



CLASS 10

TORTS AND PERSONAL INJURY

STRICT LIABILITY

- This means liability even without any showing of negligence, intent or fault (also called “no-fault” liability)

1) Animals:

- For wild animals, “*ferae naturae*,” the general rule is strict (absolute) liability!
- For domesticated animals, strict liability applies if the owner has reason to believe the animal is dangerous (sometimes called the “one free bite” rule, though that is a bit of a misnomer)

2) Abnormally dangerous activities

STRICT LIABILITY (CONT.)

3) No-fault car insurance rules:

- Varies from state to state

4) Worker's compensation rules:

- Varies from state to state
- Applies to allow workers hurt on the job to recover even if the employer was not at fault for the injury.

STRICT LIABILITY- REQUIRED ELEMENTS

- **Duty** and **breach** *are not necessary*
- **Causation** and **damages** *are necessary*
 - Analysis is similar to that in a negligence case
- Defenses to strict liability:
 - **Contributory or comparative negligence** is often not a defense, because fault is not really an issue (the liability is “no fault”), so determining what level of fault each party has is irrelevant
 - **Assumption of risk** is a valid defense



QUIZ TIME

ABNORMALLY DANGEROUS ACTIVITIES

- Old Rule:
 - Any “**ultra-hazardous**” activity subjected the owner to strict liability.
- New Rule:
 - Activities are only subject to strict liability if they are “**abnormally dangerous**”

ABNORMALLY DANGEROUS ACTIVITIES (CONT.)

- What is “**abnormally dangerous**”?
 - This is analyzed by looking at several factors based on the activity involved, including:
 - 1) Whether the activity involves a high degree of risk or harm;
 - 2) The gravity of that risk;
 - 3) Whether the risk can be eliminated by the exercise of reasonable care;
 - 4) Whether the activity is a matter of common usage;
 - 5) Whether the activity is appropriate to the place where it is carried out; and
 - 6) The value of the activity to the community.
- Note that an activity can be valuable and still be abnormally dangerous (e.g., using dynamite to build a road in a mountain)

RATIONALE FOR STRICT LIABILITY

(from *Rylands v. Fletcher* (1868))

“We think that the true rule of law is, that 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. He can excuse himself by shewing that the escape was owing to the Plaintiff's default; or, perhaps, that the escape was the consequence of vis major, or the act of God; but as nothing of this sort exists here, it is unnecessary to inquire what excuse would be sufficient. The general rule, as above stated, seems on principle just. The person whose grass or corn is eaten down by the escaping cattle of his neighbour, or whose mine is flooded by the water from his neighbour's reservoir, or whose cellar is invaded by the filth of his neighbour's privy, or whose habitation is made unhealthy by the fumes and noisome vapours of his neighbour's alkali works, is damnified without any fault of his own; and it seems but reasonable and just that the neighbour who has brought something on his own property (which was not naturally there), harmless to others so long as it is confined to his own property, but which he knows will be mischievous if it gets on his neighbour's, should be obliged to make good the damage which ensues if he does not succeed in confining it to his own property. But for his act in bringing it there no mischief could have accrued, and it seems but just that he should at his peril keep it there, so that no mischief may accrue, or answer for the natural and anticipated consequence. And upon authority this we think is established to be the law, whether the things so brought be beasts, or water, or filth, or stench.”