

Attributes of Liability

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Abstract---Liability is one of the concepts which helps in promoting and protecting justice as liability seeks to set the wrong right by making the wrong doer pay damages, compensation or fine. The general principle of civil liability is based upon the concept of negligence and duty to take care. Whereas the criminal liability revolves the concepts of mens rea and actus reus. The strict liability under the criminal law assumes the mens rea to be implicitly present in the actus reus. The strict liability under the civil law imposes liability even if the wrong doer has taken reasonable care, and under the absolute liability no exceptions are available under it and is mostly imposed against the environmental wrongs.

Keywords--- Types of punishment, theories of punishment, strict liability, actus reus, mens rea, negligence, duty of care, legal injury, absolute liability, exemplary damages

I. INTRODUCTION

The fundamental object of law is to enforce and achieve justices. Now justices are said to prevail when the rights, liberties and freedoms are protected. Also, when the powers are legally exercised. The pertinent question which arise over here is that when such rights and liberties are infringed or the powers are misused. In such a situation injustice prevails and then the law has to take efforts to ensure that justice prevail. Hence the law imposes liability on the person who has infringed the rights, liberties or transgressed the powers. The aspect of ascertaining liability depends upon many crucial factors and the law has to be particular, certain careful, reasonable and rational while imposing liability on any person.

The essential essence of the liability is inherent in the aspect of the fact that it mandates a person to do a particular act or may be to pay damages or forfeit freedom as the case may be. Now whether a person has to do a particular act or pay damages or forfeit freedom depends upon under which law the person is to be held liable. This points out another fact that to know the nature of liability one has to know the nature of law.

- The criminal law imposes criminal liability.

The law is said to be a criminal law when the following aspect are fulfilled.

- Punishment; when the law imposes punishment on a person who has violated the provision of the law is called as criminal law. The object of criminal law is to punish the wrong doer. A wrong doer means the person who has infringed the provision of law and hence is subject to criminal liability. The various types of punishments are as follows.
 - Imprisonment: - It means that the person is placed under such conditions that his liberty is restrained.

For instance, such a person is kept under surveillance in the state prisons or jails. The imprisonment may be simple or may be rigorous in nature. In the case of simple imprisonment, the offender is subjected to light work which is beneficial for him. In the case of rigorous imprisonment, the offender is subjected to heavy work.

- Fine: - Fine means the wrong doer has to pay some particulars amount of money to the state. The amount of money that is the fine to be paid is always specified by the criminal statute.
- Forfeiture of the property: - Sometimes, the law confiscates or attaches the offender's property which means that the state takes away the offender property.
- Capital sentence: - This type of punishment is very rarely invoked by the law. Capital sentence means that death is awarded to the wrong doer.

Out of the above types of punishments which punishment should be awarded depends upon the nature and consequence of the wrong and the theories of punishment which are elaborated as follows.

- The deterrent theory of punishment: - According to this theory the wrong doer is punished very severely, because the object of criminal law is to deter the other members of the society from committing the offence because punishing of the offender is to be treated like an example to the rest of the society. The deterrent theory of punishment is not followed in the recent times.
- The retributive theory of punishment: - According to the retributive theory of punishment the offender is subjected to the same degree of pain which he has inflicted upon the victim. Tooth for tooth and

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an eye for eye is the underlying philosophy of this theory.

- The punitive theory of punishment: - According to this theory the object of the criminal law is to punish the wrong doer in such a manner that he is unable to commit the same offence. The object of the punitive theory of punishment is that to prohibit or refrain the offender from committing another offence.
- The reformatory theory of punishment: - The object of this theory is to reform the offender. Here, no doubt to the offender is punished but the punishment involves the essence of reformation of the offender. The concept of “open air prison”, the concept of “parole and probation”, separate and special courts for juvenile delinquents which are incorporated in the criminal law are based upon the reformatory theory of punishment. India follows the reformatory theory of punishment and hence most of the punishments are reformatory in nature. Most of the legal system of the world follow the reformatory theory of punishment.

Hence the type of punishment which is incorporated in the criminal law depends upon the theory of punishment which is followed by that particular state.

- ii. The state initiates the proceedings under the criminal law. The classic feature of the criminal law is that the state initiates the proceedings because the offences are regarded as actions against the state. It means over here that the state wants to impose the liability on the wrong doer because the wrong is treated as a wrong against the entire state or the society. The criminal law is regarded as a public law and hence the state initiates the proceedings to impose the liability.
- iii. Strict interpretation of the criminal law. As the criminal law restrict a person’s liberty, the criminal law has to be very careful and very sure that only the offender has committed the offence. Before the criminal law imposes criminal liability, it has to be very certain that the offender has committed the offence. Hence the criminal law is very strictly interpreted and the imposing of the liability is a little difficult; because the nature of the proof of the offence is very heavy and so also the accused (the person on whom the charge of the offence is levied) enjoys the benefit of doubt. To impose the criminal liability the state has to prove beyond reasonable doubt that the offender has committed the offence.

The criminal law imposes criminal liability upon the offender and such an offender is liable to be punished

which may be in the form of imprisonment, fine, forfeiture of property or capital punishment.

- The ingredients of criminal liability.

The criminal liability is based upon the latin maxim “actus non facit reum nisi mens sit rea”. The maxim lays down two principles of criminal liability which are as follows –

- a. The mental ingredient Mens Rea: - The criminal liability can be imposed only if the person has committed the offence with the necessary intention to commit that offence. If a person commits an offence in good faith or in self defence or by mistake of fact or without the intention to commit an offence then the criminal liability cannot be imposed on such a person. The criminal liability mandates that the offence has to be committed by the offender voluntarily, knowingly, advertently, or intentionally. If it is proved in the courts of law that the accused did not possess the required intention to commit the offence then criminal liability cannot be imposed on such a person.
- b. The physical action or act Actus Reus: - The offender has to commit a physical act or action which is in contravention of the criminal law. Obviously if a person does not violate the law by committing any action there is no question of holding such a person liable.

The general principle of criminal liability requires that some act in contravention to the law is committed that is actus reus, with the appropriate mental ingredient- mens rea.

- The concept of strict liability in the criminal law.

The concept of strict liability means that the liability is not imposed on the basis of the general principles of liability but some different principle of liability is invoked. According to the general principle of criminal liability actus reus coupled with mens rea is required however in the cases of strict liability is based upon the commission of actus reus only, and mens rea is presumed in the actus reus itself. Some acts implicitly include the mental intent in the physical action itself, hence the law does not require the separate proof of the mental intent. For instance, in the offence of counterfeiting of coins; the possession of such counterfeiting machine (actus reus) is sufficient to incur criminal liability because the intention of counterfeiting of coins is very much implicit in the action of the possession of the counterfeiting machine. In such a case the law presumes the mens rea and hence it need not be proved separately.

It is called as strict liability because the liability is imposed strictly without requiring the proof of mens rea. A

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caution would like to be mentioned here is that in the case of strict liability the concept of mens rea is not waived but it is presumed to be implicit in the actus reus itself.

- The civil law imposes civil liability.

A law is said to be a civil law when the following aspects are fulfilled.

- i. When the law prescribes the wrong doer to pay compensation or damages to the person whose right has been violated, such a law is called as a civil law which imposes civil liability.
- ii. Sometimes the civil law prescribes the wrong doer to do or refrain from doing some action such as specific relief or injunction.
- iii. The persons whose right is violated has to initiate the proceedings because the civil law protects rights in personam and is consider to be private law.
- iv. The civil law is also called as a remedial law and imposes liability in the form of civil remedies.

- The ingredients civil liability as evolved in *Donoghue v. Stevenson* (1932)

- i. There should be a negligent act which infringes a right: - An act would amount to negligence if following ingredients are fulfilled.

- The requirement of physical act. It is necessary for the wrong doer to commit act.
- The wrong doer should be under a duty to take reasonable care. This is the most important requirement to impose civil liability, that the wrong doer should be under duty to take reasonable care. If there is no duty on the wrong doer to take care then civil liability cannot be imposed upon him. Further even if the duty to take care lies upon the wrong doer the degree of care required to be taken is "reasonable". The wrong doer has to prove that he has taken reasonable care to evade liability.
- The wrong doer commits a breach of duty. It is essential for the wrong doer to commit a breach of the duty. That is the wrong doer should fail to perform the duty and hence civil liability can be imposed upon him.
- Due to the breach of duty the plaintiff suffers from injury. As the wrong doer has committed a breach of duty the plaintiff suffers from a loss or injury. The injury should be a legal injury that is violation of a legal right and a physical injury may not be necessary. If the plaintiff does not suffer from a loss or legal injury than the wrong doer may not be liable.

These are the general principles of incurring civil liability.

- Strict liability under the civil law as evolved in

Rylands v. Fletcher (1868) Under the strict liability the general principles of civil liability may not apply but different principles which are of stringent nature are applied hence such a liability as called as strict liability. Ingredients of strict liability under the civil law. Are as follow.

- The bringing or keeping of some goods or products which may cause mischief or danger, on the land.
- The products or goods are put to some "non-natural" use by the wrong doer.
- The same product or goods escapes from the land in spite of taking reasonable care
- As the product or goods escapes it causes damage to the plaintiff.

The strict liability is imposed when the goods are accumulated put to some non-natural use and such good escape and cause damage in spite of reasonable care being taken by the wrong doer.

- Exceptions available under the strict liability

1. Act of god: - If the product or the goods escape and cause damage due to Act of god then the wrong doer is not liable.
2. Plaintiff the wrong doer: - If the plaintiff himself has committed a wrong then the wrong doer is not liable.
3. Intervention by the third party: - If a third person intervenes and the causes the goods to escape then the wrong doer is not liable.
4. Acts done for the common benefit: - if the goods or the products are accumulated for the common benefit of the society then also the wrong doer is not liable.
5. If the wrong doer has done the act in pursuance of a statutory duty.

- The concept of absolute liability as evolved in *The Bhopal Gas Tragedy Case*. The concept absolute liability was evolved by the Indian judiciary. The strict liability is stringent than the general civil liability, and the absolute liability is stringent then the strict liability, so the absolute liability is the most stringent liability.

- The ingredients of the absolute liability.

1. If a person brings or accumulates or produces any products on the land.
2. For commercial gains.
3. If such a thing escapes or production of goods causes damage to the mankind or the environment.
4. Then such a person is liable even though he takes reasonable care.

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5. There are no exceptions available under the absolute liability.
6. The damages awarded under the absolute liability may be exemplary.

II. CONCLUSION

Imposing liability is in pursuance of justice as justices enforces rights and liability imposes when rights are violated. The nature of liability depends upon the fact under which law it has to be imposed. The civil law imposes civil liability and the criminal law imposes criminal liability. Negligence is an essential ingredient in imposing civil liability. The criminal liability is based upon actus reus and mens rea. Strict liability is prevalent under the civil as well as criminal liability. Absolute liability which is evolved by the Indian judiciary knows no limitations and is imposed in cases of infringement of environment laws to ensure the protection of environment.

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