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REMEDIES IN TORT

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This five-volume national work provides thorough coverage of the law relating to recovery in tort actions in Canada. The first three volumes focus on specific torts while the fourth volume covers substantive and procedural issues common to all tort litigation. The first volume also includes the Master Table of Contents. The final volume includes a Table of Cases, and a comprehensive index.

What's New in This Release

This release features updates to Chapter 24. Strict Liability.

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Highlights

CHAPTER 24. STRICT LIABILITY — STATUTORY AUTHORITY —

Where the legislature has sanctioned the use of particular means, the parties will not be liable for any injury unless they have contributed to it by their own negligence. However, the courts have chosen to construe authorizing legislation strictly. The requirement of negligence is generally construed to mean the absence of reasonable care: this involves regard to the gravity of the harm, the likelihood of its occurrence, and the utility of the defendant's conduct. However, in the context of this defence, the courts have tended to restrict its meaning by holding that "if the damages could be prevented it is, within this rule, negligence not to make such reasonable exercise of powers." Similarly, it has been suggested that "it is negligence to carry out work in a manner which results in damage unless it can be shown that that, and only that, was the way in which the duty could be performed." Thus, defendants must satisfy the court that the activity was performed in the only possible way, otherwise they will be found negligent and the defence of statutory authority will not be available to them. That said, it should be noted that there are some statutes that expressly exempt government from liability under the *Rylands* rule in particular situations.

CHAPTER 24. STRICT LIABILITY — DEFENCES — Many of the common law defences to cattle trespass are the same as those under the rule in Rylands v. Fletcher. As such, consent is a complete defence and a claim may be met with the defence that the damage was due to the plaintiff's own default. Also, it is likely a defence that the escape or trespass resulted from the act of a third party. In many jurisdictions, of course, liability and available defences are now governed by legislation; there is a tendency for each province to enact its own rather idiosyncratic provisions. Along with trespass and illegality, the plaintiff's conduct in exposing himself to liability is a defence to a scienter action. Thus, a person who shouts at and frightens a horse or teases an animal has been held liable for their own injury. Similarly, an employee having knowledge of a bull's dangerous disposition who voluntarily agrees to handle it has been deemed to have voluntarily assumed the risk. Also, a mother who knows the defendant's dog has previously bitten a child, but still places her child on the floor while visiting the defendant is partially liable for her child's injury. Statutory defences to a scienter action are available to the Crown in some provinces.