

B. The concept of non-natural use of land in the doctrine of strict liability.

There are many resources which when put into operation may constitute a constant danger to person and property of others. Such resources may not be dangerous in themselves but may lead to devastating results. Water is one of such resources. Its utility is unchallengeable yet when it is collected in quantity in the wrong place or allowed to percolate it can create havoc.

The law may deal with such hazard-causing or hazardous activities in three ways. It may prohibit them altogether. It may allow them to be carried on for the sake of their social utility but only in accordance with statutory provisions laying down safety measures and providing for sanctions for non-compliance. It may allow them to be tolerated on condition that they pay their way regardless of any fault. The last is the doctrine of strict liability. The undertakers of the activities have to compensate for the damage caused irrespective of any carelessness on their part. The basis of liability is the foreseeable risk inherent in the very nature of the activities. It is based on the maxim, sic tuo alienum non laedas meaning "so use your own property as not to injure the property of your neighbour". The fact governed by this rule is neither trespass, where the harm is consequential, nor negligence because there is no duty to see the foreseeable harm,

nor nuisance because nuisance implies unlawful interference with a persons use or enjoyment of this land. This area of tort lies in the area between hinterlands of nuisance and negligence.³⁶

Historical background of the doctrine of strict liability

Strict liability has its origin in the case of Rylands v. Fletcher³⁷ wherein it was established that if a person brings on his lands and collects and keeps there anything likely to do harm if it escapes and if it does escape is liable for all the natural consequences of his act. The facts of the case are : the defendants as owners of a mill, constructed, by arrangement with the owner of certain land, reservoir on it for their mill. The plaintiff had a colliery in the locality. At some former time but unknown to anyone the land under the reservoir had worked for coal and the old working communicated with those under the plaintiff's lands. The persons employed for the work of constructing the reservoir found disused mine shafts, but did not fill them up properly. Soon after water was filled in the reservoir and one of the shafts burst and water escaped through the underground working into the plaintiff's mines and flooded them. The House of Lords approved the rule of absolute liability resting the liability on the ground that the defendants user of this land was non-natural.

In the words of Blackburn J., "the rule of law is that the person who, for his own purpose, 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."³⁸ Such a person can however excuse himself by showing that the escape was owing to the plaintiff's fault, or that the escape was a consequence of the act of God or vis major.

Thus the rule that finally emerged from Rylands v. Fletcher was that, if the defendant makes his land ^{natural use of} he is not liable in absence of negligence but if he makes 'non-natural use' of land in his occupation in the course of which there is escape of something which causes damage to person or property outside the defendant's premises, the defendant is liable irrespective of any question of negligence on the basis of the rule of strict liability.

Natural and non-natural use of land

The principle of Rylands v. Fletcher has been followed in several Indian water cases, but compared to English law such instances are few.³⁹ What is a 'non-natural user' of land has not been defined by the Courts anywhere which has resulted in creating ⁱⁿ ambiguities/the application of the principle.