

# Under What Legal Theories Can a Company Be Liable for Contaminating Neighboring Property?



## SITUATION

A tire company and a concrete company own adjacent properties. An environmental assessment of the tire company's land reveals that it's contaminated by petroleum hydrocarbons. An investigation concludes that the source of the contamination is gasoline that leaked from underground storage tanks (USTs) on the concrete company's property. Specifically, the gasoline contaminated groundwater, which flowed from the concrete company's property to the tire company's land. So the tire company sues the concrete company, demanding an order requiring it to remediate the pollution and pay damages. Evidence shows that the concrete company didn't comply with the environmental laws and standards for USTs. For example, it failed to keep daily records for the USTs. In addition, the contamination levels exceed the environmental standards for acceptable chemical concentrations in soil and groundwater, presenting a risk to human health and the environment and limiting the tire company's ability to develop the land.

## QUESTION

Based on the above, the concrete company is liable to the tire company for:

- A. Negligence
- B. Nuisance
- C. Strict liability
- D. All of the above

## ANSWER

**D. The facts establish that the concrete company is liable to the tire company under all three legal theories.**

## EXPLANATION

This hypothetical is based on an Ontario case in which the court ultimately ruled that a concrete company was liable for polluting a neighbouring tire company's land under the legal theories of negligence, nuisance, strict liability and trespass. The court concluded that the evidence proved that the source of the contamination was groundwater polluted by gasoline leaks from USTs on the concrete company's land that flowed to the tire company's property. It ordered the concrete company to pay the tire company \$3.6 million to remediate the property and \$1.1 million for out-of-pocket expenses.

## WHY THE WRONG ANSWERS ARE WRONG

**A is wrong** because negligence isn't the only legal theory under which the concrete company is liable. A defendant is negligent when: 1) it owes another party a duty of care; 2) its conduct fell below the standard of care expected of a reasonable person in the circumstances; and 3) its failure to exercise the proper duty of care caused damage to that party. Here, the concrete company owed a duty of care to the tire company because they were neighbours. The concrete company's conduct as to its USTs fell below the standard of care a reasonable person would've exercised. For example, it didn't comply with the law and standards for such tanks. And its failure resulted in the contamination of the tire company's property. So the concrete company was negligent.

**B is wrong** because nuisance is just one of the legal theories under which the concrete company is liable. A company is liable for nuisance when it causes, creates or contributes to an unreasonable interference with, or resulting in injury to, another person's land. In this case, the concrete company unreasonably interfered with the tire company's use of its land by contaminating it and creating an environmental and health hazard. The contamination also restricted the tire company's use of its property. Thus, the concrete company was also liable for nuisance.

**C is wrong** because the concrete company is liable for strict liability as well as the other legal theories. A 'strict liability' claim that specifically applies to environmental damage is based on an old case called *Rylands v. Fletcher* and so is sometimes called a *Rylands* claim. Under such claims, a company is liable for any environmental harm it causes even if it didn't cause the harm intentionally or negligently. To prove the claim, the person suing must show that: 1) the defendant used the land in a 'non-natural' way; and 2) due to this unnatural use, something 'likely to do mischief' escaped from the land. Here, the concrete company used its property in an unnatural way by storing gasoline on it in underground tanks. The gasoline in those tanks then leaked, ended up in the groundwater and escaped the property, flowing onto the tire company's land, which it polluted. Therefore, the concrete company was strictly liable, too.

**Insider Says:** For more on this legal theory, see 'When Is Your Company 'Strictly Liable' for Environmental Damage''

## SHOW YOUR LAWYER

*Canadian Tire Real Estate Ltd. v. Huron Concrete Supply Ltd.*, [2014] ONSC 288 (CanLII), May 12, 2014