

Actions under the rule of *Rylands v Fletcher* annotated problem question

Grab-and-Buy supermarket owns land on which it has built a huge two-storey metal-framed customer car park. One day, after extremely stormy weather with strong winds and heavy rain, the top level of the car park buckles; some of the metal railing breaks free and falls onto the neighbouring petrol station, owned by Low-Price-Pumps. The impact damages the pumps and injures one of Low-Price-Pumps' customers. Furthermore, water that had collected on the upper level of the car park due to an inadequate drainage system pours on to Low-Price-Pumps, flooding the forecourt of the petrol station. The station has to close two days, causing £10,000 loss of profit.

Low-Price-Pumps spends £50,000 having the forecourt cleaned and making safe the pumps. Grab-and-Buy argues that damage to the pumps caused by high winds is something that Low-Price-Pumps could and should have insured against.

Advise the parties.

Does this suggest an alternative action in negligence?

If there is a possibility that liability can be established, can GAB use the stormy weather as a defence?

LPP's first claim is for property damage.

Do this—and any of the other harms—meet the foreseeability requirement from *Cambridge Water* [1994]?

Would the customer be able to sue for their personal injuries under *Rylands v Fletcher*? If not, is there any other route they could take? Negligence is usually the best chance for personal injury claims but is there any evidence of negligence on the part of GAB here? The claimant would need to establish duty, breach and causation—would there be a problem doing so? Alternatively, if LPP has to pay the customer compensation, would it be able to claim this from GAB in its *Rylands v Fletcher* claim?

LPP is the claimant here. The first question to ask is whether they have standing to take a claim (*Transco* confirmed that this is a requirement in *Rylands v Fletcher* claims) as it is in nuisance (following *Hunter*).

These are the losses LPP will be claiming (possibly in addition to a claim representing the cost of compensating their customer for personal injury).

Is this a relevant argument? See discussion of the role of insurance in *Transco*.

In the *Rylands v Fletcher* [1868] claim for the property damage suffered by LPP, LPP would need to establish liability using the four criteria, as modified by *Transco* [2003]: (1) The defendant brings on his land for his own purposes something likely to do mischief ... (2) ... if it escapes ... (*Read v Lyons* [1947]) (3) ... which represents a non-natural use of land (*Transco*, *Stannard v Gore* [2012]; *Northumbrian Water Ltd v McAlpine Ltd* [2014]) use of land ... (4) ... and which causes foreseeable damage of the relevant type. (See *Stannard v Gore* for a 'list' of what needs to be considered in each claim.) Note that since *Transco* the substance brought or accumulated on land must bring with it an 'exceptional' danger.