



FACULTY OF JURIDICAL SCIENCES

COURSE: B.B.A.LL.B. I st Semester

SUBJECT: LAW OF TORTS

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LECTURE 19

TOPIC: ABSOLUTE LIABILITY

The Supreme Court in the Oleum gas leak case of Delhi, found strict liability woefully inadequate to protect citizens' rights in an industrialised economy like India (in the backdrop of the 1984 Bhopal gas tragedy) and replaced it with the 'absolute liability principle'. Under it, a party/company in a hazardous industry **cannot claim any exemption**. It has to **mandatorily pay compensation**, whether or not the disaster was caused by its negligence.

The concept of absolute liability evolved in India after the case of **M.C Mehta vs Union of India** famously known as **Oleum Gas Leak case**. This is one of the historic cases in the Indian Judiciary. The case of M.C Mehta is based on the principle of strict liability but with no exception were given and the individual is made absolutely liable for his acts. It is based under this principle that the defendant won't be allowed to plead defence if he/she was at fault as it was laid down in Ryland vs Fletcher case. After the Bhopal gas leak case many people lost their lives and are suffering from some of the fatal diseases through the generation and because of this there was an urgent need to develop a rule under strict liability which had no exceptions available to the defendant to escape from the liability.

The rule laid down by the Honourable Supreme Court of India is much wider with respect to the rules laid down the House of Lords in the case of Ryland vs Fletcher. It was propounded by the Supreme Court that where an enterprise is engaged in a hazardous or inherently dangerous activity and if any harm results to anybody on account of the accident in operation, the enterprise would be held strictly and absolutely liable to compensate to all those who are affected by the accident.

Dangerous Thing – As per the rules laid down, the liability of escape of a thing from an individual's land will arise only when the thing which is collected is a dangerous thing

that is a thing which likely causes damage or injury to other people in person or their property on its escape. In various torts cases which have happened all over the world, the doctrine of strict liability has held a large body of water, gas, electricity, vibrations, sewage, flag-pole, explosives, noxious fumes, rusty wires etc are certain things which come under the ambit of dangerous things.

Escape – Anything which has caused damage or mischief should have escaped from the area which was under the control of the defendant to come under the ambit of absolute liability. Like it happened in the case of *Read vs Lyons and Co.* where the plaintiff was working as an employee in the defendant's company which was engaged in manufacturing shells. The accident happened while she was on her duty that day within the company's premise. It happened when a piece which was being manufactured there exploded and due to which the plaintiff suffered harm. After this incident a case was filed against the defendant's company but the court eventually let go the defendant and gave the verdict that strict liability is not applicable here in this particular case. This was declared by the court because the explosion that took place was within the defendant's premises and not outside. And the concept says that it should have escaped the dangerous thing like shell here from the boundaries of the defendant premise which didn't happen and was missing over here. So, the negligence on the part of the defendant could not be proved in the court.

Non-natural use of land – Water collected on land for domestic purposes does not amount to non-natural use of land but if one is storing it in large quantities like in a reservoir as it was the case in *Ryland vs Fletcher* then it amounts to non-natural use of land. The difference between natural and non-natural use of land by keeping in mind the surrounding social conditions. As the growing of trees and plants on land is considered as a natural use of land but if one starts growing trees which are poisonous in nature then it will be considered as non-natural use of land. If an issue arises between the defendant and the plaintiff even though the defendant is using the land naturally, the court will not hold the defendant liable for his conduct.

Mischief - To make the person liable under this principle, the plaintiff at first needs to show that the defendant had done the non-natural use of land and escaped the dangerous thing which he has on his land which resulted in the injury further. In the case of Charing Cross Electric Supply Co. vs Hydraulic Power Co.[4], the defendant was assigned to supply water for industrial works. But he was unable to keep their mains charged with a minimum pressure that was required which led to the bursting of the pipeline at different places. This resulted in causing heavy damage to the plaintiff which was proved in the court of law. The defendants were held liable in spite of this that they were not at fault. These are the few rules where this doctrine is applied.

Evolution of absolute liability

The rule of absolute liability has evolved as a result of the old rule and it can't be applied in Indian Law Perspective as it is inappropriate for the reason because its evolution is because of high industrial growth, agricultural use of land etc. We all know that India is a developing country and with that, it is a developing economy too and the doctrine of strict liability is a very old principle. The old rule evolved when there was low or limited scope for industrial development compared to today's scenario which high in industrial growth in the country.

Absolute Liability = (Strict Liability- Exceptions)

The scope of the rule of absolute liability is very wide in all its aspects when compared with the old rule. As it does not have any exception laid under it in the new rule. Not only it covers public negligence or fault but it also covers even the personal injuries caused due to the misconduct of the neighbour. Now it covers not only the one who occupies the land but also makes people liable who is not the owner of the land. Absolute Liability has been brought up in the case of M.C Mehta vs Union of India also this is one of the landmark judgement in India's legal history. The rule which was laid down after this case was that any enterprise which is engaged in any kind of hazardous or inherently dangerous material which if there might result in any kind of harm then the enterprise would be absolutely liable to compensate to all the people who are affected by the same as it also happened in Bhopal Gas Tragedy case.

The facts of the case go on like this that in the city of Delhi in 1985, there was severe leakage of oleum gas in the month of December 1985. This incident took place in one of the units of Shriram Foods and Fertilizers Industries which belonged to the Delhi Cloth Mills Ltd. and as a result of this accident an advocate in the Tis Hazari Court had died because of the poisonous fumes and many others were severely harmed. This incident led to the filing of PIL (Public Interest Litigation) in the courts in India.

PIL is filed by a group of individual or by any person in the supreme court or high court of India. PIL is the tool to armour public interest and this instrument is brought by the court, not by the aggrieved party. But is brought in by the court of law or by any private party other than the aggrieved person in the society. It was in SP Gupta vs Union of India [6] that the Supreme Court of India has defined the term PIL in its elaborate form. The traditional rule of "locus standi" that held that a person whose right is infringed alone could file a PIL, has now been removed by the Supreme Court in its decision over the period of time like as declared in Badhua Mukti Morcha vs Union of India[7], Parmanand Katara vs Union of India[8] and many more. Now any public-spirited citizen has all the rights and can approach the court for the public cause by filing a PIL in the Supreme Court of India under article 32 and High Court under article 226 or even could be filed by approaching the Court of Magistrate under section 133 of CrPC.

For example, a construction company was constructing highways as per the orders and for doing this it has to blast rocks with dynamite. The company carried out this activity with extra precaution and care and in spite of this, some fragments of rock had flown and damaged the neighbouring houses. As a result of this, the owner of the house sued the company for the damage they had caused by their Act. But, the corporation raised an argument in the court that they cannot be sued because they are free from the fault but this was not upheld by the court and they were held absolutely liable for their wrongful acts and it is no defence that they took extra care and precautions to prevent the harm which had caused.

A tort is a civil wrong for which the remedy is an action taken by law for the unliquidated damage and which is not exclusively breach of any contract or promise or any other kind of obligations. There are principles in law which only holds a person liable when he/she is at fault whereas in certain principles the individual is held liable without him being at fault. This is the 'no-fault liability principle' This no-fault liability principle has two main landmark judgements Ryland vs Fletcher (strict liability) and MC Mehta vs Union of India [absolute liability]. In both these cases the individual was made liable even though he was not responsible for the damage caused.

Exercise:

1. Failure of preventing injury, make the person

 - a) disgraceful
 - b) liable
 - c) lonely
 - d) lazy

2. What other thing should be there beside foreseeability to constitute negligence?

 - a) Likelihood
 - b) Threat
 - c) Attack
 - d) All of these

3. Negligence should be against

 - a) probabilities
 - b) possibilities
 - c) Both (a) and (b)
 - d) None of these

4. of duty means non-observance of due care.

- a) Preach
- b) Investigation
- c) Breach
- d) Code

5. What is the standard for negligence?

- a) Psychotic man
- b) Reasonable man
- c) Police officer
- d) Life guard