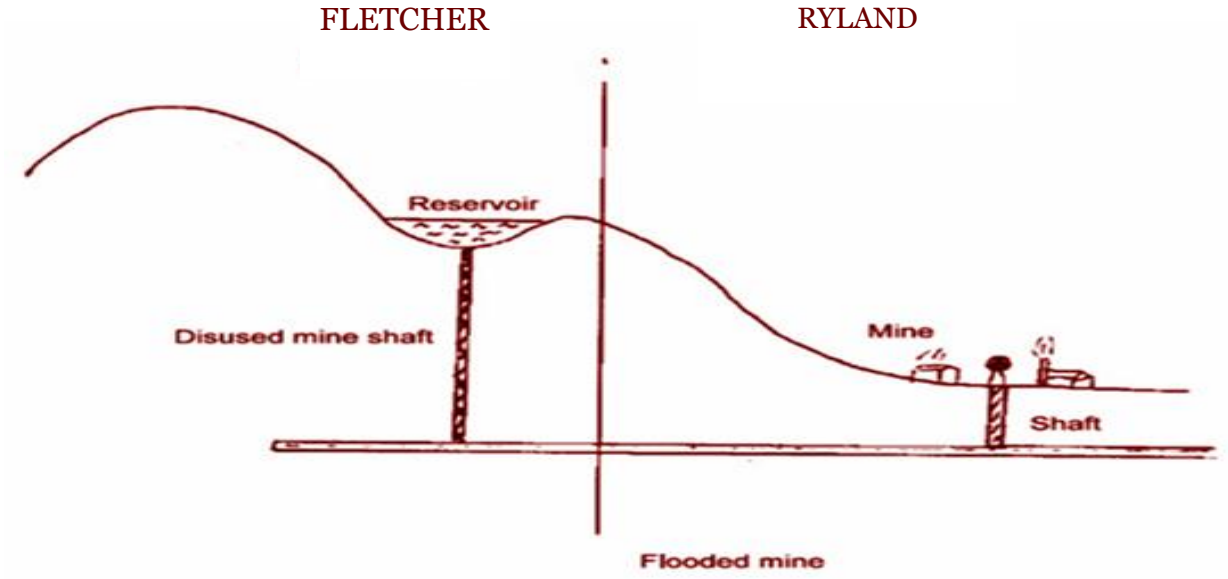
Strict and absolute Liability

The principle of strict liability evolved in the case of **Rylands v Fletcher 1868**. The principle of strict liability states that any person who keeps hazardous substances on his premises will be held responsible if such substances escape the premises and causes any damage.



In **Rylands v. Fletcher**, the defendant got a reservoir constructed, through independent contractors, over his land for providing water to his mill. There were old disused shafts under the site of the reservoir, which the contractors failed to observe and so did not block them. When the water was filled in the reservoir, it burst through the shafts and flooded the plaintiff's coal mines on the adjoining land. The defendant did not know of the shafts and had not been negligent although the independent contractors had been.

Even though the defendant had not been negligent, he was held liable.

Blackburn (judge in the case) said: "*We think that the rule of law is, that the person who for his own purposes brings on his lands and keeps there anything likely to do mischief if it escapes, must keep it in at his peril, and if he does not do so, is prima facie answerable for all the damage which is the natural consequence of its escape. He can excuse himself by showing that the escape was owing to the* ***plaintiff's default****; or*

*perhaps that escape was the consequence of **vis major**, or the act of God; but as nothing of this sort exists here, it is unnecessary to inquire what excuse would be sufficient."*

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

For the application of the rule, therefore, the following three **essentials should be there**:

1. **Dangerous Thing**- A thing likely to do mischief if it escapes. In Rylands v. Fletcher, the thing so collected was a large body of water. The rule has also been applied to gas, electricity, vibrations, yew trees, sewage, flag-pole, explosives, noxious fumes, and rusty wire in various cases
2. **Escape**- the thing causing the damage must escape to the area outside the occupation and control of the defendant.

   In **Crowhurst v. Amersham Burial Board** there was projection of the branches of a poisonous tree on the neighbor's land, this led to an escape and the cattle lawfully there on the neighbor's land were poisoned by eating the leaves of the same, the defendant was held liable under the rule.

   In **Ponting v Noakes 1849**, the plaintiff's horse died after it entered the property of the defendant and ate some poisonous leaves. The Court held that it was a wrongful intrusion, and the defendant was not to be held strictly liable for such loss.

   In **Read v. Lyons** the plaintiff was an employee in the defendant's ammunition factory. While she was performing her duties inside the defendant's premises, a shell, which was being manufactured there, exploded whereby she was injured. There was no evidence of negligence on the part of the defendants. Even thought the shell which had exploded was a dangerous thing, it was held that the defendants were not liable because there was no "escape" of the thing outside the defendant's premises and, therefore, the rule in Rylands v. Fletcher did not apply to this case.

3. **Non-natural use of land**

Water collected in the reservoir in such a huge quantity in **Ryland v. Fletcher** was held to be non-natural use of land. Keeping water for ordinary domestic purposes is 'natural use'. For the use to be non-natural, it "must be some special use bringing with it increased danger to others, and must not merely by the ordinary use of land or such a use as is proper for the general benefit of community

In **Sachacki v. Sas**, it has been held that the fire in a house due to everyday use of the fire place in a room is an ordinary, natural, proper, everyday use . If this fire spreads to the adjoining premises, the liability under the rule in Rylands v. Fletcher cannot arise. Similarly,

In **Noble v. Harrison**, it has been held that trees (non-poisonous) on one's land are not non-natural use of land. There, the branch of a non-poisonous tree growing on the defendant's land, which overhung on the highway, suddenly broke and fell on the plaintiff's vehicle passing along the highway. The branch had broken off due to some latent defect. It was held that the defendant could not be made liable under the rule in Rylands v. Fletcher as growing of trees is non-natural use of land.

Act done by an independent contractor- Generally, an employer is not liable for the wrongful act done by an independent contractor. However, it is no defence to the application of this rule that the act causing damage had been done by an independent contractor. In Rylands v. Fletcher itself, the defendants were held liable even though they had got the job done from the independent contractors.

In **T.C. Balakrishnan Menon v. T. R. Subramanin**, an explosive made out of a coconut shell filled with explosive substance, instead of rising into the sky and exploding there, ran at a tangent, fell amidst the crowd and exploded, causing serious injuries to the respondent. One of the question for consideration before the Kerala High Court was whether the appellants, who had engaged an independent contractor to attend to the exhibition of fireworks, would be liable. It was held that the explosive is an "extra hazardous" object and attracts the application of the rule in Rylands v. Fletcher. The persons using such an object are liable even for the negligence of their independent contractor

- The following **exceptions** to the rule have been recognized by Rylands v. Fletcher and some later cases:

GENERAL DEFENCES	DEFENCES AGAINST STRICT LIABILITY
• 1. ~~Volenti Non Fit Injuria~~	• Plaintiff's Fault
• 2. Plantiff is the wrongdoer	• Act of god
• 3~~. Inevitable accident~~	• Statutory authority
• 4. Vis Major i.e. Act of god	• Act of the Third Party
• 5~~. Private defence~~	• Consent of the Plaintiff
• 6. ~~Mistake~~	
• 7. ~~Necessity~~	
• 8. Statutory authority	

1. **Plaintiff's own default;**

   In **Ponting v Noakes 1849**, the plaintiff's horse died after it entered the property of the defendant and ate some poisonous leaves. The Court held that it was a wrongful intrusion, and the defendant was not to be held strictly liable for such loss.

2. **Act of God**;

   Nichols v. Marsland

   Defendant created artificial lakes on his land by damming up a natural stream. The year there was an extraordinary rainfall, heaviest in the human memory, by which the stream and the lakes swelled so much that the embankments constructed for the artificial lakes, which were sufficiently strong for an ordinary rainfall, gave way and the rush of water down the stream washed away the plaintiff's four bridges. The plaintiff brought an action to recover damages for the same. There was found to be no negligence on the part of the defendants. It was held that the defendant were not liable under the rule in Rylands v. Fletcher because the accident in the case had been caused by an act of God.

3. **Consent of the plaintiff;**

Carstair v. Taylor, the plaintiff hired ground floor of a building from the defendant. The upper floor of the building was occupied by the defendant himself. Water stored on the upper floor leaked without any negligence on the part of the defendant and injured the plaintiff's goods on the ground floor. As the water had been stored for the benefit of both the plaintiff and the defendant, the defendant was held not liable.

4. **Act of third party;**

   Box v. Jubb, the overflow from the defendant's reservoir was caused by the blocking of a drain by strangers; the defendant was held not liable for that.

   But this defence won't be applicable when the damage is foreseeable and can be prevented

5. **Statutory authority.**

   Green v. Chelsea Waterworks Co., the defendant Co. had a statutory duty to maintain continuous supply of water. A main belonging to the company burst without any negligence on its part, as a consequence of which the plaintiff's premises were flooded with water. It was held that the company was not liable as the company was engaged in performing a statutory duty.

Absolute liability

Introduction

The rule of absolute liability is similar to the rule of strict liability with some modification. This rule applies without any limitation or exception and creates a individual completely liable for any fault.

The rule of Absolute liability was laid down by the Honourable Supreme Court of India in the case of M.C. Mehta V UOI 1987 and Bhopal Gas Leak 1989 case. The Hon'ble Apex Court maximized the limit of rule of Ryland V. Fletcher. The rule laid down by the SC is much wider with respect to the rule laid down by House of Lords.

Difference between Strict Liability and Absolute Liability

The difference between Strict and Absolute liability rules was laid down by Supreme Court in M.C. Mehta v. Union of India, where the court explains as:

i. In **Absolute Liability only those enterprises shall be held liable which are involved in hazardous or inherently dangerous activities**, this implies that other industries not falling in the above ambit shall be covered under the rule of Strict liability.
ii. 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.
iii. The **rule of Absolute liability does not have an exception**, whereas as some exception were provided in rule of Strict Liability.
iv. The Rule of Ryland V Fletcher **apply only to the non natural use of land but the new rule of absolute liability apply 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 have taken proper care.

Further, **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.

Supreme Court View Our Supreme Court found that in modern times of science and technology the rule of Rylands v. Fletcher was not suitable. So it was replaced by the rule of absolute liability. Two most important decisions of the Supreme Court on the point are:

M.C Mehta v. Union of India (1987)

Facts: At 4th and 6th December, 1985 leakage of **OLEUM GAS** from one of the units of **Shriram Foods and Fertilisers Industries** in Delhi, belonging to Delhi Cloth Mill Ltd. In this leakage one advocate practising in the Hazari Court had died and several others were affected.

Case: - A writ petition under Article 32 of the Constitution was brought by way of Public Interest Litigation. The Supreme Court took a hard and holds decision holding that it was not bound to follow the 19th Century rule of English Law, and it could evolve a rule which is suitable to prevail in the Indian of social and economic at the present day. It evolved the rule of 'absolute liability' as a part of Indian Law in preference to the rule of strict liability laid down in Ryland v. Fletcher, Bhagwati, C.J. observed in this context –

"This, rule (Ryland v. Fletcher) evolved in the 19th century at a time when all these developments of science and technology had not taken place cannot afford any guidance in evolving any standard of liability consistent with the constitutional norm and the needs of the present day economy and social structure. We do not feel inhibited by this rule which was evolved in the context of a totally different kind of economy. Law has to grow in order to satisfy the needs of the fast changing society and keep

abreast with the economic developments, taking place in this country. As new situations arise the law has to be evolved in order to meet the challenge of such new situations. Law cannot allow our judicial thinking to be constrained by reference of the law as it prevails in England or for the matter of that in other foreign legal order. We in India cannot hold our hands back and I venture to evolve a new principle of liability which English courts have not done." So Supreme Court evolved a new rule creating absolute liability for harm caused by dangerous substance. The following statement of Bhagwati, C.J. which laid down the new principle may be noted:

"*We are of the view that an enterprise, which is engaged in hazardous or inherently dangerous industry which poses a potential threat to the health and safety of the persons working in the factory and residing in the surrounding areas owes an Absolute and non-delegatable duty to the community to ensure that no harm results to anyone on account of hazardous or inherently dangerous activity which it has undertaken. The enterprise must be held to be under an obligation to provide that the hazardous or inherently dangerous activity in which it is engaged must be conducted with the highest standards of safety and if any harm results on account of such activity the enterprise must be absolutely liable to compensate for such harm and it should be no answer to enterprise to say that it has taken all reasonable care and that the harm occurred without any negligence on its part."* The Court also laid down that the measure of compensation payable within the capacity of the enterprise, so that the same can have the deterrent effect. The Court held that *"We would also like to point out that the measure of compensation in the kind of eases referred to must be correlated to the magnitude and capacity of the enterprise because such compensation must have a deterrent effect. The large and more prosperous the enterprise, greater must be the amount of the compensation payable by it for the harm caused on account of an accident in the carrying on the hazardous or inherently dangerous activity by the enterprise*. "The rule laid down in MC Mehta was also approved by the Apex Court in **Charan Lal Sahu v Union of India**.

The Court pointed out that that this rule is **'absolute and non-delegable'** and the enterprise cannot escape liability by showing that it has taken reasonable care and there was no negligence on its part.

The Court gave two reasons justifying the rule:

(i) Firstly, the enterprise carrying on such hazardous and inherently dangerous activity for private profit has a social obligation to compensate those suffering there from, and it should absorb such loss as an item of overheads, and

(ii) Secondly, the enterprise alone has the resources to discover and guard against such hazards and danger.

Bhopal Gas Leak Disaster/ Union Carbide Corporation vs Union Of India 1989,1992

- ✓ In the intervening night of 2-3 December, 1984, poisonous **methyl isocyanate gas** leaked out of the Union Carbide India Limited pesticide plant in Bhopal
- ✓ As per official report, over **3,000** people had died in the tragedy.
- ✓ Several suits were filed against UCC in the United States District Court of New York by the legal representatives of the deceased and many of the affected persons for damages. The Union of India under the **Bhopal Gas Leak Disaster (Processing of Claims) Act, 1985** took upon itself the right to sue for compensation on behalf of the affected parties and filed a suit for the same in US District court New York
- ✓ All the suits were dismissed the ground of **Forum Non Convenience**. Forum *non conveniens* is a Latin term for "forum not agreeing". It is a most common law legal doctrine whereby courts may refuse to take jurisdiction over matters where there is a more appropriate forum available to the parties.
- ✓ Union of India filed a suit in District Court Bhopal claiming 3.3 billion US dollars that is 3900 Cr
- ✓ The district court ordered the UCC to pay an interim relief of 270 million US dollars that is 350 crores to victims
- ✓ The UCC filed a civil revision before High Court of Madhya Pradesh which reduce the amount from 350 to 250 crores
- ✓ Both the parties appeared before the Supreme Court
- ✓ The Court decided as follows:

(1) The Union Carbide Corporation should pay a sum of U.S. Dollars 470 million (750 crores) to the Union of India in full settlement of all claims, rights and liabilities related to and arising out of the Bhopal gas disaster.

(2) The Union Carbide Corporation shall pay the aforesaid sum to the Union of India on or before 31 March 1989.

(3) To enable the effectuation of the settlement, all civil proceedings related to and arising out of the Bhopal gas disaster shall thereby stand transferred to the Supreme Court and shall stand concluded in terms of the settlement, and all criminal proceedings related to and arising out of the disaster shall stand quashed, wherever these may be pending.

- ✓ The Settlement of the claims which was recorded by the Supreme Court was assailed mainly on two grounds (a) The criminal cases could neither have been compounded nor quashed nor could the immunity have been granted against criminal action, (b) The amount of compensation was very low. As to the withdrawal of criminal cases it was held that "the quashing and termination if the criminal proceedings brought about by the orders dated 14th and 15th February, 1989 required to be, and are, hereby reviewed and set aside."

Indian Council for Environment Legal Action V Union of India 1996

The Supreme Court Of India imposed the principle of MC Mehta case and held that "Once the activity carried on is hazardous or inherently dangerous, the person carrying on such activity is liable to make good the loss caused to any other person by his activity irrespective of the fact whether he took reasonable care while carrying on his activity is by far the more appropriate and binding."