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Strict & Absolute liability: With Special Reference to India

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Abstract

A rule specifying strict liability makes a person legally responsible for the damage and loss caused by his/her acts and omissions regardless of culpability (including fault in criminal law terms, typically the presence of mens rea). Under strict liability, there is no requirement to prove fault, negligence or intention. Strict liability is prominent in tort law (especially product liability), corporations' law, and criminal law. For analysis of the pros and cons of strict liability as applied to product liability, the most important strict liability regime, see product liability. Absolute liability is a standard of legal liability found in tort and criminal law of various legal jurisdictions. To be convicted of an ordinary crime, in certain jurisdictions, a person must not only have committed a criminal action, but also have had a deliberate intention or guilty mind (mens rea). In a crime of strict liability (criminal) or absolute liability, a person could be guilty even if there was no intention to commit a crime. The difference between strict and absolute liability is whether the defence of a mistake of fact is available: in a crime of absolute liability, a mistake of fact is not a defence. In other words, absolute liability is strict liability without any exception. The Indian Judiciary tried to make a strong effort following the Bhopal Gas Tragedy, December, 1984 (Union Carbide Company vs. Union of India) to enforce greater amount of protection to the Public. The Doctrine of Absolute Liability was therefore evolved in Oleum Gas Leak Case and can be said to be a strong legal tool against rogue corporations that were negligent towards health risks for the public.

Keywords: Strict Liability, Absolute Liability, Bhopal Gas Tragedy, Judiciary, Act Of God

Introduction

The principle of strict liability evolved in the case of Ryland's v Fletcher¹. In the year 1868, the principle of strict liability states that any person who keeps hazardous substances on his premises will be held responsible if such substances escape the premises and causes any damage. Going into the facts of the case, F had a mill on his land, and to power the mill, F built a reservoir on his land. Due to some accident, the water from the reservoir flooded the coal mines owned by R. Subsequently, R filed a suit against F. The Court held that the defendant built the reservoir at his risk, and in course of it, if any accident happens then the defendant will be liable for the accident and escape of the material². In law, strict liability is a standard for liability which may exist in either a criminal or civil context. A rule specifying strict liability makes a person legally responsible for the damage and loss caused by his/her acts and omissions regardless of culpability (including fault in criminal law terms, typically the presence of mens rea). Under strict liability, there is no requirement to prove fault, negligence or intention. Strict liability is prominent in tort law (especially product liability), corporations' law, and criminal law. For analysis of the pros and cons of strict liability as applied to product liability, the most important strict liability regime, see product liability³. In tort law, strict liability is the imposition of liability on a party without a finding of fault (such as negligence or tortious intent). The claimant need only prove that the tort occurred and that

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¹ (1868) L.R. 3 H.L. 330

² Rebecca Furtado "Concept of Strict Liability and Absolute Liability"

<https://blog.ipleaders.in/concept-strict-liability-absolute-liability/>

³ "Strict liability" https://en.wikipedia.org/wiki/Strict_liability

the defendant was responsible. The law imputes strict liability to situations it considers to be inherently dangerous. It discourages reckless behavior and needless loss by forcing potential defendants to take every possible precaution. It also has the effect of simplifying and thereby expediting court decisions in these cases. In strict liability situations, although the plaintiff does not have to prove fault, the defendant can raise a defense of absence of fault, especially in cases of product liability, where the defense may argue that the defect was the result of the plaintiff's actions and not of the product, that is, no inference of defect should be drawn solely because an accident occurs. If the plaintiff can prove that the defendant knew about the defect before the damages occurred, additional punitive damages can be awarded to the victim in some jurisdictions⁴.

Conceptual framework

Definition: "The rule of law is that the person who, for his own purpose, 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" - Blackburn, J⁵.

Essentials of Strict Liability

Dangerous Substances: The defendant will be held strictly liable only if a "dangerous" substances escapes from his premises. For the purpose of imposing strict liability, a dangerous substance can be defined as any substance which will cause some mischief or harm if it escapes. Things like explosives, toxic gasses, electricity, etc. can be termed as dangerous things.

Escape: One more essential condition to make the defendant strictly liable is that the material should escape from the premises and shouldn't be within the reach of the defendant after its escape.

For instance, the defendant has some poisonous plant on his property. Leaves from the plant enter the property of the plaintiff and is eaten by his cattle, who as a result die. The defendant will be liable for the loss. But on the other hand, if the cattle belonging to the plaintiff enter the premises of the defendant and eats the poisonous leaves and die, the defendant would not be liable. In the judicial pronouncement of *Reads v. Lyons & Co*⁶ it was held that if there is no escape, the defendant cannot be held liable.

Non-natural Use: To constitute a strict liability, there should be a non-natural use of the land. In the case of *Rylands v. Fletcher*, the water collected in the reservoir was considered to be a non-natural use of the land. Storage of water for domestic use is considered to be natural use. But storing water for the purpose of energizing a mill was considered non-natural by the Court. When the term "non-natural" is to be considered, it should be kept in mind that there must be some special use which increases the danger to others. Supply of cooking gas through the pipeline, electric wiring in a house, etc. is considered to be the natural use of land. For instance, if the defendant lights up

a fire in his fireplace and a spark escapes and causes a fire, the defendant will not be held liable as it was a natural use of the land⁷.

Exemptions to the Rule

The following exceptions to the rule have been recognized by *Ryland's v Fletcher* and some later cases:-

- Default of the claimant
- Act of God
- Statutory Authority
- Consent of the claimant
- Act of third party.

Default of the Claimant

If the damage is caused solely by the act or default of the claimant himself, he has no remedy. In *Ryland's v Fletcher* itself, this was noticed as a defense. If a person knows that there is a danger of his mine being flooded by his neighbor's operations on adjacent land, and courts the danger by doing some act which renders the flooding probable he cannot complain⁸. So too in *Pointing v Noakes*⁹, the claimant's horse reached over the defendant's boundary, nibbled some poisonous tree there and died accordingly and it was held that the claimant could recover nothing, for the damage was due to the horse's own intrusion and alternatively there had been no escape of vegetation.

Act Of God

Where the escape is caused directly by natural causes without human intervention in "circumstances which no human foresight can provide and of which human prudence is not bound to recognize the possibility", the defense of Act of God applies. This was recognized by Blackburn J. in *Rylands v Fletcher* itself and was applied in *Nichols v Marsland*¹⁰. In this case the defendant for many years had been in possession of some artificial ornamental lakes formed up by damming up a natural stream. An extraordinary rainfall, "greater and more violent than any within the memory of the witnesses" broke down the artificial embankments and the rush of escaping water carried away four bridges in respect of which damage the claimant sued. Judgment was given for the defendant; the jury had found that she was not negligent and the court held that she ought not to be liable for an extraordinary act of nature which she could not foresee or reasonably anticipate.

Statutory Authority

The rule in *Rylands v Fletcher* may be excluded by statute. Whether it is so or not is a question of *Green v Chelsea Waterworks Co*, for instance a main belonging to a water-works company, which was authorized by Parliament to lay the main, burst without any negligence on the part of the company and the claimant's premises were flooded; the company was held not liable. On the other hand, in *Charging Cross Electricity Co v Hydraulic Power Co*¹¹

⁴ "Strict liability https://en.wikipedia.org/wiki/Strict_liability

⁵ "Excerpts from the House of Lords Decision in *Cambridge Water Co. v. Eastern Counties Leather plc*" [http:// www.pierre-legrand.com/cambridge_water_excerpts.pdf](http://www.pierre-legrand.com/cambridge_water_excerpts.pdf)

⁶ [1947] AC 156 House of Lords

⁷ Rebecca Furtado "Concept of Strict Liability and Absolute Liability <https://blog.ipleaders.in/concept-strict-liability-absolute-liability/>

⁸ *Lomax v Stott*(1870) 39 L.J. Ch. 834.

⁹ 1894] 2 Q.B. 281.

¹⁰ 1876) 2 Ex.D. 1.

¹¹ [1914] 3 K.B. 772

where the facts were similar, the defendants were held to be liable and had no exemption to the interpretation of their statute. The distinction between the cases is that the Hydraulic Power were empowered by statute to supply water for industrial purposes, that is they had permissive power but not a mandatory authority, and they were under no obligation to keep their mains charged with water at high pressure, or at all. The Chelsea Waterworks Co were authorized by statute to lay mains and were under a statutory duty to maintain a continuous supply of water ; it was an inevitable consequence that damage would be caused by occasional bursts and so by necessary implication the statute exempted them from liability where there was no negligence.

Consent of the Claimant

Where the claimant has expressly or impliedly consented to the presence of the source of danger and there has been no negligence on the part of the defendant, the defendant is not liable. The exception merely illustrates the general defense, *volenti non-fit injuria*. The main application of the principle of implied consent is occupied by different persons and the tenant of a lower suffers damage as a result of water escaping from an upper floor, though it has to be said that the cases which have discussed this defense have tended to involve perfectly ordinary domestic fittings which would to modern eyes be a natural use of land¹².

Act of Third Party

If the harm has been caused due to the act of a stranger, who is neither the defendant's servant nor the defendant has any control over him, the defendant will not be liable under this rule. Thus in *Box v Jubb* the overflow from the defendant's reservoir was caused by the blocking of a drain by strangers, the defendant was held not liable for that. Similarly, in *Richards's v Lothian*¹³ some strangers blocked the waste pipes of a wash basin, which was otherwise in the control of the defendants, and opened the tap. The overflowing water damaged the plaintiff's goods. The defendants were held not liable¹⁴.

Major Case laws - *Crowhurst vs. Amersham Burial Board*, (1878) 4 Ex. D. 5; *Cheater vs. Cater*, (1908) 1 K.B. 247:-If the branches of a poisonous tree that is planted on the defendant's land spreads out to the neighboring plaintiff's land, this amounts to the escape of that dangerous, poisonous thing from the boundaries or control of the defendant and onto the plaintiff's land. Now, the issue arises, if the cattle of the plaintiff nibbles on these leaves, then the defendant will be held liable under the mentioned rule even when nothing was done intentionally on his part.

Read vs. Lyons and Co., (1947) A.C. 156:-

The plaintiff worked as an employee in the defendant's shell manufacturing company, while she was on duty within the premises of the company, a shell being manufactured there exploded due to which the plaintiff suffered injuries. A case was filed against the defendant company but the court let off the defendant giving the verdict that strict liability is not applicable here as the

¹² *Western engraving co v Film laboratories ltd* [1936] 1 All E.R. 106.

¹³ [1913] AC 263

¹⁴ "Strict and Absolute Liability-A critique"
<http://www.lawyersclubindia.com/articles/Strict-and-Absolute-Liability-A-critique-1451.asp>

explosion took place within the defendant's premises, the concept of escape of a dangerous thing like the shell from the boundaries of the defendant is missing here. Also negligence on the part of the defendant could not be proved. This principle was first applied in the House of Lords in respect to the case '*Rylands vs. Fletcher*, (1868)¹⁵': The defendant (Fletcher) an owner of a mill in Answers with an aim to improve water supply for his mill employed independent and efficient engineers for the construction of a reservoir. During their excavation of the ground underneath, they came across some shafts and passages but chose not to block them. Post construction of the reservoir when they filled it with water, all the water flowed through the unblocked old shafts and passages to the plaintiff's (Rylands) coal mines on the adjoining land and inundated them completely. The engineers kept the defendant in the dark about the occurrence of these incidents. On a suit filed before the court by the plaintiff against the defendant, the court though ruled out negligence on the defendant's part but held him liable under the rule of Strict Liability. Any amount of carefulness on his part is not going to save him where his liability falls under the scope of 'No Fault Liability'.

A few cases outside the purview of the Doctrine of Strict Liability:-

1. **Cambridge Water Co. vs. Eastern Counties Leather**, (1994) 1 ALL ER 53: The defendants had a tannery in operation at Shawston near Cambridge. They used perchloroethane (PCE) for degreasing the pelts essential for the tanning process. Till 1976, the PCE was delivered to the defendant's tannery in drums which lead to regular spillage of the PCE in limited amount. Over the next few years, this spillage amounted to one thousand gallons. The PCE was soaked by the concrete floor and got dissolved in the underground water. This contaminated water used to flow to the plaintiff's bore hole at his mill about 1.3 miles away from the defendant's tannery. Due to this, the plaintiff sued the defendant and wanted charges of strict liability to apply on him. But the court's verdict was in the favour of the defendant. The court upheld that for strict liability to apply, the defendant must be aware that the thing kept on his land will cause damage or 'mischief' to the plaintiff's land on its escape, this is an essential element¹⁶.
2. **Jai Laxmi Salt Works vs. State of Gujarat**, (1994) 4 SCC 1: In this case the defendants to manufacture salt from sea-water constructed a dam on a large portion of the land. Due to negligent construction of the dam, water overflowed from it and spread all around and damaged the plaintiff's factory due to water entering into it. A suit was filed in the court but the court held that the rule of strict liability will not apply here even though it is a non-natural use of the land as the damage arose not due to construction of the dam but due to improper construction of the same. It held the defendant guilty of breaching its public duty by

¹⁵ LR 3 HL 330

¹⁶ *Shramanadwibedi* "A Critical Analysis of Strict and Absolute Liability" <http://www.legalservicesindia.com/article/article/strict-and-absolute-liability-2155-1.html>

exposing the residents of that area to risk. According to Winfield in Winfield and Jolowicz, Tort, (Sweet & Maxwell: 13th Edition, 1989) at p.443), the presence of several defenses allows the defendant to get saved from bearing the onus of any liability as if he can prove that any of the said defenses apply to his case, the case will not stand and he shall not be held liable. To quote him, “we have virtually reached the position where a defendant will not be considered liable when he would not be liable according to the ordinary principles of negligence¹⁷”.

Absolute Liability

Is a standard of legal liability found in tort and criminal law of various legal jurisdictions. To be convicted of an ordinary crime, in certain jurisdictions, a person must not only have committed a criminal action, but also have had a deliberate intention or guilty mind (men’s rea). In a crime of strict liability (criminal) or absolute liability, a person could be guilty even if there was no intention to commit a crime. The difference between strict and absolute liability is whether the defense of a mistake of fact is available: in a crime of absolute liability, a mistake of fact is not a defense. Strict or Absolute Liability- also can arise from inherently dangerous activities or defective products that are likely to result in harm to another, regardless of protection taken. Negligence is not required to be proven. Example: Owning a pet rattle snake¹⁸. In India, absolute liability is a standard of tort liability which stipulates that where an enterprise is engaged in a hazardous or inherently dangerous activity and harm results to anyone on account of an accident in the operation of such hazardous or inherently dangerous activity resulting, for example, in escape of toxic gas the enterprise is strictly and absolutely liable to compensate all those who are affected by the accident and such liability is not subject to any of the exceptions which operate vis-à-vis the tortious principle of strict liability under the rule in Rylands v. Fletcher.

In other words, absolute liability is strict liability without any exception. The Indian Judiciary tried to make a strong effort following the Bhopal Gas Tragedy, December, 1984 (Union Carbide Company vs. Union of India) to enforce greater amount of protection to the Public. The Doctrine of Absolute Liability was therefore evolved in Oleum Gas Leak Case and can be said to be a strong legal tool against rogue corporations that were negligent towards health risks for the public. This legal doctrine was much more powerful than the legal Doctrine of Strict Liability developed in the case of English tort law Rylands v Fletcher [1868]. This meant that the defaulter could be held liable for even third party errors when the public was at a realistic risk. This could ensure stricter compliance to standards that were meant to safeguard the public¹⁹.

Conclusion

Absolute legal responsibility for an injury that can be imposed on the wrongdoer without proof of carelessness or

fault. With the development of the scientific technology the need for the inherently hazardous substance increasing, in order to meet the development program, but, with this simultaneously the law of India is also indulging into the theory of the “welfare state”. So to protect its people the court of India is more stringent & rigorous in its approach to adopt the Strict Liability principle, comparatively to the England. So, in a crime of strict liability (criminal) or absolute liability, a person could be guilty even if there was no intention to commit a crime. The difference between strict and absolute liability is whether the defense of a mistake of fact is available: in a crime of absolute liability, a mistake of fact is not a defense²⁰. If an industry or enterprise is engaged in some inherently dangerous activity from which it is deriving commercial gain and that activity is capable of causing catastrophic damage then the industry officials are absolutely liable to pay compensation to the aggrieved parties. The industry cannot plead that all safety measures were taken care of by them and that there was negligence on their part. They will not be allowed any exceptions neither can they take up any defense like that of ‘Act of God’ or ‘Act of Stranger²¹’.

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