



West Yorkshire Green Business Club
Recent developments in Environmental Law

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DenisonTill

Environmental Law – the questions

- What is it?
- Why is it important?
- How does it affect me?
- How will it develop in the future?



What is it?

Currently the most important and fastest growing area of law. It touches all our lives:

- In business
- At home
- Through taxation policy
- Through the criminal and civil law
- It affects our civil liberties (human rights)
- It has a major impact on the way we live our lives



Regulated by environmental law

- Control of pollution (air, noise, water, dust and effluent)
- Disposal of waste (domestic and commercial)
- Transportation
- Health & Safety
- Contaminated land
- Escape of Substances from Land
- Environmental taxes including landfill tax/carbon tax/ aggregates levy
- Hotels and restaurants
- Statutory nuisances
- Liability of property owners
- The list goes on . . .



Some cases on pollution:

- On causing pollution, it is an offence:
- To cause . . . poisonous noxious or polluting matters to enter controlled waters
- To permit sewage to be discharged
- To cause . . . any matter to enter inland fresh water [which] tends to impede the proper flow of the waters [and is] likely to cause pollution
- Carrying on an activity is enough



1. The very first environmental case

Rylands –v- Fletcher 1868

- Although this case was decided well before environmental law was heard of, it might be said to be the start of a long chain of cases dealing with environmental law
- It developed the concept that “the polluter pays”.



Rylands -v- Fletcher – the facts

- A mill owner (Mr Rylands) employed a contractor to build a reservoir on rented land
- The contractor filled in some disused mine shafts on the land which was to become part of the reservoir
- The reservoir was then filled with water
- The reservoir flooded adjacent mines owned by Mr Fletcher
- Mr Fletcher sued
- What did the courts think?



Rylands -v- Fletcher

The first hearing

- Mr Fletcher succeeded on the basis of trespass over and nuisance to his land by Mr Rylands
- The case went to appeal

The first appeal hearing

- The court overturned the original judgment, arguing that “intent” needs to be proved in trespass or nuisance cases and there was no “intent” by Mr Rylands to flood Mr Fletcher’s mines
- The court also said “there is nothing offensive to the senses about water”, and “Mr Rylands had been involved in a lawful act” (i.e. building a reservoir)

Mr Fletcher appealed



Rylands -v- Fletcher

The Court of Appeal:

- “A person who for his own purposes brings on his land and collects or keeps there, anything likely to do mischief if it escapes, must keep it at his peril. He is answerable for all the damage which is the natural consequences of its escape.”
- i.e. Mr Fletcher (the mine owner) won
- Mr Rylands appealed to the House of Lords



Rylands -v- Fletcher

The House of Lords

- The HL agreed with the Court of Appeal. They added a further qualification that the land from which the escape occurred must have been modified in some way for liability to have arisen. (e.g. if a river breaches its banks and floods neighbouring land, the owner of the land through which the river flows would not be liable to his neighbour, whose land became flooded)
- The case established the principle of “strict liability” i.e. if a consequence occurs, (e.g. flooding of your mine) the person who caused the flooding (the reservoir owner) is automatically liable. No excuses



2. Empress Car Co Ltd -v- National Rivers Authority 1998

- Charged with “causing pollution” contrary to Section 85 of the Water Resources Act 1991
- What does “causing pollution” actually mean?
- Definition of “causing”
- Was this an example of causing pollution?



Empress Car Co Ltd -v- National Rivers Authority 1998

Conclusion:

- A. Turning a blind eye is enough to establish “cause”
- B. Not doing everything reasonably required to prevent a third party from causing pollution on your property can also amount to “causing pollution”



3. Chappell -v- Imperial Designs Ltd 2000

- The extent to which a company can be liable for personal injuries arising from disposal of waste
 - Company arranged for waste to be collected from outside its premises
 - Arrangement to collect next morning by waste collector
 - Written warnings on tank
 - 13 year old sets fire causing injury to himself



Chappell -v- Imperial Designs Ltd 2000

- The company was found negligent both at common law and under the Environmental Protection Act for “depositing waste without a licence”
- Judge found child 70% negligent
- Both the child and the company appealed

- What happened next?



Chappell -v- Imperial Designs Ltd 2000

- On appeal...
- The Court found the child 50% negligent
- The waste was considered
 - “a trap”
 - “an allurements”



4. Bonfire Night 2002

- Can a bonfire celebration contravene environmental regulations?
- Environment Agency warned that bonfire night should not be used as an exemption from the necessity to acquire a waste management licence
- Bradford businessman was ordered to carry out 120 hours community service and pay £30,000 in costs after Crown Court convicted him of four offences – including the burning of waste at a “community” bonfire. (Illegal to burn trade waste under EPA 1990 plus Clean Air Act 1993 offences)



5. Express Dairies -v- Environment Agency 2003

- Are there any defences to the 'strict liability' concept?
- Road accident – milk tanker spillage
- Causing polluting matter to enter controlled waters
- Defence argued where caused in emergency to avoid danger to life or health
- Circumstances in which defence may be available

- Convicted or not convicted?



Express Dairies -v- Environment Agency 2003

- Convicted!
- “The company was not entitled to rely on the defence that they had acted in such a way as to avoid danger to life or health”
- Express Dairies appealed



Express Dairies -v- Environment Agency 2003

- Appeal allowed
- “The defence of causing polluting matter to enter controlled waters was available to a person whose act in causing that entry was done in an emergency in order to save life or health.”



6. BP Cases

(a) 2005

- BP's refinery in Texas, USA
- A vapour cloud emitted by the plant exploded and killed 15 and injured 170
- BP charged with various failures of H & S regulations
- In September 2005 BP offered to plead guilty and paid \$21.3 million dollars in fines
- BP paid \$1.6 billion to compensate victims



BP Cases

(b) 2007

- In October 2007 BP agreed to pay a further criminal fine of \$50 million dollars for breaches of Texas Clean Air Act
- First ever criminal prosecution of the requirement that refineries must take steps to prevent accidental releases
- Responsibility upon company's officers and directors to ensure compliance with safety procedures



BP Cases

(c) 2010 – Gulf of Mexico

- BP's contractor, Transocean, suffers rig malfunction
- Deepwater Horizon rig explodes. Major loss of life and oil leak
- BP admits liability before any prosecution even though not the rig operator or owner, and puts "clean up" into operation
- \$20 billion drop in BP share value
- Estimated costs \$5bn to \$10bn
- Loss of reputation. Potential loss of opportunity to win future work
- Potential prosecution of directors and senior managers



7. Environmental law and the individual

(a) May 2006

- Householder threatened with prosecution by local council
- She failed to divide household waste into recyclable and non-recyclable wheelie bins
- Local authority sent over 1500 residents warning letters reminding residents of their recycling responsibilities
- 300 reminder letters issued
- 15 residents received final warning
- 1 prosecution



Environmental law and the individual

(b) 2006

- Householder handed his post as he left his house
- Threw some junk mail in a litter bin on way to work
- Local authority tracked him down using address on the envelope
- Fined £50 for committing an offence of placing domestic rubbish in a street bin



Environmental law and the individual

(c) 2006

- Dutch lady feeding bread to ducks in the park
- Threw plastic bag containing bread into a street litter bin
- Fined 50 euros
- The plastic bag was domestic litter
- This was not supposed to be thrown in street bin
- Had she thrown the bag on street rather than the bin-fine would have been only 35 euros!



Environmental law and the individual

(d) 2006

Michael Reeves

- His name and address from an envelope was found in a recycling box designated for other rubbish
- He had been participating in a voluntary recycling scheme run by Swansea Council at the time
- The bin in which the envelope was found was not even his
- Prosecuted, convicted and fined £200



Environmental law and the individual

(e) 2008

- Mr Gareth Corkhill convicted for overfilling his wheelie-bin
- Bin lid open by 4 inches
- Cautioned and told to pay £110 on spot fine
- Declined
- Prosecuted at Whitehaven Magistrates Court and fined £210
- Fly-tipping the contents of his wheelie-bin – fine would have been £80



Conclusion

- Environmental control is a one way street to further regulation
- Most legislation imposes concept of “strict liability” i.e. no defence generally accepted and a deliberate act is not required to secure a conviction
- Increasing tendency to use the criminal law against private individuals in order to force a change of behaviour
- Directors, managers and senior employees increasingly prosecuted for the actions of their employer





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