



ELSA LAW & CO. SOLICITORS

羅碧嫻律師事務所

**LIABILITIES OF OWNERS AND
INCORPORATED OWNERS**

業主及業主立案法團的法律責任

Speaker: Ms Elsa Law

Elsa Law & Co. Solicitors

THE FATAL "ACCIDENTS"

Date	Tragedy
15/8/2014	Fallen tree killing a pregnant woman on Robinson Road.
15/6/2010	A cyclist died after being crushed by a fallen tree in Yuen Chau Kok(圓洲角), weighing more than 816 kilograms.
27/8/2008	A giant tree fell on a teenage girl on the main street in Stanley



--South China Morning Post, 15 August 2014

Homeowners May Face Claims After Tragedy

“Flat owners and the management company of a Mid Levels residential block face possible legal action after a tree crashed down a private slope and killed a heavily pregnant woman.....”



“The accident at Palm Court, Robinson Road, left the baby in a critical condition after it was saved by an emergency caesarean section.

Zhang Qin, 37, was waiting outside the 11-storey block for a minibus to take her for a check-up when the 10-metre-tall Indian rubber tree fell on her shortly after 2.30pm yesterday”



THE THREE STAGES

1. Liability

2. Assessment of Damages

3. Enforcement



LIABILITY – DUTY OF CARE

- *Negligence*

- *Nuisance*



NEGLIGENCE

- *Donoghue v. Stevenson [1932] AC 532*
- *neighbour as "persons who are so closely and directly affected by my act that I ought reasonably to have them in contemplation as being so affected when I am directing my mind to the acts or omissions that are called in question." Reasonably foreseeable harm must be compensated"*



PUBLIC NUISANCE

- *an act that endanger the lives, safety, health, property or comfort of the public or obstruct the exercise or enjoyment of rights common to the public*
- *a duty to prevent or eliminate the hazard*
- *knowledge, known or ought to have know*
- *effective practical control was the principal criterion for imposing a duty*
- *even where land was occupied by a tenant, an owner could usually be shown to have a sufficient control of land*
- *in the case of IO, a category closely analogous with that of owners and occupiers of land, its effective control over the common parts including the external parts.*
- *duty not delegable*



*Aberdeen Winner Investment Ltd v Incorporated Owners of Albert House
(2004] 3 HKLRD 910, CA*

Facts:

- *Albert House was built in 1973*
- *1 Aug 1994 at around 11 a.m., the whole concrete canopy on the 1/F collapsed killing 1 and injured 7*
- *Aberdeen Development Corporation Ltd was the developer, owned the 1/F but assigned to Aberdeen Winner Investment Co. Ltd. in April 1974; and it then let it out to the operators of the Sheung Hei Restaurant*
- *In Nov 1984, the Sheung Hei Restaurant sold its business to Best Restaurant Ltd. with a 10 years lease signed*
- *Renovation in 1984 and installed a fish tank on the concrete canopy and a doorway leading to it.*



ABERDEEN WINNER INVESTMENT LTD V INCORPORATED OWNERS OF ALBERT HOUSE (2004] 3 HKLRD 910, CA

- *Cause of the Collapse –non compliance of building works, reinforcing steel bars rusted, extra screeching found, no building approval given for the fish tank construction, additional doorway*
- *Fish tank protruding out from the main wall*
- *Advertising sign “New Best Restaurant” about 1 storey high*
- *No general maintenance, repair or inspection despite cracks showing rusting parts*
- *Since about 1990, water had been dripping from various parts of the underside of the canopy, poor drainage*



WHO WERE SUED?

- (1) Incorporated Owners of Albert House
- (2) Housing Management Agency Ltd.
- (3) Ho Wing Hang (New Best's Director)
- (4) New Best Restaurant Ltd.
- (5) Aberdeen Winner Investment Co. Ltd.(Developer)
- (6) Hang On Demolition & Transportation



WAS CANOPY “COMMON PARTS” ?

- *The term “common parts” is defined in s.2 of the Building Management Ordinance Cap. 344 to mean :*
- *“(a) The whole of a building except such parts as have been specified or designated in an instrument registered in the Land Registry as being for the exclusive use, occupation or enjoyment of an owner; and*
- *(b) Unless so specified or designed, those parts specified in the First Schedule.”*
- *The First Schedule to the Building Management Ordinance makes reference to, inter alia, “external walls” but makes no reference to “canopy” .*
- *Referring to DMC, no mention of it but plan annexed shown, exclusivity considered*



LIABILITY

\$33,257,886.25 plus interest and costs



1. (15%) Incorporated Owners of Albert House -failure to maintain, keep and repair)
2. (15%)(Housing Management Agency Ltd. all the tell-tale signs were there but did nothing to curb the nuisance.
3. (50%) Ho Wing Hang & New Best Restaurant Ltd - authorized, directed and procured the tortious acts and/or omissions
4. (15%) Aberdeen Winner Investment Co. Ltd. - allowed it to continue by failing to take the necessary, or any steps at all to curb danger.
5. (5%) Hang On Demolition & Transportation

Section 3(1) of the Civil Liability (Contribution) Ordinance (Cap. 377)



LEUNG TSANG HUNG v INCORPORATED OWNERS OF KWOK WING HOUSE (2007) 10 HKCFAR 480

Facts

In 1999, due to long-term exposure to rainfall and moisture seepage, a corner of the extended canopy which had been an unauthorized erection for some 35 years, collapsed and killed a hawker below. The victim's administrators brought an action in nuisance and negligence.



Ruling:



- *IO' s status is closely analogous with that of owners and*
- *Authority to control over the common parts under the Building Management Ordinance (Cap.344) and the deed of mutual covenant,*
- *IO knew or ought to have known of the nuisance hazard*
- *IO plainly had the means to achieve maintenance*
- *If the extended canopy had been properly inspected, its dangerous condition would have been discovered and rectified.*
- *The omission was therefore causative of the fatal accident*



IN RELATION TO THE FALLEN TREE.....



- Who owns the land on which the tree grow?
- Who has the responsibility to look after the tree?
- Was the condition of the tree so obvious to pose to be a danger to the public that action ought to be taken immediately?
- What action has been taken regarding the maintenance and upkeep of the tree?
- What action has been taken to prevent danger happening to the public?





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END

THANK YOU!

