
INTERNATIONAL JOURNAL OF ADVANCED LEGAL RESEARCH

AN OVERVIEW OF STRICT LIABILITY- Shruti Mulgund¹**Introduction**

In law, Liability is a very broad and significant term. It can mean an obligation, duty or responsibility of one person towards another, or any kind of threat or harm resulting from intentional act, or by breach of duty, or by violation of statutes. An individual is considered to be lawfully at risk when he is legally in charge of something, a result that took place because of the omission or activity of the individual. In the general rule of negligence, if an individual is held liable for his negligence & if he somehow proves that he wasn't negligent, then he won't be held liable. But the rule of negligence is not applicable when it comes to strict liability. Strict liability is a concept that places legal liability for any harm, injuries or damages even though the individual who is held strictly liable was not negligent or at fault. In brief, defendant will be held liable to pay damages to the plaintiff, regardless of if due care was taken by the defendant.² The doctrine of strict liability evolved from "*Rylands v. Fletcher*" case, in this case Blackburn J. put down a new ground for responsibility, which was approved by the House of Lords. It says "*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 to all the damage which is the natural consequence of its escape.*"³ This case also established that even if there is no intent and negligence by the defendant, still he will be strictly liable to pay the damages. In the cases of strict liability, necessity of negligence or *mens rea* is partly or wholly excluded, defences of mistake of fact is also not applicable. These are cases of liability with no fault.⁴

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² Sakshi Raje, Rules of Strict Liability and Absolute Liability, LAW TIMES JOURNAL (2018)
<https://lawtimesjournal.in/rules-of-strict-and-absolute-liability/>

³ Fletcher v. Rylands, (1866) LR 1 Ex265, 279

⁴ Strict Liability, lawteacher.net (2018) website accessed on 07-08-2020;

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Strict liability is beneficial in a lot of ways, it serves the special purpose of government and that is protecting the public. Some areas such as food, alcohol and medicinal drugs, pose a huge threat, as the hindrance in the quality or adulteration would be very harmful, and also the industries that deal with dangerous gas and chemicals, as leakage of such hazardous gas or chemicals will have a drastic and life threatening impact on the lives of thousands of people, through strict liability people, companies and industries can be prevented from going through a potentially dangerous activity and urge them to take all the required and possible preventive measures.⁵

Keywords

Non-natural, escape, dangerous, damage, mischief, negligence, intent.

Research Objectives

Some of the main objectives of this research paper are:

- To examine the types of cases that will come under Strict Liability with the help of case laws.
- To look into the types, essentials and exceptions of Strict Liability.
- To understand if *mens rea* or negligence plays any role in Strict Liability.

Research Questions

- What are the different categories under the rule of Strict Liability?
- What are the defences/exceptions provided for Strict Liability?
- What are the essentials for a tort to be held under Strict liability?
- Is Strict Liability applied in Criminal Law?

Research Methodology

The research methodology used in the present paper is Doctrinal Research Methodology. This specific research methodology is chosen by the researcher because it focuses on gathering and

<https://www.lawteacher.net/free-law-essays/criminal-law/strict-liability.php#citethis>

⁵ Parth Thummar, Strict Liability: Overview and Analysis, iPLEADERS (2020) p.6; Blog accessed on 07-08-2020 at 12:45 PM

[file:///C:/Users/hp/Downloads/Strict%20Liability%20Offences Crim%20Law%20&%20torts.pdf](file:///C:/Users/hp/Downloads/Strict%20Liability%20Offences%20Crim%20Law%20&%20torts.pdf)

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systematically organising relevant information from multiple sources and this is the main aspect of this research methodology. The researcher aims examine several aspects of strict liability with the help of journals, legal databases, research papers, case laws, judgements, laws, legal articles, legal sources, statutes etc. It examines law as a collection of principles that can be interpreted & analysed through legal sources only. This research methodology is based only on source-based research and will not consist any kind of qualitative or quantitative research. This also includes legal doctrines, constitutional doctrines, international doctrines, etc.

Literature Review

- Richard A. Wasserstrom in his article “Strict Liability in the Criminal Law” (1960) said that strict liability does not play a very important and advantageous role in the society. He is of the opinion that legislature has been imprudent by choosing strict criminal liability to achieve certain goals and strict liability is an unreasonable and cruel legislative/judicial mishap.⁶
- “Why isn’t the level of activity usually considered in the formulation of a due care standard?” This question has been answered by Steven Shavell in his article “Strict Liability Versus Negligence” (1980). It would be difficult for the courts to set a ‘standard of due care’ that needs to be taken in a certain activity. Developing a broad standard of care suitable for every kind of activity is will be very troublesome.⁷
- Laurie L. Levenson, in his article “Good Faith Defenses: Reshaping Strict Liability Crimes” (1993) mention that as in the cases of strict liability there is no need to prove the criminal intent, it becomes easy for the prosecutors to prove the accused guilty. The doctrine of strict liability offers an effective and almost assured method for conviction of the defendants.⁸
- In the article “Is There A Case for Strict Liability?”, the writer Larry Alexander states

⁶ Richard A. Wasserstrom, Strict Liability in the Criminal Law, 12 Stan. L. REV. 731 (1960)

⁷ Steven Shavell, Strict Liability Versus Negligence, 9 J. LEGAL Stud. 1 (1980)

⁸ Laurie L. Levenson, Good Faith Defenses: Reshaping Strict Liability Crimes, 78 CORNELL L. REV. 401 (1992-1993)

that there is no place for strict liability in criminal law. It allows punishing an innocent and poses a threat to moral conduct of the society. And the writer mentions that in tort law, strict liability can't be easily differentiated from negligence liability.⁹

- Peter M. Gerhart in his article “The Death of Strict Liability” (2008) states that strict liability is slowly dying because the analysis of accident law indicates that strict liability is an inappropriate medium to understand the role of courts in evaluating the responsibility for the harm. The writer suggests that amalgamating strict liability into negligence liability is an effective way to make the law of torts consistent and more solid.¹⁰
- Stephen Cohen in his article “Justification for a Doctrine of Strict Liability” (1982) stated that strict liability holds an individual liable for an act that was out of his control and unavoidable. The writer is of the opinion that strict liability operate as a disguise of negligence/carelessness. The doctrine of strict liability centres around holding an individual liable even if all precautionary majors are taken to prevent accidents.¹¹
- The article “Varieties of Strict Liability” is written by Douglas N. Husak in the year 1995. The writers mention that applicability of “strict liability in criminal law” is irrational. Scholars and philosophers tolerate applying strict liability in tort law but not in criminal law, however they are less rigid if the punishments are considerably lenient, nevertheless with hostile attitude towards strict liability.¹²
- It is often contended that the boundaries between strict liability & fault-based liability are blurred. John C.P. Goldberg and Benjamin C. Zipursky in their article “The Strict Liability in Fault and the Fault in Strict Liability” (2016), have tried to distinguish between strict and fault-based liability. Strict liability is holding an individual liable for the harm done even if there was no wrongdoing on his part; however, in fault-based

⁹ Larry Alexander, Is There A Case for Strict Liability?, SSRN (2017)

¹⁰ Peter M. Gerhart, The Death of Strict Liability, 56 CASE WESTERN RESERVE SCHOOL OF LAW (2008)

¹¹ Stephen Cohen, Justification for a Doctrine of Strict Liability, 8 SOCIAL THEORY AND PRACTICE, pp. 213-229 (1982)

¹² Douglas N. Husak, Varieties of Strict Liability, 8 CANADIAN JOURNAL OF LAW AND JURISPRUDENCE, pp.289-225 (1995)

liability is based on wrongdoing by the defendant.¹³

Discussion

I. Essentials of Strict Liability

There are certain essentials required to consider a tort under Strict Liability. They are: a) Non-natural use of land b) Dangerous thing c) Escape d) Mischief.

Non-natural use of land

In Strict liability, non-natural use of land is an integral element. According to current societal conditions, the use of land can be clearly distinguished between natural and non-natural. For the usage of land to be non-natural, the land must be used for a purpose that will result putting others in danger. It must not be solely for ordinary purposes or for the common benefit of the society. For example, growing a tree is a natural use of land, however, growing a poisonous tree is a non-natural use of land. In the case of “*Ryland v. Fletcher*¹⁴” it has been laid down that collecting water for domestic usage is natural use of land, but storing water in larger quantity like that in reservoirs is non-natural use of land. In “*Sochacki v. Sas*”, the defendant who was a tenant at plaintiff’s residence, lit fire in the fireplace and left the room unattended for a while. A spark leapt from the fire, which caused fire in the entire house. It was held that as the fire was built in the fireplace of the plaintiff’s house, it cannot be considered as non-natural use of land.¹⁵ This case evidently identifies when a land is put to natural or non-natural use.

Dangerous thing

A living or non-living thing can be considered as dangerous if it causes some kind of harm to others if it escapes from the defendant’s land. The owner of the land will be strictly liable to pay compensation for the damages caused by the dangerous thing. Even a non dangerous thing can be considered dangerous if kept in large quantity, for example, large amount of water in *Ryland v. Fletcher*’s case. In several cases of strict liability, dangerous things involved were gas,

¹³ John C.P. Goldberg, Benjamin C. Zipursky, *The Strict Liability in Fault and the Fault in Strict Liability*, 85 *FORDHAM L. REV.* (2016)

¹⁴ [1868] UKHL 1

¹⁵ *Sochacki v. Sas*, (1947) 1 *ALL E.R.* 471

electricity, sewage, rusty wires, explosives, water, fumes, vibrations, etc.¹⁶

Escape

In a case of strict liability, there will be escape of the dangerous thing from the premise or property of the defendant, which would not be in reach or control of the defendant after its escape.¹⁷In the case of “*Crowhurst v. Amersham Burial Board*”, a poisonous yew tree’s branches spread (escaped) from the defendant’s property and entered neighbour’s property, which resulted in the death of neighbour’s horse, which fed on the leaves shed by the poisonous tree on the neighbour’s property. The court held that the defendant was liable to pay the damages as the branches of poisonous yew tree escaped from his land and caused harm to others.¹⁸

Mischief

To hold an individual liable under Strict liability, it needs to be proved that the individual used his land for non-natural purposes and a dangerous thing escaped & caused mischief which harmed or caused damages to the claimant. The claimant needs to prove that the damage caused was because of non-natural usage of land. In the case of “*Charing Cross Electric Supply Co. v. Hydraulic Power Co.*”, the defendant had to supply water to the Industry with minimum pressure. However, the defendant could not maintain minimum pressure and this resulted in bursting of plaintiff’s pipes in several places. The defendant was held liable as the plaintiff proved the damage suffered.¹⁹

These are the essential ingredients for a tort to be held under the doctrine of Strict Liability.

II. Different Categories under the Doctrine of Strict Liability

There are three categories under Strict Liability. They are:

- Animals bites
- Abnormally dangerous acts/Ultra-hazardous acts

¹⁶ Shramana Dwibedi, Strict and Absolute Liability, LEGAL SERVICE INDIA; Article accessed on 01-11-2020 at 7:45 PM <http://www.legalservicesindia.com/article/2155/Strict-and-Absolute-Liability.html>

¹⁷ A. Beula Chrimak Darius, R. Dhivya, A Comparative Study on Principles of Absolute and Strict Liability, 120 INTERNATIONAL JOURNAL OF PURE AND APPLIED MATHEMATICS, pp.2329-2330 (2018); Article accessed on 01-11-2020 at 7:30 PM <https://acadpubl.eu/hub/2018-120-5/2/200.pdf>

¹⁸ *Crowhurst v. Amersham Burial Board* [1878] LR 4 Ex D 5

¹⁹ “*Charing Cross Electric Supply Co. v. Hydraulic Power Co.* [1914] 3 KB 772”

➤ Product Liability

Animal Bites

The doctrine of Strict Liability covers animal attacks and bites. When an individual owns/possess any animal, he/she is liable for any kind of damages / injuries caused by that animal to a person, property or another animal. In several jurisdictions, owners of the animals are held strictly liable for the injuries/ damages, only if they were aware of the dangerous behaviour patterns of their pet. However, in the case of wild animals, the owner will be strictly liable even if the animal isn't believed to be harmful/ dangerous.

Abnormally Dangerous Acts/ Ultra-hazardous Acts

The second category under Strict Liability is when an individual causes an aberrantly dangerous situation or carries out an ultra-hazardous activity, which has a possibility of causing grievous hurt or injury to other. Certain activities are so dangerous in nature that no amount of care can avoid risk of injury or harm, & aren't usually carried out under normal circumstances.²⁰ In such cases, the defendant will be liable for the harm/damages caused by such hazardous activity undertaken by him. Some of the examples for such activities are: storing explosives and chemicals, disposal of radioactive elements, containment of lethal gas, etc

Product Liability

To hold a defendant liable under strict liability, plaintiff needs to prove that the "product" was faulty when it departed from the manufacturer. He has to prove that he used the product rationally and for what it was meant. He also needs to prove that usage of the defective product caused harm / injury. The landmark case of "*Donoghue v. Stevenson*" is a perfect example for product liability. In this case, the plaintiff found a dead snail in the beer bottle she had ordered and consumed, subsequently she fell ill. The House of Lords held that the manufacturer owes duty of care towards its customers and will be held liable if that duty is breached.²¹

III. Defences to the Rule of Strict Liability

The rule of Strict Liability emerged in 1868 from "Rylands v. Fletcher" case. Since then some

²⁰ Strict Liability, JUSTIA (2018) Article accessed on 02-11-2020 at 01: 45 AM
<https://www.justia.com/injury/negligence-theory/strict-liability/>

²¹ Donoghue v. Stevenson [1932] AC 562

defences have also come to light where the defendant might not be liable. They are:

Consent of the Plaintiff

This defence applies if the plaintiff had expressed/implied consent for the act which resulted in injury or harm. In the case of “*Peters v. Prince of Wales Theatre Ltd. Birmingham*”, plaintiff rented a shop on the premise of the defendant with complete knowledge that the defendant runs a theatre & had a rehearsal room on his premises. The theatre had a facility for storing water to put out fire during emergencies. An unfortunate event led to bursting out of water and flooded plaintiff’s shop, which damaged his goods. The court held that the defendant cannot be held liable because there was implied consent by the plaintiff, as he had the knowledge of the water tank while renting the room from the defendant.²² If there is implied/expressed consent by the plaintiff for the existence of means of threat and there is no negligence by the defendant, then the defendant cannot be held liable.

Plaintiff’s Own Fault

If any harm/injury has occurred to the plaintiff because of his own fault, then no damages can be claimed. In “*Ponting v. Noakes*”, plaintiff’s horse entered defendant’s premise & fed on the poisonous leaves from the plant on the defendant’s land, due to the consumption of poisonous leaves, the plaintiff’s horse died. It was held that the defendant was not liable as the poisonous plant didn’t escape and enter into the plaintiff’s land, but the horse entered the defendant’s land and consumed the poisonous leaves.²³ If the plaintiff or plaintiff’s possession enters into the defendant’s land and harms themselves, then the defendant cannot be held liable.

Act of God

An act of God is defined as “*An event that directly and exclusively results from the occurrence of natural causes that could not have been prevented by the exercise of foresight or caution.*”²⁴

If any damages are caused to the plaintiff due to an act of God, or if the dangerous thing escapes from the defendant’s property even after due care, then the defendant cannot be held liable. In “*Nichols v. Marsland*”, the defendant had built artificial lake from a natural stream since many

²² *Peters v. Prince of Wales Theatre Ltd. Birmingham* [1943] KB 73

²³ *Ponting v. Noakes* (1894) QB 281

²⁴ Act of God, Legal Dictionary; Accessed on 03-11-2020 at 08: 45 PM
<https://legal-dictionary.thefreedictionary.com/act+of+God>

years. Due to extremely heavy rainfall which had not occurred before, the artificial lakes broke and damaged plaintiff's 4 bridges. It was held that the defendant cannot be held liable as there was no negligence on the part of the defendant and the damage occurred due to act of God which could not be controlled.²⁵

Act of Third Party/Stranger

A defendant would not be liable under strict liability for the damages caused by a stranger. But, the stranger should neither be defendant's servant nor under his control. However, the damages that can occur from the act of a stranger should not be foreseen or expected. In "*Rickards v. Lothian*" defendant's waste pipes were blocked by strangers and the tap was left open, the water overflowed into the plaintiff's property and damaged his goods. The court held that the defendant cannot be held liable as the damage caused was because of act of a stranger and it could not be foreseen by the defendant.²⁶

Common Benefit of Defendant & Plaintiff

If damage is caused by the escape of a dangerous thing, which was brought on the land for the common benefit of both the parties, then the defendant cannot be made liable for the damages. In the case of "*Box v. Jubb*" the reservoir of the defendant overflowed due to the contributed acts of the defendant and his neighbouring reservoir. Defendant and plaintiff were residents of the same building; the reservoirs were installed for the benefit of all the residents of the building. Hence, it was held that the defendant wasn't liable as the reservoirs were built for common benefit of the residents, which included plaintiff as well.²⁷

Statutory Authority

If an act is performed under the statutory authority and caused damages to an individual, then 'Statutory Authority' would be a very good defence. In the case of "*Green v. Chelsea Co.*", the defendant's company had statutory order for uninterrupted supply of water. A main which belonged to the defendant's company burst with no negligence on defendant's part and flooded plaintiff's property. It was held that the defendant's company is not liable as it was under the

²⁵ Nichols v. Marsland (1876) 2 ExD 1

²⁶ "Rickards v. Lothian (1913) AC 263"

²⁷ "Box v. Jubb (1879) 4 Ex D 76"

statutory order. However, this defence will not be applicable if the defendant who is under statutory authority was negligent.²⁸

IV. Strict Liability in Criminal Law

In criminal law, *mens rea* plays a significant role in determining whether the accused had intention of committing a crime or not. Presence of *mens rea* signifies presence of criminal intent. However, *mens rea* plays no role in the cases of strict liability. It is not needed to prove the presence of intent; defendant will be held liable even if he was not aware of the consequences of his actions. Strict Liability occurs in torts as well as criminal law. There is no need of mental element for strict liability in criminal law, the only thing that needs to be proved is that the crime was committed. In torts, remedy for strict liability is paying damages; however, in criminal law, the defendant is punished for the harm done or the injuries suffered.²⁹

In criminal law, presence or absence of knowledge of the defendant of what he is doing will not have any effect on strict liability. For example, possession of drugs leads to strict criminal liability, even if the defendant was unaware that he was in possession of drugs.³⁰

Some areas where Strict Liability is applicable in Criminal Law are:

“Statutory Rape”: It is illegal to have sexual intercourse with anyone who has not reached the age of majority (18 years) to provide consent. It does not matter if the defendant believed that the minor was above the age of majority. Statutory rape has been considered under strictly liability to protect underage girls & to also ensure that the offender does not escape punishment/liability.

“Selling Alcohol to Minors”: This crime is very similar to that of statutory rape. It does not matter that the defendant believed the age of the minor to whom he was selling alcohol was above the age of majority; the mere fact that he sold alcohol to a minor is enough to make him liable under strict liability.

“Traffic Offences”: Speeding is one of the traffic offenses that comes under strict liability.

²⁸ Green v. Chelsea Co. (1894) 70 LT 547

²⁹ Abhijeet Pratap, Strict Liability in Criminal and Tort Law, NOTESMATIC (Nov.3, 2020, 12:50 AM) <https://notesmatic.com/2016/11/strict-liability-criminal-tort-law/>

³⁰ Strict Liability, LEGAL INFORMATION INSTITUTE (Nov.3, 2020, 01:11 AM) https://www.law.cornell.edu/wex/strict_liability

Regardless of if the driver was unaware that he was speeding or believed that he was under the speed limit, he will be held strictly liable.³¹

Offences like concealment of weapons in an aircraft, mislabelling of drugs, causing pollution are also considered under strict liability.

Conclusion and Recommendations

Conclusion

The doctrine of Strict liability evolved almost 150 years ago from the Ryland v. Fletcher case. Since then, there have been several developments in this doctrine (i.e., different types and exceptions) with the help of diverse type of cases. According to the rule of strict liability, an individual is held liable for the damages occurred, regardless of if there was no negligence on his part. *Mens rea* holds no importance in the cases of strict liability; an individual is punished even if he had no criminal intent. Presence of actus reus is enough to hold the defendant liable for the damages. However, this does not hinder an individual from having a fair trial. Burden of proof is on the defendant to prove that he isn't liable. This doctrine has been applied by the Indian courts as well to determine the necessity, adequacy and amount to be paid for the damages suffered by the plaintiff. As strict liability punishes without any fault of the defendant, there is a risk of injustice; it is rendered as a dangerous tool handed to the judiciary which must be used wisely and with due care.

Recommendations

Strict Liability puts the defendants in a very vulnerable position. There is a possibility of plaintiff misusing this doctrine to harass the defendant to pay for damages. A negligence or foresee -ability test needs to be set for strict liability, to analyse if the harm done could have been foreseen and if the defendant has taken due care. If the defendant had taken extreme care to avoid any kind of harm to others and didn't show any kind of negligence, then the courts need to be more considerate and should relax the punishment accordingly. In the case of product liability, to safe guard the manufacturers from liability, they should to include do's, don'ts, safety instructions, precautionary measures to be followed on the packaging of the product, if the consumer fails to follow the instructions given, then the manufactures should not

³¹ Strict Liability Crimes, LEGAL MATCH (Nov.3, 2020, 01:45 AM) <https://www.legalmatch.com/law-library/article/strict-liability-crimes.html>

be held liable for the damages occurred to the consumers due to negligence in following the instructions or mishandling of the products. While deciding on the cases of strict liability, courts should not only view from plaintiff's perspective, but also from the defendant's perspective to prevent them from falling prey to the harsh punishments of the courts even after due care.

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