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A BREAKDOWN OF STRICT AND ABSOLUTE LIABILITY

~ *Roshni Kumari*

ABSTRACT

This paper examines two critical doctrines in tort law that impose liability without requiring proof of negligence or intent. The rule of strict liability, established in the 1868 landmark judgment of Rylands v. Fletcher, applies to the escape of dangerous things from land and permits specific defences. In contrast, absolute liability, formulated by the Indian Supreme Court in M.C. Mehta v. Union of India (1987), mandates unconditional liability on enterprises engaged in hazardous activities without recourse to defences. This paper traces the evolution of both doctrines, articulates their essential elements and analyses their pivotal distinctions.

INTRODUCTION

In law of torts, liability depends on the defendant, who by act or omission, has breached a *legal duty* incumbent on him and violated a recognised *legal right* vested in the plaintiff and thereby caused the plaintiff *injury* of a foreseeable kind.¹ Liability does not always depend on proving negligence or wrongful intention. There are situations when a person may be held liable for damage even though he is not negligent or there is no intention or even when he has made positive efforts to avert the damage, caused by his act or omission.² In this connection, two rules are laid strict liability and absolute liability. These rules reflect that some act or omission are so inherently dangerous that the burden of any resulting harm must rest on those who engage in them.³

¹ R.K. Bangia, Law of Torts 49 (26th ed., Allahabad Law Agency 2021). (hereinafter as Bangia)

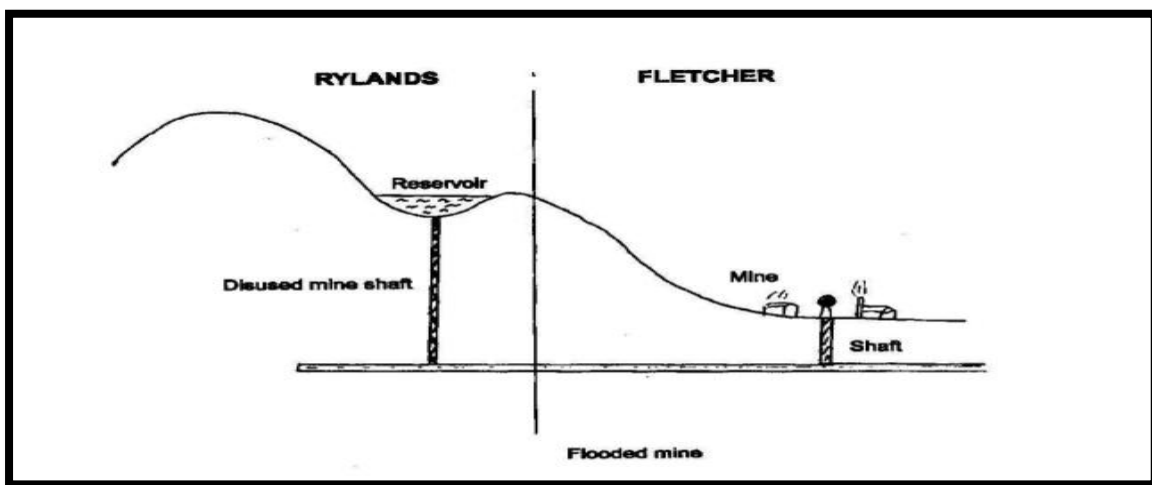
² *Id.* at 326.

³ *Id.*

THE RULE OF STRICT LIABILITY

The rule of strict liability traces its origins in the landmark judgement of *Rylands v. Fletcher*⁴, decided by the House of Lords in 1868.

In this case, the defendant had engaged independent contractors to construct a reservoir on his land for providing water to his mill. Due to negligence on the part of independent contractors, old disused shafts under the site of the reservoir were left unblocked. When the water was filled in the reservoir, water burst through these shafts and flooded the plaintiff's coal mines on the adjoining land. The court held the defendant liable even though he was not negligent.⁵



Therefore, three essentials must be satisfied for application of the rule of strict liability: **Firstly**, the defendant must have brought or accumulated *dangerous thing*, i.e. a thing likely to do mischief if it escapes, onto his land.⁶ **Secondly**, the dangerous thing so brought must be likely to do mischief if it *escapes* to the area outside the occupation and control of the defendant.⁷ If the dangerous thing never escapes, or if it was naturally present on the land, the rule will not be attracted. **Thirdly**, there must be *non-natural* use of land, it must be for some special use bringing with it increased danger to others. There should be no natural use of land, i.e. use of land for ordinary purposes or for general benefit of the community.⁸

⁴ *Rylands v. Fletcher*, (1868) L.R. 3 H.L. 330.

⁵ Krati Bhardwaj, Law of Torts in India, iPleaders (24 May, 2026, 18:27 PM), <https://blog.iPLEaders.in/law-of-torts/>.

⁶ Bangia, *supra* note 1, at 329.

⁷ *Id.*

⁸ *Id.* at 330.

EXCEPTIONS TO THE RULE OF STRICT LIABILITY

The rule of strict liability is not absolute. There are defences or exceptions under which the defendant can bypass liability even when the essentials of the rule are met. These are as follows:

Firstly, the *act of God* or *vis major*, where the escape is caused by *supernatural forces*, *extraordinary* in nature, that no human foresight can guard against and without any human intervention.⁹ In this case, the defendant will not be held liable. This defence was illustrated in *Nichols v. Marsland*¹⁰, where an *extraordinary* rainfall broke the defendant's artificial ornamental lakes and caused flooding, washing away plaintiff's four bridges, the defendant was not held liable.

Secondly, the *act of third party*, if the escape is caused by unforeseeable *act of a third party or stranger*, who is neither his servant nor he has any control over him, the defendant cannot not be held liable.¹¹ In the case of *Box v. Jubb*¹², the defendant's reservoir overflowed because the drains were blocked by strangers, the defendant was not held liable.

Thirdly, *consent of the plaintiff*, follows the principle of *volenti non fit injuria*, wherein the plaintiff has *consented* to the accumulation of dangerous thing for *common benefit*, i.e. for the benefit of both plaintiff and defendant.¹³ Th defendant will not be held liable. Common benefit does not extend to discharge of statutory authority or for public/common usage purposes. In the case of *Carstairs v. Taylor*¹⁴, the plaintiff hired ground floor of the building from the defendant. The upper floor was occupied by the defendant. Water was stored on the upper floor, which leaked without any negligence on the part of the defendant and damaged the goods of plaintiff on the ground floor. As the water had been stored for the common benefit of both plaintiff and defendant, the defendant was not held liable.¹⁵

Fourthly, the *plaintiff's own default*, if the damage has been caused by escape due to the default of the plaintiff, the defendant cannot not be held liable.¹⁶ In the case of *Ponting v. Noakes*¹⁷, a

⁹ *Id.* at 332.

¹⁰ *Nichols v. Marsland*, (1876) 2 Ex. D. 1.

¹¹ Bangia, *supra* note 1, at 334.

¹² *Box v. Jubb*, (1879) 4 Ex. D. 76.

¹³ Bangia, *supra* note 1, at 333.

¹⁴ *Carstairs v. Taylor*, (1871) L.R. 6 Ex. D. 76.

¹⁵ Mohd. Aqib Aslam, Liability (Strict Liability, Absolute Liability and Vicarious Liability) Under Law of Tort, Legal Service India (24 May, 2026, 18:34 PM), <https://www.legalserviceindia.com/legal/article-4532-liability-strict-liability-absolute-liability-and-vicarious-liability-under-law-of-tort.html> .(hereinafter as Aslam)

¹⁶ Bangia, *supra* note 1, at 331.

¹⁷ *Ponting v. Noakes*, (1849) 2 Q.B. 281.

poisonous tree was present on defendant's land, the plaintiff's horse intruded into the property of defendant and nibbled leaves of the poisonous tree. The defendant was not held liable in this case.¹⁸

Lastly, the *statutory authority*, if the defendant is performing an act under the authority of statute/s, the defendant will not held be liable.¹⁹ In the case of *Green v. Chelsea Waterworks Co.*²⁰, the defendant was performing its duty under statutory authority to maintain continuous supply of water. A main without any negligence on the part of defendant burst, flooding the premises of the plaintiff, the defendant was not held liable in this case.

¹⁸ Aslam, *supra* note 15.

¹⁹ Bangia, *supra* note 1, at 337-8.

²⁰ *Green v. Chelsea Waterworks Co.*, (1894) 70 L.T. 547.

THE RULE OF ABSOLUTE LIABILITY

In India, the rule of absolute liability traces its origins from the landmark judgement of *M.C. Mehta v. Union of India*²¹ in 1987. The case arose from a catastrophic oleum gas leak from the Shriram Food and Fertilizers Industries plant in Delhi in December 1985, which caused death and injury to several others. The matter came before the Supreme Court through writ petition under article 32²² of the constitution by the way of public interest litigation. This was a second case of large-scale leakage of deadly gas in India before the Supreme Court, after the MIC gas leakage from the Union Carbide plant in Bhopal in 1984.²³ The question arose whether the rule in *Rylands v. Fletcher* will be applied, which gave way for escaping the liability by pleading any of the defences underneath the rule.

Chief Justice P.N. Bhagwati, writing for the court, declined to apply the rule of *Rylands v. Fletcher* because it was formulated in 1868 in a vastly different socio-economic context which had no relevance to industries operating with all the resources of modern science and technology in India. She further stressed that the enterprise which chooses to engage itself in hazardous activity for profit, must bear the full cost of any disaster arising from it.²⁴ Thereby, the court formulated an entirely new and more stringent rule suited to the conditions of modern industrial India. It laid down the rule of absolute liability. The essentials for application of the rule of absolute liability: **Firstly**, an enterprise is engaged in a *hazardous or inherently dangerous activity*.²⁵ **Secondly**, the dangerous activity poses a *potential threat* to the safety and health of the persons working in the factory and residing in surrounding areas.²⁶ The enterprise owes an *absolute and no-delegable duty* to ensure no harm results from the dangerous activity.²⁷ If the damage results in the course of carrying on dangerous activity, the enterprise is absolutely liable to compensate all those affected. This rule is absolutely applied and admits of no exceptions whatsoever.²⁸

Further, the court laid down the measures for payable compensation to have deterrent effect.²⁹ The supreme court held that the compensation must be proportionate with the magnitude and

²¹ *M.C. Mehta v. Union of India*, A.I.R. 1987 S.C. 1086.

²² INDIA CONST. art. 32.

²³ Bangia, *supra* note 1, at 345.

²⁴ Sayyed Parvez, *M.C. Mehta v Union of India (Oleum Gas Leak Case)*, JuristCo (24 May, 2026, 18:11 PM), <https://www.juristco.com/judgments/mc-mehta-v-union-of-india-oleum-gas> .

²⁵ Bangia, *supra* note 1, at 342.

²⁶ *Id.*

²⁷ *Id.*

²⁸ *Id.* at 343.

²⁹ *Id.*

capacity of the enterprise. This is in correlation with “*deep pockets*” concept. This concept states that larger the capacity to accommodate the risk of the damages, higher the standard of compensation.³⁰

Bigger enterprise = Higher compensation standard

The judgement took into account the core logic that benefit and burden are two sides of the same coin. Therefore, those who benefit from engaging itself in hazardous activities, must bear the full cost of damage they have caused.

DISTINCTION BETWEEN STRICT AND ABSOLUTE LIABILITY

A most fundamental difference between strict and absolute liability lies in its scope. Strict liability, as originally conceived, was confined to the escape of dangerous things from land and non-natural use of land. Absolute liability is not so confined, it applies to any enterprise engaged in hazardous activity, whether or not an escape occurs.

The *second* distinction lies in the availability of defence. Under strict liability, a defendant may escape by establishing one of the defences, i.e. act of God, act of a stranger, plaintiff’s consent, statutory authority, or plaintiff’s own default. Under absolute liability, no such defence is available. The rule applies in its entirety regardless of the precautions taken by the enterprise or the circumstances of the accident.

The *third* distinction lies in burden of proof. Under strict liability, plaintiff must prove escape of dangerous thing and non-natural use of land. Under absolute liability, enterprise is automatically liable making it easier for victims to prove liability.

The *fourth* distinction lies in compensation. In strict liability, ordinary damages are given ensuring fairness between individuals. In absolute liability, compensation is based on the magnitude and capacity of the enterprise ensuring social justice.³¹

³⁰ Shivani Nair, The legal aspect of the Deep Pocket Theory, iPleaders (24 May, 2026 , 18:50 PM), <https://blog.iplayers.in/the-legal-aspect-of-the-deep-pocket-theory/> .

³¹ The Lawyers and Jurists, <https://www.lawyersnjurists.com/article/the-distinction-between-absolute-and-strict-liability-offences/> (last visited on 24 May, 2026)

CONCLUSION

The development from strict to absolute liability showcases changing needs of society and industrial growth in India. While the rule of strict liability in *Rylands v. Fletcher* introduced the liability without fault, its exceptions often allowed industries to escape responsibility. The decision of Supreme Court in *M.C. Mehta v. Union of India* plugged these gaps by imposing complete and unconditional responsibility on enterprises engaged in hazardous activities.

Together, these two rules ensure that the burden of industrial risks is placed on those who create profit from such activities, thereby ensuring public safety and social justice.