

Hierarchy of Fall Protection in context of Legal Liabilities

Site Safety Focus Seminar
Hong Kong Housing Authority
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Prevention of Falls

CSSR-38B states “a contractor shall take **adequate steps** to prevent any person on site from falling from a height of 2M or more”



Adequate Steps

- Working platform
- Guardrails, barriers and fences
- Covering for opening
- Gangways and runs

Safety Belts ?

CSSR-38H – Defences to CSSR-38B



1. Onus of proof on defendant that adequate steps were impracticable, and,
2. Safety belts and safety nets are provided

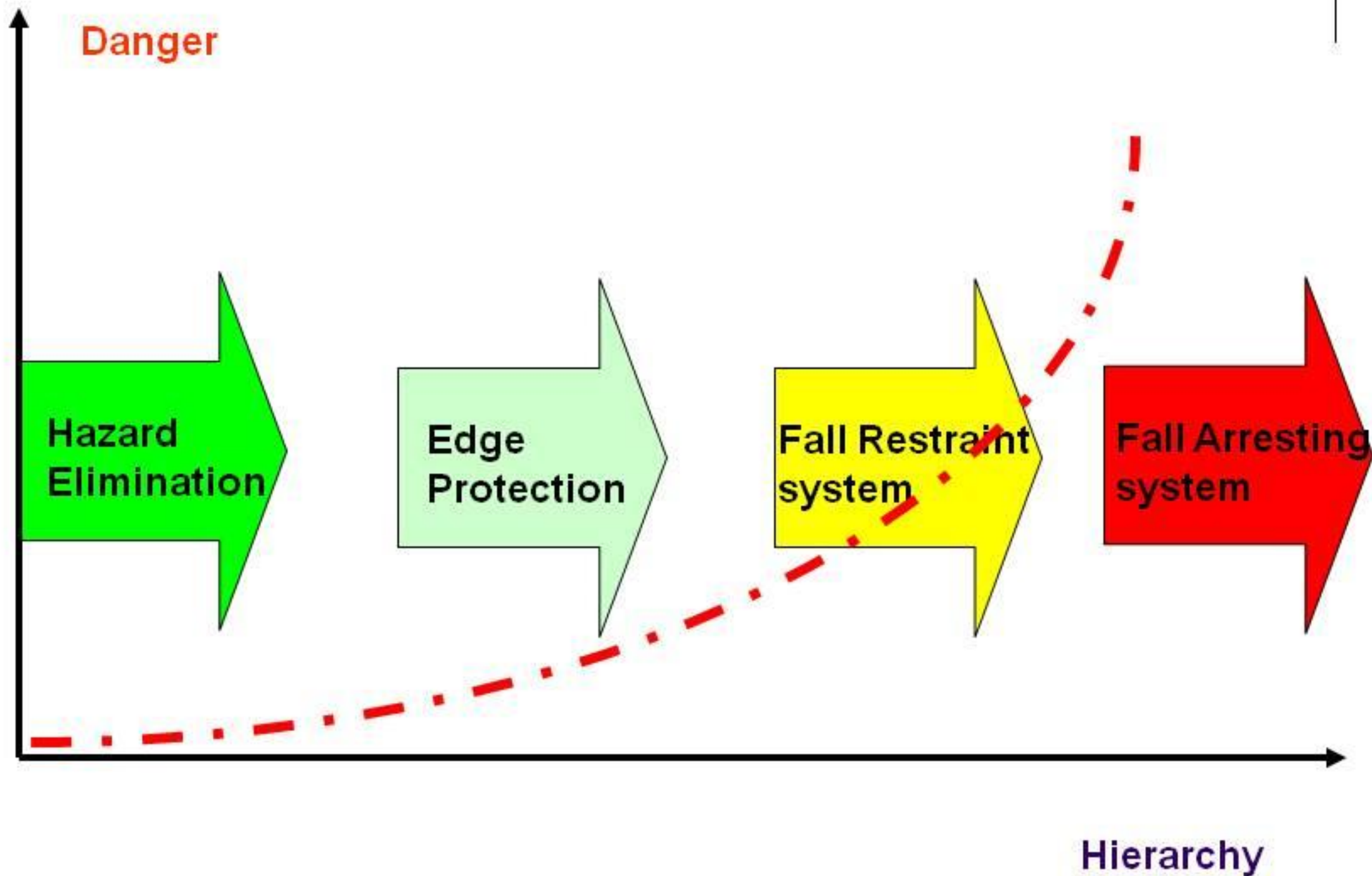
Safety Belts



1. Safety belts attached **continuously** to a suitable & secure anchorage, **and**,
2. Safety belts and its fittings are **maintained, and**,
3. Have taken **all reasonable steps** to ensure proper use of safety belts provided



Hierarchy of Fall Protection



Hazard Elimination (II)



Hazard Elimination (III)



Edge Protection System (I)



Edge Protection System (II)



Edge Protection System (III)



Fall Restraint System (I)



Fall Restraint System (II)



Fall Restraint System (III)



Fall Arresting System (IV)



Fall Arresting System (I)



Division of Responsibilities



Person responsible for a workplace

Employer

Occupier

OCCUPATIONAL SAFETY AND HEALTH ORDINANCE



Employers to ensure OSH of employees

S.6(2)(a) Every **employer** must provide or maintain **plant and systems of work** that are, so far as **reasonably practicable**, safe and without risks to health .

Division of Responsibilities



Person responsible for a workplace

Employer

Occupier

OCCUPATIONAL SAFETY AND HEALTH ORDINANCE



Occupier of premises to ensure OSH of persons employed at those premises

S.7(1) If an employee's workplace is located on premises that are not under the control of the employee's employer, the **occupier of the premises** must ensure that (i) **the premises**, (ii) **the means of access to and egress from the premises**; and (iii) **any plant or substances kept at the premises**, are, so far as **reasonably practicable**, safe and without risks to health.

Practicable and Reasonably Practicable



“**practicable**” means ignores the cost implication but recognizes possible limitation of current technical knowledge

“**reasonably practicable**” implies a balance of degree of risk against the **cost** of overcoming it

Cost Analysis



Metal Fixed Guardrails



VS

Fall Arresting Anchorage



Presumption:

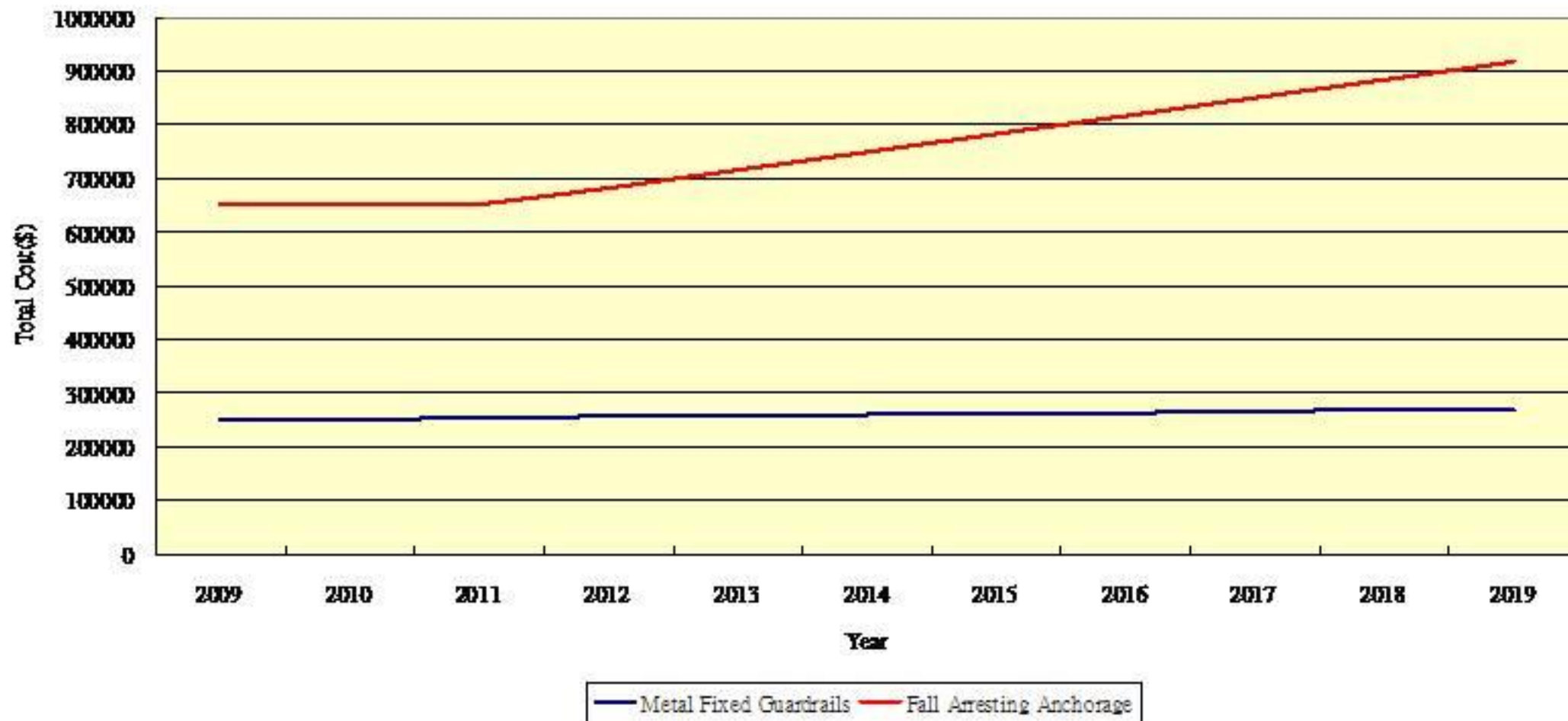
- Length = 1000M
- Period = 10 years
- Anchorage distance = 3M
- Projection of initial installation + annual maintenance

* 3 years warranty on initial installation

Cost Analysis



Total Costs





Civil and Criminal Laws

Standard of proof

- **Criminal – Beyond all Reasonable Doubts**
- **Civil – on Balance of Probability**

Negligence



**Broadly defined as a careless
conduct causing damage or
injury to another**

Negligence



Elements to establish a case in negligence:

- There is a duty of care owed by one party to the other
- There has been a breach of that duty
- The breach of duty has resulted in damage

Duty of Care



In Donoghue v. Stevenson, it is defined as:

“you must take reasonable care to avoid acts or omissions which you can reasonably foresee would be likely to injure your neighbour.”

Duty of Care



“Neighbours” is defined as:

“Person 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 which are called in question.”



謹慎責任

鄰人：“那些會受我們的行為直接或密切影響到的人，而當我們有意識地作出引致問題之作為或不作為時，理應深思熟慮到他們將會受到該等直接或密切之影響”



Duty of Care

4 indicators:

- foresight of damage
- proximity of the defendant to the plaintiff
- public policy
- whether it is just and reasonable to impose a duty

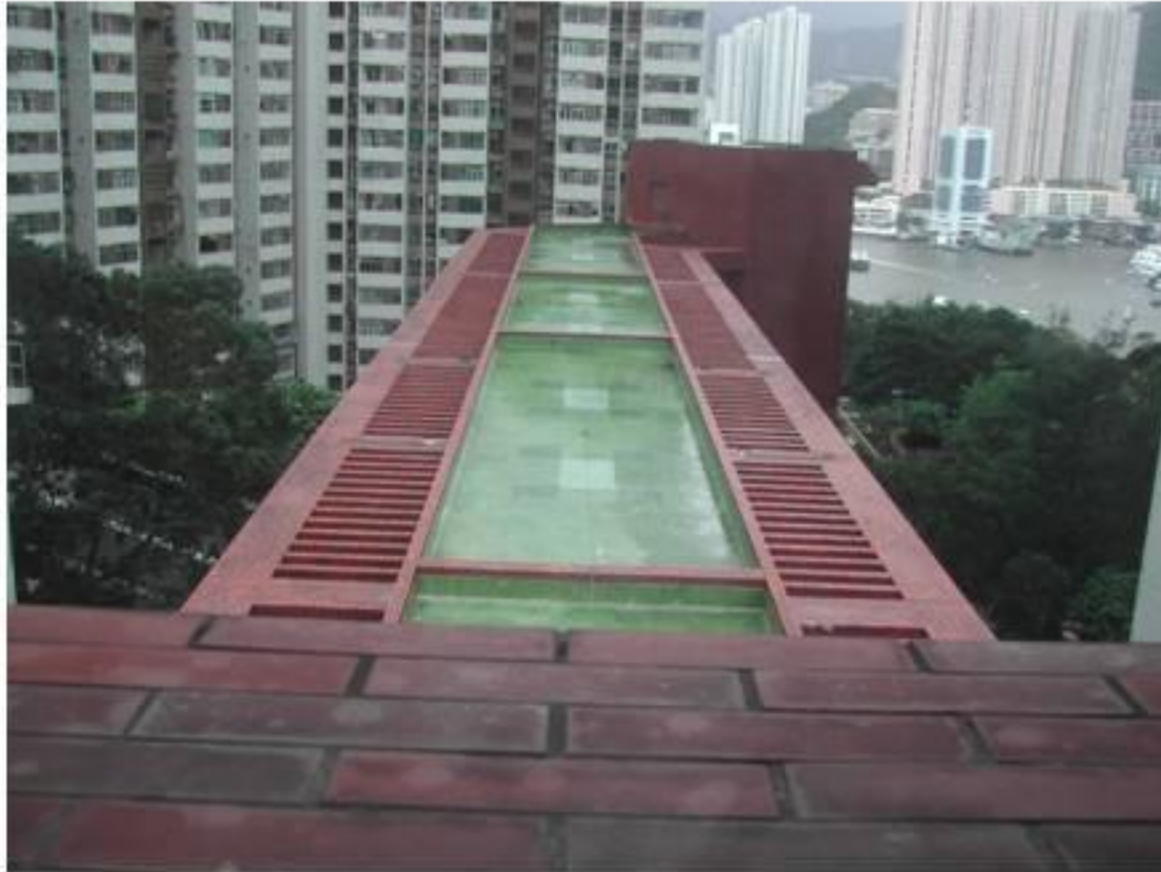
Practical Discussions (I)



Practical Discussions (II)



Practical Discussions (III)



Practical Discussions (IV)



Practical Discussions (V)



Practical Discussions (VI)





Normative References

- A Guide to the Provisions for Safe Places of Work under Part VA of the Construction Sites (Safety) Regulations
- A Guide to the Occupational Safety and Health Ordinance (Section 6 & 7) - General Duties of Employers / Occupiers
- A Guide to Safe Systems of Work



Normative References

- BS EN 795:1997 – Protection against falls from a height – Anchor devices – requirements and testing
- BS 7883:2005 – Code of Practice for the design, selection, installation, use and maintenance of anchor devices confirming to BS EN 795

A Question Asking Yourself



Do I have sufficient **competence** and **confidence** in directing my mind to reject the erection of guardrails for **protection of my neighbours** while they are working at such dangerous workplaces???



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