

LAW OF TORTS

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Topic- Absolute and strict liability

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Strict Liability

Strict liability is the principle which evolved from case of **Rylands v. Fletcher** in the year 1868. This principle clearly states that a person who keeps hazardous substances in his premises, is responsible for the fault if that substance escapes in any manner and causes damages. This principle stands true if there was no negligence on the side of the person keeping it and the burden of proof always lies on the defendant to prove how he is not liable.

Facts: There were two men living next to each other, Rylands and Fletcher. Fletcher owned a mill for whose energy requirement; he constructed a water reservoir on his land. To get this work done, he had hired independent contractors and engineers. There were old unused shafts under the site of the reservoir which the engineers didn't notice and thus did not block them. Due to the negligence of the contractors, the shafts that led way to Rylands land burst when water was filled in the reservoir. This caused huge damage and loss to Ryland as the water entered into his coal mine. Thus, Ryland filed a suit against Fletcher.

Issues: The issue was very concise and straight. Can the defendant be held liable for the act of someone else due to which an entity on his land escapes without his negligence or intention? The defendant took the defence that that it was not his fault but the contractor. His being liable for the damage, the cause of which was unknown to him was not acceptable to him.

Judgment: The house of the Lords rejected the plea of the defendant and claimed him to be liable for all the damages to Rylands.

Sir Lord Cairns: On the other hand if the Defendants, not stopping at the natural use of their close, had desired to use it for any purpose which I may term a non-natural use, for the purpose of introducing into the close that which in its natural condition was not in or upon it, for the purpose of introducing water either above or below ground in quantities and in a manner not

the result of any work or operation on or under the land, and if in consequence of their doing so, or in consequence of any imperfection in the mode of their doing so, the water came to escape and to pass off into the close of the Plaintiff, then it appears to me that that which the Defendants were doing they were doing at their own peril; and, if in the course of their doing it, the evil arose to which I have referred, the evil, namely, of the escape of the water and its passing away to the close of the Plaintiff and injuring the Plaintiff, then for the consequence of that, in my opinion, the Defendants would be liable. •

According to the rule set by this case, if a person brings on his land and keeps there any dangerous thing, a thing which is likely to do mischief if it escapes, he will be *prima facie* answerable to the damage caused by its escape even though he had not been negligent in keeping it there. The liability arises not because there was any fault or negligence on the part of a person, but because he kept some dangerous thing on his land and the same has escaped from there and caused damage. Since, in such a case the liability arises even without any negligence on the part of the defendant, it is known as the rule of strict liability.

Therefore, this is one of the most important landmark judgements in the history of the legal system since it led to the formulation of a new concept, a new idea and thus a new principle—the rule of the strict liability. Based upon his principles, there were certain qualifications given to decide whether a liability is strict liability or not. Only after these essential qualifications being satisfied, a liability can be termed as strict liability.

Essentials of Strict Liability

- Dangerous Thing

This simply means that the defendant will be liable for the damages only when the thing that escaped from his premises was a dangerous thing. The word “dangerous” here implies that it is likely to do any sort of mischief if it escapes from the land of the defendant. In the case studied above, the dangerous thing was the collected water in the reservoir on Fletcher’s land. The rule specifies that things like gas, electricity, explosives, flag pole, noxious fumes, vibrations, yew trees, sewage and even rusty wires can also be termed as dangerous if escapes from the premises of the owner.

- Escape

It is also essential that the thing causing harm must escape from the premises of the defendant. It should not be within the reach of the defendant after its escape. For example, if the poisonous plants growing on the defendant's land escapes and enters the plaintiff's land and is then eaten up by the cattle on the plaintiff's land, the defendant is liable for the damages caused to the cattle of the plaintiff. On the other hand, if the plaintiff's cattle themselves enter the land of the defendant and eat the poisonous plants and die, the defendant will not be liable since there was no escape of his property. The case of *Read v Lyons & co.* shows that the defendant is not liable if there is no escape. In this case, the plaintiff, Read was an employee in the defendant's ammunition factory. While she was working in the premises of the defendant, a shell exploded and the plaintiff was severely injured. The defendant could not be held negligent since there was no negligence on his part.

Even the rule of **Rylands v. Fletcher** didn't apply here since the dangerous thing, the shell, had not escaped from the premises of the defendant. Thus, Lyons & co. was not held liable whereas in the case of **Rylands v. Fletcher**, the dangerous thing, the water had escaped from the defendants premises. In the case of **Ponting v. Noakes**, the claimants horse died after it had reached over the defendant's fence and ate some leaves from a Yew tree. The defendant was not liable under **Rylands v. Fletcher** as the Yew tree was entirely in the confines of the defendant's land and there had therefore been no escape.

- Non-Natural Use of Land

In the landmark case, the water collected constituted the non-natural use of land. Keeping water for domestic purposes is natural use but keeping water for use in the mill is non-natural use of land. For the use to be non-natural, it must be some special use bringing with it increased danger to others, and must not merely be the ordinary use of land or such a use as is proper for the general benefit of community. Electric wiring in the house, electric wiring in the shops, supply of gas in gas pipes in a dwelling house and water installation in a house are other examples of the natural use of land. In the case of **Sochacki v. Sas**, the defendant was a lodger in the claimant's house. He lit an open fire in his room and then went out. Unfortunately a spark jumped from the fire and set the room alight. The fire spread to the rest of the house and the claimant brought an action against the defendant based on liability arising under **Rylands v. Fletcher**.

It was held that the defendant was not liable. Whilst the fire was likely to do mischief if it escaped, the use of an open fire in the claimant's fireplace was not considered a non-natural use of land. This case clearly explains the conditions when the use of the land by the defendant can be described as non-natural use and when not. These are the three basic essentials for the applicability of the rule of strict liability. If the three cases are satisfied well in the case, then the defendant will be held liable for the tort under the tort of "strict liability" and following the "no fault liability principle".

Exceptions to the Rule of Strict Liability

Strict liability evolved from the **Rylands v. Fletcher** case in the English court in the year 1868. This principle clearly states that a person, who keeps hazardous substances in his premises, is responsible for the fault if that substance escapes in any manner and causes damages. This principle stands true if there was no negligence on the side of the person keeping it and the burden of proof always lies on the defendant to prove how he is not liable. However there are certain exceptions to this rule. These exceptional rules have been recognized by the **Rylands v. Fletcher** case and later cases. The exceptions are as follows:

- Plaintiff's Own Fault

If somehow the plaintiff himself enters into the land of the defendant and injures himself and then claims for damages, he is not liable for the damages since he himself went forward to the dangerous thing. . In the case of **Ponting v. Noakes (1994)**, the claimant's horse died after it had reached over the defendant's fence and ate some leaves from a Yew tree. The defendant was not liable under **Rylands v. Fletcher** as the Yew tree was entirely in the confines of the defendant's land and there had therefore been no escape.

The plaintiff cannot recover anything if the damage was caused due to the unusual sensitiveness of the plaintiff's apparatus and such damage won't cause any harm to a person carrying ordinary business there. Until and unless there is "escape" of the dangerous thing or the land of the defendant is being used for non-natural purposes for an ordinary person, the defendant can't be held liable.

- Act Of God

An act of God can be defined as an event that directly and exclusively results from the occurrence of natural causes that could not have been prevented by the exercise of foresight or

caution. In the context to the strict liability, if the escape was unforeseen and without any human intervention, caused by some super natural force, then the defendant will not be liable for the damages. For instance, in the case of *Nichols v Marsland*, this defence was successfully pleaded. In this case, the defendant built up a dam in the natural stream flowing on his land to create artificial lakes there. Unfortunately, that land faced heavy rainfall that year. The rainfall was extra ordinary and unforgettable. Due to the rain, the embankments of the artificial lakes gave away. The rush of the water down the stream washed away the bridges of the plaintiff. It was held that the defendant was not liable.

- Consent Of The Plaintiff

In this exception, there is no common benefit to the defendant and the plaintiff, as in the case of *volenti non fit injuria*. For example, if the plaintiff and the defendant are neighbours and share the same water source on the land of the defendant, if any damage is caused to the plaintiff due to that collected water, the defendant won't be liable. On the other hand, when a festival is organized and the display of fireworks causes damages to the crowd, the organizers will be liable since the display will not be deemed to be conducted for the benefit of all.

- Act Of Third Party

The rule of strict liability doesn't apply when the damages is caused due to the act of a stranger. A stranger will be a person who is not the servant of the defendant nor is under the control of the defendant. However, if the act of the stranger can be foreseen by the defendant, due care must be taken by the defendant to avoid the damages. In the case of **Box v. Jabb**, the reservoir of the defendant overflowed because of a blockage in the drains by strangers. Thus, the court did not claim the defendant to be liable.

- Statutory Authority

An act done under the authority of the statute is a very strong defence to an action for tort. However, the defence cannot be pleaded if there is any kind of negligence on the part of the defendant who is under statutory authority. In the *Green v*

Chelsea Co. (1894), the defendant company had a statutory duty to maintain continuous supply of water. A main belonging to the company burst without any negligence on its part, as a

consequence of which the plaintiff's premises were flooded with water. It was held that the company was not liable as the company was engaged in performing a statutory duty.

Rule of Absolute Liability

The rule of absolute liability was evolved in the case of **M.C.Mehta v. Union of India**. This was a very important landmark judgment that brought in a new rule in the history of the Indian Law. The rule held that where an enterprise is engaged in a hazardous or inherently dangerous activity and it harm results to anyone on account of an accident in the operation of such hazardous or inherently dangerous activity resulting, the enterprise is strictly and absolutely liable to compensate to all those who are affected by the accident.

Facts: In the city of Delhi, there was severe leakage of oleum gas on the 4th and the 6th of December, 1985. This took place in one of the units of Shriram Foods and Fertilizers Industries belonging to the Delhi Cloth Mills Ltd. due to this, an advocate practicing in the Tis Hazari Court had died and many others were affected by the same. The action was brought through a writ petition by way of public interest litigation (PIL).

In Indian law, public interest litigation means litigation for the protection of the public interest. It is litigation introduced in a court of law, not by the aggrieved party but by the court itself or by any other private party. It is not necessary, for the exercise of the court's jurisdiction, that the person who is the victim of the violation of his or her right should personally approach the court. Public interest litigation is the power given to the public by courts through judicial activism. However, the person filing the petition must prove to the satisfaction of the court that the petition is being filed for a public interest and not just as a frivolous litigation by a busy body.

Issue: The issue raised was a very strong issue. It said that if all these tragedies follow the rule of strict liability, they will come under the exceptions laid down for **Rylands v. Fletcher** case. Judgment: The Supreme Court took a very bold decision to evolve a new rule fit for the economic and social conditions prevailing in India. The rule of absolute liability was then formed in preference to the rule of strict liability. This rule ignored all the exceptions in the **Rylands v. Fletcher** case.

The rule clearly held that where an enterprise is engaged in a hazardous or inherently dangerous activity and it harm results to anyone on account of an accident in the operation of such hazardous or inherently dangerous activity resulting, the enterprise is strictly and absolutely

liable to compensate to all those who are affected by the accident and such liability is not subject to any of the exceptions which operate vis-a-vis the tortious principle of strict liability under the rule in **Rylands v. Fletcher**.

ABSOLUTE LIABILITY = STRICT LIABILITY – EXCEPTIONS

The court gave two basic reasons justifying the rule:

- Any enterprise carrying on hazardous activities for private profits have the social responsibility to compensate those suffering from any accident and it should absorb such loss as an item of overhead expenses.
- The enterprise alone has the resources to discover and guard against such hazards and dangers.

This is the clear explanation of the absolute liability or the rule of **M.C.Mehta v. Union of India**. The court also laid down the measures of compensation to be paid by the enterprise. It said that the larger and more prosperous the enterprise, the greater must be the amount of compensation payable by it for the harm caused on account of an accident in the carrying on of the hazardous or dangerous activity by the enterprise.

The Bhopal Gas Tragedy

The Bhopal Gas Tragedy is one of the most devastating accidents in the history. It was a mass disaster caused by the leakage of Methyl Isocyanate (MIC) and other toxic gases from a plant set up by the Union Carbide India Ltd. for the manufacture of pesticides in Bhopal on the night of December 2, 1984. UCIL is a subsidiary of Union Carbide Corporation (UCC), a multinational company registered in U.S.A. More than 27 tons of methyl isocyanate and other deadly gases turned Bhopal into a gas chamber. None of the six safety systems at the plant were functional, and Union Carbide's own documents prove the company designed the plant with unproven and untested technology, and cut corners on safety and maintenance in order to save money. **The disaster resulted in the death of at least 3000 persons and there were serious diseases and injuries to many people.** Some people permanently lost their eyes, hearing senses, some suffered from neurological disorders and scores of other complications. The Supreme Court laid the rule of absolute liability in preference to the strict liability. The defence of the UCC on the grounds of sabotage was rejected and the principle laid by the Supreme Court in the **M.C. Mehta v. Union of India** was followed.

The rule clearly held that where an enterprise is engaged in a hazardous or inherently dangerous activity and it harm results to anyone on account of an accident in the operation of such hazardous or inherently dangerous activity resulting, the enterprise is strictly and absolutely liable to compensate to all those who are affected by the accident and such liability is not subject to any of the exceptions which operate vis-a -vis the tortious principle of strict liability under the rule in **Rylands v. Fletcher**.

It was thus hoped that the victims would be able to get relief without further much delay. To see to it that the victims of the handling of hazardous substances can get expeditious relief through insurance, The Public Liability Insurance Act, 1991 was passed.

The Public Liability Insurance Act, 1991

This act has the major aim of providing immediate relief to the persons affected by accident occurring while handling any hazardous substances for matters connected with the incident. It has the goal of providing public liability insurance. This act gained the assent of the President on the 22nd of January, 1991. This act says that every owner who works with hazardous substances and hires employees to control those dangerous things, shall have policies and insurances where he will be insured against liability to give relief in case of death or injury to a person or damage to property arising from the accident caused while carrying on the hazardous activities. In respect of already established units, insurance policies had to be taken as soon as possible and the rule gave the owners the time of one year to get into the insurance contracts. This liability was based on the principle of “**no fault liability**“.

Hazardous substance means any substance or preparation which by reason of its chemical or physic-chemical properties or handling, is liable to cause harm to human beings, other living creatures, plants, micro-organisms, property or the environment. The term “handling” in relation to any hazardous substance means the manufacture, processing, treatment, package, storage, transportation by vehicle, use, collection, destruction, sovereign, offering for sales, transfer of the like of such hazardous substance. This is the clause in the Section 2(c) of the Public Liability Insurance Act, 1991. Therefore, this is the clear expression of the rule of the absolute liability laid down in **M.C. Mehta v. Union of India**.