

LAWXPERTS.

WHY YOU SHOULD STUDY THIS ?

1. HIGH QUALITY.
2. BASED ON STANDARD SOURCES
3. POSSIBILITY OF DIRECT QUESTIONS
4. COMPLETELY SYLLABUS-ORIENTED.

SYLLABUS : TOPIC 2 & 3 ON UPSC LAW:

T2 : LIABILITY BASED UPON FAULT, STRICT & ABSOLUTE LIABILITY.

T3 : VICARIOUS LIABILITY INCLUDE STATE LIABILITY.



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FAULT LIABILITY :

CONCEPT : "Fault" refers to intention and negligence. Acting unreasonably in the particular circumstances

Based on "*no liability without fault*".

ORIGIN :

- a) Changing trends in 19th century = trend away from selfish individualism towards greater social and civic responsibility.
- b) Duty of care is owed is the "neighbour principle" enunciated by Lord Atkin - in *Donoghue v. Stevenson* = Everyone owes a duty of care to their neighbours

CASE LAW #*Donoghue v Stevenson* in 1932. BF buys Ginger beer for her GF ; decomposed snail inside opaque bottle ; she suffers gastro-enteritis and nervous shock

YARDSTICKS : Duty ; Breach of duty by an act/omission ; foreseeability ; proximity, and justice and reasonableness ; Actual cause ; Damages.

INDIA = FAULT LIABILITY IS BASED UPON

- ✓ "*wrongful act*",
- ✓ "*neglect*" or
- ✓ "*fault*"

National Insurance Co. Ltd. v. Sinitha, (2012) 2 SCC 356.

STRICT LIABILITY:

CONCEPT: Use your own property as not to injure the property of your neighbour = if you injure ; you are prima facie liable for all the damages arose in its natural consequences.

Based on the maxim : *Sic utere tuout alienum non laedas*.

ORIGIN : 1st formulated by Blackburn.J in *RYLANDS V. FLETCHER*.

RYLANDS V. FLETCHER : Builds reservoir(1.NON-NATURAL USE OF LAND) . Creak! Reservoir breaks. Water floods to adjacent land(ESCAPES 2.). defendant suffers DAMAGE(3).

1.2.3 = **PROVE THIS**. STRICT LIABILITY APPLIES.

EXCEPTION: 1.Damage due to natural use of land 2. plaintiff consent. 3. Act of God. 4. Statutory.5. Plaintiff default.

ABSOLUTE LIABILITY:

CONCEPT: SAME AS SL. BUT EXCEPTIONS NOT AT ALL APPLICABLE.

ORIGIN: *M.C. Mehta v. Union of India 1987 SCC (1) 395*

PRINCIPLE:

"enterprise which is engaged in a hazardous or inherently dangerous industry = poses a potential threat to the health and safety of the persons = owes an absolute and non-delegable duty to the community to ensure that no harm results to anyone on account of hazardous or inherently dangerous nature of the activity which it has undertaken....the enterprise must be absolutely liable to compensate for such harm; and it should be no answer to the enterprise to say that it had taken all reasonable care and that the harm occurred without negligence on its part."

VICARIOUS LIABILITY :

BASED ON :

- "*qui facit per alium facit per se*" meaning he who acts through another is deemed to have acted himself.
- "*respondent superior*" - "let the master answer"

ESSENTIALS OF VICARIOUS LIABILITY:

There are basically two conditions to be fulfilled for the master to be liable:

1. The person so charged should be a "servant"
2. The wrongful act should be in the "course of employment"

HOW IT ARISES ? EITHER BY

- *RATIFICATION* = CONFIRMATION ; LEWIS V .READ.
- *RELATIONSHIP* =
 - Master & servant
 - principal & agent.
- *ABETMENT* = Inducing, maintaining, encouraging.

CASE LAW : ALLEN V. FLOOD.

THE END. MORE ON THE NOTES.