Strict and Absolute Liability

A full depth understanding of Strict and Absolute Liability with reference to case laws.

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A Critical Analysis of Strict and Absolute Liability

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, J.

Absolute Liability
Definition: 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 defence like that of ‘Act of God’ or ‘Act of Stranger’.

Strict Liability
The earlier stated definition remains half done if the following terms are not emphasized upon:-
Ø Dangerous Thing: According to the above mentioned rule, the liability of escape of a thing from a person’s land will arise only when the thing or substance collected is a dangerous thing i.e. a thing which is likely to cause mischief or damage to other people in person or their property on its escape. In various torts cases filed worldwide, the ones involving the doctrine of strict liability have held “large body of water, gas, electricity, vibrations, yew trees, sewage, flag-pole, explosives, noxious fumes, rusty wires, etc. as dangerous things.

Ø Escape: The thing that has caused damage or mischief must ‘escape’ from the area under the occupation and control of the defendant. This can be better explained by bringing in two examples-

1. Case- 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 neighbouring 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.

2. Case- 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 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.

Ø Non-natural use of land: Water collected on land for domestic purposes does not amount to non-natural use of land but storing it in huge quantity like that in a reservoir amounts to non-natural use of the land (Rylands vs. Fletcher). This distinction between natural and non-natural use of land can be made possible by its adjustment to existing social conditions. Growing of trees is held natural use of land but if the defendant is found to grow trees of poisonous nature on his land, then it is non-natural use of the land. If the land has been used naturally yet a conflict has risen between the defendant and the plaintiff, owing to natural use of land, the court will not hold the defendant liable.

Ø Mischief: To make the defendant liable under the doctrine of strict liability, the plaintiff needs to prove that the defendant made non-natural use of his land and escape of the dangerous thing caused mischief/damage to him. The resultant damage needs to be shown by the plaintiff after successfully proving that unnatural use of the land was done by the defendant.

Case:- In Charing Cross Electric Supply Co. vs. Hydraulic Power Co. (1914) 3 KB 772, the defendants’ duty was to supply water for industrial works but they were unable to keep their mains charged with the minimum required pressure which led to the bursting of the pipe line at four different places resulting in heavy damage to the plaintiff which was proved with evidence. The defendants’ were held liable in spite of no fault of theirs.

Brief Summary: Essentials for a tort to be held under the Doctrine of Strict Liability
a) Non-natural use of land must have taken place.
b) Escape of a dangerous thing from that land on which it was kept must have taken place.
c) The dangerous thing must have caused mischief.

A few instances where this rule is applicable:-
a) Activities involving non-natural use of land.
b) Activities involving dangerous operations such as blasting, mining, etc.
c) Liability arising out of keeping or taming dangerous animals.
d) Liability for dangerous structures e.g. building, ship, rail, etc.
e) Liability for dangerous chattels such as crackers, explosives, petrol, etc.

Inception of this rule: The Strict Liability principle is also called as ‘No Fault Liability’. This is contradictory to the general principle of negligence in torts where a person can be held liable for commission of a tort only when the plaintiff can prove negligence on his part and the defendant himself is unable to disprove it. In the cases that I will now mention, the onus of being negligent can be ignored. In spite of all due care taken by the defendant, he will invariably be held for the consequences of the damages caused to any person outside of the boundary of the defendant’s land by any hazardous thing that he maintained on the same stretch of land i.e. in spite of no intentional or unintentional fault of his, the defendant can be held liable hence, explaining the term ‘No Fault Liability’.

This principle was first applied in the House of Lords in respect to the case ‘Rylands vs. Fletcher, (1868)’.

Rylands vs. Fletcher, 1868: The defendant (Fletcher) an owner of a mill in Answorth 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 element. However, in this case, it could never be comprehended or foreseen by any reasonable supervisor at the tannery that spillage of PCE at the tannery would damage the water at a distance of 1.3 miles away and would lead to an environmental hazard. It could not be imagined that the PCE would dissolve in the underground water by getting soaked through the ‘concrete floor’. The defendant was not aware that such a kind of damage could be caused by the PCE that he brought to use in his tannery. Therefore, the rule of Strict Liability is not applicable here.

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 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 defences allows the defendant to get saved from bearing the onus of any liability as if he can prove that any of the said defences 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 negligence".

Further exceptions/defences to the Doctrine of Strict Liability:-
§ Damage caused due to natural use of land:- Where the defendant is able to prove before the court that he made natural use of his land, he will be exempted from the rule of strict liability applying on him.

Case: Giles vs. Walker, (1890) 24 QBD 656- In the defendant’s land, there was spontaneous growth of thistle plants. The defendant did not check the growth of this undesired vegetation which was extending to the plaintiff’s land also only to cause him annoyance and damage. However, the defendant was able to prove that growing of plants is a natural use of land and therefore he won the case against the plaintiff.

§ Consent of the Plaintiff:- When the plaintiff has either expressly or impliedly consented to the presence of a source of danger and also there has been no negligence on the defendant’s part, the defendant will not be held liable. It is basically the defence of ‘Volenti non fit injuria’ taken by the defendant in the court.

Case: Peters vs. Prince of Wales Theatre Ltd. Birmingham, (1942) 2 ALL ER 533- The plaintiff took on rent a shop in the defendant’s premises after full knowledge of the fact that the defendant had a theatre and rehearsal room attached to the same premises. The theatre had a water storage mechanism to douse fire in case of an emergency. Unfortunately, the water container burst due to excessive frost and the water leaked into the plaintiff’s shop thereby damaging his goods. He sued the defendant for payment of damages suffered by him. The court held the defendant not liable as the plaintiff had impliedly consented to the presence of the dangers of a water storage tank situated right next to his shop by taking the defendant’s premises on rent.

§ Plaintiff’s Own Default: When damage is caused to the plaintiff solely due to his own fault, he shall receive no remedy in such cases.

Case: Ponting vs. Noakes, (1894) 2 QB 281- In this case, the plaintiff’s horse had nibbled on some poisonous leaves by reaching over the boundary of the defendant’s land and had eventually died. The court held that the vegetation on the defendant’s land had not spread over to the plaintiff’s side but it was the intrusion of the plaintiff’s horse in the defendant’s land when it chewed on the leaves of the plant sowed in the defendant’s plot. It was a case of the plaintiff himself being at fault, therefore he could not demand any remedy for the loss caused to him.

§ Act of Stranger: When damage is caused due to wrongful act committed by a third party or any stranger over whom the defendant had no control, the defendant will not be held liable under such circumstances.

Case: Rickards vs. Lothian, (1913) AC 263- Some strangers blocked the waste pipe of a wash basin, which was otherwise in the control of the defendant and left the tap open. The water overflowed because of this mischief caused by the strangers and damaged the plaintiff’s goods. The defendant was not held liable as this was an act of the stranger which could not be foreseen by the defendant. However, when the act of the stranger can be foreseen by the defendant and damage can be prevented from happening, proper care and duty must be exercised by the defendant to prevent the act from occurring.

§ Act of God or Vis Major: For acts which are beyond human control and contemplation, caused due to superior natural forces, the principle of strict liability does not apply.

Case: Nichols vs. Marsland, (1876) 2 Ex D 1- The defendant had some artificial lakes that he had formed by damming up a natural stream for several years. However, an extra-ordinary rainfall that year greater and more violent that any rainfall ever witnessed there broke the artificial embankments by the stream and the rushing water carried away with it four bridges of the plaintiff. When sued for damages, the court held the defendant not liable as she was not negligent and this being an act of God was beyond her control.

§ Common Benefit of Plaintiff and the Defendant: Where the act or escape of the dangerous thing was for the common benefit of the defendant and plaintiff, the defendant will not be held liable.

Case: Box vs. Jubb, (1879) 4 Ex D 76- The defendant’s reservoir overflowed partly due to his act and partly due to the acts of the neighbouring reservoir owners damaging the property of the plaintiff who was also a resident of the same multi-storied building as the defendant. The defendant was not held liable as the water reservoirs were installed keeping the common benefit of all the residents of the multi-storied building in mind including the plaintiff and the defendant.

§ Statutory Authority: If any act done under the authorization of the law/statute like the government of a country or a state government causes any damage to a person, it acts as a defence to an action for tort.

Case: Green vs. Chelsea Waterworks Co., (1894) 70 L.T. 547- The defendant company was under a statutory order to maintain continuous water supply. A main belonging to the company burst without any negligence of the defendants and flooded the plaintiff’s premises with water. It was held that the company would not be liable as it was engaged in performance of a statutory duty.

Absolute Liability
Inception in India
The following modifications in the existing Doctrine of Rylands vs. Fletcher led to the following Doctrine of Absolute Liability that prevented the defendants from taking up any defence against payment of compensation:-

· If an industry or enterprise is involved in any inherently dangerous activity, then for any damage arising out of the conduction of that activity, the defendants (the owners of the industry) will have no access to any defence or exception and will be absolutely liable to pay compensation to the aggrieved parties.

· The enterprise will be held responsible for all possible damages or consequences resulting from the activity. This will make such industries provide safety equipments to its workers to prevent any mishap. Therefore, this will safeguard the interests of the workers and will give them a refined, safe working atmosphere.

· The element of escape which is an essential in strict liability may be ignored here as this restricts the application of this Doctrine of Absolute Liability as often incidents may arise where escape of the dangerous thing like poisonous fumes may not take place outside the industry premises but may damage the workers inside. In this case, the workers’ right to compensation will not be ignored. Therefore, the extent of this principle is to be applied in a wider context ruling out the element of escape.

· In cases where strict liability applies, compensation paid is according to the nature and quantum of damages caused but in cases of absolute liability, compensation or damage to be paid is exemplary in nature. The amount decided upon should be more than the damage caused as industrial hazardous accidents generally causes mass death and destruction of property and environment.

A few cases where Absolute Liability was upheld:-
M.C. Mehta vs. Union of India, A.I.R. 1987 S.C. 1086:-
The S.C. of India was dealing with claims of leakage of oleum gas on the 4th and 6th December,1985 from one of the units of Shriram Foods and Fertilizers Industries, Delhi. Due to this leakage, one advocate and several others had died. An action was brought against the industry through a writ petition under Article 32 of the Indian Constitution by way of a Public Interest Litigation (PIL). The judges in this case refused to follow the Strict Liability Principle set by the English Laws and came up with the Doctrine of Absolute Liability. The court then directed the organizations who had filed the petitions to file suits against the industry in appropriate courts within a span of 2 months to demand compensation on behalf of the aggrieved victims.

Bhopal Gas Tragedy / Union Carbide Corporation v. Union of India, (1991) 4 SCC 548:-
This doctrine was upheld in the infamous Bhopal Gas Tragedy which took place between the intervening night of 2nd and 3rd December, 1984. Leakage of methyl-iso-cyanide(MIC) poisonous gas from the Union Carbide Company in Bhopal, Madhya Pradesh led to a major disaster and over three thousand people lost their lives. There was heavy loss to property, flora and fauna. The effects were so grave that children in those areas are born with deformities even today. A case was filed in the American New York District Court as the Union Carbide Company in Bhopal was a branch of the U.S. based Union Carbide Company. The case was dismissed there owing to no jurisdiction. The Government of India enacted the Bhopal Gas Disaster (Processing of Claims) Act, 1985 and sued the company for damages on behalf of the victims. The Court applying the principle of ‘Absolute Liability’ held the company liable and ordered it to pay compensation to the victims.

Indian Council for Enviro-legal Action vs. Union of India, AIR 1996 SC 1446
A PIL filed under Article 32 of the Indian Constitution voiced protests of the petitioners over the presence of industries that was causing large scale environmental pollution and endangering the lives of the villagers who resided in the vicinity of the industries. It violated their right to life and liberty given under Article 21of the Indian Constitution as they were unable to live in a healthy environment. The Supreme Court initiated instant action and ordered the Central Government and the Pollution Control Board to constitute strict measures against the said industries. The court upheld the Doctrine of Absolute Liability here stating that the polluted environment must be restored to a pollution free one conducive for healthy living by utilizing anti-pollution scientific appliances. The expenditure so incurred in this process must be paid by the industries even if their properties need to be attached for this purpose. The industries were made absolutely liable for paying monetary damages for restoration of the environment.

Absolute Liability can also be upheld by the courts in case of a single death without any mass destruction of property or pollution of the environment.

Klaus Mittelbachert vs. East India Hotels Ltd., A.I.R 1997 Delhi 201 (single judge):
In this case, the plaintiff, a German co-pilot suffered grave injuries after diving into the swimming pool of the five-star restaurant. Upon investigation, it was seen that the pool was defectively designed and had insufficient amount of water as well. The pilot’s injuries left him paralyzed leading to death after 13 years of the accident. The court held that five-star hotels that charge hefty amounts owe a high degree of care to its guests. This was violated by Hotel Oberoi Inter-continental, New Delhi when the defectively designed swimming pool left a man dead. This made the hotel absolutely liable for payment of damages. The hefty amounts taken from the guests by the hotel owners guaranteed them to pay exemplary damages to the deceased or in any such further cases. It was decided that the plaintiff would receive Rs. 50 lakhs for the accident caused.

However, with the death of the plaintiff while the suit was still pending in the court, the cause of action also died and the aforesaid decision was reversed on appeal by the defendant party (A.I.R, 2002 Delhi 124 D.B.)

Differences:-

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| **Strict Liability** | **Absolute Liability (modified version of Strict Liability)** |
| 1. The nature and quantum of damages that are payable to the plaintiffs are compensatory in nature i.e. in accordance to the amount of loss suffered by the plaintiff, damages will be paid equivalent to the amount lost. | 1. The nature and quantum of damages that are payable to the plaintiffs are exemplary, the compensation provided to each aggrieved party is much greater in amount that is the damages paid are more as in such cases people lose their lives and environmental conditions become life threatening. |
| 2. The defendants can take the help of several defences like the following:-· Damage caused due to natural use of land· Consent of the Plaintiff· Plaintiff’s Own Default· Act of Stranger· Act of God or Vis Major· Common Benefit of Plaintiff and the Defendant· Statutory AuthorityIf any of the defences apply to a particular case correctly as decided by the presiding Judge, then the defendant will not be held liable. | 3. In this case, it is an absolute liability put upon the defendants where the scope of any defence being taken is not allowed. They are held liable for payment of damages under all circumstances.  |

Bibliography
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