

INSTRUCTION SHEET (INSTRUCTOR ONLY)

WHEN ADMINISTERED:

Immediately after teaching the concept of abnormally dangerous activities

BROAD SKILLS GOALS:

1. To introduce students of various learning styles to the analysis aspect of IRAC essay writing.
2. To reveal to students the basic process of applying facts to rules of law and to introduce the concept of the counter argument.

RELEVANT SUBSTANTIVE CONTEXT:

Strict Liability, Assumption of Risk and Contributory Negligence

ACTIVE LEARNING METHOD:

1. Complete the following sentence. Students perform poorly on an essay examination because (*2 mins*)
 - a. Feedback (*5 mins*)
2. Have them work on the exercise individually (*10 minutes*)
3. Randomly assign a number to each of the students and ask all the one's to assemble in a specific area of the class room, the same for the two's three's etc. to have groups of 5 or 6
 - a. Helps to break preexisting peer grouping which can be disruptive
 - b. Facilitates collaborative learners and breaks the ice and is a change from doctrinal classroom atmosphere.
 - c. Ask them to come up with answer (*5 minutes*)
4. Ask each group to work as a group to complete the exercise. (*20 mins*)
 - a. Monitor each group and move around the class room gaining input and monitoring each group
5. Have each group present their answer briefly using overhead projector for visual learners and then have other groups critique. (*20 minutes*)
6. Ask students to free write what they have learned today and to discuss with class (*10 minutes*).
 - a. The answer you are trying to elicit is that legal analysis on an IRAC essay is nothing more than identifying which facts are relevant to the rule of law invoked by the hypothetical and describing whether or not they believe that the element of the rule has been satisfied.
 - b. The same facts may satisfy more than one element of a rule
 - c. Facts can be interpreted differently by either side (*15 minutes*)

CATERED TO VARIOUS LEARNING STYLES HOW:

1. Group work allowed collaborative learners to discuss and internalize the skill sets required for legal analysis and to review the substantive law.
2. Problem solving aspects, rearranging and filling in the blanks allowed the experiential or kinesthetic learners to internalize the skill sets required for legal analysis and to review the substantive law.

Use of overhead projector, charts and completed charts to demonstrate the completed answers facilitated the visual learners who now have a good understanding of what legal analysis looks like.

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">• Inherent high risk.• The proximity of the burbs	The risk of harm is great
Likelihood that the harm that results from it will be great	<ul style="list-style-type: none">• Entire neighborhoods can be wiped out• Houses are destroyed or damaged structurally	The harm which can occur is great
Inability to eliminate the risk by the exercise of reasonable care	<ul style="list-style-type: none">• Even with all reasonable precautions the occasional house is destroyed or structurally damaged	The use of reasonable care cannot eliminate the harm typically associated with the activity
Extent to which the activity is not a matter of common usage	<ul style="list-style-type: none">• Only a few quarries exist	It is not a matter of common usage
Inappropriateness of the activity to the place where it is carried on	<ul style="list-style-type: none">• The facts say that it is located near the burbs.• Occasionally houses are destroyed	Maybe it is inappropriate
Value vs. benefit to community	<ul style="list-style-type: none">• Important source of income	Not enough facts

The following factors weigh in favor of applying strict liability: **a-f** or **a-e**. The following factors weigh in favor of not applying strict liability. Finally the following factor(s) is/are inconclusive on whether or not strict liability should apply: **f** or **e,f**.

CONCLUSION

Quarrying is likely an abnormally dangerous activity and 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

- He was a retired blaster from Maine so he should have had actual knowledge that he could be hit by rocks if he went onto a blasting site
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However Fred will argue that he did not have actual knowledge of the particular risk because:

- In Maine there were three redundant barriers instead of three
- In Maine the sound proof booths are located further away from the rocks and the rocks never reach that far
- The facts also appear to indicate that the rock was traveling faster than in Maine

ELEMENT 2 OF AOR

Appreciation of the Magnitude of the Risk

Similar to the last element YBI would argue

- that there is little room to disagree that a regular person much less a retired blasting engineer would not appreciate the magnitude of the risk that being near where a rock is blasted off the face of a mountain poses to property let alone a human being

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

- based on his prior experience the rocks never reached the sound proof booths

ELEMENT 3 OF AOR

Voluntarily Encountering the Risk

YBI would argue that Fred voluntarily encountered the risk because

- He was not forced to jog through the quarry or around two warning signs which clearly stated "Please Stay Out, Blasting in Progress"

Of course Fred would again point out that

- the sound proof booths in Maine were further back so that he did not voluntarily put himself at risk of being hit because he was in a place where he was unaware that he would be encountering the risk of being hit.

Whether or not the plaintiff's actions constitute assumption of risk or contributory negligence is a close call. In my opinion 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 engaged in an abnormally dangerous activity and so would be subject to strict liability 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.