

**RMM LAW COLLEGE SAHARSA**

**JURISPRUDENCE**

**Part I**

**Paper -1**

**Topic- Concept of Liability**

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**Date:- 01/02/21**

In civilized societies, most of the relations between the individual and the state are governed by rules made or recognised by the state, that is, law. Law lays down the rights and duties of the individuals. In other words, it prescribes what one is to do and what one is not to do and what one is entitled to get it done. A breach of these rules is called wrong. When a person has committed a wrong, he is said to be liable.

Thus, liability is the condition of the person who has committed a wrong. Salmond defines liability as, 'the bond of necessity that exists between the wrongdoer and the remedy of the wrong'. The task of law is not finished only by laying down rights and duties; it ensures their

protection, enforcement and redress also. Therefore, **liability** is a very important part of the study of law. The kinds of liability, when one becomes liable or in other words, when liability comes into existence and the measure of liability are the things that must be known in this connection.

## Kinds of Liability

Liability is of two kinds:

1. Civil.
2. Criminal.

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## Distinction between civil and criminal liability

About the distinction between the two, different jurists have given different views.

### **Austin's view:**

An offence which is pursued at the discretion of injured party or his representatives is a civil injury. Offences which are pursued by the sovereign or by the subordinates of the sovereign are a crime. All absolute obligations are enforced criminally.

**Salmond's view is that** the distinction between criminal and civil wrong is based not on any difference in the nature of the right infringed,

but on a difference in the nature of the remedy applied.

One view is that the main difference between the two lies in the procedure. In other words, their procedures are different.

**Generally, four points of distinction between the two have been put forward:**

1. Crime is a wrong against the society but a civil wrong is a wrong against a private individual or individuals.  
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2. The remedy against a crime is punishment but the remedy against the civil wrongs is damages.  
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3. A third difference between the two is that of the procedure. The proceedings in case of crime are criminal proceedings, but the proceedings in case of a civil wrong are called civil proceedings and criminal and civil proceedings take place in two different sets of courts.  
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4. The liability in a crime is measured by theÂ intentionÂ of the wrongdoer, but in a civil wrong the liability is measured by theÂ wrongful actÂ and the liability depends upon the act and not upon the intention.

Points of distinction not well founded. It is submitted that most of these

points of distinction between the two are not well founded. To take the first point, there are wrongs which are against the state or society, but they are not considered as crime, for example, a breach of a contract by an individual made with the state is not a crime.

In the same way, there are wrongs which are only against a private individual but they are considered as crimes. Secondly, a criminal proceeding does not always result in punishment and on the contrary sometimes civil proceedings result in punishment.

**For example**, in the case of disobedience of an injunction granted by a court, punishment is awarded although it is a civil proceeding. Thirdly, to say that the measure of criminal liability is intention and of civil liability is the wrongful act. In modern times, mens rea (intention) has gone under an eclipse and the question of intention has become more a matter of form than of a substance. The distinction on the basis of proceedings is sounder and contains substantial truth. Though in some cases civil and criminal both the proceedings can be instituted for the same act, they are always different and are regulated by two different sets or rules.

### Remedial and Penal liability

The liability can again be classified as **penal** and **remedial**. This distinction has been made on the basis of the legal consequences of the action against the wrong, if after a successful proceeding the defendant is

ordered to pay damages or to pay a debt, or to make a specific performance etc., the liability is called **remedial liability**.

When after a successful proceeding the wrongdoer is awarded punishment which may be the fine, imprisonment, etc., it is called penal liability. The civil liability is generally remedial and the criminal liability is penal. But this is not always true. As pointed out earlier, the civil liability in some cases is penal. Therefore, civil liability is remedial and penal both. So far as criminal liability is concerned, with the very few exceptions, it is always penal.

### Remedial liability

This liability is based on the maxim **ubi jus ibi remedium** (where there is a right, there must be some remedy). When law creates a duty, it ensures its fulfillment also. For the breach of a duty, there is some remedy prescribed by law and it is enforced by law. With very few exceptions this is the rule.

### **The exceptions are the following:**

1. The duties of imperfect obligation. This is the first exception of the rule that a duty is enforceable by law. A time-barred debt is an example of it. Though the debt exists in law, it is not enforceable.

Therefore, there can be no proceedings to compel its payment.

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2. There are some duties which are of such a nature that if once broken cannot be specifically enforced (in respect of the act done). For example, in a completed assault (that is actionable as a tort), the defendant cannot be made to refrain from it (as it is already done and the original state of things cannot be brought).

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3. Cases where, though the specific performance of the duty is possible, the law, on other considerations, does not enforce the specific performance, but instead awards damages to the plaintiff.

**For example**, if A contracts to render personal service to B, B cannot enforce performance of this contract, (Specific Relief Act of 1877, section 21).

## Penal Liability

The Maxim **actus non facit reum, nisi mens sit rea** (the act alone does not amount to guilt, it must be accompanied by a guilty mind) is considered to be the condition of penal liability. Thus, there are two conditions of penal liability:

1. Act.
2. Guilty mind or mens rea.

Austin defines act as a 'movement of the will'. It is bodily movement caused by volition, a volition being a desire for a bodily movement which is immediately followed by such movement provided the bodily member is in a normal condition. The view of Holmes is that **an act is always a voluntary muscular contraction and nothing else**. Thus, according to both the jurists an act is a willed movement of the body.

Salmond takes act in a wider sense. He says: 'We mean by it (act) any event which is subject to the control of human will'. Salmond's use of the word 'event' is of great significance. **Even** is not an act in the strict sense nor is movement, but Salmond by act means those events which are subject to the control of human will.

### **An act consists of three stages:**

- a. Its origin in some mental or bodily activity or passivity of the doer.
- b. Its circumstances
- c. Its consequences.

### **For example, if we take theft, it has five ingredients:**

1. Dishonest intention to take property.
2. The property must be movable property.
3. It should be taken out of the possession of another person.
4. It should be taken without the consent of the person.
5. There must be some moving of the property in order to accomplish the taking of it.

If we examine the ingredients, in the light of the above definition, we can say that it is an act according to the definition. Leaving the first ingredient which is the second condition mens rea, if we arrange the other ingredients in the light of the definition, intention to take the property is a mental activity where the act originates. The circumstances are the property must be movable (ingredient 2);

it should be taken without the consent of that person (ingredient 4); there must be some moving of the property in order to accomplish the taking of it (ingredient 5).

The consequence is that the property is taken out of the possession of another person (ingredient 3).

A theft would take place when all the ingredients are complete. When we use the word 'act' as condition of penal liability, it is used in its wider sense, and not in its limited sense as the movement of the body only. Therefore, the definition given by Salmond is more accurate than the definition of Austin and Holland.

The law prescribes as to under what circumstances and consequences an act shall be punishable or, in other words, a person committing the act shall be under penal liability. The circumstances so prescribed are relevant in determining whether a particular act (wrong) has taken place or not. A person is liable only for his own acts and not for the acts done by others, or the events which are independent of human activity.

