In a recent article on environmental law in China ((2010) 6 IELR 182), Stephen Tromans noted that the common law will continue to apply in Hong Kong until 2047. Thus, he continued, the rule in *Rylands v Fletcher*, the common law principle of strict liability in tort, may continue to play a role in the common law’s response to environmental harm. However, in western common law jurisdictions, the recent trend has been to impose ever more stringent conditions on the use of the rule. As long ago as 1994 the Australian Courts took the extreme step of killing off the rule altogether. Other jurisdictions have not gone that far; however, case law in different jurisdictions is beginning to converge to the extent that the rule should only be applied in the narrowest of circumstances. Despite periodic assertions to the effect that *Rylands v Fletcher* is alive and well, the recent Court of Appeal decision in *Stannard v Gore* [2012] EWCA Civ 1248 has been seen as strengthening the existing shackles.

Those shackles largely result from attempts by the UK courts to rein in the rule and to peg it to nuisance in the manner advocated by Professor Newark in 1949; although his thesis is far from uncontested. This has had the effect of limiting the range of potential claimants and, as a result of the well-known decision in *Cambridge Water v Eastern Counties Leather*, has introduced a foreseeability of harm requirement. In *Birnie Port Authority* the High Court of Australia ruled that there was no need for a common law rule of strict liability, whether or not it could be construed as an adjunct to the law of nuisance. It was held that the law of negligence was capable of absorbing many of the situations in which *Rylands* might apply. The reasoning was based on the proposition that there is a natural correlation between the extent of the hazard and the stringency of the measures necessary to discharge the duty of care. Other jurisdictions have preserved the tort but have sought other means of restricting its application. For example, some have argued that the Ontario Court of Appeal decision in *Smith v Inco* [2011] ONCA 628 has weakened the tort in that jurisdiction through its interpretation of the unnatural use of land and foreseeability requirements.

This paper will examine the commonalities in those factors which may explain this erosion of the rule and the wider implications in terms of the future role of common law. In particular, it will be argued that the continued retreat of *Rylands* marks an ever increasing reluctance on the part of the courts to apply the common law in a manner which could cut across or undermine regulatory regimes; especially in densely populated states with complex land use issues. For example, where an activity has been duly authorized by planning controls and permitting systems, a claimant may face an uphill struggle in arguing that the land use is unnatural or unduly hazardous. However, the risk of emasculating the rule is that, those who suffer harm which was not anticipated by the regulator, will have one less weapon in their armoury.