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DOCTRINE OF STRICT LIABILTY AND IT'S IMPACT ON INDUSTRIES: AN OVERVIEW

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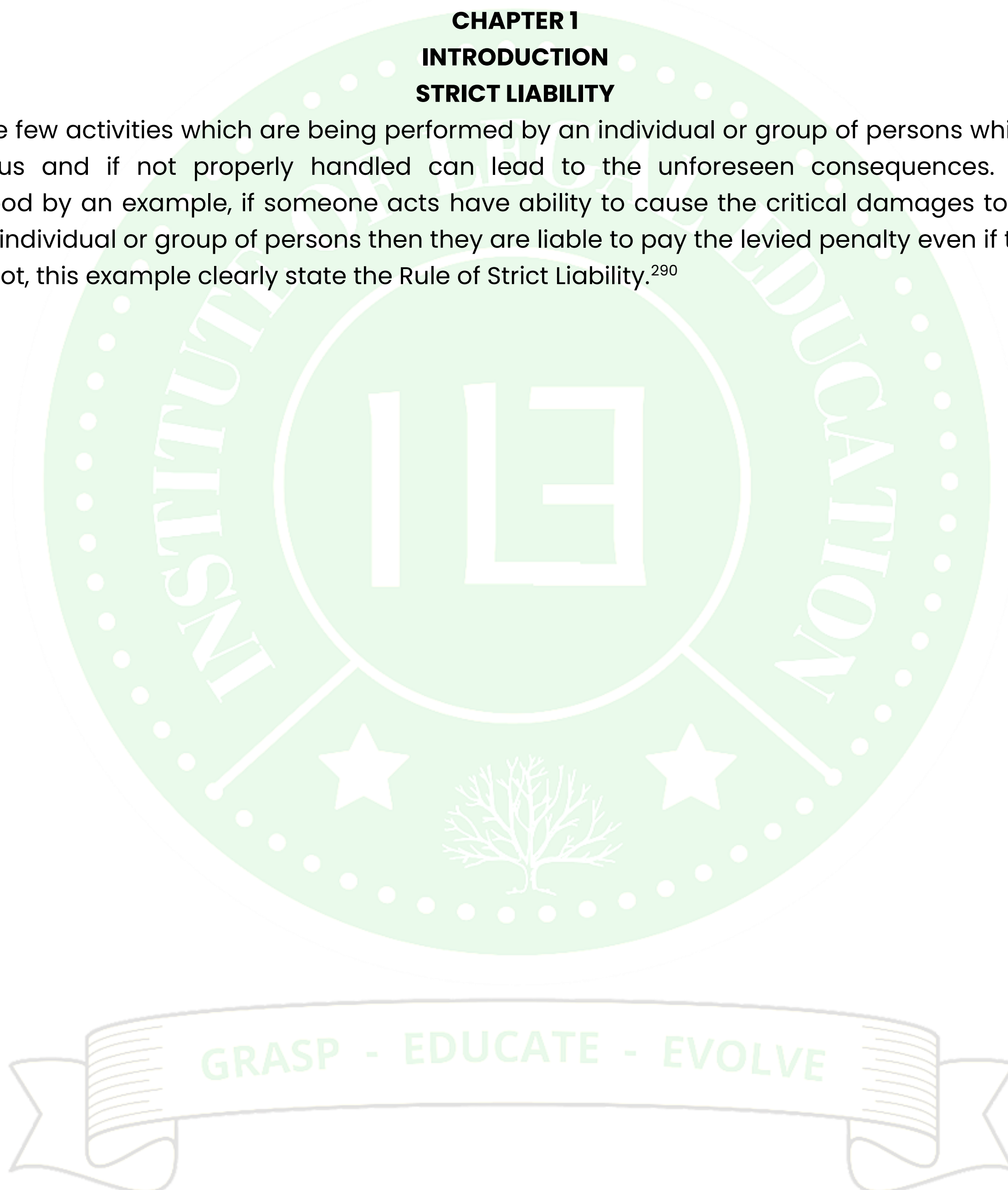
CHAPTER 1

INTRODUCTION

STRICT LIABILITY

There are few activities which are being performed by an individual or group of persons which are too dangerous and if not properly handled can lead to the unforeseen consequences. It can be understood by an example, if someone acts have ability to cause the critical damages to either it is done by individual or group of persons then they are liable to pay the levied penalty even if they are at fault or not, this example clearly state the Rule of Strict Liability.[290]



290 'BetiBachao, BetiPadhao: Caring for the Girl Child' <https://www.pmindia.gov.in/en/government_tr_rec/betibachao-beti-padhao-caring-for-the-girl-child/> accessed 12 October 2022

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There can be a situation where person can be held liable for any act either done by him or not either he is negligent for causing it or not, either he is intended to the same or not or even if he has taken the proper precautions to avert the same, even then if it causes some harm to anyone then in that case the owning or possessing that property which caused harm will be held liable. It can also be said as "No Fault" liability, this concept has been briefed in the case of Rylands versus Fletcher.

The concept of strict liability is provided under the Law of Torts is extremely important Rule. The core of this liability lies under the concept of principle which specifies the Inherent harm that has been done by someone which can inflict others. For an example, if a poisonous gas leaks out from the premises, which exactly happened during the Bhopal Gas leak Tragedy, in such cases the Rule of strict liability will be looked into force.[291]

Under the Rule of recompense for the injury caused or to recover the losses occurred it depends upon the precautions taken by the person, if a person has taken all the necessary and possible steps to avoid the damages and prevent harm to others then the law can exempt them from paying the compensation. But this principle is totally opposite in the Rule of Strict Liability.

In the Rule of Strict Liability, the person is liable to pay the compensation for all the damages which has been caused by him or because of him even if he is at fault or not or even if had taken all the necessary steps to prevent the damages caused. In can also be said that, the person who has caused such damage will be liable to pay the compensation to the peoples who have suffered the losses because of him and also to the government if there is any environmental loss so that it could be recovered as well. The permission to possess such substance to perform such activity where the Rule of Strict Liability is applied, the principle is applied as the pre-condition.

The rule of Strict Liability can also be termed as 'No Fault Liability'. This rule is completely in the contradiction of the rule of Negligence as per in Torts, which states that a person could be liable for committing a tort only in the situation where the plaintiff has enough proof to prove that the defendants was at fault and where the defendant in not able to defend himself from the alleged charges upon him. In such a case the liability or the onus for being negligent might be ignored. Even if all the due care has been taken care of by the defendant, then also he could be held liable for the damages or consequences which has being caused by him. The substance must have escaped from the defendant's land and have caused damage to others outside the property of the defendant, for such a situation he will be held liable for his misconduct.[292]

No topic has received more attention in modern torts scholarship than the distinction between strict liability and fault-based liability. Legal historians have debated the provenance and significance of each.

1. Doctrinalists have fought over whether negligence liability is actually strict and whether strict products liability is actually fault-based.
2. Economists have argued about the incentive effects of these different modes of liability.
3. Philosophers have pondered the extent to which strict or fault-based liability is compatible with, or required by, moral principles.

In this Article, we argue that, notwithstanding all the attention it has received, standard invocations of the fault v. strict liability distinction badly mischaracterize it, which in turn has caused a great deal of needless confusion. We aim to clear up the confusion by providing a more careful.[293]

291 https://www.ijlmh.com/paper/the-rule-of-strict-liability-and-absolute-liability-in-indianperspective/#:~:text=Strict%20liability%20determines%20that%20one,the%20soil%2C%20with%20some%20e xceptions.

292 https://blog.ipleaders.in/concept-absolute-liability/

293 See, e.g., MORTON J. HORWITZ, THE TRANSFORMATION OF AMERICAN LAW, 1780– 1860, at 70,
74–75 (1977) (arguing that, in the mid-nineteenth century, courts in the United States moved from a regime of strict tort liability to a regime of fault

Can Strict Liability and Absolute Liability be considered as same?

The simple answer to this question is No, both the Rules are different and are applied in different circumstances and situations. Under the Rule of Strict Liability there is an opportunity for the defendant to prevent himself from the onus of being held liable if he manages to prove himself the caused by him are covered under the three exceptions given under the concept of strict liability which we will study in the further in this research paper whereas in the Rule of Absolute Liability there are no such escape for the defendants as there is no as such exceptions for the defendant to shift his onus. Therefore, in the both the Rules the wrongdoer will be held liable at the same level and will also get punishment accordingly but the important crux differentiating the both is that the compensation or the penalty the wrongdoer has performed will be different in both the Rule.[294]

As the Rule of Strict Liability is very old concept to deal in this new modern era the necessity to amend or bring new rule into force emerged. This was fulfilled in the 19th Century when the Apex Court has propounded the concept of Absolute Liability in the case of M.C. Mehta vs Union of India. In this case the Supreme Court has stated that "Moreover that the principle which was established in Ryland vs Fletcher's case cannot be applied in the modern world because the rule was laid down in the old world as compared to the one laid down in the modern world which is period of industrial revolution and this principle is two century's old which can't be adopted without the modifications being made into it. The main aim is to limit the scope of the rule and bring it at the same level as the modern theory.[295]

Absolute Liability = (Strict Liabilty - Exceptions)

Can Strict Liability and Vicarious Liability be considered as same?

The Rule of Vicarious Liability can also be differentiated by the similar related concept of the Rule of Strict Liability. Under the Rule of Strict Liability, the defendant should do the act which or possess such substance or thing which is dangerous for others and it must escape from its boundaries whereas in the situation of the vicarious liability the defendants employee or the servants negligent acts will also be equally treated as the masters liability, it can be related to any circumstances.

This concept can be understood by an example, comprising of three persons i.e., A, B and C. A is a scientist and the owner of the property where he used to keep various trees and plants, few of them are very poisonous and could cause death of a human being. A has taken the proper care of his property but in one such circumstance the tree leaves has escaped from the property and C unknowingly has eaten that leaf which ultimately caused his death. Here in this situation A will be held liable under the Rule of Strict Liability.[296]

In the another instance the B the gardener of A while cleaning the garden threw out the waste outside the boundary and C's Horse ate it and died, here again A will be held liable for B's conduct as under the Rule of Vicarious Liability the master will be liable for the servants wrong doing, even if he has ensured all the necessary precautions and steps.

According to prevailing academic usage, strict liability is liability without wrongdoing. A defendant subject to strict liability must pay damages irrespective of whether she has met, or failed to meet, an applicable standard of conduct. Action that causes harm is all that is required. By contrast, fault-based liability is conceived as liability predicated on some sort of wrongdoing. The defendant's liability rests on the defendant having been "at fault," i.e., having failed to act as required.

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liability as a means of promoting nascent industry); Gary T. Schwartz, Tort Law and the Economy in Nineteenth-Century America:

294 Tyagi, Anamika, Reiterating the Principle of Absolute Liability in Light of Oleum Gas Leakage Case (2020), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3697451

295 https://blog.ipleaders.in/concept-absolute-liability/

296 Prendergast, David, The Constitutionality of Strict Liability Offences (2014), https://papers.ssrn.com /sol3/pars.cfm?abstract_ id=2359084

This treatment of strict and fault-based liability as opposites is a monumental mistake. In fact, tort liability is almost always simultaneously fault-based and strict. For torts ranging from battery to negligence, and from libel to trespass, liability is imposed on the basis of wrongdoing. Yet, it is also imposed strictly—that is, in a demanding or unforgiving manner. As the first half of our title suggests, there is strict liability in fault.

While we insist that strict liability appears throughout tort law because of the manner in which courts have defined the various torts, we also acknowledge that there are marginal instances in which courts recognize tort liability without any wrongdoing.[297] This form of liability can fairly— though not un-controversially—be traced to the old English case of
Rylands v. Fletcher and today can be found in applications of the "abnormally dangerous activities" doctrine that grew out of Rylands. Conventional wisdom errs in large part because it treats every instance of strict tort liability as an instance of the type of liability commonly associated with Rylands, when in fact that type is quite distinct from what we have just described as "the strict liability in fault." Thus, to invoke the second half of our title, it is critical to appreciate the fault in strict liability—that is, the difference between two very different kinds of strict liability, one of which is pervasive and the other of which is an outlier in tort law. The former, noted above, is an attribute of the standards of conduct contained within the various torts. The latter imposes liability without regard to whether a standard of conduct has been met or violated.

Our analysis proceeds as follows: Part I discusses the strict liability in fault. Specifically, it demonstrates that there are common instances of strict liability in negligence, battery, trespass, nuisance, libel, and other torts. Because the standards of conduct built into these torts are defined objectively, they are often quite demanding or unforgiving. Nonetheless, as we explain, objectivity-based strict liability of this sort is still wrongs- based. To say the same thing: demanding standards of conduct are still standards of conduct, and violations of them are still cogently described as wrongs.[298]

Part II turns to the fault in strict liability. Specifically, it explains how liability for injuries resulting from abnormally dangerous activities can, at least sometimes, be understood as a distinctive form of strict liability that detaches liability from any notion of wrongdoing. We refer to this special, non-wrongs-based form of strict liability as licensing-based strict liability. This part concludes by rebutting arguments suggesting that licensing-based strict liability is, after all, a form of wrongs-based liability.

Part III identifies and responds to several challenges that might be raised against our map of the terrain of tort law. First, it explains why the recognition of "strict" products liability by U.S. courts in the second half of the twentieth century does nothing to undermine our contention that strict liability in tort is overwhelmingly wrongs-based and that licensing based strict liability is anomalous. Second, it counters the suggestion that the strictness of tort law's standards of conduct renders tort law normatively indefensible or unattractive. Third, it explains why, even granting that liability without any wrongdoing is imposed for injuries caused by abnormally dangerous activities, there are plausible reasons for categorizing this particular form of liability as "tort" liability. Finally, we consider whether, in recognizing licensing-based strict liability at the very margins of tort law, courts have drawn the fault line between the two forms of strict liability in a defensible place, or whether they would do well to recognize more instances of licensing-based strict liability.

We conclude with some thoughts about possible practical implications of our analysis.

297 Tyagi, Anamika, Reiterating the Principle of Absolute Liability in Light of Oleum Gas Leakage Case (2020), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3697451

298 Raffa, Mohamed. (2018). Strict and Absolute Liability in Common Law Practice. (2018), https://www.researchgate.net/publication/324415453_Strict_and_Absolute_Liability_in_Common_Law_Practic e

Strict Liability without Wrongdoing

At least in some applications, liability for abnormally dangerous activities is distinctive because its imposition does not turn on a determination that the defendant committed a legal wrong. Of course, one could say that the bringing about of physical injury or property damage is itself a wrong—after all, without an injury there would not be any liability. Rylands, however, is not such a decision, nor are such decisions typically found in tort law.

For torts ranging from defamation to trespass, the plaintiff's being injured by what the defendant did is a part of the wrong but not the wrong in and of itself. As we noted above, the various torts recognize a duty of non-injury that is qualified by a sub duty of non-injuriousness. The sub duty identifies prohibited ways of behaving that are agent accessible, not simply consequences that are not to be brought about. Causing physical harm without carelessness is not the wrong of negligence any more than causing harmful contact without the requisite intent is the wrong of battery.

In Rylands, it is probably significant that the House of Lords was not criticizing the Defendant for having created a reservoir. Similarly, the Second and Third Restatements' use of the phrase "abnormally dangerous" is not meant to connote disapproval. The characterization of the risk level as unusually high, while relevant to liability, is not intended to suggest these activities are forbidden or ill advised. On the contrary, building reservoirs and using explosives for demolition have generally been understood to be permissible and indeed valuable activities.

Fletcher's claim against Rylands had much in common with a nuisance action. The plaintiff was claiming that the defendant interfered with his enjoyment of his real property, without alleging an intentional boundary crossing by the defendant. Moreover, the interference asserted stemmed from an activity the defendant undertook on his own property, and the defendant was not being accused of behaving in a culpable manner.

There is nonetheless arguably a crucial difference between Rylands liability and nuisance liability. The court in Rylands seems never to have suggested that the defendant was doing something he was not supposed to be doing. There was nothing about the creation of the reservoir that was itself invasive, and there is no indication from the Law Lords that the defendant was required to stop carrying on his activity in the manner in which he had been carrying it out. Nuisance, as we have seen, turns on the idea of a context-inappropriate use of one's property. In Sturgis, for example, the court concluded that the confectioner's use of loud, vibrating equipment attached to a wall shared with his neighbour was impermissible.

That use of the equipment was a misuse of the confectioner's property, i.e., a use that exceeded the relatively broad reign given to property owners to do what they wish on their properties. The claim of a plaintiff suing on an abnormally dangerous activity theory is not predicated on the violation of a right to be free of injury flowing from a certain kind of conduct by the defendant. It is the damage done, not the property-right invasion, that grounds the claim.

Conditional Permissibility and Licensing[10]

In so far as Rylands and its progeny impose liability without anything that would qualify as wrongdoing, they create an interpretive problem for anyone who claims, as we have claimed, that torts are wrongs. A tenet of our "civil recourse" theory is that, through tort law, the state affords to a plaintiff a right of action against a defendant only because the defendant has wronged the plaintiff. A right of action is a power to exact a remedy from a defendant as redress for having been wronged. Without a wrong, there is no entitlement to a right of action. Strict liability for injuries inflicted by abnormally dangerous activities—if it really is not wrongs-based liability— breaks the civil recourse mould.[11]

Still, the most important issue is not one of theoretical defensiveness or conceit, but one of simple explanation. Why does the common law permit plaintiffs to recover from defendants in such cases if the defendant has not committed

a legal wrong against the plaintiff? Our answer, like that of Professors Robert Keeton, George Fletcher, and Gregory Keating, looks to an idea of fair distribution rather than wrongfulness. Defendants who engage in certain activities unilaterally impose well-known, well- defined, and substantial risks upon others in a course of conduct
that (typically) is consciously undertaken for their own benefit. If such a knowing imposition of risk upon others is permitted—if it is not enjoined or prohibited—those engaged in the risk imposition must stand ready to compensate those injured by it. The permissibility of this kind of extraordinary risk imposition is conditioned on the readiness of the risk imposer to take responsibility for the injuries that flow from it, irrespective of the presence or absence of wrongdoing.
Anglo-American law provides several different ways of rendering an activity conditionally permissible in this manner. Licensing, taxing, and regulatory approval are three of the most familiar. Simpson's narrative of the Parliamentary response to dam failures provides a nice, real-world illustration. The private bills containing Holmfirth clauses quite explicitly conditioned permission to build reservoir dams on the engineering company's agreement to pay for any losses caused by dam failure.
As Simpson suggested, Rylands can be understood as a common law parallel, applicable to private reservoir builders, to the legislative licensing regime for public reservoir builders. The regime of strict liability applicable to builders does not judge the conduct of building a reservoir as wrongful or impermissible. Rather, it insists that the builder stand ready to pay for the injuries that flow from it. The same is probably true of many instances of liability for abnormally dangerous activity: it is permissible to engage in the activity, but one must stand ready to pay for the injuries that it causes.

1. Prendergast, David, The Constitutionality of Strict Liability Offences (2014), https://papers.ssrn.com /sol3/pars.cfm?abstract_ id=2359084
2. Tyagi, Anamika, Reiterating the Principle of Absolute Liability in Light of Oleum Gas Leakage Case (2020), https://papers.ssrn.com/sol3/papers.cfm ?abstract_id=3697451
3. Raffa, Mohamed. (2018). Strict and Absolute Liability in Common Law Practice. (2018),
4. https://www.researchgate.net/publication/324415453_Strict_and_Absolute_Liability_in_Common_Law_Practice