



SAFALTA CLASSTM

An Initiative by **अमरउजाला**

1. VICARIOUS LIABILITY ≡

2. STRICT LIABILITY

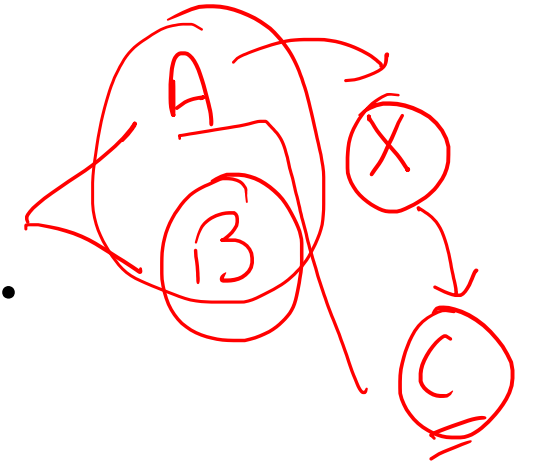
3. ABSOLUTE LIABILITY

VICARIOUS LIABILITY

The term 'vicarious liability' means 'liability of a person for the tort committed by someone else'.

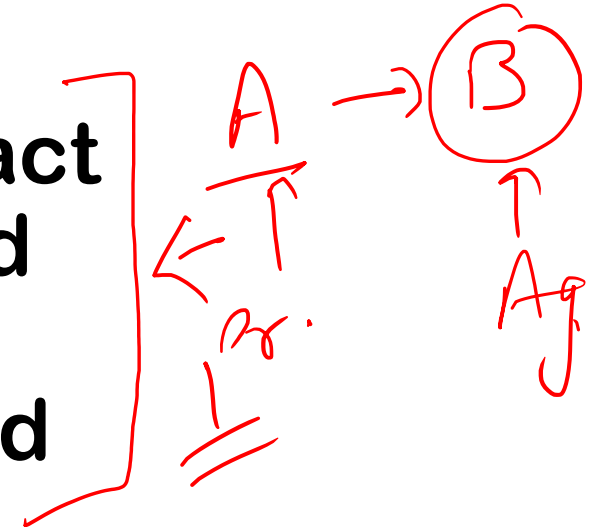
Vicarious liability arises in the following cases:

1. Liability of the master for the tort of his servant.
2. Liability of the partner of each others' tort.
3. Liability of the principal for the tort of his agent.



1. Principal and Agent

When a person appoints another to do any act for him or represent him in dealing with third persons so as to bind himself by the acts of such another person, such a person is called the principal.



An agent is a person employed to do any act for another or to represent another in dealing with third persons.

Thus, an agent establishes a link between such another person and third person.

(Maxim)

Qui facit per alium facit per se:

This maxim literally means that (the act of the agent is the act of the principal.) ←

The principal is liable for all acts done by the agent during the course of agency.

Lloyd vs Grace Smith & Co.:

Ms Lloyds approached M/s Grace Smith & Co. to seek investment-related advice.

The clerk who attended upon her asked her to sell her properties and then reinvest the proceeds.

Ms Lloyd signed certain documents, which were supposed to be the sale deed.

Actually, it turned out to be a **gift deed** in favour of the clerk.

The clerk disposed the property and misappropriated the funds.

It was held that the company was liable for the fraudulent acts of the clerk.

2. Master and Servant

If a servant does a wrongful act in the course of his employment, the master is liable along with the servant.

Thus, the wrongful act of the servant is deemed to be the act of the master as well.

This is based on the doctrine ‘Respondent Superior’ – Let the principal be liable.

Conditions for the Liability of the Master:

1. The tort must have been committed by the 'servant'.

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2. The servant must have committed the tort in the course of his employment.

The liability of a master is not limited only to the acts, which he expressly authorizes to be done but **he is also liable for torts committed by his servant on his own accord in the course of employment.**



Liability of the Employer for the Acts of an Independent Contractor:

(Agent)

(Pr. & Agent)

Generally, the employer is not liable for the torts committed by an independent contractor employed by him.

However, this rule has some noted exceptions, where an employer can be made liable for the wrongs of the independent contractor.

1. If an employer authorizes the doing of an illegal act.

2. An employer is liable for the act of an independent contractor in cases of strict liability.

Vicarious liability

Doctrine of Strict Liability:

In some cases, a person (defendant) is liable for the harm caused to another (plaintiff) even though there is no negligence on his part and he never intended such a harm to come to the other person.

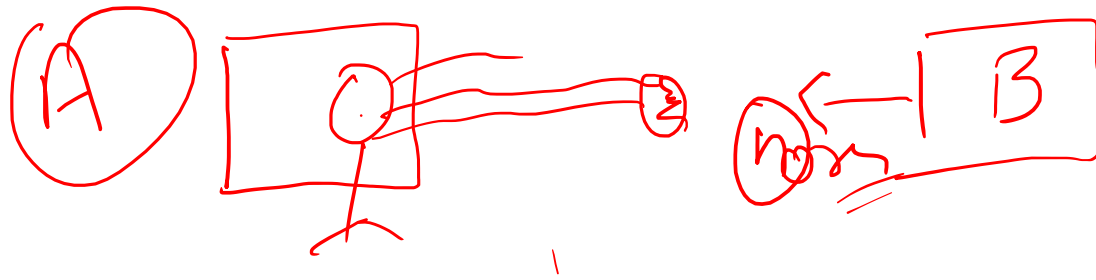
Leading Case

This principle was laid down in the famous case Rylands vs Fletcher.

Rylands vs Fletcher:

The owner of a mill employed a contractor to construct a reservoir on his land to provide water to his mill.

While digging, the contractor failed to notice some disused shafts beneath the ground and as such, did not block them up.



Thereafter, he filled the reservoir with water. That night, the water broke through some of the shafts and flooded the neighbour Y's mine.

The court held that X was liable for the damage caused to Y, even though the damage could not be attributed to his negligence.

'ESCAPE
clause'
==

Essential ingredients for the application of doctrine of strict liability:

(a) A person on his land must have brought some dangerous thing.

(b) The thing thus brought/kept by a person on his land has escaped.

(c) It must be a non-natural use of land.

Non-natural use of land:

Non-natural use refers to some special use by the defendant, which may otherwise expose others to increased danger.

Water collected in the reservoir in such a huge quantity in Rylands vs Fletcher was held to be non-natural use of land.

Escape:

To apply the doctrine of strict liability, the dangerous thing kept on land should escape from the defendant's land.



For example, if there is projection of the branches of a poisonous tree on the neighbour's land, this amounts to an escape and if the cattle lawfully enter on the neighbour's land are poisoned by eating the leaves of the same; the defendant will be held liable under the rule.

Exceptions to the above rules:

~~A~~ dangerous thing
~~A~~ Escape

1. Act of God: ≡

If the dangerous thing escapes due to unforeseen or supernatural forces without any human intervention, the defence of act of God can be pleaded. .

→ Volenti Non fit Injuria
≡≡≡

2. Consent of the Plaintiff:

The rule of law, 'where there is consent, there is no injury' is applicable where the plaintiff has consented to the accumulation of the dangerous thing on the defendant's land, he cannot sue if it escapes and causes some damage

3. Plaintiff's Own Fault:



Where the thing escapes due to the plaintiffs own default and causes damage, the rule in Rylands vs Fletcher does not apply.

4. Wrongful Act of the Third Party:

If the harm caused is due to the act of a stranger (who is in no way under the control of the defendant), the defendant is not liable under the rule.

→ Enterprise

Doctrine of Absolute Liability:

The doctrine of absolute liability is a creation of the Supreme Court in preference to the rule of strict liability according to Rylands vs Fletcher.

The highlight of the rule of absolute liability is that it is **not subject to any of the exceptions** discussed under the rule of strict liability.

M.C. Mehta vs Union of India: (1987)

This path-breaking decision was made by the Supreme Court following two major gas leaks, namely, the escape of methyl isocyanate from the Union Carbide Plant (Bhopal Gas Tragedy).

As the first case had wrecked havoc on thousands of innocent lives, the Supreme Court feared that industries dealing with hazardous substances would escape the liability for damage caused by leakage of deadly gases by pleading some exception under the doctrine of strict liability.

Hence, the courts in India are in favour of applying the rule of doctrine of absolute liability instead of doctrine of strict liability.

Case Study

The National Green Tribunal (NGT) held that LG Polymers India has absolute liability for the loss of life caused by a gas leak at its factory in Visakhapatnam.

It said the ₹50 crore in compensation, deposited by the company, would be spent on restoration.

It also constituted a committee to prepare a restoration plan.

<https://www.thehindu.com/news/national/andhra-pradesh/lg-polymers-india-has-absolute-liability-for-gas-leak-ngt/article31737142.ece>

Link

Question No: 1

Question No: 1

Principle:

Damages is the money recompense, as far as money can do, for the loss suffered by a person.

Facts:

A, an Indian citizen, having a right to vote, was not allowed to cast his vote on the polling booth, by the returning officer.

Name of A was mentioned in the voter's list. A has also reported at the polling booth in time.

However, the candidate in whose favor A would have cast his vote won the election. A filed a suit claiming damages

Question No: 1

- (a) A will be entitled to damages ~~= X~~
- (b) A will not be entitled to damages
- (c) A will be entitled to only nominal damages
- (d) A will be entitled to exemplary damages

Leading Case
Ashby v White

Question No: 1

Question No: 2

Principle:

Doing of an act which causes common injury, danger or annoyance to public or which is likely to cause such injury or annoyance is Public nuisance.

A common nuisance is not excused because it causes some nuisance or advantage.

Facts:

‘A’ a farmer having large farmlands burns crop residue (stubble) on his fields after harvesting the crop to make the field ready for next crop as this is the easy, fast and convenient method of making the field ready for next crop.

His farmlands are adjoining a densely inhabited residential area and people pass through the smoke while travelling on the road adjoining his farmlands. The smoke caused by fire also enters the houses in the colony.

Question No:

- (a) A has not committed any offence since he does not cause any specific injury to any specific person
- (b) A has not committed any offence because he does not gain any advantage from persons living in the vicinity
- (c) A has committed public nuisance ✓
- (d) A has not committed any offence because the alleged acts are done on the fields owned and used