Strict Liability

Torts
Eric E. Johnson
ericejohnson.com

Strict Liability

STRICT LIABILITY

STRICT LIABILITY

Basic ideas:

- It doesn't matter how careful the defendant is.
- If you choose to engage in the activity, you're on the hook if someone or something gets hurt.
- But remember that the negligence defenses apply. So if the plaintiff really brought it on themselves, the defendant can avoid liability.
- Doctrinal structure: It's just like negligence, but duty and breach of duty are swapped for the existence of an absolute duty of safety.

Negligence

- Duty of care owed to plaintiff
- Breach of duty
- Actual causation
- Proximate causation
- Injury (Damages)

STRICT LIABILITY

- Duty of care owed to plaintiff
- Breach of duty
- Actual causation
- Proximate causation
- Injury (Damages)

Absolute duty of safety

STRICT LIABILITY

Absolute duty of safety

- Keeping of wild animals
- Trespassing livestock
- Domesticated animals with known, dangerous propensities
- Ultrahazardous (a/k/a abnormally dangerous) activities
- Defective products

STRICT LIABILITY

Absolute duty of safety

Keeping of wild animals

- "Wild" depends on the species, not the individual animal.
- "Wild" means not domesticated.
- Domestication takes place over generations, not one lifetime.
- Wild animal strict liability even applies to "mild" wild animals; e.g., baby deer.

Some generalities:

- Livestock are animals raised as part of a farming or ranching operation, including animals raised for meat, milk, eggs, wool.
- Dogs and cats aren't livestock.
- Archetypally this is about escaped livestock eating a neighboring farmer's crops.

Note there are two variations:

- fence-in/fence-out

- Fence in
  - This is the default rule.
  - Typical for "farm country."
  - The livestock keeper has a duty to fence in livestock.
  - Livestock keeper is strictly liable for livestock that escapes.
- Fence out
  - Typical for "ranch country."
  - The farmer of crops has a duty to fence out roaming livestock.
  - The livestock keeper is strictly liable for livestock that penetrates the fence.
- Fence-in/fence-out rules may be set by ordinance at the county level or portion of a county.

STRICT LIABILITY

Absolute duty of safety

Domestic animals with known vicious propensities

- Largely concerns dog bite injuries (but applies to other animals as well).
- If a domestic animal is known to the owner to be vicious, then the owner is strictly liable for injuries it causes.
- Having bit someone previously would be sufficient for "known vicious," but a bite is not necessary.
- This is not the only way dog bites create liability! There's also regular negligence, negligence per se, and often statutory causes of action.

Check-Your-Understanding Questions About Strict Liability

from the casebook

A. Suppose an exotic rancher raises non-domesticated ostriches for meat, eggs, feathers, and leather. Some ostriches leave the ranch and enter a patio café where they seriously injure a patron. Can the injured patron recover in strict liability? Why or why not?

Check-Your-Understanding Questions About Strict Liability

from the casebook

B. A plaintiff sues a zoo for injuries sustained because of an escaped boa constrictor. The snake did not actually touch the plaintiff. Instead, the snake killed the plaintiff's friend's pet cat. But because of the cat's death, the plaintiff's friend was not available to help the plaintiff repair a stair railing, as had been the plan. The plaintiff was injured when the railing collapsed. Can the plaintiff recover against the zoo in strict liability?

- "Ultrahazardous activities" and "abnormally dangerous activities" are two names for the same thing.
- Whether an activity qualifies is generally a question of law (meaning, for a judge to decide).
- Not about magnitude of harm: Something that is dangerous to just one person can qualify.
- Remember: This is not just for personal injury, it's for property damage too.

STRICT LIABILITY
Absolute duty of safety
Ultrahazardous activities

Some key examples held to be ultrahazardous:

- blasting
- oil drilling
- fireworks (making, using, storing, transporting)
- explosives (making, using, storing, transporting)
- highly toxic chemicals (making, using, storing, transporting)
- crop dusting
- fumigation
- things involving radioactivity or nuclear reactions

STRICT LIABILITY
Absolute duty of safety
Ultrahazardous activities

- No hard and fast rule about what activities qualify.
- Some oft-repeated, key ideas:
  - Danger cannot be eliminated even with utmost care
  - Uncommonness of activity
- "Ultrahazardous activities and substances all fall into the class where small triggers, physical or chemical, can release far larger forces." – Richard A. Epstein

STRICT LIABILITY
Absolute duty of safety
Ultrahazardous activities

Restatement (Second) of Torts, § 520 factors, *quote*:

a) existence of a high degree of risk of some harm to the person, land, or chattels of others;
b) likelihood that the harm that results from it will be great;
c) inability to eliminate the risk by the exercise of reasonable care;
d) extent to which the activity is not a matter of common usage;
e) inappropriateness of the activity to the place where it is carried on; and
f) extent to which its value to the community is outweighed by its dangerous attributes.

STRICT LIABILITY
Absolute duty of safety
Ultrahazardous activities

Restatement (Second) of Torts, § 520 factors, *quote*:

a) existence of a high degree of risk of some harm to the person, land, or chattels of others;
b) likelihood that the harm that results from it will be great;
c) inability to eli nable care;
d) extent to whic usage;
e) inappropriate is carried on; an
f) extent to which ghed by its dangerous attributes.

One view of the § 520 factors:
These are useful as a list of things to talk about in working through the policy choice, but they seem manipulable and not very determinative …

Query: crop dusting

Restatement (Second) of Torts, § 520 factors, *quote*:

a) existence of a high degree of risk of some harm to the person, land, or chattels of others;
b) likelihood that the harm that results from it will be great;
c) inability to eliminate the risk by the exercise of reasonable care;
d) extent to which the activity is not a matter of common usage;
e) inappropriateness of the activity to the place where it is carried on; and
f) extent to which its value to the community is outweighed by its dangerous attributes.

Query: letting your 16-year-old drive your car to the movie theater

Restatement (Second) of Torts, § 520 factors, *quote*:

a) existence of a high degree of risk of some harm to the person, land, or chattels of others;
b) likelihood that the harm that results from it will be great;
c) inability to eliminate the risk by the exercise of reasonable care;
d) extent to which the activity is not a matter of common usage;
e) inappropriateness of the activity to the place where it is carried on; and
f) extent to which its value to the community is outweighed by its dangerous attributes.

STRICT LIABILITY

Important context note

Simultaneous availability of multiple theories of recovery

- As with all of tort law (and law generally), the availability or applicability of one cause of action does not preclude others!
  - But note: There is such a thing in law called "preemption," where a statute can preempt conflicting or encroaching common law, or where federal law can preempt encroaching/conflicting state law. But that's an exception to the general rule, and it doesn't apply here.
- So on the same set of facts, a plaintiff could for instance sue on theories of regular negligence, negligence per se, and strict liability for domestic animals with known vicious propensities — all in the same lawsuit.
- That's why *Bard v. Jahnke* is such strange case. It violates general principles of common law jurisprudence and is clearly erroneous under accepted principles.
- So don't take the majority in *Bard* as being representative of the law!
- But do take *Bard* as a warning that you never can know when a court will depart entirely from the law and do something incomprehensible.