

- 1. ABNORMALLY DANGEROUS  
ACTIVITIES**
- 2. ASSUMPTION OF RISK**
- 3. CONTRIBUTORY NEGLIGENCE**

## FACT PATTERN

Seattle, Washington is such a green tree filled city, bordered on one side by the noble and imposing presence of Mount Rainier and on the other by the unique vistas of Puget Sound. The city is a liberal stronghold surrounded by conservative towns. One of those conservative towns is Yakima, Washington. Yakima is known for the manufacture of beer. They grow hops in vast quantities there to manufacture this beer.

Recently, quarrying has become an important source of income for the people of Yakima. One quarrying company, Yakima Blower Inc. (“YBI”), set up a quarry just outside the heavily populated suburbs and regularly blasts rock using large amounts of dynamite. No amount of reasonable care would eliminate the inherent high risk associated with the blasting and most of the land remaining in Yakima is used for agricultural purposes and cannot be quarried. For this reason only a few quarries exist in Yakima. Another reason only a few quarries exist in Yakima is because of the many expensive precautions which quarries must undertake. After all, without precautions entire neighborhoods could be wiped out routinely. Even with all reasonable precautions in place the occasional house is destroyed or structurally damaged. YBI is one of the few companies that spares no expense to ensure that it complies with every safety regulation available.

One day a retired blasting engineer from Maine, Fred, who had relocated to the west coast and was now living in the suburbs next to YBI decided to go for a jog. Having heard the noises he recognized as blasting from his former career he headed out to the YBI quarry. As he jogged along he passed two signs which said in big orange letters, “Please Stay Out, Blasting in Progress.” The thought of his old career came back to him, he felt young and rejuvenated at seeing those signs. He sped up. In his mind’s eye he could picture vividly what lay ahead in great detail. He visualized the conveyor belts feeding the dynamite, into the side of the rock face, further back from the rock face he imagined there would be the sound proof booths and even further back would be the three redundant and repetitive perimeter barriers telling people to keep out.

He kept imagining the rock which he pictured flying in great quantities off the rock wall in uncontrolled directions after each explosion. The blood of his youth coursed through his veins again. He was jarred back to the present when he realized he was next to the redundant perimeter barriers. Curiously, there were only two here. In Maine, there were always three. Anxious to see the operation he snuck around the barriers and continued running towards the rock wall. Suddenly just as he reached the sound proof booths a large piece of rock nailed him right in the head, fracturing his skull. On his way to the hospital he said in a strong New England accent, “That rock was traveling wicked fast, it surprised me, because in Maine the booths are further back and the rocks never reach that far.”

Fred wants to sue YBI and asks you to discuss potential causes of action against YBI and any relevant defenses they may raise during litigation.

## **ISSUE**

Whether quarrying is an abnormally dangerous activity?

## **RULE**

An abnormally dangerous activity is subject to strict liability and 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.

## ANALYSIS

Factor of Rule	Facts from fact pattern which apply to the factor of the rule listed in the cell to the left	Conclusion
Existence of a high degree of risk of some harm to the person land or chattels of others	<ul style="list-style-type: none"> <li>• Inherent high risk.</li> <li>• The proximity of the burbs</li> </ul>	The risk of harm is great

The following factors weigh in favor of applying strict liability:\_\_\_\_\_. The following factors weigh in favor of not applying strict liability:\_\_\_\_\_. Finally the following factor(s) is/are \_\_\_\_\_ on whether or not strict liability should apply.

### CONCLUSION

Quarrying maybe an abnormally dangerous activity and maybe strict liability therefore applies

**ISSUE 2**

Whether Fred’s actions constituted assumption of the risk?

**RULE**

Assumption of risk exists when a plaintiff has actual knowledge of a particular risk, appreciates the magnitude of the risk and voluntarily encounters the risk. Assumption of risk is a defense to a strict liability cause of action while contributory negligence is not.

**ANALYSIS**

Since assumption of the risk is a defense to a strict liability cause of action YBI will attempt to categorize Fred’s actions as assumption of risk. Fred on the other hand will try to demonstrate that his actions were merely contributory negligence because contributory negligence is not a defense to a strict liability cause of action.

**ELEMENT 1 OF AOR**

Actual Knowledge of the Particular risk

YBI will argue that there was actual knowledge of a particular risk because

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However Fred will argue that he did not have actual knowledge of the particular risk because:

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**ELEMENT 2 OF AOR**

Appreciation of the Magnitude of the Risk

Similar to the last element YBI would argue

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Fred would counter by saying he did not appreciate the magnitude of standing by the sound proof booths because

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**ELEMENT 3 OF AOR**

Voluntarily Encountering the Risk

YBI would argue that Fred voluntarily encountered the risk because

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Of course Fred would again point out that

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Whether or not the plaintiff's actions constitute assumption of risk or contributory negligence is a close call. The weakness of Fred's argument regarding the voluntariness of his conduct sways the argument in favor of the blasting company.

However it may not be necessary for the blasting company to classify Fred's conduct as assumption of the risk because even if we classify it as contributory negligence, Restatement 2d of Torts §524(2) may be favorable to YBI. The restatement reiterates the lack of a clear line between assumption of the risk and contributory negligence, and allows extreme or egregious contributory negligence to be a defense to a strict liability cause of action. Whereas here the contributory negligence of the plaintiff is more egregious than mere unreasonableness and demonstrates some subjective knowledge of the risk and some voluntariness in encountering the risk it will be a defense to a strict liability cause of action based on an abnormally dangerous activity exactly like assumption of risk would be

### CONCLUSION

It is likely that YBI will be deemed to have engaged in an abnormally dangerous activity but the plaintiff's conduct whether or not it is classified as assumption of risk or contributory negligence will likely be a defense to the action.