

LL.M. II SEMESTER

Subject : Jurisprudence II (Legal Concepts)

L-2002

Liability

Definitions :-

Liability means vinculum juris

Salmond - “ liability is a bond of necessity that exists between the Wrong doer and remedy of wrong”.

Markby - “ The word liability is used to describe the condition of person who has a duty to perform”.

Liability :- Joint liability , Several liability , Joint tort feisor , Primary liability , Secondary liability, Liability in Solido

Kinds of liability :-

(**Salmond**) Civil liability , Criminal liability , Remedial liability, Penal liability

(**Generally**) Absolute liability , Vicarious liability , Strict liability , Criminal liability , Civil liability

Civil liability – In Civil cases

Civil liability is imposed by the plaintiff against the defendant in civil proceeding the plaintiff usually demands compensations or damages from the defendant for the harm caused to him.

Civil liability :- Family , Promise , Contract , Breach of duty

Criminal liability :- In “Criminal cases” Criminal liability is imposed by the victim against the accused , the victim usually seeks punishment in the form of imprisonment or fine for the accused.

Grounds of the liability :- “ No liability without fault”.

Delictal liability :-

Under Roman Law – Delict –

Under French Law

Under Common Law

Tortious Ground - 1 Theory of Interest in Security

2 Theory of interest in freedom of action

Difference between in Civil & Criminal Liability :-

- 1- Civil liability accrues on an accused if he commits a civil wrong – like negligence defamation etc.
While Criminal liability accrues to an accused if he commits a criminal offences like murder, sedition, theft, rape etc.
- 2- Civil liability determined under the CPC while Criminal liability is determined under Cr.PC.
- 3- The Legal remedy for a civil wrong is payment of compensation or damages by the wrong doer to the victim While the Legal remedy for a Crime is the giving of punishment to the offender by the State.
- 4- Civil cases are decided by the standared of preponderance of probabilities while in Criminal cases the guilt of the accused has to be proved beyond reasonable doubt.

Remedial liability :- It is based on the maxim “ Ubi jus ibi remedium” Which means that “ Where there is a right there is a remedy.” If a right has been conferred by Law, then the Law must also provide a remedy to enforce or claim that right . Similarly , If a duty has been imposed by the Law , then the law must also ensure its fulfillment , If there is a breach of duty, there ought to be some remedy prescribed and enforced by Law.

In Civil cases the liability of the defendant is remedial.

Object of remedial liability:-

- 1- To protect the right of the plaintiff
- 2- To provide him compensation or damages in case his right are Infringed.

Penal liability – It is based on the maxim “ actus non facit reum nisi mens sit rea” which means that an act alone does not make a person guilty

unless & until it is accompanied with a guilty mind” if the guilt of an accused is established in a Criminal Case , the court awards him appropriate punishment which may be simple imprisonment , rigorous imprisonment , fine , death penalty etc.

Conditions for Penal liability :-

1- Actus Reus

1.1 - Physical Act :- Positive Act & Negative Act, Voluntary & Involuntary Act , Internal & External Act.

2- Mens Rea - IPC Act

Act :-

Austin - An act is a bodily movement caused by volition which is a movement of human will.

Salmond - An act is any event subject to human control.

Holland - An act is determination of will which produces an affect in the sensible world.

Bentham - Volition Will , Consciousness , Circumstances , Consequences , Intention, Motive

Relevancy of Intention in Criminal Law :- “ Actus non facit reum, nisi mens sit rea”

Criminal liability :- Physical & Mental Condition

Strict liability / Rylands Fletcher rules

Strict liability :- Negligence , Breach of absolute duty , Actual & Proximate Cause

Rylands us Fletcher (1868) LR3HL.330

Condition of strict liability:-

- a- Bringing of anything likely to do mischief if it escapes
- b- Escape
- c- Non natural use of land

Exceptions to the rule of strict liability :-

- a- Natural use of land
- b- Plaintiff's own default
- c- Act of God
- d- Consent of the Plaintiff
- e- Act of Stranger
- f- Common benefit
- g- Statutory Authority

Application of Rylands us Fletcher in India :-

Vacarious liability :- Generally a person can be liable only for his own acts. He can't be liable for the acts of others , but in certain situations a person can be made liable for the acts of another person because he stands in a particular relationship with him. This liability is known as Vacarious liability.

It is based on the maxim

- 1- "Oui facit per alium facit per se"
Means He Who acts through another does the act himself
- 2- "Respondeat Superior" Let the superior be responsible
- 3- He who has set the whole thing in motion must be liable

Circumstances of the arise of vicarious liability :-

- a- By abetment
- b- By ratification
- c- By special relationship :- Principal & Agent, Firm & Partnership, Company & Directors , Husband & Wife , Guardians & word , Master & Servant

For further clarification you may reach us via

E-mail- sudeshcm@gmail.com

Mob- 7409496868

Smt. Sudeshna

Assistant Professor

I.L.S. , CCSU Meerut