

## Strict Liability

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### Restatement (Third) on Torts: Liability for Physical Harm

#### § 20. Abnormally Dangerous Activities

- (a) An actor who carries on an abnormally dangerous activity is subject to strict liability for physical harm resulting from the activity.
  
- (b) An activity is abnormally dangerous if:
  - (1) the activity creates a foreseeable and highly significant risk of physical harm even when reasonable care is exercised by all actors; and
  
  - (2) the activity is not one of common usage.

#### Hypothetical 1

At the end of the planting season, farmer Fred needs to dispose of dry straw spread over much of his 50 acres. He therefore initiates a controlled burn fire, with the aim of using the fire to destroy the straw. For fires of this sort there are appropriate precautions, including placing various types of obstacles at the property's boundary line. However, even when all reasonable precautions are adopted, such fires escape the farmer's property approximately 10 percent of the time. Because of the size of such fires, when there is such an escape, the damage done to neighboring property is likely to be substantial. When Fred's fire is in progress, the wind unexpectedly picks up. The fire spreads to the property of Emily, Fred's immediate neighbor, causing harm.

## Hypothetical 2

The Malloy Company produces components for computers that are essential to the modern economy. Its manufacturing plant is located in a community almost all of which is residential. Its manufacturing process generates a toxic chemical as a byproduct. Malloy stores this chemical in storage bins in a way that complies with the requirements of reasonable care and applicable regulations. Even during normal and proper operations, it is often necessary to open the lids on these bins for periods of time. Wind conditions may then arise which can disperse the chemical to the property of neighbors. Over time, such dispersion is quite likely, but not certain. When and if it occurs, the toxic fumes can easily induce serious illness.

### § 21. Intrusion by Livestock or Other Animals

An owner or possessor of livestock or other animals, except for dogs and cats, that intrude upon the land of another is subject to strict liability for physical harm caused by the intrusion.

### § 22. Wild Animals

- (a) An owner or possessor of a wild animal is subject to strict liability for physical harm caused by the wild animal.
- (b) A wild animal is an animal that belongs to a category of animals that have not been generally domesticated and that are likely, unless restrained, to cause personal injury.

### § 23. Abnormally Dangerous Animals

An owner or possessor of an animal that the owner or possessor knows or has reason to know has dangerous tendencies abnormal for the animal's category is subject to strict liability for physical harm caused by the animal if the harm ensues from that dangerous tendency.

### § 25. Comparative Responsibility

If the  $\pi$  has been contributorily negligent in failing to take reasonable precautions, the  $\pi$ 's recovery in a strict-liability claim under §§ 20-23 for physical or emotional harm is reduced in accordance with the share of comparative responsibility assigned to the  $\pi$ .