

## **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 standard 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