

2. Circumstances where Strict Liability was Imposed in Other Ordinances under the Purview of the Environment and Food Bureau

- Sections 52(1) and 54 (1) & (2) of Part V of the Public Health Municipal Services Ordinance (Cap. 132) i.e. selling to the prejudice of a purchaser any food which is not of the nature, substance or quality demanded by the purchaser. The relevant defences are available under sections 53(1) & (3), 54(3), 70 and 71 of Cap. 132.
- Sections 8 and 9 of the Water Pollution Control Ordinance (Cap. 358) i.e. discharging waste or polluting matter into the waters of Hong Kong or communal sewers and drains. The relevant defences are available in section 12 of Cap. 358.

Extracts of the above provisions are enclosed for reference.

BLIS ONSection of Enactment

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Chapter: 132 Title: PUBLIC HEALTH AND MUNICIPAL SERVICES ORDINANCE Gazette Number:
Section: 52 Heading: General protection for purchasers of food and drugs Version Date: 30/06/1997

(1) If any person sells to the prejudice of a purchaser any food or drug which is not of the nature, or not of the substance, or not of the quality, of the food or drug demanded by the purchaser, he shall, subject to the provisions of section 53, be guilty of an offence.

(2) Without prejudice to the provisions of subsection (1), any person who for the purpose of sale keeps in any container any liquid which is not of the nature, or not of the substance, or not of the quality, of the alcoholic liquor which, by reason of the labelling or other marking of such container, it appears to be, shall be guilty of an offence.

(3) Where regulations made under section 55 contain provisions prescribing the composition of, or prohibiting or restricting the addition of any substance to, any food or drug, a purchaser of that food or drug shall, unless the contrary is proved, be deemed, for the purposes of subsection (1), to have demanded a food or drug complying with the provisions of such regulations.

(4) In any proceedings for an offence under the provisions of subsection (1), it shall not be a defence to allege that the purchaser bought for analysis or examination and therefore was not prejudiced.

(5) In this section, save in so far as it relates to drugs, any reference to sale shall be construed as a reference to sale for human consumption.

(6) For the purposes of subsection (2), the expression "alcoholic liquor" (酒類) means spirits, liqueurs, wines and Chinese type liquor.

BLIS ONSection of Enactment

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Chapter: 132 Title: PUBLIC HEALTH AND MUNICIPAL SERVICES ORDINANCE Gazette Number:
Section: 53 Heading: Defences available in proceedings under section 52 Version Date: 30/06/1997

(1) In any proceedings under section 52 for an offence consisting of the sale of food to which any substance has been added, or in the preparation of which any substance has been used as an ingredient, or from which any constituent has been abstracted, or which has been subjected to any other process or treatment, other than food thereby rendered injurious to health, it shall be a defence for the person charged to prove that the operation in question was not carried out fraudulently, and that the article was sold having attached thereto a notice of adequate size, distinctly and legibly printed and conspicuously visible, stating explicitly the nature of the operation, or was sold in a wrapper or container displaying such a notice.

(2) The provisions of subsection (1) shall apply in relation to an offence consisting of the sale of a drug to which any substance has been added, or from which any constituent has been abstracted, other than a drug thereby injuriously affected in its quality, constitution or potency, as they apply in relation to any such offence as is therein mentioned.

(3) In proceedings under section 52 in respect of any food or drug containing some extraneous matter, it shall be a defence for the defendant to prove that the presence of that matter was an unavoidable consequence of the process of collection or preparation.

BLIS ON

Section of Enactment

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Chapter:	132	Title:	PUBLIC HEALTH AND MUNICIPAL SERVICES ORDINANCE	Gazette Number:
Section:	54	Heading:	Offences in connection with the sale, etc. of unfit food or drugs	Version Date: 30/06/1997

- (1) Subject to the provisions of this section, any person who-
- (a) sells or offers or exposes for sale, or has in his possession for the purpose of sale or preparation for sale; or
 - (b) deposits with, or consigns to, any person for the purpose of sale or of preparation for sale, any food intended for, but unfit for, human consumption, or any drug intended for use by man but unfit for that purpose, shall be guilty of an offence.
- (2) Subject as aforesaid, where any food or drug in respect of which an offence under subsection (1)(a) has been committed was sold to the offender by some other person, that person also shall be guilty of an offence.
- (3) Where a person is charged with an offence under subsection (1)(b), or under subsection (2), it shall be a defence for him to prove either-
- (a) that he gave notice to the person with whom he deposited, or to whom he consigned or sold, the food or drug in question that it was not intended for human consumption or for use by man, as the case may be; or
 - (b) that, at the time when he delivered or dispatched it to that person, either it was fit for human consumption or for use by man, as the case may be, or he did not know, and could not with reasonable diligence have ascertained, that it was not so fit.
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BLIS ON

Section of Enactment

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Chapter:	132	Title:	PUBLIC HEALTH AND MUNICIPAL SERVICES ORDINANCE	Gazette Number:
Section:	70	Heading:	Contraventions due to some other person	Version Date: 30/06/1997

(1) A person against whom proceedings are brought under this Part shall, upon information duly laid by him and on giving to the prosecution not less than 3 clear days' notice of his intention, be entitled to have any person to whose act or default he alleges that the contravention of the provisions in question was due brought before the court in the proceedings, and, if, after the contravention has been proved, the original defendant proves that the contravention was due to the act or default of that other person, that other person may be convicted of the offence, and, if the original defendant further proves that he has used all due diligence to secure that the provisions in question were complied with, he shall be acquitted of the offence.

(2) Where the defendant seeks to avail himself of the provisions of subsection (1)-

(a) the prosecution, as well as the person whom the defendant charges with the offence, shall have the right to cross-examine him, if he gives evidence, and any witness called by him in support of his pleas, and to call rebutting evidence;

(b) the court may make such order as it thinks fit for the payment of costs by any party to the proceedings to any other party thereto.

(3) Where it appears to the Authority that an offence has been committed in respect of which proceedings might be taken under this Part against some person and the Authority is reasonably satisfied that the offence of which complaint is made was due to an act or default of some other person and that the first-mentioned person could establish a defence under subsection (1), the Authority may cause proceedings to be taken against that other person without first causing proceedings to be taken against the first-mentioned person, and, in any such proceedings, the defendant may be charged with, and, on proof that the contravention was due to his act or default, be convicted of, the offence with which the first-mentioned person might have been charged.

(4) In proceedings instituted under the provisions of subsection (3), the information or complaint shall set out the facts and state that the Authority concerned is reasonably satisfied that the offence of which complaint is made was due to the act or default of the person against whom the proceedings are brought.

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Section of Enactment

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Chapter:	132	Title:	PUBLIC HEALTH AND MUNICIPAL SERVICES ORDINANCE	Gazette Number:
Section:	71	Heading:	Conditions under which warranty may be pleaded as defence	Version Date: 30/06/1997

(1) Subject to the provisions of this section, in any proceedings for an offence under this Part, being an offence consisting of selling, or offering, exposing or advertising for sale or having in possession for the purpose of sale, any article or substance, it shall be a defence for the defendant to prove-

(a) that he purchased it as being an article or substance which could lawfully be sold or otherwise dealt with as aforesaid, or, as the case may be, could lawfully be sold or dealt with under the name or description or for the purpose under or for which he sold or dealt with it, and with a written warranty to that effect; and

(b) that he had no reason to believe at the time of the commission of the alleged offence that it was otherwise; and

(c) that it was then in the same state as when he purchased it.

(2) A warranty shall only be a defence in proceedings under this Part if-

(a) the defendant-

(i) has, not later than 3 clear days before the date of the hearing, sent to the prosecutor a copy of the warranty with a notice stating that he intends to rely on it and specifying the name and address of the person from whom he received it; and

(ii) has also sent a like notice to that person; and

(b) in the case of a warranty given by a person resident outside Hong Kong, the defendant proves that he had taken reasonable steps to ascertain, and did in fact believe in, the accuracy of the statement contained therein. (Amended 10 of 1986 s. 24)

(3) Where the defendant is a servant or agent of the person who purchased the article or substance under a warranty, he shall be entitled to rely on the provisions of this section in the same way as his employer or principal would have been entitled to do if he had been the defendant.

(4) The person by whom the warranty is alleged to have been given shall be entitled to appear at the hearing and to give evidence, and the court may, if it thinks fit, adjourn the hearing to enable him to do so.

(5) For the purposes of this section and of section 72, a name or description entered in an invoice shall be deemed to be a written warranty that the article or substance to which the entry refers can be sold or otherwise dealt with under that name or description by any person without contravening any of the provisions of this Part.

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Section of Enactment

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Chapter:	358	Title: WATER POLLUTION CONTROL ORDINANCE	Gazette Number: 29 of 1998 s. 72
Section:	8	Heading: Prohibited discharges into waters of Hong Kong and inland waters	Version Date: 01/07/1997

Remarks:

Amendments retroactively made - see 29 of 1998 s. 72

(1) Subject to section 12, a person commits an offence who discharges-

(a) any waste or polluting matter into the waters of Hong Kong in a water control zone; (Amended 67 of 1990 s. 4)

(b) any matter into any inland waters in a water control zone which tends (either directly or in combination with other matter which has entered those waters) to impede the proper flow of the water in a manner leading or likely to lead to a substantial aggravation of pollution.

(1A) Subject to section 12(1A), a person commits an offence who discharges any poisonous or noxious matter into the waters of Hong Kong. (Added 67 of 1990 s. 4)

(2) Where any matter referred to in subsection (1)(a) or (b) or (1A) is discharged from any premises or vessel, then, subject to section 12, the occupier of the premises or the person having command or charge of the vessel commits an offence, in addition to any other person who may be guilty of an offence under subsection (1) of (1A). (Amended 67 of 1990 s. 22)

(3) This section does not apply to any of the following discharges or deposits-

(a) a discharge which is made by way of a communal sewer or communal drain; (Amended 67 of 1990 s. 22)

(b) (Repealed 42 of 1985 s. 2)

(c) a discharge incidental to, or derived from, the normal operation of a vessel (including a dynamically supported craft) or of its equipment;

(d) a discharge which requires a permit under the Dumping at Sea Ordinance (Cap 466); (Amended 18 of 1995 s. 34)

(e) a discharge or deposit made-

(i) by, or with the consent of, the Director of Marine for the purpose of carrying out harbour works or providing moorings or aids to navigation;

(ii) in accordance with the grant of a Government lease or as part of the execution of a reclamation or other work of a public nature which has been authorized under section 7 or 8 of the Foreshore and Sea-bed (Reclamations) Ordinance (Cap 127); (Replaced 63 of 1985 s. 21. Amended 29 of 1998 s. 72)

(iii) (Repealed 63 of 1985 s. 21);

(f) a discharge of unpolluted water, as defined in section 9(3). (Replaced 67 of 1990 s. 4)

BLIS ON

Section of Enactment

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Chapter:	358	Title: WATER POLLUTION CONTROL ORDINANCE	Gazette Number: L.N. 320 of 1999
Section:	9	Heading: Prohibited discharges into communal sewers and communal drains	Version Date: 01/01/2000

(1) Subject to section 12, a person commits an offence who discharges any matter into a communal sewer or communal drain in a water control zone other than-

(a) a discharge of domestic sewage into a communal sewer or communal drain that-

(i) is vested in and maintained by the Government as a sewer or drain for the carriage of foul water;

(ii) conducts the discharge into a communal sewer or communal drain that is vested in and maintained by the Government as a sewer or drain for the carriage of foul water; or

(iii) delivers the sewage to a wastewater treatment facility, the discharge from which is licensed; (Replaced 83 of 1993 s. 6)

(aa) a discharge of domestic sewage into-

(i) a communal sewer; or

(ii) a communal drain,

that has been designated by the Authority, by notice in the Gazette, as a communal sewer or communal drain for the carriage of foul water or surface drainage water; or (Added 67 of 1990 s. 5. Amended 83 of 1993 s. 6)

(b) a discharge of unpolluted water into-

(i) a communal sewer, or

(ii) a communal drain,

for the carriage of surface drainage water. (Amended 67 of 1990 s. 22)

(2) Where any matter is, in contravention of subsection (1), discharged into a communal sewer or communal drain in a water control zone from any premises, then, subject to section 12, the occupier of the premises commits an offence, in addition to any other person who may be guilty of an offence under subsection (1). (Amended 67 of 1990 ss. 5 & 22)

(3) In subsection (1)-

"domestic sewage" (住宅污水) means waste of a kind and quantity that is generated by the domestic use of a toilet, watercloset, bath, shower, sink, basin or other sanitary fitment by a person residing in a household or while at a place of work but does not include-

(a) the solid residue from a wastewater treatment facility;

(b) the effluent from a wastewater treatment facility that uses electrical or mechanical equipment in its operation; or

(c) waste that is generated by a food business that is subject to the Food Business Regulation (Cap 132 sub. leg.); (Replaced 83 of 1993 s. 6. Amended 78 of 1999 s. 7)

"unpolluted water" (沒有污染的水) means-

- (a) rain water from any part of a building, including any area appurtenant to a building;
- (b) water which does not contain any poisonous, noxious or polluting matter.

(4) This section does not apply to-

(a) (Replaced 67 of 1990 s. 5)

(b) water used-

(i) for firefighting purposes;

(ii) in connection with an occurrence in which life or property is endangered;

(iii) for the cleansing of streets, thoroughfares, and other areas.

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Section of Enactment

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Chapter:	358	Title:	WATER POLLUTION CONTROL ORDINANCE	Gazette Number:
Section:	10	Heading:	Mental ingredient of offences under sections 8 and 9	Version Date: 30/06/1997

In any proceedings for an offence under section 8(1), 8(1A), 8(2), 9(1) or 9(2) in which it is alleged that the defendant caused matter to enter the waters of Hong Kong or inland waters or a communal sewer or communal drain or caused matter to be deposited as provided in section 2(3) it shall not be necessary for the prosecution to prove that the acts or omissions in question were accompanied by any intention, knowledge or negligence on the part of the defendant as to any element of the offence.

(Amended 67 of 1990 s. 22)

BLIS ON

Section of Enactment

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 Chapter: 358 Title: WATER POLLUTION Gazette Number:
 CONTROL ORDINANCE
 Section: 12 Heading: Defences Version Date: 30/06/1997

(1) A person does not commit an offence under section 8(1), 8(2), 9(1) or 9(2) if he proves that-

(a) the discharge or deposit in question is an existing discharge or deposit-

(i) in respect of which an application under section 14 has been made and the prescribed application fee paid when required and the applicant has not been notified of a refusal to grant a licence as required by section 15(2); or

(ii) which is made under, and in accordance with, a licence granted under section 15, 16 or 23A; or (Replaced 67 of 1990 s. 8. Amended 83 of 1993 s. 8)

(b) the discharge or deposit in question is made under, and in accordance with, a licence granted under section 20; or

(c) where section 2(3) applies, the matter was deposited pursuant to an approval under subsection (2) and in accordance with the terms and conditions thereof; or

(d) (Repealed 67 of 1990 s. 8)

(e) the discharge or deposit was made in an emergency in order to avoid danger to life or property and as soon as was reasonably practicable he informed the Authority thereof in writing; or

(f) he acted under instructions given to him by his employer and he exercised the care and took the steps that the court, having regard to his position as an employee, considers reasonable in the circumstances to avoid the occurrence of the prohibited discharge or deposit. (Replaced 67 of 1990 s. 8)

(1A) A person does not commit an offence under section 8(1A) if he proves that-

(a) the discharge or deposit was made in an emergency in order to avoid danger to life or property and as soon as was reasonably practicable he informed the Authority thereof in writing; or

(b) he acted under instructions given to him by his employer and he exercised the care and took the steps that the court, having regard to his position as an employee, considers reasonable in the circumstances to avoid the occurrence of the prohibited discharge or deposit. (Added 67 of 1990 s. 8)

(1B) A person does not commit an offence under section 8 or 9 in respect of a discharge-

(a) that is licensed under the Waste Disposal Ordinance (Cap 354); or

(b) that complies with the Waste Disposal (Livestock Waste) Regulations (Cap 354 sub. leg.). (Added 67 of 1990 s. 8)

(2) The Authority may by order published in the Gazette approve the making of any particular kind of deposit as a farming practice to which the provisions of subsections (1)(a), (1)(b) and (1A) of section 8, or either of those provisions, do not apply so far as it is made in such areas by such persons and in such manner as may be specified in the order. (Amended L.N. 74 of 1986; 67 of 1990 s. 22; 83 of 1993 s. 8)

(3) The power of the Authority under subsection (2) extends to practices employed in all kinds of farming, including agriculture, animal husbandry and fish farming. (Amended L.N. 74 of 1986; 83 of 1993 s. 8)