

Session: Strict and Vicarious Liability

Topic: Strict Liability for Escape of Dangerous Substances

Recommended time: 1 Hour 45 Minutes

Score: 58 Marks

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Facts

It is no longer news that Canada throws away more than three million tons of plastic waste each year, and that only about 9% of this huge number is recycled with almost everything else ending up in landfills. It is also no longer news that the City of Edmonton ranks after Toronto as the cities having the highest single-use plastic products. In order to solve this huge societal menace, Edmonton Metropolitan Region Board (the Board) empowered the 21 municipalities in the region to designate certain areas specifically for any activity aimed at tackling this problem.

Alpha Century Multipurpose Waste Inc. (Alpha Century), a recycling company, submitted a proposal to expand its operations in Alberta so it could take on more than 50% of these waste products for recycling purposes and make them reusable. This was promptly approved and a town planning regulation was made by the municipality designating the area for that purpose. Alpha Century's piece of land is in the Village of Boyle, an agricultural village located north of Edmonton, and was acquired specifically for the collection of these plastics. Within a couple of months, Alpha Century had amassed quite a substantial number of plastic wastes, so huge that it was as high as a six-story building.

Alpha Century shares boundary with a number of agricultural settlements and companies. One of these is Maverick Farming Services Ltd (Maverick Ltd, Maverick) whose major activity is growing canola seeds for supply to oil manufacturing companies. Maverick's sole source of water supply is the Cheply Stream which runs through Alpha Century's land before getting to Maverick's. Business was booming for Maverick Ltd and it anticipated that it should be able to double its income this year.

Alex is one of the individuals who collects and supplies plastic wastes to Alpha Century. He is not an employee of the company but is paid on the basis of whatever he supplies. Some weeks ago, Alex was making a delivery of about 20 tons of plastics to Alpha Century, and while maneuvering his truck, he hit the concrete wall holding the huge pile of plastics. The wall collapsed and several tons of plastic wastes swarmed Alpha Century's land, entirely covering every available space. A substantial number of the plastic wastes swept into Cheply Stream, completely blocking it from flowing. Aided by strong southeasterly winds, a large number of the plastics also swept into Maverick's land, destroying all the canola crops that were still in nursery. Deprived of water and suffocated by the plastics, all the canola plants rotted out within a couple of days. Maverick Ltd estimates that the company will suffer financial losses of up to \$500,000 from this event.

Maverick Ltd is contemplating an action in strict liability under the rule in *Rylands v. Fletcher*, among others, against Alpha Century. Advise the parties.

Notes:

As the facts stipulate, this is a sample question on strict liability; your stress is lesser here since it is clearly stated as a strict liability question.

*In answering any question on strict liability under the rule in *Rylands v. Fletcher*, your second step after identifying the legal issue is to state the four requirements that must be met before the rule will apply. This is of utmost importance. You must state them and apply them one after the other to the facts of your exam question. You must be able to reach a conclusion on whether each of these four requirements has been met before you finally conclude on whether the rule will apply. You will see this approach in our sample answer below.*

It is also important to be alert with this type of question: it instructs you to advise the parties. Firstly, the parties to be advised are Alpha Century and Maverick Ltd, because they are the ones contemplating legal actions. Don't stray into bringing in the Board or Alex; it will be a waste of time because there are no facts in the question to support strict liability against them.

Secondly, since you are to advise the parties, (which we have identified as Alpha Century and Maverick Ltd), it means you must analyze whether Alpha Century has a sustainable claim for strict liability against Maverick, and also whether Maverick has a sustainable defence against the tort of strict liability. This is very important and you must address both sides. That's what the question requires of you.