

Law and Our Rights

Making Law User-Friendly

The Modern Trend of Strict Liability

by Md Anowar Zahid

trodden a long path through tide and ebb. While praised it has been criticized as well. Recently it is getting a very cold reception by the courts. This necessitates a review of the rule and, therefore, justifies the present work.

Genesis of the Rule

In formulating the rule Blackburn J. relied upon precedents in three classes of cases—cattle-trespass, injury by dangerous animals and escape of water, filth and stench. Thus it appears that "Blackburn J. did not intend to make new law in Rylands Vs Fletcher; he made a generalisation which covered the cases of absolute liability which had survived the general 'moralization' of the law in the eighteenth and nineteenth centuries." In Blackburn's own opinion, "I wasted much time in the preparation of the judgment in Rylands Vs Fletcher if I did not succeed in showing that the law held to govern it had been law for at least 300 years."

However, Blackburn's credit is in his categorising the cases of liability without fault. The cases of liability without fault, in the words of Wigmore, "wandered about, unhoused and unshepherded, except for a casual attention, in the pathless fields of jurisprudence, until they were met by mastermind of Mr Justice Blackburn, who guided them to the safe fold where they have since rested. In a sentence epochal in its consequences this judge coordinated them in their true category."

But Lord Simon shook the soundness of the historical basis of the rule when he observed in Read Vs Lyons that "it appears to me logically unnecessary and historically incorrect to refer to all these instances as deduced from one common principle." In fact, all the three classes of cases relied upon by Blackburn J. were not cases of absolute liability. Though cattle-trespass was an instance of absolute liability, the cases of injury by dangerous animals and escape of water, filth and stench were cases of negligence and nuisance respectively.

It might, however, be that the instances relied upon by Blackburn J. were indiscriminately treated as one group of cases as because they "belong to a period when principles of liability were in a crude stage of development and the modern distinction between liability for negligence and liability in respect of it could not have emerged." But it is true that Blackburn J. did introduce "really a new doctrine on the strength of the said precedents by putting modern interpretation on phrases like 'acting at one's peril', used in them. This mode of introducing the doctrine however determined its form and content. So we have a rule which equates cattle, wild animals and explosives as dangerous things by finding a common factor in them, viz. their tendency to escape and do

harm. The rule in Rylands Vs Fletcher is thus an interesting illustration of the methods as well as the limitations of judicial legislation of which it is outstanding example".

Winfield and Jolowicz evaluated the rule in Rylands Vs Fletcher as "the creation of new law behind a screen of analogies drawn from existing law... succeeding generations have regarded it as the starting point of a liability wider than any that preceded it." They again observed that the substantial advances which it made on the earlier law were two:

1. In the direction of things for the escape of which an occupier of land is subjected to strict liability.

2. In the direction of the persons for whose defaults in connection with such escape the occupier is vicariously responsible.

As to the first, the court took a rule of liability which had been more or less clearly perceived in connection with the escape of fire, cattle or unruly beasts, and extended it to the escape of mischievous things generally. As to the second, they held in effect that the occupier from whose land these things escaped and did damage is liable not only for the default of his servant, but also for that of an independent contractor and (as later decision show) for that of anyone except a stranger."

For true application of the rule the conditions laid down by the House of Lords in Rylands Vs Fletcher must be strictly complied with, otherwise "it would be a very oppressive decision". While the rule has been strictly applied in a number of cases, it has been loosely interpreted and applied in other cases and as a result the areas of nuisance and negligence have been invaded. Thus whereas escape of mischievous thing from the defendant's land is an essential condition finally was held to have arisen under the rule for damage caused by the escape of water from a pipe laid down by the defendants under the highway. Again, where under the rule liability arises for interference with the plaintiff's land resulting from escape of dangerous thing from the defendant's land, defendants were held liable for damage caused to person or chattels on the plaintiff's land. These could have been decided as nuisance cases.

On the other hand, some cases decided under the rule could be decided as negligence cases. For instance, in Shiffman Vs Order of St John where the defendant, though at fault, was held liable under the rule for injury caused by a falling flag-pole belonging to the defendant, the ground of liability could have been different namely, the principle of *res ipsa loquitur*. In Dunn Vs North Western Gas Board, Sellers LJ asserted that in the present

time the defendant's liability in Rylands Vs Fletcher itself could simply have been placed on the defendant's failure of duty to take reasonable care. "In modern law there would have been no difficulty in holding John Rylands (and his partner Jehu Horrocks) liable for negligence of the contractors whom they had hired to build the reservoir for them. Building such a reservoir would have had sufficient possibilities for mischief, if done carelessly, to bring into play, what is now generally known as the doctrine of non-delegable duties."

Modern Attitudes of Courts Towards the Rule

Today the courts of law look upon the rule with a squinted eye like step-mother and tend to restrict its application. "The most restriction on any extended application of the rule is the requirement of non-natural user. As it is now interpreted this excludes from the ambit of the rule those accumulations which in the judgement of the court (there being no objective test) do not involve an unreasonable risk or an extraordinary use of land. Such an interpretation allows the courts to hold that a common activity such as the collection and storage of gas or water does not constitute a non-natural use of land, even though the injury potential of the activity is high. Moreover, in determining what is extra ordinary or unreasonable the courts can have regard not only to the interests of the defendant but to the public interest as well." Thus in British Celanese (Capacitors) Ltd V A H Hunt Ltd where the defendant, manufacturers of electronic components, stored on their land metal foil in such a way as to cause an escape of it on an isolated occasion resulting in a flash-over at a nearby electricity sub-station, Lawton J. refused to regard the act of storage of metal foil as a non-natural use of land. The defendants were held liable in nuisance for foreseeable harm through power loss to plaintiff's factory in vicinity. "The manufacturing of electrical and electronic components in the year 1964... can not be adjudged to be a special use nor can the bringing and storing on the premises of metal foil be a special use in itself. The metal foil was there for use in the manufacture of goods of a common type which at all material times were needed for the general benefit of the community."

Moreover as a result of the defences of act of God, act of third party and statutory authority, the courts must investigate not only the reasonableness of the accumulation but also the defendant's responsibility for its actual escape. The nature and quality of the defendant's conduct are therefore factors of great importance, and although the decisional process is different from that in negligence, the result is almost always the same. We have virtually reached the position where a defendant will not be considered

liable when he would not be liable according to the ordinary principle of negligence". Thus in Turner Vs Big Lake Oil Co, where salt water that had been pumped to the surface and stored in man-made ponds in the course of producing oil had somehow escaped from those ponds and eventually polluted natural waterholes some six miles away that were used by livestock, the court held that, in the absence of proof of negligence, there could be no liability. Thus "the usefulness of the rule has been reduced by the unwillingness of the court to apply it in circumstances where the defendant could not be said to have been at fault."

In Cambridge Water Company (CWC) Vs The Eastern Counties Leather (ECL) Plc, the appellant, ECL a tannery company for many years used a solvent known as PCE as part of its

industrial process. Quantities of this solvent escaped from containers and eventually seeped into the ground beneath ECL's works. The solvent eventually percolated to the water supply in adjoining land. In 1976 the respondents (CWC), a water company, purchased a borehole at some distance from the land owned by ECL. Before doing so, CWC carried out tests on the water it could obtain from this borehole and these indicated that the water was wholesome and suitable for public consumption. The company, therefore, purchased the borehole in order to carry out its responsibility of supplying water for public consumption. From 1970s on, concerns were expressed as to the presence of certain chemicals in drinking water. An EC Directive, dealing with quality of water intended for human consumption, was produced in 1980. It proposed

new standards as to the concentrations in drinking water of such solvents as PCE. The Directive was implemented in the United Kingdom by the promulgation of new domestic standards dealing with the concentrations of these chemicals in drinking water. CWC decided to carry out tests to its water supplies to see whether they complied with the new standards. Analysis of samples of water taken from the borehole purchased in 1976 revealed excessive concentrations of PCE. Following a major geographical survey, CWC eventually traced the source of this contamination to ECL. CWC decided to take borehole out of commission and it developed a new source of supply. CWC then sued ECL, seeking compensation for its losses relying on negligence, nuisance and the rule in Rylands Vs Fletcher.

At trial, Ian Kennedy J.

found that the spillage of the contaminant and its seepage into the ground water supply was cause of the contamination to the borehole. However, he held that a reasonable supervisor employed by the ECL at the time would not have foreseen this result; nor was it foreseeable that the detectable quantities of PCE would have spread and have led to any environmental damage or hazard. The judge held that ECL has not been negligent, that there was no liability in nuisance and he also dismissed the claim based on Rylands Vs Fletcher. It is well known that the courts have developed an important qualification to the scope of liability under the rule in Rylands Vs Fletcher by stating that a plaintiff has to show that the defendant's use of land was a non-natural use. Ian Kennedy J. held that the storage of PCE and other solvents was a natural use of land, being part of ECL's manufacturing process. He concluded that the company's activities served the general benefit of the community by providing employment.

To be continued

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My Thoughts
Crime and Punishment

by Justice Mohammad Gholam Rabbani

A person is liable to be sentenced if he commits an intentional act or omission in violation of criminal law without defence or justification. This juridical definition is now found to be inadequate and unsuitable. E H Johnson in his book 'Crime, Correction and Society' has given a social definition of the crime. According to him crime must be "an act which the group (social) regards as sufficiently menacing to its fundamental interests, to justify formal reaction to restrain the violator." R Garofalo, an Italian jurist, rejects the juridical conception of crime and formulates the theory of "natural crime". He means those acts which offend the basic moral sentiments of pity (revulsion against the voluntary infliction of suffering on others) and probity (respect for property rights of others).

To begin I read the news published in the daily news paper as hereunder:

"Mother with four daughters commits 'suicide', Brahmanbaria. Jan 7. A young woman and her four minor daughters were crushed under the wheels of a local train near Mukundapur Station here Monday morning."

"Railway police recovered the bodies of Suraiya Begum, 30 and her daughters — Beauty Akhter, 10, Fauzia Akhter, 9, Jhuma Akhter, 5 and Taniya Akhter, 3 — from rail track near Maheshpur, some 15 kilometres from Brahmanbaria town, Monday night."

The Officer-in-Charge of Akhaura Thana said, the mother, along with her daughters are sitting on the railway track apparently to commit suicide following a family feud. The Bhairab-bound train was coming from Balla."

"Police quoting family sources said, Suraiya's husband and in-laws were very angry as they had no boy and her husband decided to marry again."

In a criminal appeal against acquittal sitting with justice Kazi A T Manowaruddin I had to decide a similar case. The judgment passed on 4.3.96 has been reported in 16 BLD (1996) 526 and also in other law reports. In that case trial court acquitted the husband from the charge murdering his wife on the finding that she committed suicide. Relevant portions of the judgement are as hereunder:

It is in the evidence that the marriage ran into rough weather from the very beginning for two reasons. One being the husband's oppressive pressure for resigning from the police service. Other being the in-laws' caustic remarks about her relations. Her mother met with an unnatural death. She was burnt to death. It was suggested to the informant PW1 that she committed suicide. PW1, however, denied the suggestion. Admittedly the younger brother was suffering from mental depression since the date of this appearance in the examination 3/4 years ago. Admittedly elder sister (PW7) deserted her husband after 14 years of marriage and married an actor younger than herself. All these might be the subject of caustic remarks. It is also in the evidence that Monowara was not allowed to move freely, was not given any pocket-money and was mentally

tortured." "We, therefore, hold that the husband and the in-laws continuously subjected Monowara to cruelty to such an extent that she ultimately felt miserable and helpless. The incident on 13.5.84 added last straw on the camel's back so that she committed suicide...."

"Unfortunately there is no provision in our laws to punish such person or persons whose cruel behaviour drags a married woman to commit suicide. Section 306 of the Penal Code provides punishment to the person only in the case where a suicide is abetted and intended."

"Indian Parliament by enacting the Criminal Law (Second Amendment) Act of 1983 effective from 25.12.83 provides punishment in such cases by inserting section 113A in the Indian Evidence Act and section 498A in the Indian Penal Code. We hope that our Parliament will enact similar laws. In our society women are generally subjected to whims and caprices of men specially in the cases between husbands and wives."

"Section 113A of the Indian Evidence Act runs as follows:

"113A presumption as the abatement of suicide by a married woman. When the suicide by a woman had been abetted by her husband or any relative of her husband and it is shown that she had committed suicide within a period of seven years from the date of her marriage and that her husband or such relative of her husband had subjected her to cruelty, the court may presume, having regard to all the other circumstances of the case, that such suicide had been abetted by her husband or by such relative of her husband."

"Explanation — for the purposes of this section, 'cruelty' shall have the same meaning as in section 498A of the Indian Penal Code."

"Section 498A of the Indian Penal Code runs as follows:

"498A. Husband or relative of husband of a woman subjecting her to cruelty. Whoever, being the husband or the relative of the husband of a woman subjects such woman to cruelty shall be punished with imprisonment for a term which may extend to three years and shall also be liable to fine."

"Explanation — for the purpose of this section 'cruelty' means—

(a) any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman;

(b) harassment of the woman where such harassment is with a view to coercing her or any person related to her to meet any unlawful demand for any property or valuable security or is on account of failure by her or any person related to her to meet such demand."

We then pass order to send a copy of the judgement to the Secretary, Ministry of Law, Justice and Parliamentary Affairs, for considering our suggestion as given in the judgement.

It was March, 1996, when we sent the copy of our judgement, but we hope that our suggestion still merits consideration.

Towards a Broadcasting Policy

by MS Ahmed and Shuva Mandal

Continued from 2nd March

CONSTITUTIONALLY the position of media freedom is varying. In Britain, there is no specific written constitution or law setting out fundamental freedoms, nor are there any specific press laws. Even so, freedom of press is widely respected in Britain. Media freedoms and restrictions are based on conventions as well as general legislation relating to contempt of court, official secrets, protection of sources and libel. In Italy, it is the duty of public broadcasting company to prove comprehensive and objective news and information which was safeguarded by Parliamentary Committee rather than by recognition of individual viewer rights. Broadcasters' programming freedom when exercised within constraints imposed by the regulatory authority has priority over rights claimed by the viewers to see a particular programme. Article 5 of the German Basic Law is one of its kind guaranteeing reporting by means of broadcast in specific free from censorship. It is viewed that broadcasting freedom has a constitutional value requiring positive legislative provision. The scope of free speech in broadcasting has been expounded by the European Court of Human Rights in a case (Informations Verein v Austria (1994) 17 EHRR 93) whereby clause (1) of Article 10 of the European Convention of Human Rights has been said to include imparting information and ideas without interference by public authority regardless of frontier.

Most Asian countries like Malaysia, Singapore and Indonesia though provide for freedom of speech and press have laid down many restrictions on such freedom. For instance in Singapore on account of 'national security' and religious harmony, many restrictions are placed on freedom of media. In Indonesia, the state philosophy of 'Panchsila' in essence on affirmation of national unity on the basis of a secular society, which permeates every aspect of life in Indonesia, places many restrictions on freedom of press. In India, broadcasting freedom is implicit within freedom of

Speech and Expression through judicial pronouncements (CAB v Secretary Ministry Of Information and Broadcasting AIR 1995 s C 1236), however, subject to reasonable restrictions as in Article 19(2) of the Indian Constitution.

A New Order

The media systems in different countries evolve and develop in response to their specific socio-economic and cultural needs. However, with market economics dominating the world of broadcasting, third world countries will witness like Britain and USA a high concentration of media ownership.

Towards this what is foremost required is an independent Television and Radio Regulatory Authority. It is imperative that such an organisation be autonomous in its functioning. In Britain there exists the Office of Telecommunications (OFTEL). Which is a non ministerial government department, headed by a Director-General who is free from ministerial control but accountable to the Parliament. Such an authority is admirable as it ensures independence in decision making.

It is evident that public broadcasting in the form of state run television and radio stations cannot cater to the demands of innumerable viewers, who are becoming more demanding and exacting concerning their programme choices. However, with technical developments, in particular the formation of cable networks and with the advent of satellite technology, private broadcasters are capable of filling in the void created by poor public broadcasting. Most if not all of these private broadcasters have extra-territorial operation bases and as such are not amenable to domestic laws and regulations. In order to bring these private broadcasters within the ambit of domestic laws, it is necessary that their right to establish private television stations be recognized, however subject to statutory provisions. The right to establish private television stations is not an unregulated right and in most developed countries is governed by law. In Italy, public

monopoly of broadcasting is justified at least at national level till adequate anti-trust laws are enacted to prevent the development of private media oligopolies.

Private and Public functioning under the supervision of independent regulatory authority must be viewed as complementers and not as competitors. For such an authority licensing will assume an important function. One of the major considerations should be the 'qualifying revenue' necessary for granting a licence. The regulatory authority must also see to whether the prospective broadcasters will be able to sustain their service for the period of licence. It is imperative that the licence be conditional on certain fairness rules and be limited in time as in the Lebanese Audiovisual Information Law 1994. Another way of regulating private broadcaster would be to withdraw or deny renewal of licences for violations of regulations. Last but not the least, effective anti-trust and cross-media ownership regulations must be in place before permitting private broadcasting. A case in example would be the FCC, which is responsible for regulating all inter-state and foreign communication by means of radio, television, wire, cable and satellite. The FCC rules bar common ownership of a daily newspaper and radio or television station in the same market. At the same time common ownership of a television station and a cable system in the same market is prohibited.

The virtues of the electronic media should not become its enemies. In the question of broadcasting freedom there is an underlying emphasis on legislative policies to regulate it. The argument about scarcity of resources is inadequate with the advent of Ultra High Frequency (UHF) television broadcasting. Technological advances are enough grounds to expand the scope of rights under the Constitution. Definite laws need to be framed towards this purpose, otherwise shortcomings of present laws shall become anachronisms of the future.

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How long does it take to get access to a cell phone?

One requires only 20 minutes to get connected to the City Cell network.

What are the documents one needs to furnish while buying a cell phone?

Documents to be furnished in case of:

a) Individual For Personal Id

- A copy of the voter's identification card,
- or, copy of the first three pages of the Passport,
- or, copy of the Driver's License.

b) Expatriates

Documents required for Individual plus letter from the respective embassy for proof of id.

c) Corporate /Organization

- copy of the Trade License Agreement of the company,
- copy of the previous month's telephone bill.

Can one rent a cell phone?

Yes, one can rent a cell phone, provided one pays the security deposit and the installation fee. The amount of the security deposit is dependent on the price of the phone. One also needs to furnish documents for Personal Id and Address Id.

All you wanted to know about a cellular phone.

What all do you receive for the amount you pay in addition to the handset?

For the amount you pay, you receive a handset + 2 rechargeable batteries + adaptor cum charger + warranty (valid for a period of 6 months from the date of purchase.)

PACIFIC BANGLADESH TELECOM LIMITED, 4/FLR., PACIFIC CENTER, 14, MOHAKHALI C.A., TEL :882186, 882187, 885281, 885282.