



Press Summary

13 March 2026

Rubis Bahamas Ltd (Appellant) v Lillian Antoinette Russell (Respondent) (The Bahamas)

[2026] UKPC 9

On appeal from the Court of Appeal of the Commonwealth of The Bahamas

Justices: Lord Briggs, Lord Sales, Lord Leggatt, Lord Burrows and Lady Rose

Background to the Appeal

The Respondent, Lillian Russell, owns a residential property in Nassau, New Providence, The Bahamas, opposite a petrol service station owned by the Appellant, Rubis Bahamas Ltd (“Rubis”). The service station was acquired by Rubis from Texaco Bahamas Ltd in 2012 and was let to Fiorente Management and Investments Ltd (“Fiorente”). [1]

In 1994, a leak of fuel from underground storage tanks at the service station caused contamination of the groundwater and soil in an area which included Ms Russell’s property. As a result, water from her well became unfit to drink and fruit from her trees inedible. Just after Rubis acquired the service station from Texaco and leased it to Fiorente in November 2012, another leak of fuel occurred (this time from a riser pipe to one of the fuel dispensers). Ms Russell began these proceedings against Rubis in March 2015, alleging that both the 1994 leak and the 2012 leak contaminated her property through the migration of petroleum products from the service station, and that Rubis was liable for the resulting damage. [2]-[4]

The judge found that Rubis was liable to compensate Ms Russell for damage caused by both the 1994 leak and the 2012 leak and awarded damages in the sum of \$692,825. Rubis appealed from this decision. The Court of Appeal allowed the appeal in part, holding that the judge was wrong to find Rubis in relation to the 1994 leak because any claim relating to that leak lay against Texaco and not Rubis, and the claim was in any case made out of time as the limitation period had expired. In relation to the 2012 leak, the Court of Appeal upheld the judge’s finding of liability based on the rule in *Rylands v Fletcher* (1868) LR 1 Ex 265, (1868) LR 3 HL 330. The Court of Appeal substituted an award of damages of \$159,450. [8]-[10]

Rubis appealed this decision to the Judicial Committee of the Privy Council, who decided, as a preliminary issue, that an appeal lay as of right (*Rubis Bahamas Ltd v Russell* [2025] UKPC 13). [11]

Judgment

The Board unanimously allows the appeal. Lord Leggatt gives the Board's advice. The courts below were right to hold that Rubis is liable under the rule in *Rylands v Fletcher* for any damage caused to Ms Russell's property by the 2012 leak (over and above any damage resulting from the 1994 leak). But neither court made findings of fact based on the evidence about whether any, and if so what, damage was actually caused by the 2012 leak. The case will be remitted to the court of first instance to decide this question.

Reasons for the Judgment

The appeal raises three issues: (1) Whether the judge found as a fact that petroleum products had migrated to Ms Russell's property as a result of the 2012 leak and, if so, whether the judge erred in so finding; (2) Whether Rubis is liable under the rule in *Rylands v Fletcher* for any damage caused to Ms Russell's property by the 2012 leak; and (3) Whether, if there was damage for which Rubis is liable, the Court of Appeal erred in its assessment of damages. [12]

(1) The migration issue

There was a dispute at the trial about whether fuel from the 2012 leak had migrated underground to Ms Russell's property. The trial judge wrongly applied the "rule in *Browne v Dunn*" which requires a party to challenge by cross-examination the evidence of any witness of the opposing party on a material point which he or she wishes to submit to the court should not be accepted. The judge accepted an argument that, because it was not put in cross-examination to an expert witness called by Ms Russell that Ms Russell's property was unaffected by the 2012 leak, both Rubis and the court were bound to accept that the 2012 leak did cause contamination of her property. On that basis the judge thought it unnecessary actually to evaluate the evidence bearing on the migration issue and make a finding of fact based on the evidence. [24]-[27]

The argument based on the "rule in *Browne v Dunn*" was misconceived because, although the expert witness had found traces of petroleum products in groundwater at Ms Russell's property which he attributed to migration through the sub-soil from the service station, he had expressed no opinion about whether the contaminants found resulted from the 2012 leak or were residues from the 1994 leak (or both). He had therefore given no evidence which Rubis was required to challenge. Failure to cross-examine on the point would not in any case have absolved the judge from his duty to assess the evidence as a whole. [28]-[36] The error was not corrected by the Court of Appeal, which also made no evaluation of the evidence or finding of fact based on the evidence on this key factual issue. [38], [39]

(2) Liability under the rule in *Rylands v Fletcher*

Whether this factual issue needs to be resolved depends on whether the courts below were right to decide that Rubis is liable for any damage caused to Ms Russell's property by fuel from the 2012 leak under the rule in *Rylands v Fletcher*. Under this rule, a person who brings onto land

and keeps there a dangerous thing which poses an exceptional risk of causing harm if it escapes from the land is liable (without proof of fault) for harm caused if it does escape. [49]-[53]

Rubis argued that it is not liable under *Rylands v Fletcher* for any damage caused by fuel which escaped from the service station in the 2012 leak on two grounds: (1) that the person liable for damage caused by the escape of fuel was the owner and controller of the fuel, which was the lessee of the service station, Fiorente, and not Rubis; and (2) that the storage of petroleum products in underground storage tanks is an ordinary use of land and, for that reason, outside the scope of the rule. [54]

In assessing these arguments, the Board discusses the rationale for the rule in *Rylands v Fletcher* and its relationship with the torts of private nuisance and negligence. In doing so, the Board doubts the view expressed in some earlier cases that the rule applies only where the harm caused by the escape of the dangerous thing consist of damage to property and not where the escape causes personal injury. [73]-[75]

(i) Is Rubis a person liable under the rule?

The person responsible for damage caused by the escape of the dangerous thing is the person who created the risk of such damage by bringing the dangerous thing onto and keeping it on the land from which it escaped. That person need not be the owner or “occupier” of the land. Nor will liability arise merely from giving permission for the land to be used in a particular way. [83], [86]-[87]

The arrangements by which the fuel was brought onto and kept on the service station site from which it escaped are found in the lease between Rubis and Fiorente. [88] Two features of those arrangements together establish that Rubis was responsible for introducing and keeping on the land the fuel which escaped. First although the fuel stored on the site had been purchased by Fiorente, Rubis (as the lessor) caused the fuel to be brought onto and kept on the land by requiring the premises to be operated as a service station (subject to strict operating requirements) and by requiring fuel supplied (exclusively) by Rubis to be stored, handled and dispensed at the premises. Second, under the terms of the lease Rubis was responsible for maintaining and repairing the tanks and other equipment and thus had a high degree of control over the integrity of the underground fuel storage system. Rubis is therefore potentially liable under *Rylands v Fletcher*. [92]-[94]

(ii) Is the storage of petroleum products an ordinary use of land?

The rule in *Rylands v Fletcher* does not apply where the use made of land is a “natural” or “ordinary” use. Rubis argues that the test is whether the relevant use is extraordinary or unusual for the time and place. Service stations are commonplace in present day Nassau, including in urban and residential areas, and there was therefore nothing extraordinary or unusual in the storage of petroleum products. [107]-[109]

The Board rejects this interpretation of the law. The relevant question is whether the use of the land is ordinary in the sense that the activity is one carried on by a large proportion of persons and therefore not a specialised activity. The underlying principle is that, where an activity is ordinary and everyday, others can be expected to put up with the risks created by it and to bear the costs if such a risk materialises. In contrast, where the use of land is specialised (rather than carried on by a large proportion of persons) and exceptionally dangerous (in that involves keeping on the land something which gives rise to an exceptionally high risk of causing damage

if it escapes), mutual sufferance cannot be expected and it is the person who imposes this risk on others who must bear the costs of harm that results if the risk materialises. [112]-[121]

Applying this principle, the storage of large quantities of petroleum products is not an activity carried on by a large proportion of persons. It is a specialised and dangerous activity which does not constitute an “ordinary” use of land and gives rise to liability under *Rylands v Fletcher* for damage caused in the event of an escape [122]-[123]

(3) Assessment of damages

The Court of Appeal’s assessment of damages cannot stand because it was not based on findings about what, if any, physical damage to Ms Russell’s property resulted from the 2012 leak. The question of damages must be considered afresh on the basis of the factual findings of the judge when the case is remitted. [124]-[133]

References in square brackets are to paragraphs in the judgment.

NOTE:

This summary is provided to assist in understanding the Court’s decision. It does not form part of the reasons for the decision. The full judgment of the Court is the only authoritative document. Judgments are public documents and are available at: [Cases - JCPC](#)