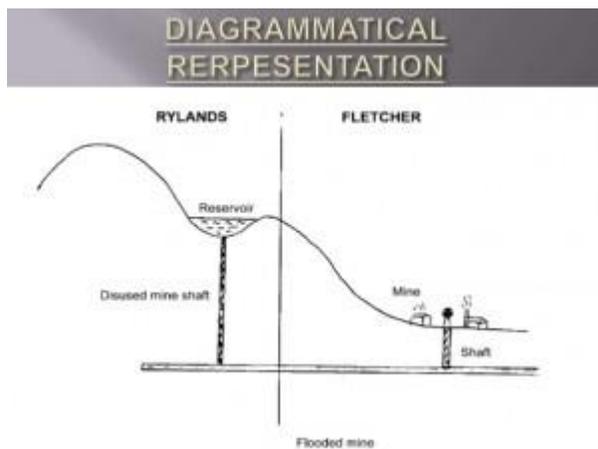


Concept of Strict Liability and Absolute Liability

Strict Liability

The principle of strict liability evolved in the case of *Rylands v Fletcher*[\[1\]](#). In the year 1868, the principle of strict liability states that any person who keeps hazardous substances on his premises will be held responsible if such substances escape the premises and causes any damage. Going into the facts of the case, F had a mill on his land, and to power the mill, F built a reservoir on his land. Due to some accident, the water from the reservoir flooded the coal mines owned by R. Subsequently, R filed a suit against F. The Court held that the defendant built the reservoir at his risk, and in course of it, if any accident happens then the defendant will be liable for the accident and escape of the material.



Going by the principle laid in this case, it can be said that if a person brings on his land and keeps some dangerous thing, and such a thing is likely to cause some damage if it escapes then such person will be answerable for the damaged caused. The person from whose property such substance escaped will be held accountable even when he hasn't been negligent in keeping the substance in his premises. The liability is imposed on him not because there is

any negligence on his part, but the substance kept on his premises is hazardous and dangerous. Based on this judicial pronouncement, the concept of strict liability came into being. There are some essential conditions which should be fulfilled to categorize a liability under the head of strict liability.

Essentials of Strict Liability

Dangerous Substances: The defendant will be held strictly liable only if a "dangerous" substance escapes from his premises.

For the purpose of imposing strict liability, a dangerous substance can be defined as any substance which will cause some mischief or harm if it escapes. Things like explosives, toxic gasses, electricity, etc. can be termed as dangerous things.

Escape: One more essential condition to make the defendant strictly liable is that the material should escape from the premises and shouldn't be within the reach of the defendant after its escape.

For instance, the defendant has some poisonous plant on his property. Leaves from the plant enter the property of the plaintiff and is eaten by his cattle, who as a result die. The defendant will be liable for the loss. But on the other hand, if the cattle belonging to the plaintiff enter the premises of the defendant and eats the poisonous leaves and die, the defendant would not be liable. In the judicial pronouncement of *Reads v. Lyons & Co.* [\[2\]](#) it was held that if there is no escape, the defendant cannot be held liable.

Non-natural Use: To constitute a strict liability, there should be a non-natural use of the land. In the case of *Rylands v. Fletcher*, the water collected in the reservoir was considered to be a non-natural use of the land. Storage of water for domestic use is considered to be natural use. But storing water for the purpose of energizing a mill was considered non-natural by the Court. When the term "non-natural" is to be considered, it should be kept in mind that there

must be some special use which increases the danger to others. Supply of cooking gas through the pipeline, electric wiring in a house, etc. is considered to be the natural use of land. For instance, if the defendant lights up a fire in his fireplace and a spark escapes and causes a fire, the defendant will not be held liable as it was a natural use of the land.

These three condition needs to be satisfied simultaneously to constitute a strict liability.

Exception to the Rule of Strict Liability

There are certain exceptions to the rule of strict liability, which are-

Plaintiff's Fault: If the plaintiff is at fault and any damage is caused, the defendant wouldn't be held liable, as the plaintiff himself came in contact with the dangerous thing.

In the judicial pronouncement of *Ponting v Noakes*,^[3] the plaintiff's horse died after it entered the property of the defendant and ate some poisonous leaves. The Court held that it was a wrongful intrusion, and the defendant was not to be held strictly liable for such loss.

Act of God: The phrase "act of God" can be defined as an event which is beyond the control of any human agency. Such acts happen exclusively due to natural reasons and cannot be prevented even while exercising caution and foresight.^[4] The defendant wouldn't be liable for the loss if the dangerous substance escaped because of some unforeseen and natural event which couldn't have been controlled in any manner.

Act of the Third Party: The rule also doesn't apply when the damage is caused due to the act of a third party. The third party means that the person is

neither the servant of the defendant, nor the defendant has any contract with them or control over their work. But where the acts of the third party can be foreseen, the defendant must take due care. Otherwise, he will be held responsible.

For instance, in the case of *Box v Jubb*,^[5] where the reservoir of the defendant overflowed because a third party emptied his drain through the defendant's reservoir, the Court held that the defendant wouldn't be liable.

Consent of the Plaintiff: This exception follows the principle of *volenti non fit injuria*.

For instance, if A and B are neighbors, and they share the same water source which is situated on the land of A, and if the water escapes and causes damage to B, he can't claim damages, as A wouldn't be liable for the damage.

Absolute Liability

The rule of absolute liability, in simple words, can be defined as the rule of strict liability minus the exceptions. In India, the rule of absolute liability evolved in the case of *MC Mehta v Union of India*.^[6] This is one of the most landmark judgment which relates to the concept of absolute liability.

The facts of the case are that some oleum gas leaked in a particular area in Delhi from industry. Due to the leakage, many people were affected. The Apex Court then evolved the rule of absolute liability on the rule of strict liability and stated that the defendant would be liable for the damage caused without considering the exceptions to the strict liability rule.

According to the rule of absolute liability, if any person is engaged in an inherently dangerous or hazardous activity, and if any harm is caused to any

person due to any accident which occurred during carrying out such inherently dangerous and hazardous activity, then the person who is carrying out such activity will be held absolutely liable. The exception to the strict liability rule also wouldn't be considered. The rule laid down in the case of *MC Mehta v UOI* was also followed by the Supreme Court while deciding the case of Bhopal Gas Tragedy case. To ensure that victims of such accidents get quick relief through insurance, the Indian Legislature passed the Public Liability Insurance Act in the year 1991.

The Public Liability Insurance Act, 1991 [7]

This act was introduced with the aim of providing immediate relief to people who are victims of accidents in which handling of hazardous substances is involved. The main focus of the Act is to create a public liability insurance fund which can be used to compensate the victims.

The Act states that any person who is carrying out inherently dangerous or hazardous activities should have insurances and policies in place where he will be insured against liability to provide compensation to the victims in case any accident takes place, and some injury occurs. This liability is based on the principle of "no fault liability" or in other words, the rule of strict liability and absolute liability. Inherently dangerous or hazardous substance covers under its scope any mixture, preparation or substance which because of its properties can cause serious harm to human beings, animals, plants, property or the environment. If any substance is inherently dangerous or hazardous due to its handling also, then also the absolute liability of the defendant arises.

Concluding Remarks

The rule of strict liability and absolute liability can be seen as exceptions. A person is made liable only when he is at fault. But the principle governing these two rules is that a person can be made liable even without his fault. This is known as the principle of "no fault liability." Under these rules, the liable person may not have done the act, but he'll still be responsible for the damage caused

due to the acts. In the case of strict liability, there are some exceptions where the defendant wouldn't be made liable. But in the case of absolute liability, no exceptions are provided to the defendant. The defendant will be made liable under the strict liability rule no matter what.