



Strict Liability

Torts
Eric E. Johnson
ericejohnson.com



Konomark
Most rights sharable

**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

Absolute duty of safety

- Actual causation
- Proximate causation
- Injury (Damages)

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.

STRICT LIABILITY

Absolute duty of safety

Trespassing livestock

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

STRICT LIABILITY

Absolute duty of safety

Trespassing livestock

- 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.

STRICT LIABILITY

Absolute duty of safety

Ultrahazardous activities

- "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 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.

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

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.

So instead of or in addition to the § 520 factors, you can reason by analogy from the list of key examples of ultrahazards ...

STRICT LIABILITY

Absolute duty of safety

Ultrahazardous activities

Review ...

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