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# NUISANCE VALUE – *RYLANDS v. FLETCHER* ESCAPES OBLIVION IN SINGAPORE

*Tesa Tape Asia Pacific Pte Ltd. v. Wing Seng Logistics Pte Ltd.*[1]

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## I. INTRODUCTION

The rule in *Rylands v. Fletcher* has never really fulfilled its potential. Famously formulated in the Court of Exchequer Chamber by Blackburn J.,[2] it imposes liability without fault on owners or legal occupiers of land who make a special use of that land which results in the escape of a damage-causing agent. Although initially hailed by proponents as a fair and far-sighted basis for compensation, the rule has always had its detractors, and it has never been wholeheartedly embraced by the judiciary, many of whom were from the first uncomfortable with the notion of strict liability. Throughout its history, its influence has been restricted by a number of exceptions and defences, and its role diminished as the 20th century progressed, due largely to the increasing significance of the tort of negligence.

Then, in the last decade of the century, two major decisions, one by the House of Lords in *Cambridge Water Co. Ltd. v. Eastern Counties Leather*,[3] the other by the High Court of Australia in *Burnie Port Authority v. General Jones Pty. Ltd*,[4] threatened the rule's very existence. In *Cambridge Water*, the House of Lords held that *Rylands v. Fletcher* was merely an extension of private nuisance, while in *Burnie Port Authority*, decided just a few months later, the High Court of Australia went even further, holding that the rule should cease to exist, and that actions which would previously have been brought under its aegis should henceforth be subsumed under the umbrella of negligence. The approach of the High Court of Australia, in particular, gave rise to inevitable speculation that *Rylands v. Fletcher* might soon draw its last breath elsewhere. And while on the one hand the decision of the House of

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1 [2006] SGHC 73; [2006] 3 S.L.R. 116.

2 *Fletcher v. Rylands* (1866), L.R. 1 Ex. 265 at 279. Blackburn J. formulated the rule thus: "We think that the true rule of law is, that the person who for his own purposes brings on his land and collects and keeps there anything likely to do mischief if it escapes, must keep it in at his peril, and, if he does not do so, is *prima facie* answerable for all the damage which is a natural consequence of its escape."

3 [1994] 2 A.C. 264 (H.L.) [*Cambridge Water*].

4 (1994), 179 C.L.R. 520 (H.C.A.) [*Burnie Port Authority*].

Lords in *Transco plc. v. Stockport Metropolitan Borough Council*[5] arguably quieted such speculation (in the U.K., at least) by rejecting the Australian approach and treating the rule as a sub-species of nuisance, on the other hand their Lordships' very narrow definition in that case of what would constitute non-natural use of land for the purposes of the rule raised questions about the circumstances in which a *Rylands v. Fletcher* action would in future arise.[6]

For some years after the decisions in *Cambridge Water* and *Burnie Port Authority*, the Singapore courts continued (without discussing the impact of either case) to treat *Rylands v. Fletcher* as a discrete tort.[7] Recently, however, Choo Han Teck J. in the High Court revisited its status. In deciding *Tesa Tape*—a case founded on actions in negligence, nuisance and *Rylands v. Fletcher*—his Honour examined the rule, its interaction with nuisance and negligence, and its treatment during the last decade or so by the English and Australian courts. Rejecting the solution propounded by the High Court of Australia, Choo J. instead favoured the English approach, under which he endorsed the continued application of *Rylands v. Fletcher* in Singapore, although as an aspect of nuisance rather than as a free-standing tort.

## II. The Decision In *Tesa Tape*

The claimants and the defendants in *Tesa Tape* both occupied premises at Gul Circle, an industrial area owned by Jurong Town Corporation. The claimants manufactured adhesive tape. The defendants, whose premises adjoined those of the claimants, operated a container storage depot where they repaired and stored 40-foot oblong-shaped containers. The containers were stacked one on top of another, in tiers up to seven containers high. These were placed width-to-width in rows of up to ten tiers, with several rows stacked side-by-side, creating what Choo J. described as a "huge mono-block of containers."[8] The two highest rows were stacked nearest to the metal chain-link perimeter fence which separated the defendants' property from the claimants' property, with three slightly smaller rows stacked behind them. The containers were placed parallel to the fence (*i.e.* with their long sides against it, rather than perpendicular to it), the closest containers being about 1.2 metres away. One night in October 2002, during a heavy thunderstorm, several containers from the mono-block fell across the fence, damaging

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5 [2004] 2 A.C. 1 (H.L.); [2003] UKHL 61 [*Transco*].

6 Their Lordships effectively equated non-natural use of land with a special use which created an exceptionally high risk of danger (*ibid.* at paras. 10 and 108). Lord Hoffmann even suggested (at para. 49) that as long as a risk could be insured against by a potential claimant, that risk should not be regarded as being attributable to a non-natural use of land, although Lord Hobhouse (at para. 60) felt that the burden of insuring against the risk should remain with the person who created it.

7 See *e.g. Epolar System Enterprise Pte. Ltd. and others v. Lee Hock Chuan and others*, [2002] 4 S.L.R. 769 (H.C.), *Sim Chiang Lee and another v. Lee Hock Chuan and others*, [2003] 1 S.L.R. 122 (H.C.), and *The Body Shop (Singapore) Pte. Ltd. v. Winmax Investment Pte. Ltd. and another*, [2004] SGDC 73. (In the Malaysian High Court, preference has been expressed for the Australian approach. Foong J. in *Steven Phoa Cheng Loon & Ors. v. Highland Properties Sdn. Bhd. & Ors.*, [2000] 4 M.L.J. 200 held (at 218) that the introduction of foreseeability into the rule in *Cambridge Water* had deprived the rule of its attractiveness as an independent cause of action, and that it might as well be absorbed into the tort of negligence. However, the Federal Court has not yet had occasion to deliberate on this issue.)

8 *Supra* note 1 at para. 2.

the claimants' diesel storage tanks. The claimants sued the defendants in negligence, nuisance and under the rule in *Rylands v. Fletcher*.[9] The defendants denied each claim and pleaded that the containers had fallen as a result of an 'act of God', a term which Choo J. preferred to replace by the more neutral label of *force majeure*.

### A. *Negligence and Nuisance*

As far as the actions in nuisance and negligence were concerned, Choo J. held that the key consideration under both causes of action was whether the containers had been stacked in a foreseeably unsafe manner.[10]

In terms of negligence, the evidence (which included the results of an inspection by the Ministry of Manpower in 2001, in response to a complaint that the containers were stacked too high, as well as the fact that there were known cases in other depots of containers falling due to sudden gusts of wind) established that the danger of the wall of containers collapsing was foreseeable.[11] It was also foreseeable that if they fell, they could damage the claimants' diesel storage tanks.[12] On this basis, Choo J. held that the defendants had owed the claimants a duty of care. This they had breached, by failing to take reasonable steps to minimise the foreseeable risk. Such steps would have included reducing the number of containers stored on top of one another,[13] using locking devices to fasten the containers, and/or stacking the containers perpendicularly rather than parallel to the fence.[14] The defendants were therefore liable for the damage which the claimants sustained when the containers fell over the fence in the storm. With respect to the *force majeure* argument, Choo J. conceded that strong gales were not a frequent occurrence in Singapore. However, he held that they were not so uncommon that their potential consequences could simply be ignored. The defendants ought, therefore, to have taken steps to guard against the possibility of gale damage.

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[9] The claimants also sought to rely on the doctrine of *res ipsa loquitur*, but Choo J. held that it was unnecessary, since there was ample evidence of what had caused the accident in this case.

[10] *Supra* note 1 at para. 6.

[11] *Ibid*. at para. 12. Choo J. found that "the danger posed by falling containers stacked as they were ... was reasonably foreseeable, if not by common sense, then by knowledge of such incidents that operators in that industry possessed." (*Ibid.* at para. 13).

[12] *Ibid*. at para. 10.

[13] While it was true that at the time of the inspection by the Ministry of Manpower in 2001, the defendants had agreed to reduce the height of the tiers of containers placed next to the fence from seven to six containers in the first row and from eight to seven in the second—which suggested that both the defendant and the Ministry considered columns of seven containers to be a reasonable number—this was not conclusive. In Choo J's opinion, the defendants' knowledge of the risks inherent in high tiers meant that they ought not to have stacked the containers to such a height, and "the ultimate decision" as to whether the precautions taken were adequate in the circumstances, was that of the court, not the defendant or the Ministry (*Ibid*. at para. 14).

[14] *Ibid*. at para. 14. Choo J. rejected arguments relating to the inconvenience which would have resulted: "I do not think that stacking the containers perpendicular to the fence would have created any difficulty in retrieving the containers. It might mean that the defendant would not be able to stack as many containers in that way, but that would not be a physical difficulty." (*Ibid.*).

The same facts supported a finding of liability in nuisance. Choo J. acknowledged the problems inherent in defining an actionable private nuisance,[15] but held that the vital element—that of unreasonable use of land—could be established in this case. While storing containers on land in an industrial zone was not in itself a nuisance, placing the containers in a manner which made them foreseeably unsafe rendered the use of land unreasonable and the ensuing damage actionable.[16]

### B. *The Rule in Rylands v. Fletcher*

In deciding whether there could also be liability under the rule in *Rylands v. Fletcher*, Choo J. examined the historical origins of the rule and the reasons for its abandonment in Australia, as well as the philosophy underlying its retention in England. Whereas the majority of the High Court of Australia in *Burnie Port Authority* had regarded *Rylands v. Fletcher* as offering an independent—but in their opinion anachronistic and unnecessary—cause of action[17], the House of Lords in *Cambridge Water* had accepted the view of Professor F. H. Newark in his seminal article "The Boundaries of Nuisance"[18] that Blackburn J.'s judgment had not been intended to break new ground, and that its only novel aspect had been the application of nuisance for the first time to an isolated escape.[19] Their Lordships had thus concluded that the law would be more coherent if the rule were to be regarded merely as an extension of private nuisance to such circumstances.[20] This view had also subsequently been accepted in *Transco*, in which the House of Lords had considered both *Burnie Port Authority* and *Cambridge Water*, and had chosen to retain the rule in *Rylands v. Fletcher*, though as a sub-species of nuisance.[21] Adopting the reasoning of Lord Bingham—who, while recognising the theoretical attraction of subsuming the rule within negligence, had

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[15] For Choo J.'s discussion of the difficulties in this respect, see *ibid.* at para. 5. His Honour observed that while some annoyances (such as an overhanging tree branch) are actionable in nuisance, others (such as a poorly played piano) are not, and he added: "It is no wonder that some cases in the law of nuisance are . . . found to be irreconcilable with others." In terms of abating sources of danger, the circumstances of each individual case could be so diverse that "it would be difficult to draw any general consensus as to whether an actionable nuisance had arisen . . . What might be an act of actionable nuisance in a residential property might not be in an industrial one." Choo J. also recognised that, as a tort, nuisance had been subject to "the occasional trespass into its territory by the tort of negligence and, it is sometimes claimed, the rule in *Rylands v. Fletcher*." This last point he examined in further depth in his analysis of the rule in *Rylands v. Fletcher*. See discussion *infra* at note 17 *et seq*.

[16] *Ibid*. at paras. 6 and 22.

[17] *Supra* note 4. The majority held that standards in negligence had been raised, particularly in relation to dangerous activities, while the restrictions placed on *Rylands v. Fletcher* through the development of a number of exceptions and the introduction of aspects of fault into the element of non-natural use had blurred the lines between the two causes of action. They concluded (at 540) that the rule had thus been "progressively weakened and confined from within . . . and progressively diminished by increasing assault from without."

[18] (1949) 65 Law Q. Rev. 480.

[19] *Supra* note 3 at 304. Newark's view on this point, while extremely influential, has nevertheless not gone unquestioned. See *e.g*. Donal Nolan, "The Distinctiveness of *Rylands v. Fletcher*" (2005) 121 Law Q. Rev. 421. Nolan argues (at 423) that Newark's thesis in this respect "consists merely of assertion." He suggests that Blackburn J. and the other judges who decided the case sought to create the impression that they were merely restating existing principles for the purely pragmatic reason that they wished their reasoning to appear in line with precedent.

[20] *Supra* note 3 at 306, per Lord Goff.

[21] *Supra* note 5 at para. 9, per Lord Bingham of Cornhill.

nevertheless concluded that a number of arguments militated against such a dramatic solution[22]—Choo J. observed:

> Liability in negligence is naturally fault based, whereas that is not so in all cases in nuisance, nor in *Rylands v. Fletcher* . . . [Furthermore] the concepts reasonable foresight and reasonable care in the law of negligence have already engendered much difficulty and a sea of ink in debate over the definition and application of these concepts. The assimilation of *Rylands v. Fletcher* into negligence as in *Burnie Port* would probably also necessitate following the Australian courts in differentiating diverse degrees of negligence. In my view, the English approach provide[s] a simpler formula for ascertaining liability than that envisaged in *Burnie Port*.[23]

This conclusion was reinforced by the fact that the language used both by Blackburn J. in *Fletcher v. Rylands*[24] and Holt C.J in *Tenant v. Goldwin*[25] (to which the underlying basis for the rule in *Rylands v. Fletcher* could be traced) was "more consonant with the language of nuisance than negligence."[26]

In terms of the rule's application to the facts of this case, Choo J. held that all the necessary elements (non-natural use of land, escape and damage) had been satisfied. Stacking containers of the size and weight of those stored by the defendants to a height of seven tiers was a non-natural use of land, even in an industrial zone.[27] The containers had then escaped by falling onto the claimants' land,[28] and had caused damage to their diesel storage tanks. The defendants were therefore liable under the rule in *Rylands v. Fletcher*.[29]

## III. Discussion

The influential status enjoyed by the House of Lords and the High Court of Australia makes it logical that courts in other jurisdictions should take into account the views of these two heavyweights when formulating their own positions on the modern role of *Rylands v. Fletcher*. Choo J.'s careful examination of the law in England and

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[22] These included the fact that there were still cases in which liability could be justified in the absence of fault; the fact that the common law in this area operated in conjunction with statutory provisions which appeared to assume that in a *Rylands v. Fletcher* situation, strict liability would attach; the fact that the House of Lords in *Cambridge Water* had rejected the idea of departing entirely from the rule, preferring "a more principled and better controlled application" of it; and the fact that, while assimilating the rule would have brought English law in line with Scottish law, it would have increased its disparity with that of other European countries. See *supra* note 5 at 8.

[23] *Supra* note 1 at para. 8.

[24] *Supra* note 2.

[25] (1703) 2 Ld. Raym. 1089, 91 E.R. 20 (S.C.): "[E]very man must so use his own as not to damnify another." (cited by Blackburn J. in *Fletcher v. Rylands*, *supra* note 2 at 284).

[26] *Supra* note 1 at para. 8.

[27] *Ibid.* at para. 7.

[28] Choo J. noted that although the containers falling over the perimeter fence would not amount to an escape in common parlance, "*escape* in the tort sense of *Rylands v. Fletcher* has a nuance, which, when translated into common terminology, would mean a situation in which things on one's land find themselves in the neighbouring land." (*Ibid*. at para. 9).

[29] Although Choo J. did not explicitly discuss the 'act of God' (or *force majeure*) argument in the context of *Rylands v. Fletcher*, it was implicit in his judgment that the argument would fail for the same reasons as those discussed in relation to negligence.

Australia is therefore to be welcomed both for its clarity and for the fact that it has brought the thinking in Singapore up-to-date with that elsewhere. While his Honour could, of course, have chosen to reject both approaches and to retain the *status quo*, the sheer force of authority represented by *Cambridge Water/Transco* and *Burnie Port Authority* seems to have militated against this. Seen in this light, his decision to favour the English position on the basis that the land-related, strict liability origins of *Rylands v. Fletcher* sit more easily with nuisance than with negligence is certainly clearly reasoned and superficially attractive.

However, the adoption of the English approach might in the long run turn out to be a rather unhappy compromise, and one which will leave *Rylands v. Fletcher* in something of a legal limbo. For there is a significant school of thought that the rule has been ill-served by both English and Australian jurists. It is never a good thing to abandon a tort without being certain that it no longer has any useful role to play, and for that reason the decision of the High Court of Australia to abolish the rule has caused judges and academics alike to argue that its abandonment was precipitate.[30] But the English approach—under which *Rylands v. Fletcher* now lives on merely as an offshoot of another tort—has not escaped criticism either, given the unsatisfactory half-life to which the rule has now been consigned in that jurisdiction.[31]

Proponents of the view that *Rylands v. Fletcher* should not have been deprived of its status as a discrete tort point to the fact that it is not only negligence, with its demands that the claimant establish fault on the part of the defendant, with which the rule is incompatible. They argue that it is also simplistic and misleading to assume that it can properly be accommodated within private nuisance.[32] It is certainly true that while both nuisance and *Rylands v. Fletcher* share property-based origins, there are a number of significant differences between them,[33] which the courts appear to have sidestepped in their zeal to tie up loose ends.

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[30] See *e.g.* the strong dissent of McHugh J. in *Burnie Port Authority*, *supra* note 4 at 366:

> Irrespective of whether the rule . . . is or is not a satisfactory ground of tortious liability, for more than 100 years it has been treated in this country as a settled rule of liability in no way dependent upon proof of negligence . . . With great respect to those who are of the contrary opinion, I do not see how, consistently with the settled doctrine of this Court, the liability of an occupier of land under the rule in *Rylands v. Fletcher* can be understood as assimilated to, or could be incorporated into, an occupier's liability in negligence.

See also John Murphy, "The Merits of *Rylands v. Fletcher*" vol. 24, no. 4 (2004) Oxford J. Legal Stud. 643. Murphy observes (at 659-660) that: "to allow the rule in *Rylands v. Fletcher* to be swallowed up by the law of negligence would mean that in some cases claimants would face insurmountable evidentiary burdens, burdens, indeed, that may be thought inappropriate as a matter of policy and justice."

[31] See *e.g.* Murphy, *ibid.*, who argues (at 643) that *Rylands v. Fletcher* "is sufficiently distinct in juristic terms to maintain a claim to continued vitality . . . integration of the rule into the law of private nuisance would involve further confusing an area of law that is already beset by considerable intellectual incoherence." See also Margaret Fordham, "The Demise of the Rule in *Rylands v. Fletcher*" [1995] Sing. J.L.S. 1 at 27-28.

[32] Indeed, some commentators consider the merger of *Rylands v. Fletcher* with negligence to be the lesser of two evils. See, *e.g.*, Nolan, *supra* note 19, who suggests at 442 that although it is "to some extent misguided" to conclude that there is no longer anything more than a negligible difference between *Rylands v. Fletcher* and negligence, it "is less invidious than the offshoot theory."

[33] For a full analysis of these differences, see Murphy, *supra* note 30, and Nolan, *supra* note 19. Nolan (at 432) sees the differences as deriving from "the fact that while private nuisance is a tort against land, the *Rylands* rule overcame its origins in the real property context and developed into a cause of action of more general application."

Among the more important of these differences is the fact that the claimant must have a proprietary interest in land to bring an action in private nuisance, whereas the rule in *Rylands v. Fletcher* traditionally required only the defendant to be an owner or legal occupier of land. Although the decision of the English Court of Appeal in *Khorasandjian v. Bush*[34] in the early 1990s temporarily cast some doubt on the proprietary interest requirement in private nuisance, the House of Lords in *Hunter v. Canary Wharf Ltd.*[35] forcefully reiterated the fact that a legal interest in land is a key prerequisite for such an action. On the other hand, before the decision in *Cambridge Water*, there were a number of *Rylands v. Fletcher* decisions in which the courts had accepted the notion that claimants without a legal interest in land could sue under the rule.[36]

Another major difference relates to the types of damage covered by the two actions. While the majority of private nuisance claims involve intangible damage sustained through continuous interference with use and enjoyment of land, the application of *Rylands v. Fletcher* tends to be confined to significant physical damage sustained on a single occasion. This distinction was most famously recognised by Cotton L.J. in *Hurdman v. The North Eastern Railway Co.*,[37] where his Lordship described private nuisance as a tort which protected against interference with enjoyment of land, and *Rylands v. Fletcher* as an action giving rise to liability when physical damage flowed from that interference.[38] Moreover, a number of the physical damage claims brought under *Rylands v. Fletcher* have related to personal injuries, a type of damage which the judiciary has consistently refused to recognise as recoverable in private nuisance, where liability has traditionally been linked with loss of amenity value of the land.[39]

Nor can the concept of non-natural use, which is one of the fundamental requirements of an action in *Rylands v. Fletcher*, always comfortably be equated with that

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[34] [1993] Q.B. 727 (C.A.).

[35] [1997] A.C. 655 (H.L.) [*Hunter*]. Note, however, that this requirement is open to challenge under the *Human Rights Act 1998* (U.K.), 1998, c. 42, which, in giving effect to art. 8 of the *European Convention on Human Rights*, (1953) Cm. 8969, provides all citizens with an equal right to respect for their private lives.

[36] See *e.g.* the decisions in *Perry v. Kendricks Transport Ltd.*, [1956] 1 W.L.R. 85 (C.A.) [*Perry*], and *British Celanese Ltd. v. A.H. Hunt (Capacitors) Ltd.*, [1969] 2 All E.R. 1252 (Q.B.D.). However, following the decisions in *Cambridge Water* and *Transco*, it seems that in English law, actions brought under *Rylands v. Fletcher* now require a legal interest in land on the part of the claimant: see *McKenna & Ors. v. British Aluminium Ltd.*, [2002] Env. L.R. 30 (Ch.D.).

[37] (1878), 3 C.P.D. 168 (C.A.).

[38] Although Murphy, *supra* note 30 at 650-668, acknowledges that private nuisance actions have been brought in cases involving physical damage (as *e.g.* in *St Helen's Smelting Co. v. Tipping* (1865), 11 H.L. Cas. 642 and *Sedleigh Denfield v. O'Callaghan*, [1940] A.C. 880 (H.L.)) he argues that such cases actually fall outside the proper historical boundaries of the tort. And Nolan, *supra* note 19 at 437-438, argues that "extending private nuisance to isolated escapes undermines the essential nature of the cause of action." He regards as unpersuasive the handful of cases (such as *Spicer v. Smee*, [1946] 1 All E.R. 489 (K.B.)) in which nuisance has been held to extend to isolated escapes.

[39] See the dicta of Lords Goff and Hoffmann in *Hunter*, *supra* note 35 at 707 and 692 (echoing the views of Newark, *supra* note 18). On the other hand, before *Rylands v. Fletcher* ceased to exist as an independent cause of action, the rule was held to be applicable to personal injuries in cases such as *Miles v. Forest Rock Granite Co. (Leicestershire) Ltd.*, (1918) 34 T.L.R. 500 (C.A.) and *Perry*, *supra* note 36. It should be noted, though, that even before the decision in *Cambridge Water*, some eminent judges had expressed doubts about the rule extending to personal injury claims (see, in particular, the judgment of Lord Macmillan in *Read v. J. Lyons & Co. Ltd.*, [1947] A.C. 156 (H.L.)). The dicta of Lords Bingham, Hoffmann and Hobhouse in *Transco*, *supra* note 5 at paras. 9, 35 and 52, suggest that, as part of private nuisance, the rule will not in future be held to extend to such claims.

of unreasonable user in private nuisance. Whereas the former is concerned with the nature of the defendant's activity, rather than the harm caused to the claimant, the latter focuses on the infringement of the claimant's rights, and whether that infringement is serious enough to be actionable.[40]

Concern that a discrete tort should neither be consigned to the scrap-heap nor lumped together with other torts simply because of superficial similarities, has led a number of writers to conclude that *Rylands v. Fletcher* has been shabbily treated. Some have argued that, unlikely as a return to the old orthodoxy may be, such a course of action would have much to recommend it.[41] Others, while agreeing that the rule should not have been deprived of its independent status, argue that the most recent decision of the House of Lords in *Transco* at least saved it from ignominy by limiting its scope to that of a strict liability action applicable to situations where there is an exceptionally high risk of danger.[42] Still others, while also agreeing that the rule was historically sound and distinctive, consider that it has been so ravaged by time that it would be best served by being allowed to die.[43] The only consensus to be drawn from the various views is that *Rylands v. Fletcher* has become so marginalized and ill-appreciated that it is now a mere shadow of its former self.

## IV. Conclusion

Like most other commentators, this writer would have preferred to have seen *Rylands v. Fletcher* retain its status as a discrete tort. One of the distinguishing features of tort law has always been its diversity—made up as it is of a number of separate causes of action linked by the common denominator that all offer private law remedies for complaints outside contract. Historically, the courts had no problems with this diversity, or with the inevitable overlap which occurred when several torts

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[40] See Nolan, *supra* note 19 at 434-435. See too Murphy, *supra* note 30, who observes, at 655:

> Being intricately bound up with the normal 'give and take, live and let live' of neighbouring landowners, the reasonable user test may be contrasted sharply with the 'non-natural use of land' requirement under the rule in *Rylands v. Fletcher*. The latter has never been invoked to determine the respective land-use rights and responsibilities of neighbours. And while the notion of non-natural use has never been an especially transparent one, it has always been tolerably clear . . . that the category of non-natural use is necessarily broader than that of 'unreasonable user'.

[41] See e.g. Murphy, *supra* note 30, who (at 669) asserts both the "juridical distinctiveness of the rule" and its "utility as a discrete tort" and concludes that "the continued vitality of the rule . . . forms a useful residual mechanism for securing environmental protection by individuals affected by harmful escapes from polluting heavyweight industrialists."

[42] See e.g. Kumaralingam Amirthalingam, "*Rylands* Lives" [2004] Cambridge L.J. 273. While arguing (at 275) that the interlinking of dangerousness and non-natural use in *Transco* diluted the strict liability aspect of the rule, he nevertheless welcomes the decision in *Transco* to the extent that it "has rightly given *Rylands* a very narrow application and thus saved it from disrepute," although he feels it would have been better had the House of Lords "disassociated *Rylands* from nuisance and reinvented it as a special rule that was applicable in cases where fairness dictated imposition of strict liability." (*Ibid*. at 276). For further discussion of the limits placed on the rule by the decision in *Transco*, see *supra* note 6.

[43] See e.g. Nolan, *supra* note 19. Nolan argues (at 446) that "even before the most recent developments the restrictions imposed on the rule's operation robbed it of any coherence, and fostered arbitrary distinctions." Referring (at 451) to Lord Hoffmann's conclusion in *Transco* (*supra* note 5 at para. 39) that the combined intellectual efforts of numerous judges and writers over the years had "brought forth a mouse," he goes on to ask: "[W]ould not putting this poor creature down have been more merciful than leaving it in the legal equivalent of a persistent vegetative state?"

were applicable to the same set of facts. But the massive development of negligence, coupled with the fall from favour of strict liability, has led in recent years to a shift towards greater homogeny. We are currently witnessing a process in which traditional torts are being combined or abandoned, and in which the surviving actions are often left as less than the sum of their parts. *Rylands v. Fletcher* seems to have been a particularly unfortunate victim of this process.

It is, however, too late to turn back the clock, so if *Rylands v. Fletcher* is to survive, it will now have to do so as a special branch of private nuisance. Even in this form the narrow definition of non-natural use in *Transco*[44] suggests that, in the U.K. at least, it will be applicable only in very limited circumstances. In Singapore, the restrictive definition in *Transco* did not prevent Choo J. from holding that the defendants in *Tesa Tape* had made a non-natural use of land, so perhaps it is too soon to conclude that the rule's newly downgraded status has robbed it of all purpose in this jurisdiction. On the other hand, in *Tesa Tape*, like so many other *Rylands v. Fletcher* cases, there was liability in both negligence and ordinary private nuisance anyway. So if the rule is going to be retained only as a theoretically interesting but rarely determinative poor relation of private nuisance, it may ultimately be hardly worth the trouble. Perhaps the English and Singapore courts would actually have done the kinder thing had they accepted that *Rylands v. Fletcher* had exceeded its natural life-span and that the time had come for it to be put out of its misery.

[44] See discussion *supra* note 6.