

115.00
ULTRAHAZARDOUS ACTIVITIES

115.01 Ultrahazardous Activities--Strict Liability

When a person carries on an ultrahazardous activity such as [e.g., blasting], he is liable for any [injury] [property damage] proximately caused by that activity regardless of the amount of care used [except to one who has actual knowledge of the dangers involved and (voluntarily participates in the activity) (or) (voluntarily exposes himself to the dangers)].

Notes on Use

There is no Illinois case law as to whether the doctrine of strict liability for ultrahazardous activities applies to trespassers. *See* Restatement (Second) of Torts §520B (1977) (does not apply to intentional or negligent trespassers; no opinion as to whether doctrine applies to those who trespass accidentally, inadvertently, or by innocent mistake).

The bracketed phrase should be used if the court rules that the common-law defense of assumption of risk is applicable. *See* Restatement (Second) of Torts §523 (1977). As to whether this is a complete bar to recovery or is only a damage-reducing factor, the Committee expresses no opinion.

Comment

Use of explosives is the typical example of an ultrahazardous activity. *Opal v. Material Serv. Corp.*, 9 Ill.App.2d 433, 133 N.E.2d 733 (1st Dist.1956); *Hadraba v. Sanitary Dist. of Chicago*, 309 Ill.App. 577, 33 N.E.2d 627 (1st Dist.1941) (abstract opinion); *Baker v. S.A. Healy Co.*, 302 Ill.App. 634, 24 N.E.2d 228 (1st Dist.1939); *City of Joliet v. Harwood*, 86 Ill. 110 (1877); *Fitzsimons & Connell Co. v. Braun*, 199 Ill. 390, 65 N.E. 249 (1902). In *Clark v. City of Chicago*, 88 Ill.App.3d 760, 410 N.E.2d 1025, 43 Ill.Dec. 892 (1st Dist.1980), the court held that, as a matter of law, the demolition of a five-story building within the city of Chicago was an inherently dangerous activity for which the city should be held absolutely liable. *See also Chicago & N.W. R. Co. v. Hunerberg*, 16 Ill.App. 387 (1st Dist.1885) (train derailed and struck plaintiff's house); *Indiana I. & I. R. Co. v. Hawkins*, 81 Ill.App. 570 (2d Dist.1899) (fire escaped from defendant's right-of-way onto plaintiff's property).

The United States Court of Appeals for the Seventh Circuit held that determining what activity is “abnormally dangerous”⁴ is a matter of law to be decided by the court, and that placing acrylonitrile in a rail shipment that will pass through a metropolitan area does not subject the shipper to strict liability. *Indiana Harbor Belt R. Co. v. Am. Cyanamid Co.*, 916 F.2d 1174 (7th Cir.1990). Neither does manufacturing polychlorinated biphenyls (PCBs) constitute an abnormally dangerous activity. *City of Bloomington v. Westinghouse Electric Corp.*, 891 F.2d 611 (7th Cir.1989) (applying Indiana law, but stated as being no different from Illinois law). The Illinois Appellate Court held that the “plaintiff had failed to allege sufficient facts showing that

⁴ The *Restatement (Second) of Torts* uses the phrase “abnormally dangerous” in place of the more traditional term “ultrahazardous.” The Committee has kept the latter term, which was used in previous editions.

storing containers of highly flammable solid and liquid chemicals in the subject warehouse was an abnormally dangerous activity.” *Continental Bldg. Corp. v. Union Oil Co.*, 152 Ill.App.3d 513, 504 N.E.2d 787, 105 Ill.Dec. 502 (1st Dist.1987). A trampoline is not an abnormally dangerous instrumentality nor is its use an abnormally dangerous activity. *Fallon v. Indian Trail School*, 148 Ill.App.3d 931, 500 N.E.2d 101, 102 Ill.Dec. 479 (2d Dist.1986). In *Anderson v. Marathon Petroleum Co.*, 801 F.2d 936 (7th Cir.1986), the court held that sandblasting was not an abnormally dangerous activity because the plaintiff had failed to show that people engaged in sandblasting cannot prevent a serious risk of injury by taking precautions. The manufacture and sale of handguns is not an ultrahazardous activity. *Riordan v. Int'l Armament Corp.*, 132 Ill.App.3d 642, 477 N.E.2d 1293, 87 Ill.Dec. 765 (1st Dist. 1985); *Martin v. Harrington & Richardson, Inc.*, 743 F.2d 1200 (7th Cir.1984). The *Martin* court stated, “plaintiff's attempt to impose strict liability for engaging in an ultrahazardous activity upon the sale of a nondefective product is unprecedented in Illinois” 743 F.2d at 1203. Both the *Martin* and *Riordan* courts stated that it was the use or misuse of the handgun that constitutes the ultrahazardous activity.

Traditionally, plaintiff's assumption of the risk of the activity has been regarded as a complete defense. Restatement (Second) of Torts §523 (1977). In *Nat'l Bank of Bloomington v. City of Lexington*, 138 Ill.App.3d 805, 486 N.E.2d 967, 93 Ill.Dec. 434 (4th Dist.1985), the court held that the trial court's granting of the city's summary judgment motion was in error because reasonable minds might differ as to whether plaintiff was participating (along with the city's independent contractor) in the allegedly ultrahazardous activity of felling a tree. (This issue as to whether the felling of the tree was an ultrahazardous activity was not before the reviewing court.)

Contributory negligence traditionally has not been a defense. Restatement (Second) of Torts §524 (1977).

See generally Restatement (Second) of Torts ch. 21 (1977); Prosser & Keeton on Torts ch. 13 (5th ed. 1984); *Burke, Rylands v. Fletcher in Illinois*, 22 Chi. Kent L. Rev. 103 (1944).</pub>