

Mock-up of section 8, Civil Aviation Ordinance (Cap.448)

8. ~~No~~ Liability in respect of trespass, or nuisance or surface damage in certain circumstances

(1) No action shall lie in respect of trespass or in respect of nuisance, by reason only of the flight of an aircraft over any property at a height above the ground, which, having regard to wind, weather and all the circumstances of the case, is reasonable, or the ordinary incidents of such flight so long as such of the provisions of orders made under section 2A, of regulations made under section 3 or of an enactment specified in section 13(6) which are applicable in the particular case are complied with and there has been no breach of section 4.

(2) Subject to subsection (3), where material loss or damage is caused to any person or property on land or water by, or by a person in, or an article or person falling from, an aircraft while in flight, taking off or landing, then unless the loss or damage was caused or contributed to by the negligence of the person by whom it was suffered, damages in respect of the loss or damage shall be recoverable without proof of negligence or intention or other cause of action, as if the loss or damage had been caused by the wilful act, neglect, or default of the owner of the aircraft.

(3) Where material loss or damage is caused as described in subsection (2) and in circumstances in which -

- (a) damages are recoverable in respect of the said loss or damage by virtue only of subsection (2); and
- (b) a legal liability is created in some person other than the owner of an aircraft to pay damages in respect of the said loss or damage,

such owner shall be entitled to be indemnified by that other person against any claim in respect of the said loss or damage.

(4) ~~In this section "owner" (機主) includes, in relation to an aircraft, the person having the management of the aircraft for the time being or, in relation to a time, at that time.~~ Subject to subsection (5), in this section –

- (a) "owner" (機主), in relation to an aircraft, includes the operator of the aircraft; and
- (b) "operator" (經營人) means the person having the management of an aircraft for the time being or, in relation to a time, at that time.

(5) A person is not the owner of an aircraft within the meaning of this section if, at the time the material loss or damage mentioned in subsection (2) was caused –

- (a) the aircraft had been bona fide demised, let or hired out by such person ("the lessor") to any other person ("the lessee") under a lease or other arrangement for a term exceeding 14 days;
- (b) under the lease or arrangement, the lessee was responsible for ensuring the airworthiness of the aircraft; and
- (c) no member of the crew of the aircraft was in the employment of the lessor.