

# The rule in rylands law general essay

Law



Lauren Dignam First Year BCL In order to be liable under the Law of Tort, a violation of one's legal duty must be proven in court in negligence, fault, or the wrongful intent of the defendant. However, if none of the aforementioned can be proven, the accused will escape liability. The exception to this general rule is the doctrine of strict liability. Under this doctrine a person can be found liable regardless of fault on their part. The classic example of strict liability being that of a tiger obtained in a rehabilitation centre – should the tiger escape and injure someone, the fact that the owner used the strongest cage and the highest standard of care possible will not be relevant, and he will be found liable for injury. The doctrine of strict liability was embraced in Blackburn J's judgment in the renowned case of Rylands v Fletcher[1]. He established an innovative rule of strict liability under the title of the case itself. The defendants owned a mill, and wished to build a water reservoir for their use. They hired independent contractors to do so. Unbeknownst to Rylands and Horrocks, the contractors constructed the reservoir over an empty mineshaft, which collapsed and flooded the plaintiff's coal mine. In 1860, when John Rylands anticipated building a water reservoir for his mill, he was unaware of the effect that this would have on the common law of tort for centuries to come. The lengthy, chaotic litigation relating to the escape of water from Rylands' reservoir to Fletcher's mine continued in the courts from 1861 until 1868. The rule in Rylands v Fletcher, as stated by Blackburn J, is as follows: We think that the true rule of law is, that the person who for his own purposes brings on his lands and collects and keeps there 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 the natural consequences of its escape.[2] Essentially, Blackburn J found that in order to

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hold the defendant strictly liable under the rule, negligence need not be established; rather the following elements must be satisfied: a person brings something on his land and accumulates / keeps it there; this is done for his or her own purposes; the thing in question is likely to do mischief should it escape; the damage done is a natural consequence of the escape. Though one may assume liability could arise based upon proof of negligence in *Rylands v Fletcher*, Blackburn J expressly differentiated the rule from that possibility. The contradiction between negligent liability and the rule in *Rylands v Fletcher* requires some attention to detail. Blackburn J worded the rule in such a way that emits a sense of fairness: the thing that escapes must have been accumulated for the defendant's own benefit; therefore the defendant must suffer the consequences should that thing escape. In terms of fairness, the rule in *Rylands v Fletcher* makes sense with its idea of 'keeping things at one's peril'. We do not primarily regard the damage as the result of an escape. This was critically different to nuisance, where the interference is a result – sometimes an inevitable result – of the conflict between two uses of land. The rule in *Rylands v Fletcher* differed from both negligence and nuisance in suggesting that the risks in question may legitimately be run.<sup>[3]</sup> The judgment of Blackburn J was approved by the House of Lords. From an objective view, when reading his decision, the rule in *Rylands v Fletcher* appears to be a simple strict liability tort, satisfying simple criteria without having to establish fault. However, there are various defences available to the defendant under the rule in *Rylands v Fletcher*. These defences limit the rule as a tort of strict liability. Should the plaintiff consent; through the plaintiff's own default; the act of a third party; an Act of God; or with Statutory Authority, strict liability shall not be applicable.

[4] Under a serious rule of strict liability a defendant could not expect to enjoy a wide range of defences such as those concerning an act of God, vis major and acts of third parties, proving that the rule in *Rylands v Fletcher* was never fully 'strict' in terms of liability. Lord Cairns further commented on Blackburn J's judgment, adding the criterion of the 'non-natural user'[5] in order to establish liability. This has subsequently been taken to be an additional requirement for the application of the rule, along with Blackburn J's four aforementioned criteria. Nowadays however, the non-natural user criterion has essentially become the main mechanism for setting some appropriate limits to the rule. Its content may now be in the process of developing in a manner uncluttered by confusion over the origins, purpose, and nature of the rule. But because of other limitations to the rule – particularly in the form of defences listed above, but also through the close association with other forms of nuisance – this development is probably too late to convert *Rylands v Fletcher* into a workable rule of strict liability in this day and age. It is inarguable that the rule in *Rylands v Fletcher* has developed immensely since its origin in 1868. It is now seen as a limb of the tort of private nuisance in the English and Welsh courts. Australian courts have merged the rule with negligence, giving an alternative route to liability without personal fault in the realm of certain hazardous activities. Their decision to do so has abolished a connection between the rule and strict liability. The United States of America established a separate specific and limited principle of strict liability regarding dangerous activities. This is evidential that the rule in *Rylands v Fletcher* has developed from its original position as a tort of strict liability in the 1800s, and indeed no longer remains a strict liability tort in many jurisdictions today. The English case of *Read v*

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Lyons<sup>[6]</sup> in 1947 was the catalyst for detaching the rule in Rylands v Fletcher from being known as a completely strict liability tort. In order to be found liable under the rule, an escape is required. This is one of the most artificial requirements of the rule, and the retention of this requirement illustrates clearly that the rule has not developed into a general principle of strict liability. In *Read* the court decided that if an incident occurs within the confines of a person's land, it will not satisfy the requirements of the rule as there has been no escape.<sup>[7]</sup> Fleming described this case as ending the possibility of a general rule of strict liability developing based on Rylands v Fletcher: "The most damaging aspect of the decision in *Read v Lyons* was that it prematurely stunted the development of a general theory of strict liability for ultra-hazardous activities."<sup>[8]</sup> Following the decision of *Read v Lyons*, in 1994 the British House of Lords decided upon what has once been described as "the most important legal case in the UK this century"<sup>[9]</sup>. The decision in *Cambridge Water Co. v Eastern Counties Leather plc*<sup>[10]</sup> both completely readjusted the limits of the rule in Rylands v Fletcher and established the extent to which common law torts could be used to establish strict liability in English cases of historic pollution.<sup>[11]</sup> In their decision, a unanimous House of Lords surprisingly retained the rule - not without altering it somewhat, however. Speaking through Lord Goff, they introduced a foreseeability test in order to establish liability under the rule in Rylands v Fletcher. Traditionally, the rule has meant anyone who accumulates something on their land that is likely to cause damage should it escape is strictly liable to any person who suffers loss or damage resulting from that escape.<sup>[12]</sup> In the original judgment, according to Blackburn J, if the rule was to be applied, then the plaintiff did not have to prove that the damage may

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have been foreseen, as it was a strict liability tort. Cambridge Water, however, overturns the traditional interpretation of the rule and introduces foreseeability into Rylands v Fletcher. In this case, the House of Lords concluded that due to the close connection between the rule and the tort of nuisance, " it would... lead to a more coherent body of common law principles if the rule [in Rylands] were to be regarded essentially as an extension of the law of nuisance..."[13]In effect, the case holds that " Rylands v Fletcher was not a separate cause of action in its own right, but was, in fact, a specific application of the law of nuisance."[14]Henceforth, the foreseeability test established in Cambridge Water became a fundamental mechanism in detecting liability under the rule in Rylands v Fletcher for years to come. Lord Goff subsequently considered how appropriate the introduction of this foreseeability test would be into the strict liability rule in Rylands v Fletcher. Traditionally, Blackburn J ascertained that under the rule, fault or foreseeability need not be proven in order to establish liability. [15]Lord Goff interpreted the rule differently, departing from the historical view of Rylands. In a unique decision, he specifically analysed Blackburn J's individual decision in the case, rather than looking at the case as a whole. Lord Goff stated that the basis for finding one strictly liable under the rule stems from Blackburn J's exclamation of the true rule of law, which was affirmed by the House of Lords. However, in his judgment, Blackburn J also " spoke of ' anything likely to do mischief if it escapes'; and later he spoke of something ' which he knows to be mischievous if it gets on to his neighbour's [property]', and the liability to ' answer for the natural and anticipated consequences'".[16]Lord Goff found:" the general tenor of [Blackburn J's] statement of principle is therefore that knowledge, or at least foreseeability

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of the risk, is a prerequisite of the recovery of damages under the principle; but that the principle is one of strict liability in the sense that the defendant may be held liable notwithstanding that he has exercised all due care to prevent the escape from occurring." [17] Thus, Lord Goff concluded that it is "appropriate now to take the view that foreseeability of damage of the relevant type should be regarded as a prerequisite of liability in damages under the rule [in *Rylands v Fletcher*]." [18] His findings weaken the rule in *Rylands v Fletcher* as a strict liability tort. Once the House of Lords affirmed in *Cambridge Water* that foreseeability was prerequisite to liability under the rule in *Rylands v Fletcher*, they moved on to whether the rule should be "treated as a developing principle of strict liability from which can be derived a general rule of strict liability for damage caused by ultra-hazardous operations..." [19] Lord Goff highlighted how the United States of America have developed such a principle of limited strict liability regarding dangerous activities. In 1977 the US government brought into law the "Second Restatement of the Law of Torts". This imposes strict liability in respect of abnormally dangerous activities: "One who carries on an abnormally dangerous activity is subject to strict liability for harm to the person, land or chattels of another resulting from the activity, although he has exercised the utmost care to prevent the harm," [20] However, the House of Lords did not wish to follow in their footsteps. Instead, they incorporated the rule back into the tort of nuisance: "It would moreover lead to a more coherent body of common law principles if the rule were to be regarded essentially as an extension of the law of nuisance to cases of isolated escapes from land..." [21] In doing so, the House of Lords managed to completely redefine the rule in *Rylands v Fletcher* in a clear, concise manner, while

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simultaneously limiting strict liability under the rule with the introduction of the foreseeability test. Lord Goff's groundbreaking decision was guidance for common law jurisdictions around the globe. The view in England was that by introducing a foreseeability test, liability could be established reasonably and justly. The dichotomy between England's take on the rule in *Rylands v Fletcher* and the High Court of Australia's view is stark. In *Burnie Port Authority v General Jones Pty Co*[22] the court felt it was time to completely eradicate the rule in *Rylands v Fletcher* in Australia. Instead, the rule became a part of ordinary negligence. The reasons given for this drastic step were (a) the uncertainties as to the content and application of the rule; (b) its progressive weakening by restricting its scope largely by means of the non-natural user requirement; and (c) that the law of negligence had developed since *Rylands v Fletcher* and largely supplanted it.[23] The House of Lords was later invited by counsel in *Transco plc v Stockport Metropolitan Borough Council*[24] to follow in the footsteps of the High Court of Australia in *Burnie Port Authority* and to absorb the rule in *Rylands v Fletcher* into negligence. They declined to do so. The House of Lords felt that previous case law (*Read and Cambridge Water*) had sufficiently clarified the rule in relation to strict liability, and that there was no need for them to do so. Should one review precedent case law, the development of the rule in *Rylands v Fletcher* from a strict liability tort to, what now appears to be a limited, archaic rule of liability would be evident. While Blackburn J's original judgment aided the law surrounding the case of *Rylands v Fletcher*, his rule of strict liability unfortunately became a part of tort law that was clouded with confusion. Courts have hence been forced to clarify the rule, and in doing so, they have



removed it from strict liability and immersed it with the torts of negligence and nuisance.