

INTERNATIONAL JOURNAL OF LAW
MANAGEMENT & HUMANITIES

[ISSN 2581-5369]

Volume 4 | Issue 3

2021

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The Rule of Strict Liability and Absolute Liability in Indian Perspective

NUPOOR AGRAWAL¹

ABSTRACT

In many cases, an individual is held accountable for the act, which he could not have committed, or, further, to prevent any damage incurred by his act, he made all practicable attempts, but was still held responsible. This is the case where the individual is responsible even though there is no negligence; these are laws in accordance with strict liability. This provision is recognised by the statute on the basis of the 'no-fault liability' guidelines. These principles derive from case laws. In the case of Rylands vs. Fletcher, this provision was laid down and thus this rule is often referred to as "Rule in Rylands vs. Fletcher", but the rule of absolute liability was laid down for a number of exceptions given for in this rule. In the case of M.C. Mehta vs. Union of India, the Supreme Court of India found that the offence should not be defended, but the defendant is responsible for the act. As part of law of torts, strict liability and absolute liability shall be defined. These two have the similar significance with some differences. Strict liability determines that one must be responsible for the damages incurred by the use of hazardous objects, the escape, and the un-natural use of the soil, with some exceptions. Absolute responsibility is without question a broader sense of this responsibility. It states that even if he has taken charge of his land, an individual is liable to pay for injury. As specified in the case of strict liability, he cannot take any defences.

Keywords: *Negligence, Strict Liability, No-Fault Liability, Absolute Liability, Law Of Torts, Exceptions, Absolute Responsibility, Defences.*

I. INTRODUCTION

In 1868, the concept of strict liability evolved in the case of Rylands v. Fletcher, which specifies that an individual who preserves dangerous substances on his property is liable for the escape and harm of those substances. Going into the facts, F had a mill on its ground, and F constructed a reservoir on its land to fuel the mill. The reservoir water was flooding coal mines operated by R due to a certain tragedy. R lodged a lawsuit against F subsequently. The Court found the defendant to have created the reservoir at his own expense, and, if an accident occurs, the

¹ Author is a student at School of Law, NMIMS Navi Mumbai, India.

defendant is responsible for the accident and escape of the material. In legislation, strict liability is a standard of responsibility which may apply in a criminal or civil context. A regulation setting out strict liability requires an individual personally liable for the harm and loss of any wrongdoing and omission (including fault in criminal law terms, typically the presence of mens rea). No proof of guilt, negligence or motive is required under strict liability. Of tort law (in particular, product liability), corporate law and criminal law, strict liability takes precedence. The most critical strict liability regime for analysing the advantages and disadvantages of strict liability as applicable to product liability see product liability. In the tort rule, the imposition of responsibility on a party without identifying any blame is a rigid responsibility (such as negligence or tortious intent). The plaintiff just has to show that the wrong has occurred and the defendant is liable. The statute imposes absolute responsibility on cases it deems potentially risky. This discourages careless conduct and unnecessary damage by requiring prosecutors to take all the precautions available. It also makes court rulings in these cases simplified and speeded up. In strict cases of liability, where the complainant may not have to show a fault, the defendant may contend that the protection of the failure was a consequence of the conduct of the claimant and not the substance, that is, no presumption of a flaw can be made merely because there is an accident. If the complainant may demonstrate that the defect was known by the defendant when the harm happened, the claimant in some jurisdictions can be given further punitive damages. This paper analyses the concepts of strict and absolute liability by discussing landmark judgments, while also covering the various aspects of both of these principles.

(A) Objectives

- To understand the concept of strict and absolute liability through discussion of landmark judgments.
- To study the rules of strict and absolute liability in detail, i.e., in terms of essentials, exceptions, defences available, etc.

(B) Hypothesis

H₀: There is no exception to the rule of strict liability.

H₁: There are certain exceptions to the rule of strict liability.

(C) Research Question

How did the principle of no-fault (strict and absolute) liability evolve in the Indian judiciary?

(D) Research Methodology

The proposed study is founded on secondary data, gathered from previously published research

papers and other external sources that address different research questions related to the concept of no-fault based liability. The research for some of these studies was done primarily while some of these were based on secondary data.

The information gathered for this research is qualitative in nature, and it is intended to re-examine data sets in order to address the current research question of how the evolution of no-fault liability occurred. Through a case study of the landmark judgments, it aims to understand the principles of strict and absolute liability and their application in the Indian legal system.

(E) Literature Review

Ezike, 2011² explores flaws in common law remedies and legislation that combat fair justice in cases of environmental contamination in Nigeria. The common law on damage remedies and liability laws in environmental laws was discussed. Common law and federal strict liability legislation are also discussed. The common law solution has been shown to be inefficient in achieving sufficient environmental compensation. The fact that the strict liability in the applicable laws is not fully demonstrated when polluters still evade liability is discovered.

The question of the constitutionality of strict liability in criminal law and the question of the value of strict liability in criminal law may be related but are not the same (Prendergast, 2011)³. The issue of the constitutionality of strict responsibility in Ireland is dealt with in this paper. It reviews the issue of which constitutional principles are infringed by strict criminal liability. The response proposed is that in an extraordinary situation the presumption of legitimacy may be violated, but in addition, the unconstitutionality of strict responsibility per se in the law of Ireland is difficult to understand. The first section of this paper analyses an Irish case objectively, stating that the judgement does not demonstrate incompatibility with the Constitution. The second part examines possible procedural bases on which strict responsibility should be contained; considers the recommendation that the presumption of innocence be regarded as containment of strict liability and underlines the rule of law as an essential control of criminalization.

Most scholars question the utility of absolute liability, which makes it irrelevant whether an infringement defendant copied from the patentee or independently invented the patented invention (Merges, 2014)⁴. This study partially defends patent law's absolute liability rule.

² Ezike, Edwin. (2011). Remediating Environmental Pollution Damages in Nigeria: Need to Adopt the Principle of Absolute Liability. (2011), https://www.researchgate.net/publication/323848066_Remediating_Environmental_Pollution_Damages_in_Nigeria_Need_to_Adopt_the_Principle_of_Absolute_Liability

³ Prendergast, David, The Constitutionality of Strict Liability Offences (2014), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2359084

⁴ Merges, Robert. (2014). A Few Kind Words for Absolute Infringement Liability in Patent Law. (2014),

Two literatures in defence build on this analysis. First, it examines how information is transmitted or disseminated by technological innovations. In combination with ‘inadvertent copying’ experiments by psychologists, these findings show that ideas can often be replicated in dark and indirect ways, leaving little to no proof that copying has taken place in fact. The article also reviews the literature on the best quality of treatment in the field of tort law, to explain what would happen if US law were amended to compel patentees to display a copy.

Alexander, 2017⁵ addresses whether there is a case in the matter of strict liability, first in criminal law then then in tort law. In the last section it also addresses strict, statutory and other types of civil liability, but they are not the main subject. It concludes that strict liability as the criterion for retributive compensation is never correct; it is a very crude instrument for the achievement of dissuasive fines by non-repayment damages and is best justified as a way of identifying insurance types with regard to tort responsibility.

Robinson, 2017⁶ states that the obvious appeal to politicians and legal reformers to mitigate criminality can be understood with ease. If criminal code can do away with the conventional guilt mandate, it will improve people's chances of arrest and prosecution that commit prohibited behaviours, or cause prohibited harm or bad. it could also be understood by statute. And such an improvement in the rate of punishment will increase the efficiency of a criminal control scheme based on prevention or incapacitation of the violent. The use of criminal responsibility for administrative offences is supported by similar claims. Higher penalty rates mean that enforcement is increased. However, this report does not assess the costs of strict liability for crime prevention. In the lack of moral blame, the statute expressly provides for deterrence, which removes its moral credibility to the society and thus provokes subversion and opposition rather than co-operation and consent to the successful supervision of criminal activity. More fundamentally, the lost moral integrity of the scheme threatens the capacity of the legislation to manipulate the strong powers of bias, societal control and internal standards.

The strict and absolute responsibility principle to which different countries, including USA, Australia, Canada, Germany, etc., apply is critically reviewed in Raffa (2018)⁷. It further uses case laws to investigate the implementation in the past and the present of the principles of

https://www.researchgate.net/publication/272242751_A_Few_Kind_Words_for_Absolute_Infringement_Liability_in_Patent_Law

⁵ Alexander, Lawrence, Is There a Case for Strict Liability? (2017), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2960327

⁶ Robinson, Paul H., Strict Liability's Criminogenic Effect (2017), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2894455

⁷ 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_Practice

absolute and strict liability. It describes each of the laws in depth and their impact on the legal jargon. A few references are cited in the thesis to provide a good view of the concepts and support the literature.

Davis, 2019⁸ provides a brief and basic explanation of pharmaceutical liability treatment and also explains the impact of federal pre-emption doctrine, which has dramatically limited the operation of tort law in pharmaceutical liability cases. It explains the parallel trends in the marketing and use of pharmaceuticals that increase the incidence of adverse drug events, affect prescribing practices, and fail to enhance informed practitioner and consumer choice in use of pharmaceuticals and also provides support for the application of strict liability given the convergence of these trends.

Strict liability is considered to be a regime that inherently stifles innovation given the costs it may inflict on companies (Lior, 2020)⁹. It is often argued that applying a strict liability regime on AI-inflicted damages may lead to the monopolization of the AI industry. The logic and the implicit association between an AI strict liability scheme and the monopoly on the AI market are rejected in this paper. It provides two explanations behind it. First, the strict liability scheme and the now under way AI monopolies are not substantially interlinked. Secondly, there are insurance schemes that minimise the impact that a strict liability scheme can have on the opportunity to access and participate in this critical market for small AI businesses. Therefore, as losses are caused by AI, the continuing AI Monopolization Mechanism does not make strict liability a feasible regime.

Tyagi, 2020¹⁰ reviews over a substantial length of time the evolution of absolute liability. This article tries to analyse how the absolute rules of liability are practised today. In addition, in invoking the total responsibility principle, it seeks to clarify the transition from conventional judicial remedies to public interest litigations. It also explains the deficiencies of Locus Standi's strict responsibility and the traditional definition. Therefore, contemporary research and explanation is completed, describing most things by means of jurisprudence and treaties. The researchers performed qualitative studies in the fields of doctrine, analytics, assessment, evolution. As independent variable and environmental security as dependent variable, the researcher assumed full responsibility. Secondary data including papers, blogs, etc has been

⁸ Davis, Mary J., Time For a Fresh Look at Strict Liability for Pharmaceuticals (2019), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3375061

⁹ Lior, Anat, AI Strict Liability Vis-à-Vis AI Monopolization (2020), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3707110

¹⁰ 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

collected by the researchers. In addition, primary data covers legislation, jurisdictions, etc.

Werro and Büyüksagis, 2021¹¹ shows that while adhering to the idea of liability based either on fault or on a special risk, various legal systems tend to develop their own refinements. This is also true at the European level where the different proposed principles and model rules vary, depending on the bounds they draw between the two. It has been shown that preference often goes to fault-based liability where it appears that use of reasonable care can avoid harmful outcomes. As a rule, the test to find negligence that consists in comparing the conduct of the defendant with that which is a reasonably prudent person would have shown in like circumstances. Use of this objective standard eliminates the need for evaluating the personal capacity of a given defendant to behave in such manner, so that the determination is not contingent upon the personal qualities of the particular individual whose conduct is in question. Study of literature shows no recent research papers on the analysis of strict and absolute liability to understand the principles through the analysis of landmark judgments. The proposed study aims to fill this void by understanding the rule of strict and absolute liability by reviewing landmark judgments and case laws over the years.

II. RESEARCH ANALYSIS

The first part of the analysis discusses the landmark case of *Rylands v. Fletcher*, which laid down the principle of strict liability. It then studies the essentials and exceptions to the rule of strict liability. Further, it explores the landmark case of *M.C. Mehta vs. Union of India* to understand the concept of absolute liability and then gives some insight into the essentials of the same.

(A) Strict Liability

The rule of strict liability was laid down in the year 1868. According to this rule, in this case, it was laid down that any person keeping any hazardous substance on his premises would be held liable if that substance escapes from there and harms others. At that point in time, it would be irrelevant, that whether the defendant has taken due care whether he was negligent or not. Under this principle, the person would be held liable even if he had taken proper care, provided there are certain exceptions under which defendant can run off his liability.

1. Rylands v. Fletcher

- i. **Facts:** There were two men living next to each other, Rylands and Fletcher. Fletcher owned

¹¹ Werro, franz and Büyüksagis, Erdem, The Bounds between Negligence and Strict Liability (2021), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3792715

a mill for whose energy requirement; he constructed a water reservoir on his land. To get this work done, he had hired independent contractors and engineers. There were old unused shafts under the site of the reservoir which the engineers didn't notice and thus did not block them. Due to the negligence of the contractors, the shafts that led way to Rylands land burst when water was filled in the reservoir. This caused huge damage and loss to Ryland as the water entered into his coal mine. Thus, Ryland filed a suit against Fletcher.

- ii. **Issues:** The question was rather brief: should a litigant be put at risk, regardless of whether it was someone else's act, which resulted in an aspect being removed on his territory? It was remarkable in light of the fact that there was no carelessness or expectation on part of the litigant.
- iii. **Judgment:** The House of Lords dismissed the supplication of the respondent and held him at liable for every one of the damages to Rylands' mine. As per the rule set by this case, if a man expedites his territory and keeps there any hazardous thing, a thing which is probably going to do insidiousness on the off chance that it gets away, he will be at first sight liable to the harm caused by its escape despite the fact that he had not been careless in keeping it there. Regardless of there being no blame or carelessness with respect to the litigant, he was held at liable since he kept some unsafe thing on his territory and the said hazardous thing has gotten away from his property and caused harm.
- iv. **Analysis:** According to the rule set by this case, if a person brings on his land and keeps there any dangerous thing, a thing which is likely to do mischief if it escapes, he will be prima facie answerable to the damage caused by its escape even though he had not been negligent in keeping it there. The liability arises not because there was any fault or negligence on the part of a person, but because he kept some dangerous thing on his land and the same has escaped from there and caused damage. Since, in such a case the liability arises even without any negligence on the part of the defendant, it is known as the rule of strict liability. Therefore, this is one of the most important landmark judgements in the history of the legal system since it led to the formulation of a new concept, a new idea and thus a new principle- the rule of the strict liability. Based upon his principles, there were certain qualifications given to decide whether a liability is strict liability or not. Only after these essential qualifications being satisfied, a liability can be termed as strict liability.

(B) Essentials of Strict Liability

1. **Dangerous substance:** This implies that only if anything that escaped from the property was dangerous would the defendant be responsible for the damages. The term "dangerous" means here that some kind of misery would possibly occur if it leaves the defendant's

territory. In the above example, it was the gathered water in the Fletcher pool that was toxic. The law states that objects such as petrol, electricity, bombs, flag poles, harmful smoke, vibration, yew trees, sewage and even rough wires can also be considered to be hazardous if escaped from the owner's premises.

2. **Escape:** Another essential of feature of Strict Liability is escape which states that all the things which causes harm to another person if escaped from the property of the person using it and should not be in reach of the person. For example, if a person A has grown some dangerous plants which may cause serious harm to any person or animal consuming it. If a person B's Sheep ate that plant because some of them have been fallen in B's land so, in this case A is responsible to compensate B for his loss but if B's Sheep enters A's land and ate that plant then A is not liable for the loss.
3. **Non-natural use:** It means that if a stored water is used for a natural use like domestic purpose, then a person cannot be held liable for any harm occurred due to it, but if it is used for non- natural use like in the case of Rylands Vs. Fletcher, the defendant used the land for making of reservoir to benefit its mill and which created danger for others and due to which he was liable for the loss occurred to the plaintiff.

(C) Exceptions (defences) to the rule of Strict Liability

1. **Plaintiff's own fault:** Damage caused by the escape due to the plaintiffs own can be considered as a good defence. That is, if the plaintiff suffers damage by his own intrusion into the defendant's property, then he has no right to complain about the damage so caused. Like in a case, the horse of the plaintiff died because of nibbling the leaves of poisonous trees planted at defendant's land. It was contended that the horse intruded in defendants' property where he ate leaves and therefore defendant won't be held liable for the same. Moreover, if the damage suffered by the plaintiff was not because of escape but due to its incapacity to handle during its normal nature also then also the defendant won't be held liable.
2. **Act of God:** It has always been considered that where an incident occurs due to an unforeseeable event, which human body can't have any control over it, then in such circumstances the person can't be held responsible for any liability arising or any incident occurs there out of it. As held in a case which serves as a good example for the Act of God, in this case, the defendant made artificial lakes over his land by damming up natural stream. That year there was unusual rain which has never occurred in the human history. Due to heavy rain the lakes over flooded and has caused damage to plaintiff's property. It was held

that the defendant couldn't be made liable for the event so happened was unforeseen and therefore the defendant couldn't be held liable under the rule of strict liability.

3. **Consent of plaintiff:** Where the plaintiff has voluntarily consented to suffer the harm for the common benefit of both then at that situation the defendant won't be held liable. That is, if the plaintiff voluntarily has given consent to install such dangerous object on the defendant's land, then at that situation the defendant won't be held liable for the loss suffered by the plaintiff. As in a case there was a double storied building, where the plaintiff acquired a ground floor of the building and the defendant acquired the first floor. There was a leakage of water from the upper floor of the building which the plaintiff and defendant both have agreed to store. The defendant was at no fault for leakage. Due to the leakage plaintiff good were damage. It was held that the defendant couldn't be made liable for the damage as it was the consented act.
4. **Act of third-party:** If the damage is suffered by the defendant without the fault of the defendant but due to the third party, who was neither defendant's servant nor was in any relation to defendant then under those circumstances if any damage is suffered by plaintiff defendant won't be held liable. As in a case, where there was an overflow of water from defendant's reservoir causing damage to the plaintiff. It was revealed that the overflow so happened was due to the blocking of drain done by the stranger i.e., the third party. The defendant was not held liable under strict liability rule.

The research analysis shows that there are some exceptions to the rule of strict liability, hence the null hypothesis, i.e., there is no exception to the rule of strict liability, can be rejected, and the alternate hypothesis, i.e., there are certain exceptions to the rule of strict liability, can be accepted.

(D) Absolute Liability

Absolute liability is a concept of law evolved in India, after the case of *M.C. Mehta vs. Union of India* popularly known by the name of *Oleum Gas Leak case*. This case was a landmark judgment case for the principle of absolute liability. This principle is a kind of strict liability with no exception. That is under this principle the defendant won't be allowed to plead any defence as there was under *Rylands vs. Fletcher case*.

1. M.C. Mehta v. Union of India

- i. **Facts:** On the fourth and the sixth of December, 1985 in Delhi, there was serious spillage of oleum gas which this occurred in one of the units of *Shriram Foods and Fertilizers Industries*, which had a place with the *Delhi Cloth Mills Ltd*. Because of this, a backer

honing in the Tis Hazari Court had kicked the bucket and numerous others were affected by the same. A writ appeal to by method for open intrigue suit (PIL) was conveyed to the court.

- ii. **Issues:** It was challenged that if every one of the tragedies emerging from the direct of the huge production lines take after the control of strict liability, they will fall under the exemptions and escape scot free for the harm they have caused in the lead of their action.
- iii. **Judgment:** The Court had noticed this was the second instance of expansive scale spillage of a fatal gas in India inside the time of a year in India, as a year sooner in excess of 3000 individuals had passed on because of the spillage of gas from the Union Carbide plant in Bhopal and lakhs of others were subjected to different sorts of ailments. On the off chance that the control of strict risk set down in *Rylands v. Fletcher* was connected to such circumstances, at that point the individuals who had built up "hazardous and dangerous " businesses in and around thickly populated regions could get away from the obligation for the destruction caused in this manner by arguing some exceptions. The Supreme Court subsequently developed another administer – the run of "Absolute Liability", as authored by the then Chief Justice of India PN Bhagwati.
- iv. **Analysis:** The law so laid by the English govt. in case of *Rylands v. Fletcher* was justifiable according to the demands of law at that time. But it is not necessary or binding to the Indian government to strictly follow the rule so laid in the late 19th century because in the modern industrial society with highly developed scientific knowledge and technology, where it is necessary to run hazardous or inherently dangerous industries as a part of the development programme. This rule was laid in the 19th century when this type of development in science and technology has not taken place as compared to today's economy and social structure. Law needs to be kept changing according to the needs of the society and evolving social structure. Law cannot afford to remain static. We need to evolve new principles and laid down new and amended rules which could adequately deal with the problems of a new and industrialised economy. We cannot allow judicial thinking to be restricted to the laws laid down in England or any other country. Therefore, the principle of absolute liability was laid down.

(E) Rules for establishing absolute liability

1. **Hazardous or inherently dangerous activities:** 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.

2. **Escape not necessary:** The escape of a dangerous thing from one's own land is not necessary; it means that the rule of absolute liability shall be applicable to those injured within the premise and person outside the premise.
3. **No exception:** In Strict Liability there are certain exceptions and if a case comes under that exception, then the defendant is not liable for the act. Absolute Liability is the one in which defendant is liable to pay compensation, he cannot take the defence of any of the exceptions.
4. **Applies to Non-Natural and Natural uses of land:** The rule of *Ryland v. Fletcher* applies only to the non-natural use of land but the new rule of absolute liability applies to even the natural use of land. If a person uses a dangerous substance which may be natural use of land & if such substance escapes, he shall be held liable even though he has taken proper care.
5. **Extent of Damages:** The extent of damages depends on the magnitude and financial capability of the institute. Supreme Court also contended that, The enterprise must be held to be under an obligation to ensure that the hazardous or inherently dangerous activities in which it is engaged must be conducted with the highest standards of safety and security and if any harm results on account of such negligent activity, the enterprise/institute must be held absolutely liable to compensate for any damage caused and no opportunity is to given to answer to the enterprise to say that it had taken all reasonable care and that the harm caused without any negligence on his part.

III. FINDINGS AND SUGGESTIONS

(A) Findings

- Provisions are less regarding absolute and strict liability.
- There is a lack of negligence on the part of the legislature.
- Punishments are less for absolute and strict liability.

(B) Suggestions

- There should be more provisions regarding absolute and strict liability.
- There should be no negligence on the part of the legislature.
- Punishments should be made more for absolute and strict liability.

IV. CONCLUSION

The rule of strict liability and absolute liability can be viewed as exception. A man is made subject just when he is to be at fault. In any case, the guideline overseeing these two principles is that a man can be made at risk even without his fault. This is known as the principles of “no-fault liability”. Under these principles, the liable individual might not have done the act, but rather despite everything he'll be in charge of the harm caused because of the act. It can be concluded that on account of strict liability, there are a few exemptions where the respondent wouldn't be made liable. Be that as it may, on account of absolute liability, no exceptions are given to the respondent. The litigant will be influenced at risk under the strict liability to administer regardless. Tort is a common wrong for which the cure is a precedent-based law activity for unliquidated harms and which isn't solely the rupture of an agreement or the break of a trust or other just fair commitment. There are numerous standards representing the law of torts. For the most part, a man is subject for his own wrongful acts and one doesn't cause any liability for the act done by others. In the event that an individual commits a fault, he is at risk for it. In any case, there is a rule which asserts an individual liable without his being to fault. This is the “no-fault liability principle”. For this situation, the at-risk individual might not have done any act of carelessness or may have put in some positive endeavours however the rule claims him for the pay. This guideline has its foundations in the two historic point cases- *Rylands v. Fletcher* (strict liability) and *M.C. Mehta v. Union of India* (absolute liability). The principles of strict liability obviously expresses that a man who keeps hazardous substances in his premises is in charge of the fault if that substance escapes in any way and causes harms. This principle stands genuine if there was no carelessness in favors of the individual keeping it and the weight of evidence dependably lies on the litigant to act how he isn't at risk. Though the rule of absolute Liability held that where an undertaking is occupied with a hazardous or dangerous movement and it hurt outcomes to anybody by virtue of a mischance in the task of such risky or characteristically hazardous action coming about, the venture is strictly and absolutely liable to repay to every one of the individuals who are affected by the accident. Both these rules take after the “no-fault liability principle”, a rule in which the respondent is held subject regardless of whether he isn't specifically or by implication in charge of the harms caused to the offended party.

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