

## Chapter 2: STRICT LIABILITY

Strict liability is an exception to the fault principle. It is liability without fault. Where a tort is one of strict liability there is no need to prove fault on the defendant's part. Once the plaintiff is proved to have suffered damage from the defendant's wrongful act, the defendant is liable notwithstanding with there may have been no fault on his part. A specific instance of strict liability is afforded by the Rule in *Rylands v. Fletcher* discussed below.

Although, the strict liability is liability without fault but it does not mean that wrongdoer or tortfeasor has no defence at all. Certain defences may be available in some specific circumstances in case of strict liability.

We may also distinguish between absolute liability and strict liability. Where there is absolute liability, a particular wrong is actionable without proof of fault on the part of the tortfeasor and in addition there is no defence whatsoever to the action. Where there is strict liability, a particular wrong is actionable without proof of fault but some defences may be also available.

Strict liability may be considered in the following cases:-

- i. The Rule in *Rylands v. Fletcher*, (1866)
- ii. Liability for Fire, and
- iii. Liability for Animals.

### **The Rule in *Rylands v. Fletcher*, (1866)**

The following statement is commonly called the Rule in *Rylands v. Fletcher*:

“The person who, for his own purposes, brings on his land 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 consequence of its escape”.

This is a rule of strict liability and negligence in this case is irrelevant. This rule was formulated on the basis of the following case:-

#### *Rylands v. Fletcher*, (1866)

The defendants constructed a reservoir on their land for the purpose of supplying water to their mill. The site chosen had a disused and filled up shaft of an old coal-mine, whose passages communicated with the adjoining mine of the plaintiff. But this fact was not known to the defendants, who therefore took no precaution against it. When the reservoir was filled, the water escaped down the shaft into the plaintiff's mine, flooding it and causing great damage.

**Held:** The defendants were liable and it was immaterial that there was no fault on their part.

The court considered that the situation that arose in the above case was the first of its kind. There was no established rule on the basis of which the defendants could be made liable. Yet it was clear that the damage suffered by the plaintiff was caused by the act of the defendants and that the circumstances called for compensation to be paid by the defendants to the plaintiff. The court therefore formulated the above Rule (the Rule in *Rylands v. Fletcher*) and on the basis of it made the defendants liable even though no fault could be proved on their part. In *Rylands*

*v. Fletcher* itself the defendants for their own purposes brought on to their land water, collected and kept it there in a reservoir specially constructed for that purpose. The water was something likely to do mischief if it escaped. It did escape down the shaft and actually did mischief since it escaped. It did plaintiff's mine. The damage to the plaintiff's mine was the natural consequence of the escape of the water. Accordingly the Rule formulated by the court applied and the defendants were liable to the plaintiff.

It should be observed that the Rule refers to "anything likely to do mischief." Although in *Rylands v. Fletcher* it was water which escaped, the Rule equally applies in other instances involving the escape of obnoxious fumes, poisonous leaves on the branch of a tree, bees from a bee-farm, electricity etc.

### **Limits of the Rule:**

The application of the Rule in *Rylands v. Fletcher* is not automatic. The following conditions must be satisfied before the rule can apply:-

#### **(i) Non-Natural User:**

There must be a non-natural user of land, i.e. the defendant must have used his land in a way that is not ordinarily natural. In other words, there must be an artificial accumulation of things not naturally found on the defendant's land; this is the basis of the Rule; just as there was an artificial accumulation of water in a reservoir by the defendants in *Rylands v. Fletcher*: the water was not naturally found on the defendants land and by bringing, collecting and keeping it there the defendants had engaged in a non-natural user of their land.

Another instance is afforded by the following case:

*Crowhurst v. Amersham Burial Board, (1878)*

The defendant had on his land a tree with poisonous leaves, branches of which projected onto the plaintiff's land. The plaintiff's horse ate the poisonous leaves and died. **Held:** The defendant was liable under the Rule in *Rylands v. Fletcher*.

**Note:** In the above cases, the keeping by the defendant of a tree with poisonous leaves was considered a non-natural user of his land.

#### **(ii) Need for Escape:**

There must be an actual escape from the defendant's land. Thus, the non-natural user of land must be accompanied by an escape of the thing which is the source of the mischief in question. It will be recalled that in *Rylands v. Fletcher* the water did escape from the defendant's land to the plaintiff's mine. Indeed, for the Rule under consideration to apply, it is not sufficient that there was an escape; the escape must be from the defendant's land to a place outside it, otherwise if the thing escapes and causes damage within the defendant's land, the Rule does not apply:

*Read v. J. Lyons & Co., (1947)*

The defendants were authorized by the Minister of Supply to manage and control a munition factory for the purpose of manufacturing high-explosive shells for the

government. The plaintiff was in the defendant's shell-filling shop when an explosion occurred, killing one person and injuring several others, including the plaintiff. In her action against the defendants the plaintiff sought to rely on the Rule in *Rylands v. Fletcher*. **Held:** Escape for the purpose of the Rule in *Rylands v. Fletcher* means escape from land in the occupation or control of the defendant to a place outside it; and since the plaintiff was injured while on land under the occupation and control of the defendant; there was no escape and the Rule did not therefore apply.

**(iii) Natural User of Land:**

We saw above that one of the conditions for the application of the rule is that there must have been a non-natural user of the land. Where there is a natural user of the land, the rule does not apply and the defendant is protected against the Rule.

It is pointed out: "*It is not every use to which land is put that brings into play that principle. It must be some special use bringing with it increased danger to others, and must not merely be the ordinary use of the land or such a use as is proper for the general benefit of the community.*"

This is why the plaintiff's action did not succeed in the following case:

*Ross v. Fedden, (1972)*

The supply and overflow pipes of a water-closet burst, flooding the premises of the plaintiff which were on the lower floor of a house shared with the defendant. **Held:** The pipes, being for the convenience and use of the defendants, were a natural user of the premises and there could be no liability under the Rule.

**(iv) No Escape**

Also given as one of the conditions for the application of the Rule, is the need for an escape. The absence of escape is therefore a possible defence available to the defendant, as in *Read v. J. Lyons & Co.*

**Defences in Rule in *Rylands v. Fletcher*:**

The case of *Rylands v. Fletcher* itself suggested three defences available to a defendant in an action brought against him under this Rule. These are:

**(a) Plaintiff's Fault:**

Where the escape in question resulted from some fault on the part of the plaintiff, this may be pleaded by the defendant as a defence to an action brought against him by the plaintiff under the Rule. For in this case the plaintiff has himself brought about his own suffering.

**(b) Act of God**

Act of God is also defence to an action brought under the Rule, i.e., the act occurred as a result of natural forces.

**(c) Act of Stranger**

Where the escape is caused by the intervention of person over whom the defendant has no control and whose intervention was not foreseeable, this is a defence to an action brought under the Rule, particularly where the stranger's act was deliberate or intentional.

*Rickards v. Lothian (1913)*

The plaintiff leased second-floor offices in a building occupied by the defendant. His stock-in-trade was seriously damaged by water from a fourth-floor lavatory basin. The outlet of the lavatory basin had been plugged with nails, soap, penholders and string and its tap had been turned fully on. According to the defendant's caretaker all was well when he left the place the previous evening. But it was clear that the plugging of the outlet and the turning of the tap was the malicious act of some person. **Held:** The escape of water had been caused by the malicious act of a third party over whom the defendant had no control; the defendant could not therefore be liable under the Rule in *Ryland v. Fletcher*.

The above case pointed out, however, that even if the escape of the water had been caused by the defendant this would still not be a proper case for the application of the Rule in *Rylands v. Fletcher*.

In addition to above defences, some general defences like "*volenti non fit injuria*", statutory authority are also available in this rule.

The Rule in *Rylands v. Fletcher* can also apply in the following cases:

1. The liability for fire
2. The liability for animals
3. The liability for fire due to negligence is actionable in tort. It is also a case of strict liability. Similarly, if a fire starts without negligence but is spread due to negligence of a person then that person will be liable for damages caused by the spread of the fire.
4. The liability for animals may arise in both nuisance and negligence. An occupier of land is liable for damage done by his cattle if they trespass on the land of his neighbours and thereby cause damage. Similarly, a person who keeps dangerous animals like lions, leopards, dogs etc is liable strictly for any injury by such animals, even in the absence of negligence.

**Research case:**

***Securicor (U) Ltd. v. Mugenyi* (1972) E.A. 362**