IN THE COURT OF APPEAL (**On Appeal from the Bradford County Court)**

BETWEEN:

PICKLES (Appellant)

V

HAMELIN BOROUGH COUNCIL (Respondent)

Judgment of His Honour Judge Muddle Q.C.

"This is a curious case. The facts are not in dispute. The town of Hamelin in Yorkshire had, for several years, been troubled by a plague of rats. These creatures were attracted to the town in large numbers by the presence of quantities of salted sprats, the curing of which forms the staple industry of the inhabitants. So great a nuisance did these rats become that considerable public agitation arose and the Defendant Council was pressed time and again to rid the town of the animals.

"After conventional efforts to eradicate them had failed, on July 15th last year, a stranger suddenly appeared at a Council meeting and undertook to dispose of the rats in return for the sterling equivalent of one thousand guilders, to be paid to him on successful completion of the work. He produced letters from the Mayor of Kiev and from the Nizam of Hyderabad commending him for having rid those cities, in the one case, of huge swarms of gnats and, in the other, of a brood of vampire bats. The Council was asked to agree, and did agree, to accept his proposal on the spot, whereupon the stranger immediately left the council chamber, arrayed himself in a colourful mediaeval costume of red and yellow, descended into the street and commenced to play certain melodies upon a flute or pipe. By this method he induced the whole of the rat population to leave the town and follow him out along the highway leading to Bradford.

"On the southern side of the town there runs a deep, wide and fast flowing river known as the Weser. His intention was, it seems, to pipe or play the animals into the river, and thus to drown

them. In this he was, alas, only partially successful. Although many of the rats did drown a substantial number of them escaped. They escaped onto Mr Pickles' farm and ate his barley. "The stranger did not return to claim the promised payment and (so far at least) has not been seen again. But Mr Pickles now brings this action against the Council claiming £24,800, the agreed value of the loss which he sustained by the depredations of the rats.

"Mr Cicero-Smith, who appeared for Mr Pickles, has strenuously argued that the Council is liable to Mr Pickles on one or more of the grounds pleaded in the Particulars of Claim – in negligence, for nuisance, under the rule in *Rylands v. Fletcher* and under the Animals Act 1971. Counsel for the Defendant, on the other hand, has submitted that there are no grounds in law on which the Council can be found liable to Mr Pickles. I must reluctantly agree with her. My sympathies are with Mr Pickles but his claim must fail."

The Claimant now appeals to the Court of Appeal on all four grounds.

Lead counsel should deal with the appeal on negligence and on nuisance.
Junior counsel should deal with the appeal under the rule in *Rylands v. Fletcher* **and under the Animals Act 1971.**

Problem generously written by Professor Anthony Guest C.B.E., Q.C., for the Bar Society of King's College London, 2015

IN THE COURT OF APPEAL:

BETWEEN:

PICKLES (Appellant)

V

HAMELIN BOROUGH COUNCIL (Respondent)

SUBMISSIONS FROM THE JUNIOR COUNSEL FOR THE APPELLANT

Grounds of Appeal:

The Junior Counsel for the Appellant seeks to repeal the decision that the Council is not liable for the damage suffered by the Appellant due to the rats entering his farm under the Rylands and Fletcher rule and the Animals Act 1971

Submissions:

1. The rule in *Ryland and Fletcher* as explained by Blackburn J. in his judgment and confirmed by the Lord Chancellor Cairns fits the current situation perfectly.
   1.1. The rats which were bought by the pied piper to the land near that of the Appellants are dangerous for the purpose of the rule in *Rylands v Fletcher* as they would certainly cause immense damage were they to escape the possession of the pied piper. This was also an unnatural and extraordinary use of the land
   1.2. A detailed explanation of the rule in Ryland and Fletcher can be found in the case of *Transco plc v Stockport Metropolitan Borough Council* in the judgement of Lord Bingham
   1.3. The Council, for the purpose of this rule was an occupier of the land through its agent, the pied piper.

2. The Council would be liable for the damage done to the Appellant under the Animals Act 1971 c22 s2(1)
   2.1. The wild rats in such large numbers and can be classified as a dangerous species for the purpose of Animals Act 1971 c22 s6(2)

2.2. The wild rats were in the possession of the pied piper in that way a was a keeper of the animals as in Animals Act 1971 c22 s6(3).

For the reasons set out above, it is respectfully submitted that this appeal should be allowed.

Authorities:

1. John Rylands and Jehu Horrocks v Thomas Fletcher (1868) L.R. 3 H.L. 330
2. Transco plc v Stockport Metropolitan Borough Council [2003] UKHL 61
3. Animals Act 1971 c22
4. Flack v Hudson [2001] Q.B. 698

Counsel for the appellant,

Sera Singh, Junior Counsel

IN THE COURT OF APPEAL (On Appeal from the Bradford County Court)

BETWEEN:

PICKLES

Appellant

V

HAMELIN BOROUGH COUNCIL

Respondent

SKELETON ARGUMENT FOR THE SENIOR APPELLANT

GROUNDS OF APPEAL:

Senior Counsel for the appellant seeks to establish that Hamelin Borough Council should be held liable for the loss of £24,800 suffered by Mr Pickles either through the negligence of the council, or alternatively in the nuisance caused by the council's actions.

SUBMISSIONS:

1: The actions of the council create liability under common law negligence.

1.1: In *X and Others (Minors) v Bedfordshire County Council*, Lord Browne Wilkinson confirms that a council can be held liable for its actions carried out in line with statutory authority under the rules of common law negligence. Further explanation of this occurred in *Stovin v Wise.*

1.2: The conventional test for finding common law negligence is stated in *Caparo Industries v Dickman.* The test requires harm to be reasonably foreseeable, a relationship of proximity between the parties and for the imposition of liability to be fair, just and reasonable.

1.3: In entrusting on the spot the task of ridding the town of rats to an individual with no direct experience of the task at hand, it was entirely foreseeable that inadvertent damage would be done to the property of those within the reaches of the town.

1.4: Given the fact that Mr Pickles lives within the town for which the council is responsible and is thus directly affected by negligent discretions effected by the council when undertaking their statutory duties, a relationship of proximity exists.
1.5: Imposition of liability here is fair, just and reasonable given the extraordinarily reckless actions of the council. No 'floodgate' arguments are applicable.

2: The council should be liable under the tort of nuisance.
2.1: The case of *Sedleigh-Denfield v O'Callaghan* confirms the possibility of imposing liability for nuisance on the basis of third-party actions.
2.2: In allowing the stranger to dispose of the rats using council land, the council effectively reduced Mr Pickles' enjoyment of his own land through the escape of rats onto his field.

Christopher Banks: Senior Appellant

Authorities to be relied upon:
Caparo Industries PLC v Dickman [1990] 2 AC 605
X and Others (Minors) v Bedfordshire County Council [1995] 3 All ER 353
Sedleigh-Denfield v O'Callaghan [1940] AC 880
Stovin v Wise [1996] AC 923
Murphy v Brentwood District Council [1991] 1 AC 398

IN THE COURT OF APPEAL

ON APPEAL FROM THE BRADFORD COUNTY COURT

BETWEEN:

PICKLES

Appellant

-and-

HAMELIN BOROUGH COUNCIL

Respondent

SUBMISSIONS ON BEHALF OF THE JUNIOR RESPONDENT

Grounds of appeal:

The appeal should be dismissed on the basis that HHJ Muddle Q.C. was correct in his finding that the Defendant, Hamelin Borough Council, was not liable to the Claimant, Mr Pickles, under the rules laid out in Rylands v Fletcher or the Animals Act 1971.

Submissions

1. **The Defendant is not liable under the test laid out in Rylands v Fletcher:**
    a) The rule in Rylands v Fletcher*: "... the person who, for his own purposes, brings on his land and collects and keeps there anything likely to do mischief if it escapes, must keep it in at his peril; and if he does not do so, is prima facie answerable for all the damage which is the natural consequence of its escape.*" (Rylands v Fletcher [1868]) Lord Carnwath at 340.

b) Firstly, no liability arises when the thing naturally accumulates on the land (Ellison v Ministry of Defence (1997). It cannot be submitted that the rats were deliberately accumulated on the Appellant's land. Rather, it should be understood that the rats naturally accumulated on the land. Cambridge Water Co v. Eastern Counties Leather Plc [1994] 2 A.C. 264.

c) Further, per Lord Bingham in Transco v Stockport MC (2003), the rule in *Rylands v Fletcher* can only be engaged where the Defendant's use is extraordinary or unusual. On the facts, this is not the case here.

d) Alternatively, the remoteness of the damage to the Appellant's property prevents the collection of damages, as the damage to property must be reasonably foreseeable. Cambridge Water Co v. Eastern Counties Leather Plc. [1994].

2. The respondent cannot be liable under the Animals Act 1971 for damage caused to the Claimant's property.

a) Firstly, for the purposes of s6(3)(a) and (4), the respondent cannot be considered as a 'keeper of the animal'.

b) If he cannot be properly designated as the keeper, then no liability can arise.

c) Alternatively, the Appellant has failed to establish a breach under the limbs of s2(2) of the Animals Act 1971.

Chloe Gershon

Junior Respondent

Authorities:

1. Rylands v. Fletcher [1868] L.R. 3 H.L. 330.
2. Ellison v Ministry of Defence (1997).
3. Cambridge Water Co v. Eastern Counties Leather Plc [1994].
4. Transco v Stockport MC (2003).
5. Animals Act 1971.

IN THE COURT OF APPEAL BETWEEN: -

HAMELIN BOROUGH COUNCIL **Claimant/Respondent**

and

PICKLES **Defendant/Appellant**

SKELETON ARGUMENT ON BEHALF OF THE RESPONDENT

Introduction

1. Counsel for the Respondent seeks to uphold the finding at first instance that there was no successful claim in negligence and in nuisance against the Respondent. Accordingly, it is respectfully submitted that the court dismiss the appeal.

Submissions

2. The property damage on Mr Pickles' land was too remote. Accordingly, the claim in negligence must fail. a. There will only be a breach of the duty of care if a reasonable person in the Respondent's position would contemplate that the injury would follow from their acts or omissions (*Whippey v Jones* [2009] EWCA Civ 452). b. Having hired a skilled and highly-recommended pest-control expert, a reasonable person in the Respondent's position would not have contemplated the damage suffered by the Appellant would follow from their act. c. Accordingly, the Respondent did not breach their duty of care owed towards the Appellant.

3. In the alternative, it is submitted that the Respondent did not breach their duty of care, considering the Appellant's resources, and the utility of the Respondent's activities.

a. It is not fair, just, or reasonable to expect of a public authority to dedicate their resources to the protection against the risk of property damage when the property

owner is expected to safeguard against such risks by obtaining insurance (*Lambert v Barratt Homes Ltd* [2010] EWCA Civ 681).

b. Accordingly, it would not be fair, just, and reasonable to impose a duty upon the Respondent to safeguard against the risk of the private property damage suffered by the Appellant. That duty lay with the Appellant.

c. Further, when assessing the standard of care owed by the Respondent, it is respectfully submitted that the end to be achieved, and the importance of such ends, be considered (*Watt v Hertfordshire County Council* [1954] 1 WLR 835).

d. The Court should have regard to the utility of the Respondent's act of contracting for the Stranger to eradicate the plague of rats. Accordingly, weighing the utility of improving the locality of the Council by eradicating the plague of rats against the risk of property damage, the Respondent did not breach their duty of care.

4. Further, it is respectfully submitted that the claim in nuisance fails due to the lack of foreseeability.

a. For a claim in nuisance to succeed, the damage caused must be reasonably foreseeable. This standard of foreseeability is objective (*Cambridge Water Co Ltd v Eastern Counties Leather Plc* [1994] 2 A.C. 264).

b. Adopting an objective standard, no reasonable person in the Respondent's position could have foreseen that a plague of rats would survive the extermination by the skilled pest-control expert, and subsequently, cause damage to the Appellant's property.

c. Accordingly, as the damage caused was not reasonably foreseeable, it is submitted that the claim in nuisance fails.

<u>Conclusion</u>

5. The court is invited to dismiss the appeal and hold that there are no grounds in law on which the Respondent could be found liable to the Appellant under negligence or nuisance.

SHAVONNE TEO, SENIOR COUNSEL FOR THE RESPONDENT

List of Authorities:

1. *Whippey v Jones* [2009] EWCA Civ 452
2. *Lambert v Barratt Homes Ltd* [2010] EWCA Civ 681
3. *Watt v Hertfordshire County Council* [1954] 1 WLR 835
4. *Cambridge Water Co Ltd v Eastern Counties Leather Plc* [1994] 2 A.C. 264