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Origins of Strict Liability for Abnormally Dangerous Activities in the United States, Rylands v. Fletcher and a General Clause of Strict Liability in the UK

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Abstract : The paper reveals the birth and evolution of the British precedent Rylands v. Fletcher that, once adopted on the other side of the Ocean (in United States), gave rise to a general clause of liability for abnormally dangerous activities recognized by the §20 of the American Restatements of the Law Third, Liability for Physical and Emotional Harm. The main goal of the paper was to analyze the development of the legal doctrine and of the case law posterior to the precedent together with the intent of the British judicature to leapfrog from the traditional rule contained in Rylands v. Fletcher to a general clause similar to that introduced in the United States and recently also on the European level. As it is well known, within the scope of tort law two different initiatives compete with the aim of harmonizing the European laws: European Group on Tort Law with its Principles of European Tort Law (hereinafter PETL) in which article 5:101 sets forth a general clause for strict liability for abnormally dangerous activities and Study Group on European Civil Code with its Common Frame of Reference (CFR) which promotes rather ad hoc model of listing out determined cases of strict liability. Very narrow application scope of the art. 5:101 PETL, restricted only to abnormally dangerous activities, stays in opposition to very broad spectrum of strict liability cases governed by the CFR. The former is a perfect example of a general clause that offers a minimum and basic standard, possibly acceptable also in those countries in which, like in the United Kingdom, this regime of liability is completely marginalized.

Keywords : Rylands v. Fletcher, strict liability, dangerous activities, general clause
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