome reflects Malaysia's continued reliance on outdated common law doctrines, where liability depends on rigid concepts such as 'unusual danger' rather than on a clear statutory duty of care. This case demonstrates how the absence of codified legislation forces courts to stretch general negligence principles to fill gaps, resulting in uncertainty for both occupiers and claimants.

Similarly, real-life incidents in Malaysia have highlighted grave deficiencies in legal responsibility and public premises safety. For instance, a four-year-old child had serious injuries in February 2016 after his leg became stuck in a shopping mall escalator, but the mall operators were not automatically liable because there were no regulatory requirements (Mokhtar, 2016). Similarly, when a lift in a Brickfields condominium fell from the eighth floor in October 2022, injuring two tenants, the victims had no immediate legal recourse other than to prove common law negligence (Kevin Wu & Zarul Farrid, 2022; Mondaq, 2022). Another unfortunate incident occurred in August 2024 when a foreign visitor fell into a sinkhole on Jalan Masjid India (Juhari, 2024). DBKL had to make emergency repairs; however, due to legal restrictions, they were unable to provide an occupiers' liability remedy (Hassan, 2025). Furthermore, due to a lack of statutory duties controlling public areas, two boys were gravely poisoned in July 2024 after consuming food laced with rat poison that had been left in a public park (Zulkiffli, 2024). No safety warnings were in place, and local authorities were not held liable (Zulkiffli, 2024). All of these occurrences show how urgently a codified legal framework is needed to guarantee accountability and shield the public from foreseeable harm.

In each of these cases, victims found it challenging to get justice or restitution because Malaysia lacked a codified occupiers' liability law. The plaintiff bears the full burden of proving that the occupier breached a duty of care, which is a difficult and frequently unachievable threshold under the law as it is today. What is particularly lacking in the current Malaysian framework is a statutory definition of 'occupier,' clear guidance on the scope of duty owed to different categories of entrants, and specific standards for reasonable care. Courts are left to rely on outdated common law tests, such as whether a hazard

¹⁴ *Datuk Bandar Dewan Bandaraya v. Ong Kok Peng & Anor* [1993] 2 Malayan Law Journal 234 (Supreme Court, Malaysia).

¹⁵ *Qi Qiaoxian (claiming as the mother and dependent of Qi Xiangqing, deceased) & Anor v. Sunway Putra Hotel Sdn Bhd* [2024] Malayan Law Journal Unreported 732 (Court of Appeal, Malaysia).

qualifies as an ‘unusual danger,’ resulting in uncertainty and inconsistent outcomes. On the other hand, countries like the UK and Australia that have codified laws offer greater clarity. The UK House of Lords acknowledged in *Wheat v. Lacon & Co Ltd* that many parties may be ‘occupiers,’ extending liability suitably based on control.¹⁶ The Occupiers’ Liability Act of 1984 further developed the law by incorporating the principle of a duty of ‘common humanity,’ as established in *British Railways Board v. Herrington*, thereby extending protection even to trespassers.¹⁷ These laws created a coherent and predictable legal framework in which duties were clearly articulated, and responsibility was not left entirely to judicial discretion.¹⁸ Malaysia, however, continues to struggle with these uncertainties. For example, in *Kalaichelvi v. Kinrara Group Estates*, a child was injured by a flying object from a grass-cutting machine.¹⁹ The court held that the occupier owed a duty of care because children could not reasonably be expected to recognise the danger. Although the decision extended protection to vulnerable entrants, it illustrates how liability still depends on judges stretching common law principles rather than applying clear statutory rules. This piecemeal approach leaves significant gaps in public safety and inconsistent protection for victims.

As seen in *See Toh Siew Kee v. Ho Ah Lam Ferrocement (Pte) Ltd*, Singapore has modernised its approach.²⁰ The Court of Appeal subsumed occupiers’ liability under the general law of negligence, applying the *Donoghue v. Stevenson* neighbour principle. This removed the rigid distinctions between invitees, licensees, and trespassers, producing a more consistent and rational system (Amirthalingam, 2013). Similarly, Canada has progressively modernised its tort framework. While early Canadian cases were constrained by outdated English classifications, provinces have since enacted legislation modelled on the UK Occupiers’ Liability Acts, thereby consolidating occupiers’ duties into a general duty of care. As McDonald and Leigh (1965) observed, this statutory reform reflects the broader shift away from fragmented common law doctrines towards a unified, transparent, and equitable system of liability.

Contemporary commentaries support this need for reform. Dickstein (1974) argued that Malaysia’s reliance on English tort law is outdated, particularly as the country faces growing urbanisation and increased foot traffic in public premises. Atkinson (1968) similarly emphasised that reforms are necessary to move away from a rigid visitor-status system toward a general duty of care. The absence of legislation creates inconsistent standards, with outcomes depending entirely on individual judges’ interpretation of what constitutes ‘reasonable care’ (MahWengKwai, 2020).

¹⁶ *Wheat v. E Lacon & Co Ltd* [1966] 1 All England Report 582 (House of Lords).

¹⁷ *British Railways Board Appellants And Herrington Respondent [On Appeal From Herrington v. British Railways Board]*, [1972] Appeal Cases 877 (House of Lords).

¹⁸ Occupiers’ Liability Act 1984.

¹⁹ *Kalaichelvi v. Kinrara Group Estates Ltd.* [1971] 4 Malayan Cases 169 (High Court, Malaysia).

²⁰ *See Toh Siew Kee v. Ho Ah Lam Ferrocement (Pte) Ltd and others* [2013] SGCA 29 (Court of Appeal, Singapore).

2.3 Evaluating the Effectiveness of Existing Laws in Ensuring Public Safety

Due to the lack of a specific local statute, Malaysia's present legal framework regarding occupiers' liability is still largely based on English common law concepts that were introduced under Section 3 of the Civil Law Act 1956.²¹ In contrast to other common law nations like the UK and Australia, Malaysia does not have a formal Occupiers' Liability Act that outlines the level of care that occupiers must provide to anyone who enters their property. Because of this, legal obligations in Malaysia are frequently decided on an individual basis, which leads to irregularities, uncertainty, and legal ambiguity, particularly for injured plaintiffs seeking compensation. Courts find it challenging to apply the same standard of care to various types of premises and occupiers due to the fragmented legal interpretations caused by the absence of a single statutory framework. Public expectations of safety are further complicated by Malaysia's tortious responsibility for occupiers, which is inadequate and inconsistent with the needs of a modern and urbanised society (Hussain & Abdullah, 2013).

The limitations of Malaysia's present approach are demonstrated by court rulings. The court upheld strict common law distinctions between invitees, licensees, and trespassers in *Datuk Bandar Dewan Bandaraya v. Ong Kok Peng & Anor*, holding that each was entitled to varying degrees of care.²² These outdated classifications are no longer appropriate in complicated settings where many people regularly deal with numerous property operators and contractors, such as shopping centres, government buildings, and condominiums.

A further illustration can be seen in *Sri Inai (Pulau Pinang) Sdn Bhd v. Yong Yit Swee*, where a student injured during a school activity brought a claim against the school.²³ The court held that the duty of care owed depended on the student's status as a lawful entrant, applying the rigid English classifications rather than a broader test of reasonableness. This reliance on outdated categories not only limits judicial flexibility but also burdens plaintiffs with proving technical entrant status before liability can even be considered. Plaintiffs are therefore unfairly disadvantaged by doctrines that fail to reflect contemporary expectations of safety and foreseeability in public and commercial spaces.

The idea that Malaysia's legal framework is unclear and ineffective is further supported by recent academic and legal research. The Application of Standard of Care During Post-MCO in Malaysia's Tourism Industry, a 2021 study, emphasises how Malaysian law still relies on the invitee-licensee distinction, restricting the duty of care to warning about known threats (Musa et al., 2021). The contemporary reasonableness factor that supports occupiers' liability in other countries is disregarded in this approach. Furthermore, Malaysian courts frequently determine culpability by determining whether the premises were 'as safe as a

²¹ Civil Law Act 1956.

²² *Datuk Bandar Dewan Bandaraya v. Ong Kok Peng and Anor* [1993] 2 Malayan Law Journal 234 (Supreme Court, Malaysia).

²³ *Sri Inai (Pulau Pinang) Sdn Bhd v. Yong Yit Swee and Ors* [2003] 1 Malayan Law Journal 273 (Court of Appeal, Malaysia).

reasonable occupier would have kept them' (Puthuchear, 2024). Without legislation, this subjective examination produces inconsistent and unpredictable results. A framework without statutory instruction creates an unequal playing field between injured people and powerful occupiers, as Dickstein (1974) noted decades ago. In addition to promoting a statutory approach, Atkinson (1968) defended the UK's adoption of the Occupiers' Liability Act 1957 as a reform that brought justice and clarity to the law.

Malaysia lags behind other common law nations that have enshrined occupiers' liability in statute, according to comparative studies. While the 1984 Act gives trespassers limited duties under certain circumstances, the Occupiers' Liability Act of 1957 in the UK creates a general duty of care given to all legitimate visitors.²⁴ To guarantee clear and consistent legal protection, statutory frameworks can coexist peacefully with developing case law, as demonstrated by the judicial interpretations in *Wheat v. Lacon & Co Ltd* and *British Railways Board v. Herrington*.²⁵ In Singapore, *See Toh Siew Kee v. Ho Ah Lam Ferrocement (Pte) Ltd* eliminated antiquated classifications in favour of a more straightforward 'neighbour principle,' and combined occupiers' liability with the more general law of negligence (Amirthalingam, 2013).

2.4 Comparing Malaysian Laws With the Legal Systems of Common Law Countries Such as the United Kingdom and Australia

According to Section 3 of the Civil Law Act 1956, Malaysia's approach to occupiers' liability is still largely based on inherited English common law concepts, mainly those that existed before 1956.²⁶ Due to the lack of particular domestic legislation, Malaysian courts continue to determine the level of care required by occupiers using strict classifications of entrants, such as invitees, licensees, and trespassers. This rigid approach frequently produces results that are inconsistent and occasionally unjust, particularly for vulnerable groups such as children or foreign visitors who may not understand the risks on the premises. For instance, while the hotel was found negligent for failing to implement adequate pool safety measures, the claim under occupiers' liability was dismissed because the swimming pool was not deemed an 'unusual danger'²⁷. The outcome shows that liability in Malaysia still depends heavily on technical common law tests rather than a broader, statutory duty of care.²⁸

A further example can be seen in *Sri Inai (Pulau Pinang) Sdn Bhd v. Yong Yit Swee*.²⁹ At first instance, the Sessions Court found both the school (Sri Inai) and the Penang Municipal

²⁴ Occupiers' Liability Act 1957.

²⁵ *Wheat v. E Lacon & Co Ltd* [1966] 1 All England Report 582 (House of Lords).

²⁶ Civil Law Act 1956.

²⁷ *Qi Qiaoxian (claiming as the mother and dependent of Qi Xiangqing, deceased) & Anor v. Sunway Putra Hotel Sdn Bhd* [2024] Malayan Law Journal Unreported 732 (Court of Appeal, Malaysia).

²⁸ *Qi Qiaoxian (claiming as the mother and dependent of Qi Xiangqing, deceased) & Anor v. Sunway Putra Hotel Sdn Bhd* [2024] Malayan Law Journal Unreported 732 (Court of Appeal, Malaysia).

²⁹ *Sri Inai (Pulau Pinang) Sdn Bhd v. Yong Yit Swee & Ors* [2003] 1 Malayan Law Journal 273 (Court of Appeal, Malaysia).

Council liable. The school was held negligent in failing to protect students under its care, and despite conventional landlord immunity, the council was also deemed liable for failing to ensure compliance with building safety standards. On appeal, however, the High Court reversed the ruling against the council, citing the pre-1956 common law principle (*Cavalier v. Pope*) that a landlord owes no duty once premises are leased, reflecting the formal application of Section 3 of the Civil Law Act 1956. Ultimately, the Court of Appeal disagreed, reinstating the Sessions Court's decision by applying the *Donoghue v. Stevenson* neighbor principle. It held that the council, having known the premises would house young children, owed them a duty of care. This divergence between courts at different levels underscores the inconsistent legal landscape in Malaysia, where judges must stretch common law categories in the absence of a unifying statutory framework.

The United Kingdom, on the other hand, has embraced a modern statutory approach. While the Occupiers' Liability Act of 1984 extends a limited duty of care to trespassers, including children, the Occupiers' Liability Act of 1957 lays out the obligations of occupiers towards lawful visitors.³⁰ Courts can take into account foreseeability, the existence of enticing risks, and the victim's vulnerability due to these statutes. Significant cases like *British Railways Board v. Herrington* and *Wheat v. E Lacon & Co Ltd* show how the courts have shifted towards a more liberal and humanitarian understanding of liability.³¹ According to academics such as Mullis and Oliphant (1997), these regulations have substituted a general, uniform duty of care that produces more equal results for the previously fragmented approach (Mullis & Oliphant, 1997).

Palfreyman (2001) supports this viewpoint as well by analysing the changing responsibility of care concerning school property. His article emphasises how the definition of what is 'reasonably expected' of occupiers evolves, especially when kids are involved. Palfreyman (2001) emphasises that occupiers, including educational institutions, must adjust their safety standards in response to growing awareness of children's physical and psychological vulnerabilities. This change is indicative of larger patterns in the UK legal system, where courts now assess occupiers' obligations within contemporary social and cultural contexts.

In the same way, Australia has abandoned strict common law classifications. Australian courts use general negligence principles to determine occupiers' liability through state-level Civil Liability Acts, taking into account whether reasonable precautions were taken to avoid foreseeable injury. The High Court of Australia upheld a general duty of care to entrants in the 1987 case of *Australian Safeway Stores Pty. Ltd. v. Zaluzna* goes beyond the traditional classifications of trespassers and legitimate visitors.³² According to Atkinson (1968), these legislative advancements give judges the authority to determine liability in a more flexible

³⁰ Occupiers' Liability Act 1957.

³¹ *British Railways Board Appellants And Herrington Respondent [On Appeal From Herrington v. British Railways Board]*, [1972] Appeal Cases 877 (House of Lords).

³² *Australian Safeway Stores Pty. Ltd. v. Zaluzna* [1987] 162 Commonwealth Law Reports 479 (High Court, Australia).

and equitable manner, particularly in complex and modern circumstances. This change allows for a more consistent and straightforward approach by bringing occupiers' liability into line with more general negligence legislation. The nature of the premises, the possibility of harm, and the cost of implementing measures are some of the criteria that Australian courts consider when determining the standard of care. The emphasis is on foreseeability and reasonableness rather than the entrant's status. This makes it possible for laws to change to reflect shifting social norms and safety standards in both public and private areas.

The absence of statutory direction in Malaysia has significant practical consequences as well. Jesumoroti et al. (2024) examined recurring structural defects in Malaysian hospital buildings, highlighting poor maintenance, under-enforcement of safety regulations, and the absence of legal mechanisms to hold occupiers accountable. These results point to a larger structural problem with Malaysia's judicial system. The fact that even hospitals, which are important public facilities, face such safety issues illustrates the pressing need for reform to ensure that occupiers across all sectors are legally obliged to maintain safe premises. Existing legislation, such as the Occupational Safety and Health Act 1994 (OSHA), cannot address this issue effectively because its scope is limited to employer–employee relationships in workplace settings. It does not extend to protecting members of the public, patients, or visitors in hospitals and other public spaces, thereby leaving a significant regulatory gap. This gap is evident in incidents such as the fire outbreak at Sultanah Aminah Hospital in Johor Bahru in 2016 ('6 Patients Killed in Fire,' 2016), which tragically claimed six lives, and the partial ceiling collapse at Serdang Hospital in 2013 that endangered patients and staff ('Seventh ceiling collapse at Serdang Hospital', 2013). These cases demonstrate how inadequate statutory protection continues to expose the public to serious risks in facilities where safety should be paramount.

Legal experts, including Lee, Salleh, and Abdul Rahman (2014), Dickstein (1974), and Amirthalingam (2013) are ardent supporters of Malaysia passing a particular Occupiers' Liability Act. According to these academics, statutory reform would guarantee clarity, match legal decisions with public expectations, and allow courts to consistently and contextually apply modern negligence principles (Hussain & Abdullah, 2013). Amirthalingam (2013) points out that including occupiers' liability into a larger duty of care principle improves justice and legal predictability, citing Singapore's example in *See Toh Siew Kee v. Ho Ah Lam Ferrocement (Pte) Ltd.*

In conclusion, Malaysia still relies on outdated and rigid common law principles, whereas the UK and Australia have created extensive legislative frameworks that represent modern standards of public safety and child protection. Malaysian courts interpret liability inconsistently due to the lack of prescribed responsibilities, which frequently disadvantages victims. In order to comply with international best practices and guarantee legal accountability in both public and private areas, Malaysia must have a specific Occupiers' Liability Act that includes general duty principles, special protections for children and vulnerable people, and unambiguous standards for premises safety.

2.5 Proposing the Enactment of Specific Legislation That Clearly Defines Occupiers' Liability to Enhance Public Safety

Malaysia's persistent reliance on pre-1956 English common law under Section 3 of the Civil Law Act 1956 has created a rigid framework for occupiers' liability. Because liability is still determined by the entrant's classification whether as an invitee, licensee, or trespasser.³³ The law does not take into account the complex and overlapping ways in which modern premises are used, such as by employees, contractors, tenants, and members of the public in shared spaces. This narrow approach means that courts often prioritise technical entrant status over the occupier's actual responsibility to maintain safe premises. Consequently, victims who suffer injuries in public or commercial spaces frequently face significant obstacles in securing compensation, and similar cases can lead to inconsistent rulings depending on how the visitor is categorised. This shows that the reliance on pre-1956 common law doctrines fails to provide a clear or equitable standard of care for today's circumstances.

Hwang's (1968) landmark scholarly analysis in *Basic Definitions in the Law of Occupiers' Liability* is still very much in use today. Hwang (1968) maintained that traditional entrant classifications ignore practical realities and erect artificial legal obstacles. He advocated changing the emphasis from the visitor's legal status to the occupier's actions and whether the harm was predictable. His criticism emphasises how Malaysian courts' ability to recognise current dangers and determine an occupier's duty to maintain safety is restricted by their dependence on rigid categories.

This criticism was supported by Evans' (1986) review of the book *Occupiers' Liability in Singapore and Malaysia*, which showed how both countries had lagged in statutory change. Although Malaysian courts occasionally express a desire to update current doctrine, he noted that because there is no clear legislation, occupants are not always held responsible for preventable harm on their premises. Evans (1986) noted that occupiers benefit from legal ambiguity and frequently avoid liability unless plaintiffs are able to overcome procedural obstacles derived from earlier legal frameworks. In order to guarantee consistency in court rulings and equity for injured parties, his theory emphasises the necessity of legal clarity.

Osborough (1977), who argued for statutory reform to update Ireland's occupiers' liability legislation, echoed this viewpoint. He suggested that legal frameworks offer much-needed accessibility, justice, and coherence. In Malaysia, where recent infrastructure breakdowns and safety incidents have revealed systemic deficiencies in premises management, Osborough's emphasis on balancing legal obligations with public safety and modern risk management is particularly relevant. Jesumoroti et al. (2024) further validate these failures by identifying serious structural and maintenance flaws in Malaysian hospital facilities, pointing to a widespread absence of a legal duty to maintain safety standards in both the public and private sectors.

³³ Civil Law Act 1956.

In cases involving trespassers, especially children, who are regularly exposed to unsafe premises due to poverty or a lack of safe recreational spaces, Mat Nor and Wasli (2023) emphasise the urgent need for statutory clarity. They contend that occupiers ought to be required by law to take reasonable and humane safeguards, particularly when it is known that vulnerable people will be around. Conflicting rulings in Malaysian case law concerning child trespassers demonstrate how the existing dependence on ad hoc judicial discretion produces inconsistent results. It would be easier to remove uncertainty and improve accountability if laws were introduced that formally recognised a responsibility of care to all individuals, regardless of status.

According to these expert suggestions, Malaysia would gain a great deal from a certain Occupiers' Liability Act. Such laws ought to replace outdated classifications with a broad duty of care based on reasonableness and foreseeability. Clearer definitions of 'occupier,' obligations to trespassers (particularly children), safety standards, and administrative enforcement tools like regular audits or penalties should all be included. While Australia has chosen a more comprehensive negligence structure under state-level Civil Liability Acts, other jurisdictions, such as the UK, have previously adopted this model through the Occupiers' Liability Acts 1957 and 1984.³⁴ As noted by Amirthalingam (2013) in the *See Toh Siew Kee* case, Singapore has made progress in rationalising occupiers' responsibility under general negligence despite the absence of a statute.

Malaysia must pass specific occupiers' liability laws in order to safeguard public safety, advance legal consistency, and ensure compensation for those hurt in preventable accidents. Malaysia can finally update an outdated section of tort law and bring it into line with current legal and social norms by utilising the ideas of Hwang (1968), Evans (1986), and Osborough (1977), as well as by studying modern statutory models worldwide.

3. Conclusion

This article examines the existing status of Malaysia's occupiers' liability law and argues for the necessity of passing certain legislation to increase public safety and legal clarity. The current legal system, which is still founded on outdated common law ideas, is unclear, inconsistent, and unadaptable, according to the study. It is mostly based on outdated visitor categories and fails to take into account the realities of modern premises, where users have access to a variety of private and public areas at different danger levels. Injured people find it challenging to get justice under the current system, especially when children or unforeseen dangers are involved. This legal loophole emphasises how urgently an updated, all-inclusive statute that precisely outlines occupiers' responsibilities is needed.

The legal systems of countries like Australia and the United Kingdom, where occupiers' responsibilities are enshrined in precise and well-organised laws, are compared in the paper. Instead of using strict classifications, these nations now consider whether the occupant took reasonable precautions to avoid injuries. Courts can now appropriately assess responsibility

³⁴ Occupiers' Liability Acts 1957 and 1984.

based on context and foreseeability due to this more adaptable and modern approach. The study also looks at how the complexity of contemporary buildings, societal changes, and growing safety consciousness have affected the development of the law in these jurisdictions. This comparative analysis shows how Malaysia can fix the present flaws in its tort law system by implementing a similar reform.

This study suggests that Malaysia should implement a specific Occupiers' Liability Act in response to these findings. A general duty of care that is applied equitably in all situations should be established, obsolete visitor classifications should be eliminated, and the duties of an occupier should be clarified. Better safety regulations, clearer legal obligations, and more consistent court rulings would all be facilitated by this. This change will bring Malaysia's legal system into compliance with international norms, encourage accountability, and safeguard the public, particularly vulnerable populations such as the elderly and children. Overall, this article concludes that a well-crafted and contextually relevant statutory framework is both necessary and feasible for implementing significant legal reforms in occupiers' liability.

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Authors' Contributions

Murugan: conducted the research, data collection, formal analysis, and preparation of the original draft of the manuscript.

Ab Rahim: proposed the research topic in view of its contemporary relevance and the absence of a specific occupiers' liability statute in Malaysia; contributed to the conceptual development of the study, guided the analytical framework, and provided continuous supervision throughout the research and writing process; contributed to writing – review and editing, served as the corresponding author, and approved the final version of the manuscript.

Conflict of Interest Declaration

The authors declare that there is no conflict of interest regarding the publication of this paper.

Ethics Approval

This study is based on doctrinal legal research and does not involve human participants or personal data. Accordingly, ethical approval was not required.

AI Usage Declaration

The authors declare that Artificial Intelligence (AI) tools were used solely for language refinement and editorial assistance. All substantive content, analysis, and arguments were developed by the authors. The authors take full responsibility for the integrity and originality of the work.

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