

460. Strict Liability for Ultrahazardous Activities—Essential Factual Elements

[Name of plaintiff] claims that *[name of defendant]* was engaged in an ultrahazardous activity that caused *[him/her/it]* to be harmed and that *[name of defendant]* is responsible for that harm.

People who engage in ultrahazardous activities are responsible for the harm these activities cause others, regardless of how carefully they carry out these activities. *[Insert ultrahazardous activity]* is an ultrahazardous activity.

To establish *[his/her/its]* claim, *[name of plaintiff]* must prove all of the following:

1. That *[name of defendant]* was engaged in *[insert ultrahazardous activity]*;
2. That *[name of plaintiff]* was harmed;
3. That *[name of plaintiff]*'s harm was the kind of harm that would be anticipated as a result of the risk created by *[insert ultrahazardous activity]*; and
4. That *[name of defendant]*'s *[insert ultrahazardous activity]* was a substantial factor in causing *[name of plaintiff]*'s harm.

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Sources and Authority

- “The doctrine of ultrahazardous activity provides that one who undertakes an ultrahazardous activity is liable to every person who is injured as a proximate result of that activity, regardless of the amount of care he uses.” (*Pierce v. Pacific Gas & Electric Co.* (1985) 166 Cal.App.3d 68, 85 [212 Cal.Rptr. 283], internal citations omitted.)
- Whether an activity is ultrahazardous is a question of law to be determined by the court. (*Luthringer v. Moore* (1948) 31 Cal.2d 489, 496 [190 P.2d 1].)
- Restatement of Torts Second, section 519, provides:

- (1) One who carries on an abnormally dangerous activity is subject to liability for harm to the person, land or chattels of another resulting from the activity, although he has exercised the utmost care to prevent the harm.
 - (2) This strict liability is limited to the kind of harm, the possibility of which makes the activity abnormally dangerous.
- Restatement of Torts Second, section 520, provides:

In determining whether an activity is abnormally dangerous, the following factors are to be considered:

 - (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.
 - Section 519 formerly provided, in part, that “one who carries on an ultrahazardous activity is liable to another whose person, land or chattels the actor should recognize is likely to be harmed by the unpreventable miscarriage of the activity for harm resulting thereto from that which makes the activity ultrahazardous, although the utmost care is exercised to prevent the harm.” This section was followed by the court in *Luthringer, supra*, and by other courts in subsequent cases. (See *Garcia v. Estate of Norton* (1986) 183 Cal.App.3d 413, 418 [228 Cal.Rptr. 108].) This statement regarding foreseeability is evidently still good law in California, even though the wording of section 519 does not presently contain the limitation.
 - Strict liability in this context has been confined to “consequences which lie within the extraordinary risk posed by the abnormally dangerous activity and is limited to the ‘class of persons who are threatened by the abnormal danger, and the kind of damage they may be expected to

incur.’ ” (*Goodwin v. Reilley* (1985) 176 Cal.App.3d 86, 92 [221 Cal.Rptr. 374], citing Prosser & Keeton, *The Law of Torts* (5th ed. 1984) § 75, p. 562.)

- “The important factor is that certain activities under certain conditions may be so hazardous to the public generally, and of such relative infrequent occurrence, that it may well call for strict liability as the best public policy.” (*Luthringer, supra*, 31 Cal.2d at p. 500.)
- “It is axiomatic that an essential element of a plaintiff’s cause of action, whether based on negligence or strict liability, is the existence of a causal connection between defendant’s act and the injury which plaintiff suffered.” (*Smith v. Lockheed Propulsion Co.* (1967) 247 Cal.App.2d 774, 780 [56 Cal.Rptr. 128], internal citations omitted.)
- Defendant contended that the strict liability doctrine “cannot be applied unless the defendant is aware of the abnormally dangerous condition or activity.” This is unsound: One who carried on such an “activity is liable for injuries to a person whom the actor reasonably should recognize as likely to be harmed . . . , even though ‘the utmost care is exercised to prevent the harm.’ ” (*Garcia, supra*, 183 Cal.App.3d at p. 420, internal citation omitted.)

Secondary Sources

6 Witkin, *Summary of California Law* (10th ed. 2005) Torts, §§ 1414–1427

1 Levy et al., *California Torts*, Ch. 7, *Strict Liability for Hazardous Activities*, §§ 7.01–7.06

1 *California Environmental Law & Land Use Practice*, Ch. 1, *Nuisance, Trespass, and Strict Liability for Ultrahazardous Activities* (Matthew Bender)

1A *California Trial Guide*, Unit 11, *Opening Statement*, § 11.55 (Matthew Bender)

33 *California Forms of Pleading and Practice*, Ch. 380, *Negligence* (Matthew Bender)

23 *California Points and Authorities*, Ch. 234, *Ultrahazardous Activities* (Matthew Bender)

1 *California Civil Practice: Torts* (Thomson West) §§ 2:4–2:10

461. Strict Liability for Injury Caused by Wild Animal—Essential Factual Elements

[Name of plaintiff] claims that *[name of defendant]*'s *[insert type of animal]* harmed **[him/her]** and that *[name of defendant]* is responsible for that harm.

People who own wild animals are responsible for the harm that these animals cause to others, no matter how carefully they guard or restrain their animals.

To establish **[his/her]** claim, *[name of plaintiff]* must prove all of the following:

1. That *[name of defendant]* owned a *[insert type of animal]*;
 2. That *[name of plaintiff]* was harmed; and
 3. That *[name of defendant]*'s *[insert type of animal]* was a substantial factor in causing *[name of plaintiff]*'s harm.
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Sources and Authority

- Lions, tigers, bears, elephants, wolves, monkeys, and sharks have been characterized as wild animals. (*Rosenbloom v. Hanour Corp.* (1998) 66 Cal.App.4th 1477, 1479, fn. 1 [78 Cal.Rptr.2d 686].)
- An owner of a wild animal is strictly liable to persons who are injured by the animal: “In such instances the owner is an insurer against the acts of the animal, to one who is injured without fault, and the question of the owner’s negligence is not in the case.” (*Opelt v. Al G. Barnes Co.* (1919) 41 Cal.App. 776, 779 [183 P. 241].)
- “[I]f the animal which inflicted the injury is vicious and dangerous, known to the defendant to be such, an allegation of negligence on the part of defendant is unnecessary and the averment, if made, may be treated as surplusage.” (*Baugh v. Beatty* (1949) 91 Cal.App.2d 786, 791 [205 P.2d 671].)
- A wild animal, of a type to be known to have a vicious nature, is presumed to be vicious. (*Baugh, supra*, 91 Cal.App.2d at p. 791.)

Accordingly, an instruction on the owner's knowledge of its ferocity is unnecessary. (*Id.* at pp. 791–792.)

- “It is commonly said that scienter, or knowledge of such propensities, must be proved in the case of domestic animals, but is presumed in the case of wild animals.” (6 Witkin, Summary of California Law (10th ed. 2005) Torts, § 1403.)
- “The owner of a naturally dangerous animal may be excused from the usual duty of care: ‘In cases involving “primary assumption of risk”—where, by virtue of the nature of the activity and the parties’ relationship to the activity, the defendant owes no legal duty to protect the plaintiff from the particular risk of harm that caused the injury—the doctrine . . . operates as a complete bar to the plaintiff’s recovery.’ ” (*Rosenbloom, supra*, 66 Cal.App.4th at p. 1479, internal citation omitted.)

Secondary Sources

6 Witkin, Summary of California Law (10th ed. 2005) Torts, § 1403

California Tort Guide (Cont.Ed.Bar 3d ed.) §§ 3.3–3.6

1 Levy et al., California Torts, Ch. 6, *Strict Liability for Injuries Caused by Animals*, §§ 6.01–6.10

3 California Forms of Pleading and Practice, Ch. 23, *Animals: Civil Liability* (Matthew Bender)

1 California Civil Practice: Torts (Thomson West) §§ 2:20–2:21