



THE RULE OF STRICT LIABILITY

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Abstract

Doctrine of Strict liability has been the most discussed rule by Modern torts scholars. Strict Liability differs from ordinary negligence as in rule of strict liability the defendant is held liable even if the defendant is not negligent or even if the defendant did not intentionally cause harm or he was careful, he could still be held liable under this rule. In *Rylands v. Fletcher*¹ the House of Lords laid down rule recognizing rule of 'no fault', the rule was recognized as Strict Liability. Rule of Strict liability is different from liability of negligence as the defendant is held liable even though he has taken precautions to avoid harm.² Under the strict liability rule, the law makes people pay compensation for damages even if they are not at fault. In other words, people have to pay compensation to victims even if they took all the necessary precautions. In fact, permissions allowing such activities often include this principle as a pre-condition. This paper will discuss the exceptions and essentials of Strict liability

Introduction

The Rule of strict liability was evolved after the case of *Rylands v Fletcher*, the rule is also recognized as "No Fault liability". According to the rule even if the defendant was not negligent or he has not intentionally caused harm he or she were careful, he could still be made liable under this rule. Through this case three essentials for the application of this rule were introduced which were dangerous things must have been brought by the person on his land, the thing brought by the person or kept on his land must escape, and it must be non-natural use of land.

The Rule in *Rylands v. Fletcher*

➤ Facts:

In *Rylands v Fletcher* (1868) LR 3 HL 330, the defendants employed independent contractors to construct a reservoir on their land. The contractors found disused mines when digging but failed to seal them properly. They filled the reservoir with water. As a result, water flooded through the mineshafts into the plaintiff's mines on the adjoining property. The plaintiff secured a verdict at Liverpool Assizes. The Court of Exchequer Chamber held the defendant liable and the House of Lords affirmed their decision.

¹ (1868) L.R. 3 H.L. 330

² *Gittan Ram v. State of J.& K.* A.I.R. 2013 J.&K. 83.

The basis of liability in above case was the following rule pronounced by Blackburn J.³:

A person, for, whom his own purpose brings on anything likely to do mischief if it escapes, must keep it in at his peril and if he does not do so, is prima facie answerable for all the damage which is natural consequences of its escape.

For the application of rule, therefore, the three essentials should be there:

- 1.) The defendant brought something on his land
- 2.) The thing brought or kept by a person on his land must *escape*.
- 3.) It must be *non-natural* use of land.

Essentials of the rule

- 1.) The defendant brought something on his land (Dangerous Thing):

The defendant will be held strictly liable only if “dangerous” substances escapes from his premises. For the purpose of imposing strict liability, a dangerous substance can be defined as any substance which will cause some mischief or harm if it escapes. Things like explosives, toxic gasses, electricity, etc. can be termed as dangerous things.

- 2.) Escape:

The things causing damage must escape to area outside the occupation and control of the defendant. In case of *Ponting v. Noakes*⁴, The claimant’s horse died after it had reached over the defendant’s fence and ate some leaves from a Yew tree. The defendant was not liable under *Rylands v Fletcher* as the Yew tree was entirely in the confines of the defendant’s land and there had therefore been no escape. The case of *Read v. Lyons & Co*⁵, the defendant has some poisonous plant on his property. Leaves from the plant enter the property of the plaintiff and is eaten by his cattle, who as a result die. The defendant will be liable for the loss. But on the other hand, if the cattle belonging to the plaintiff enter the premises of the defendant and eats the poisonous leaves and die, the defendant would not be liable.

³ The rule was formulated by Blackburn J. in Exchequer Chamber in *Fletcher v. Rylands*, (1866) L.R. 1 Ex 265 and the same was approved by the House of Lords.

⁴ *Ponting v. Naokes*, (1994) 2 Q.B. 281

⁵ *Read v. Lyons & Co* (1947) A.C. 156;

3.) Non- Natural use of land:

For the use to be non-natural, it must be some special use bringing with it increased danger to others, and must not merely be the ordinary use of land or such a use as is proper for general benefit for community. Examples of natural use of land-Electric wire in a house or a shop,⁶ Supply of gas in gas pipes in a dwelling house,⁷water installation in a house⁸.In the case of Rylands v. Fletcher, the water collected in the reservoir was considered to be a non-natural use of the land. Storage of water for domestic use is considered to be natural use. But storing water for the purpose of energizing a mill was considered non-natural by the Court. When the term “non-natural” is to be considered, it should be kept in mind that there must be some special use which increases the danger to others.

4.) Act done by an independent contractor:

An employer is not liable for acts done by an independent contractor but in Ryland v. Fletcher, The defendants were held liable even though they had got the job done by independent contractor. Similarly, in T.C. Balakrishnan Menon v. T.R. Subhramanian⁹, an explosive made out of a coconut shell filled with explosive substance, instead of rising in the sky and exploding there, ran at a tangent, fell amidst the crowd and exploded causing serious injuries to respondent. The court held that the explosive is an ‘extra hazardous’ object and attracts the application of the rule in Rylands v. Fletcher the persons using such object are liable even for negligence of their independent contractor.

Exceptions to the rule

There are certain exceptions to the rule of strict liability, which are-

1.) Plaintiff's own default-

If the plaintiff suffers damage by his own intrusion into the defendant's property, he cannot complain for the damage he has caused. In case of Pointing v. Noakes,¹⁰. the plaintiff's horse died after it entered the property of the defendant and ate some poisonous leaves. The Court held that it was a wrongful intrusion, and the defendant was not to be held strictly liable for such loss. When the damage to the plaintiff's property is caused not so much by the “escape” of the things collected by the defendant as by the unusual sensitiveness of the plaintiff's property itself, the plaintiff cannot recover anything.

⁶ Collingwood v. Home and colonial Stores Ltd., (1936)

⁷ Miller v. Addie & Sons Collieries

⁸ Rickards v. Lothian,(1913) A.C. 263.

⁹ A.I.R. 1968 Kerala, 151

¹⁰ (1846

2.) Act of God-

The phrase “act of God” can be defined as an event which is beyond the control of any human agency. Such acts happen exclusively due to natural reasons and cannot be prevented even while exercising caution and foresight.¹¹ Act of God or vis major was also considered to be a defence to an action under the rule in *Rylands v. Fletcher* by Blackburn, J. himself. Act of god has been defined as:

‘Circumstances which no human foresight can provide against and of which human prudence is not bound to recognize the possibility’¹²

The case of *Nicholas v. Marsland*,¹³ serves as a good illustration where the defence was successfully pleaded. In that case, the defendant created artificial lakes on his land by damming up a natural stream. That year there was an extraordinary rainfall, heaviest in the human memory, by which the stream and lakes swelled so much that embankments constructed for the artificial lakes which were sufficiently strong for an ordinary rainfall, gave way and the rush of water down the stream washed away the plaintiff’s four bridges. The plaintiff brought an action to recover damages for the same. There was no negligence found at defendant’s part.

3.) Consent of the plaintiff-

This exception follows the principle of *volenti non fit injuria*. Consent is implied where the source of danger is for the ‘common benefit’ of both the plaintiff and defendant. In case *Carstairs v. Taylor*¹⁴ the plaintiff hired ground floor of a building from the defendant. The upper floor of the building was occupied by the defendant himself. Water stored on the upper floor leaked without any negligence on the part of defendant and injured the plaintiff’s goods on the ground floor. As the water had been stored for the benefit of both the plaintiff and the defendant, the defendant was held not liable.

4.) Act of third party-

If the harm has been caused due to act of a stranger, who is neither the defendant nor has any control over him; the defendant will not be liable under this rule. Thus, in *Box v. Jubb*¹⁵, the overflow from the defendant’s reservoir was caused by the blocking of a drain by strangers, the defendant was held not liable for that. Similarly, in *Rickards v. Lothian*,¹⁶ some strangers blocked the waste pipes of a wash basin, which was

¹¹ <http://legal-dictionary.thefreedictionary.com/act+of+God/>

¹² *Tennet v. Earl of Glasgow*, (1864) 2 M (H.L.) 22, 26-27

¹³ (1876)

¹⁴ (1871)

¹⁵ (1879)

¹⁶ (1913) A.C. 263.

otherwise in the control of the defendants, and opened the tap. The overflowing water damaged the plaintiff's goods. The defendants were held not liable.

5.) Statutory Authority

Act done under authority of a statute is a defence to an action for tort. Statutory authority cannot be pleaded as defence when there is negligence.¹⁷ In *Green v. Chelsea Waterworks Co.*,¹⁸ the defendant Co. had a statutory duty to maintain continuous supply of water. A main belonging to the company burst without any negligence on its part, as a consequence of which the plaintiff's premises were flooded with water. It was held that the company was not liable as the company were with water. It was held that the company was not liable as the company was engaged in performing a statutory duty.



¹⁷ *Northwestern Utilities Ltd. V. London Guarantee & Accident Co.*, (1936)

¹⁸ (1894) 70 L.T.