

## THE CONCEPT OF ABSOLUTE LIABILITY AND CASE ANALYSIS OF MC.MEHTA VS UNION OF INDIA

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### **Abstract**

Absolute Liability is an important topic under the arena of Law of Torts. Absolute Liability is a relatively new concept compared to other topics in Law of Torts. The aim of this research paper is to make readers understand what is Absolute Liability, and what this topic deals with. The aim is also to clear out any confusion that a researcher or budding lawyer may face with regard to Strict Liability and Absolute Liability. The research paper also defines and gives brief details about the landmark case law which marked the beginning of Absolute Liability, M.C.Mehta v. Union of India. The paper starts with defining the concept which he has gathered from various textbooks from Law of Torts. Later, the paper also comes with 2 important Landmark cases, one is above mentioned and second one being,

Union Carbide Corporation v. Union of India. Both the cases have a lifelong effect on the lives of ordinary people as well as Judiciary. The researcher has equally analysed the facts of the case and judgement given by the apex court of India. The paper also contains myriad case laws with regard to Absolute Liability, which helps to clear every aspect of this concept. The paper then showcases wide array of differences between Absolute Liability and Strict Liability. Last but not least, paper later, suggest some steps and end the paper with concluding statement.

### **Introduction**

Under the concept of Absolute liability rule,” **if any industry/enterprise/individual is involved in any potentially hazardous or dangerous operation, and if any injury is caused to any person due to any accident that happened during the execution of such inherently dangerous and dangerous activity, then the person (industry owners) who performed such activity will be absolutely liable to pay compensation.**”<sup>1</sup>The concept of strict liability rule also wouldn't be considered in case of Absolute liability.

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<sup>1</sup> M.N. SHUKLA: The Law Of Torts(20th edition, Central Law Agency 2016)

The Tort Absolute Liability has similar concept to that of Strict Liability .The main difference between both the concepts is that strict liability has exceptions but absolute liability has none. Absolute liability means complete and full liability without any exceptions. Moreover, In businesses that are unsafe or dangerous, as well as in other fields, such as cases of motor vehicle collisions, the law of absolute liability could also be enforced.This implies that Industries which do not deal in hazardous or dangerous activities will not come under this rule instead they will follow the rule of strict liability.Another difference between the two rules was that new rule of absolute liability applies to natural and non-natural use of land but rule of Rylandvs Fletcher applies to non-natural use of land only,” Now cover not only the occupier of land but also non occupier of the land”<sup>2</sup>

According to the Apex Court , The rule of Rylandvs Fletcher was not termed suitable because in these modern times where the technology and science have move forward and making progress day by day , the laws laid down by this case were old and setback for the environment and humans.Moreover, this case rules were laid down in the 19th century and are very different in terms of social, legal and economic development is concerned. Therefore, it was the duty of judiciary to scarp out the old rule and replace the same with a new rule which can fit in the perspective of today’s world .The concept of strict liability had many defences which made it difficult for court to award compensation to the plaintiff for the damage that they faced.

## **2. Case laws made which mark the beginnings of this concept were**

### **MC.Mehta vs Union of India<sup>3</sup>**

The rule of Absolute liability was laid down by the Honourable Supreme Court of India in the case of MC.Mehtavs Union of Indiacase. The case deals with Oleum gas leakage from Shriram foods and fertilizers industries on the date of 4<sup>th</sup> and 6<sup>th</sup> December which belonged to Delhi Cloth Mill Ltd in Delhi.Due to release of the Oleum gas, many people suffered deteriorating and ill-health effects including the death of one lawyer who was practicing in the Hazari Court. According to then CJIP.N.Bhagwati,the rule laid down by Rylandvs Fletcher was inappropriate

<sup>2</sup> J.N. PANDAY : Law of Torts(9<sup>th</sup> edition, Central Law Publication 2014)

<sup>3</sup>MC.Mehta VS Union of India 1987 SCR (1) 819:AIR 1987 SC 965-A

to consider the present dilemma with a 19th century old law which is not with the context of present century, country, or any other factor. Then, The apex court developed the rule of absolute liability from that of strict liability and stated that the defendant would whole and fully be liable without considering any exception from strict liability. The Supreme Court stated that the concept of strict liability was not adequate with evolving technology and industries as they have become more hazardous and dangerous. Moreover, the Supreme Court also declared the amount of the payable measure from the industry to have a deterrent effect on the other industries so that no other can think of potentially letting go the rules and regulations of industry which later prove to be harmful for either the people working in the industry or any human living around the industry. The amount payable by the industry will depend on the fact that "larger the industry, greater will be the compensation"<sup>4</sup>.

### **Union Carbide Corporation vs Union of India case**<sup>5</sup>

Other than Shriram Food Industries, another hazardous industry disaster took place as mentioned, known as the Bhopal Gas Leak case. This was one of the world's largest and worst industry disasters any country has ever observed. In the midnight of 1984, Methyl Isocyanate, a highly toxic gas, was released into the atmosphere from the Union Carbide Corporation (UCC)'s sister company, Union Carbide India Ltd in Bhopal, Madhya Pradesh. The next day was disaster. Lakhs of people were seriously injured. Initially, 2660 people died but after later the toll rose to 4000 with 1.5 lakh people injured from this calamity. Several law suits were filed before the court against the Union Carbide India Ltd as well as the Union Carbide Corporation in USA. The then presiding Judge Keenan spoke about Indian judiciary must have the "opportunity to stand tall before the world and to pass judgment on behalf of its own people". While the case was still under the trial, an outside court settlement took place between the then government of India and Union Carbide India Ltd which was widely criticized and became a topic of utmost importance in those times. The deal was denounced because first, the compensation that was agreed for the victims and survivors was very low and second, the procedure of law was not followed as the deal took place in a hideous way. Finally, a review petition was registered under the apex court to determine the faith of the case. The judgement of Supreme Court upheld the settlement agreed between the

<sup>4</sup>Minal H. Upadhyay, The Law of Torts in India, 2(2) INTL. J. OF RES. IN ALL SUBJECTS IN MULTI LANGUAGES, 27-32, (2014).

<sup>5</sup> Union Carbide Corporation VS Union of India AIR (1989)(1)SCC 674: AIR 1992 SC 248

two parties.

These two cases led to the important discovery of new concept of liability which had to see the light of day in order to safeguard the lives and dignity of people. It was also needed to have a deterred effect on any industry causing such damage or about to deal in dangerous activities.

### **Research Questions**

The following are the questions of this research:

- ✚ What is the concept and meaning of Absolute liability?
- ✚ How the principle of absolute liability originated in the case of MC.Mehta vs. Union of India along with other similar case laws?
- ✚ In case of MC.Mehta, the concept of Strict liability is also observed. Explain the concept of Strict Liability?
- ✚ What is the difference between Absolute liability and Strict liability?

### **LITERATURE REVIEW**

#### ❖ **“Harward law review, Absolute liability for Dangerous Things”**

Activity conducted in such a care that it cannot be condemned as negligent and sufficiently within the public tolerance to escape injunction may nevertheless entail the liability for the harm it causes. Such liability is variously termed as absolute, with or without the fault of the owner. It also entails and details the factor, situation, judgements and reason for bringing a concept exclusively for India.

#### ❖ **“ Author Manoj Kumar, Strict & Absolute liability”**

With special reference to Indian Author, A law stating strict responsibility renders a person morally liable irrespective of guilt for the harm and loss incurred by his or her actions and omissions. Absolute liability is a civil liability principle in different legal jurisdictions used in tort and criminal law. A individual may not only have committed a

criminal offence in some jurisdictions, but also have a deliberate intention or culpable mind to be guilty of an ordinary crime.

❖ **“Michigan Law Review, Tort: Blasting: Absolute Liability”**

Journal contains a number of recent judgments in terms of harmful and hazardous activities that took place from late 1900s and include elucidation of sub topics like negligence, trespass and strict liability with main focus on the theme 'Absolute Liability'. It presents the history, facts and judgments of the cases related to industrious disasters and thus, involves Absolute Liability. Cases such as railway and gas companies are included in the journal.

❖ **“Paul H. Robinson, Strict Liability’s Criminogenic Effect”**

The article raises the issue that, owners face due excess amount of damages that has to be paid by them. The simple attraction of strict liability to policymakers and legal reformers trying to mitigate criminality is easy to understand: if criminal law can do away with the conventional requirement of guilt, it can raise the chance of prosecution and punishment of those who participate in forbidden activity or cause banned harm or bad. The use of criminal responsibility for regulatory violations supports related claims. Greater rates of penalty reflect greater enforcement.

❖ **“Universal Law Series, Law of Torts”**

The book of Universal Law series dives deep into the different concepts of law of torts, terminology, examples and illustrations. It describes the concept of Strict Liability and Absolute Liability. It also shows how the concept of Absolute derived from the famous case law case of MC Mehta vs Union of India. It also Describe absolute liability in the light of observation made by the Court in the case M.C. Mehta v. Union of India (Shriram case). How does it differ from the rule as laid down in the case Rylands v. Fletcher.

**❖ “Legal service India, A critical Analysis of Strict Liability and Strict Liability”**

This Article has served the purpose of clearly defining the difference between the terminology of Strict Liability and Absolute liability. It mentions a number of aspect for which needs to be fulfilled first in order to establish Strict liability and Absolute liability like Escape, Dangerous thing, non-natural usage of land and mischief. The data has been backed up by number of case laws. It also mentions the inception of Absolute liability in India.

**MAIN CONTENT****CRITICAL ANALYSIS OF MC. MEHTA VS UNION OF INDIA****• FACTS OF THE CASE**

Shriram Foods and Fertiliser Farm, Delhi (Shriram), has a population of 200,000 inhabitants. Articles such as glycerin soap and technical hard oil were produced. M.C.Mehta, the petitioner lodged a written petition with the Supreme Court to seek an injunction for the plant to be closed and relocated to an area where "there would be no real risk to the health and safety of the people."The Supreme Court allowed the power and operation of the plant to reopen, awaiting the petition's disposal. Oleum gas spilled from the facility during the ongoing petition, causing substantial adverse health consequences to the general public, according to which compensation lawsuits were filed. The Supreme Court held that “since the issues raised involved substantial questions of law relating to the interpretation of Articles 21 and 32 of the Constitution, the case should be referred to a larger Bench...” The wider bench was to view Article 21, which sets down the right to the protection of life and liberty, had to be understood in regards to the 'vital public interest' of a private company. Article 32 was in order to decide if it was possible to grant a writ in accordance with compensation.

- **JUDGMENT AND ANALYSIS**

As regards the responsibility of a corporation for the injurious effects of the risky operations carried out by that corporation, The Court held that the firm owes the company a total and non-delegable responsibility to ensure that the risky or potentially hazardous nature of the operation carried out by that company does not affect any person. Extending the concept of strict liability in *Rylands v. Fletcher*, the Court set out, for the first time, the principle of absolute liability of a company when it engages in risky and dangerous practises. According to the Court, such conduct should be permitted only on the condition that the undertaking 'indemnifies all those suffering as a consequence of the carrying on of such dangerous or inherently unsafe activity, irrespective of whether the undertaking is carried on carefully or not.'. This is how the concept of Absolute Liability came into force in India.

The case "MC Mehta vs Union of India" briefly derives into 2 most important concepts of law of torts;

- Strict Liability
- Absolute Liability

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### **Absolute Liability**

The terminology, rule and characteristic of No-fault Liability were obtained from the case of MC.Mehtavs Union of India. In this case, the court held that, "**It does not offer any advice on the establishment of any standard of responsibility compatible with the existing economy and social structure's constitutional norms and needs. This law, which has developed in the sense of a very different kind of economy, need not impede us. Legislation must adapt in order to address the demands of the ever-developing population and to keep up with the structural developments taking place in the world. In order to face the burden of those emerging circumstances, the legislation needs to be developed as new situations emerge. It should not be allowed by statute to stay unchanged. We have to establish new ideals and set new expectations that can cope effectively with the new challenges that emerge in a highly**

**developed economy.”**<sup>6</sup>Absolute liability is defined as the harm to the person or property because of the intrinsically harmful activity carried out by the firm or industry or any other related element, the firm should be strictly liable for all the cost of carrying such hazardous activity as part of carrying activity for the profit.

It is therefore seen here that the strict liability rule laid down in Rylands v. Fletcher was considered to be inadequate for modern industrial society in 1868 and, thus, the Supreme Court created a new rule of absolute liability that is very distinct from the strict liability rule that remains:

Some of the inferences were as follows-

1. The companies engaged in unsafe or potentially harmful behaviour would be liable and the law as set out in the case of Rylands v. Fletcher would be applied to those not falling within this group.
2. It is not possible to avoid dangerous things from one's land to another land, so the law would apply to all people who stay outside the premises and also within the industry.
3. There is no exception to this rule.
4. The amount of harm depends on the size and the financial resources of the defendant's corporation. Here, the Supreme Court veered away from the concepts of tortious liability.

This is similar to the Strict Liability principle, with the exception to the fact that there are no protections against it. There are simply no reasons for the damage suffered, in consequence. If the Total Obligation rule sounds unreasonable, so try the absolute liability clause. There are laws that are for the specific public benefit and they include very dangerous activities.

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<sup>6</sup>MC.Mehta VS Union of India 1987 SCR (1) 819:AIR 1987 SC 965-A



**CASE LAWS IN ACCORDANCE WITH ABSOLUTE LIABILITY**

The court noted the finding in the **Indian Council for Environment Legal Action V Union Of India**<sup>7</sup> under which a corporation that is engaged in a harmful or inherently dangerous practices and The court stressed that without the proper clearances/consents/license, the respondents created this waste, did not install sufficient treatment facilities, did not carry out the orders of the Court, and continued in an unlawful course of action. The harm they had caused by the release into the atmosphere of extremely radioactive untreated waters was indescribable. Neighboring villagers, the soil and water, and the climate in general, were adversely affected. In another case of Absolute liability, **The Meghalaya Energy Corporation vs. Shri Sukendra Sangma**<sup>8</sup>, There was an electrical accident where late Anita Sagma and Sheetal Joshi were electrocuted on 19 February 2012 who lived in a Three-storied building and adjacent to it passes a 11 kv line. The incident happened when both the victims were on terrace and the electrical wire touched the terrace of the building. Some burnt spots were also observed on the terrace. The court decided that this was a case of Absolute Liability and hence, the Meghalaya Energy Corporation is liable to pay all the damages to the aggrieved party. In another case of **Assn. Of Victims Of Uphaar Tragedy vs Union Of India**<sup>9</sup>, it was held that liability in this case was strict and could not be escaped. However, As the case involved hazardous chemicals leakage, The court ruled out that the liability will be absolute like in the case of MC .Mehta and hence, no exceptions will be tolerated in the above case and hence, the company would fully compensate the victims.

Other than dealing in cases of chemical and hazardous industries, Absolute liability has also been used in other cases such as incidents involving Vehicle accidents. In one such case, **Minu B Mehta vs Balkrishna Ramchandra Nayan**<sup>10</sup>, the appellant was referred to in a separate decision by Justice Mridul. In reference to section 95(1)(b)(i) and (1)(b)(ii) of the Act, the learned Judge found that the area of liability in clauses (i) and (ii) must be held to be the same since there are and are obligatory insured liabilities of both the owner and the driver. The respected Judge, in

<sup>7</sup>Indian Council for Environment legal action v Union of India And Ors. Etc. 1996 AIR 1446, 1996 SCC (3) 212

<sup>8</sup>The Meghalaya Energy Corporation vs Shri Sukendra Sangma, WA No. 33/2014 in WP(C) No. 197/2012.

<sup>9</sup>Assn. Of Victims Of Uphaar Tragedy ... vs Union Of India (Uoi) And Ors. II (2003) ACC 114, 2003 ACJ 1631, 2003 IIIAD Delhi 321, 104 (2003) DLT 234, 2003 (68) DRJ 128, 2003 RLR 333

<sup>10</sup>Minu B. Mehta And Another vs Balkrishna Ramchandra Nayan And others. 1977 AIR 1248, 1977 SCR (2) 886

process of recognising the comparisons in the language of the both, agreed that it was inconceivable for the legislature to envisage total responsibility in cases secured by clause (i) and not in cases covered by clause (ii) (i). In **K. Ramulu And Ors. vs Shaik Khaja And Ors**<sup>11</sup>, the owner of the vehicle involved in car accident was fully liable and solely responsible for causing the death of the victim. Thus, in case of Absolute liability, the owner has to pay damages for permanent disablement or death. Similarly, in another case **Divisional Manager, New India vs Tumu Gurava Reddy And Ors.**<sup>12</sup>, the court held that the insurer could raise the defences to defeat the claim of Absolute liability but none of the defences could prevent the insurer from paying the compensation to the owner of the vehicle that was involved in the accident and so the principle of Absolute liability mentions that there are no exceptions in case of absolute liability and makes a big difference to its counterpart, Strict liability which has exceptions to prevent from the claim raised by the plaintiff.

However, there were instances where the Absolute liability cases were filed, but the court ruled out for one or another reason. Like in **G.N. Deshpandevs Ishwaribai U. Ahuja And Others**<sup>13</sup>, The respondent accuses Mayer Hans George, a Swiss citizen, of fleeing Zurich by a Swiss aeroplane, and he was immediately apprehended by the customs when the aeroplane arrived in Bombay on the morning of 28-11-1962, on the basis of secret information that had already been received with regard to his possessing a massive sum of gold. The court held that even though the respondent was carrying gold, but appellant arguments make respondent absolute liable in terms of mensrea which is not applicable here. Therefore, as with this case, absolute liability should not be fastened solely on the premise that the accused's knowledge of the crime of possession was in breach of the Act of his knowledge. Another case where the court ruled out the concept of Absolute liability was in **Bheru Manufacturing Co. vs The Collector Of Customs And Ors.**<sup>14</sup>, The court ruled out that Even though the arguments presented by the appellant clearly showcases that respondent was responsible for the revenue offences as income-tax and thus, is liable but this is not based on the concept of Absolute liability and will not apply here.

<sup>11</sup>K. Ramulu And Ors. vs Shaik Khaja And Ors. on 25 April, 1991 ACJ 359

<sup>12</sup>Divisional Manager, New India vs Tumu Gurava Reddy And Ors. II (1998) ACC 732, 1999 ACJ 1077, 1998 (5) ALD 600, 1998 (5) ALT 271

<sup>13</sup>G.N. Deshpandevs Ishwaribai U. Ahuja And Others, 1992 CriLJ 2665

<sup>14</sup>Bheru Manufacturing Co. vs The Collector Of Customs And Ors, 1970 2 MLJ 709

**Strict Liability**

Strict liability, according to Blackburn, J, “The rule of law is that the person who, for his own purpose, brings on his land and collects 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.” It is a concept that derived from the case of **Ryland vs Fletcher**<sup>15</sup>. In this case, Fletcher and Rylands were neighbours. To build a reservoir on their property, the defendants hired independent contractors. When exploring, the contractors uncovered disused mines but neglected to correctly seal them. With water, they filled the tank. As a result, water poured into the plaintiff's mines on the surrounding property into the mineshafts. At Liverpool Assizes, the appellant won a verdict. The complainant was considered guilty by the Chamber of the Court of Exchequer and the House of Lords affirmed their decision. In order to prevail in this offence, Blackburn J, who delivered the judgments of the Court of Exchequer Chamber and the House of Lords, determined that the claimant must prove:

1. That something was carried onto the property by the defendant;
2. That the defendant made a “non-natural use” of his land;
3. The thing was something likely to do mischief if it escaped;
4. The thing did escape and cause damage.

**The above judgement gave essential characteristics of Strict liability**

1. That the defendant brought something onto his land

It is important for the applicability of Strict Liability that the material that escapes must be of a hazardous sort. Whether or not this involves personal risk is rather meaningless, or the extra dangerous nature of the thing in the way that it might be liable to injure others who are on the premises where it is stored, the material may be unsafe to inflict harm to others' land on fleeing. Items that have been considered as part of the regulation include energy, coal, things that are likely to pollute.

2. That the defendant made a “non-natural use” of his land

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<sup>15</sup>Rylands v Fletcher, LR 3 HL 330 (1868)

The defendant is only liable if he makes a non-natural use of his land by taking the thing; There must be an emphasis on the term 'non-natural'. There was a specific usage of land that caused or raised the risk to humanity. It was claimed in the case of **Richards v. Lothian**<sup>16</sup> that "it must be of special use that brings with it increased danger to others and not merely the ordinary use of land."

3. The thing was something likely to do mischief if it escaped

To hold the defendant liable under the strict liability doctrine, the complainant must show that the defendant made unnatural use of his property and caused him mischief/damage to flee from the dangerous thing. Since arguing successfully that unnatural use of the property was made by the claimant, the resulting harm has to be demonstrated by the applicant.

4. The thing did escape and cause damage.

Escape indicates an escape from a position that is beyond the defendant's occupation and power. For strict liability, it is necessary that the content escapes from the premises and also out of the other party's reach. A case of **Read v. Lyons and Co**<sup>17</sup>., House of Lords ruled that the claimant was not responsible because the crash took place in the factory premises and there was no escape from there that could have caused either individual harm.

### **Comparison between Absolute liability and Strict liability**

- In the sense of absolute liability, only those undertakings involved in hazardous or potentially dangerous practises are responsible, which means all other businesses which do not come under the category alluded to above shall be held liable. It is included by the Strict Liability Clause. Under the case of strict liability, however, the responsibility for the escape of an object from the land of a citizen will only arise if the item or The gathered material is a dangerous thing, i.e. a thing that is liable to cause other persons or their possessions mischief or hurt in their escape. In a number of tort cases filed worldwide, "Wide bodies of water, gas, power, vibrations, yew

<sup>16</sup>Richards v Lothian, AC 263(1913).

<sup>17</sup>Read v. Lyons and Co. AC 156 (HL)(1947)

trees, waste, flagpoles, explosives, noxious gases, rusty wires, etc. have been held as hazardous stuff by those concerning the doctrine of strict liability.

- In case of Absolute liability, The escape from one's own land of a dangerous thing is not necessary; it implies that the law of absolute liability is applied to those harmed inside the premises as well as people outside the premises. In case of Strict liability, The item that has caused injury or mischief must 'escape' from the region under the defendant's occupation and control like in the case of **Crowhurstvs.Amersham Burial Board**<sup>18</sup>The branches of a poisonous tree that is planted on the property of the defendant hit the adjacent complainant's land, which leads to fleeing from the boundaries of the defendant or managing the dangerous, poisonous stuff and to the plaintiff's land.
- There is no exception to the law of absolute liability, although the rule of strict liability has given some exceptions and defences which includes the Act of god, Plaintiff's the wrongdoer, Statutory Authority and damage caused due to natural use of land.The constitutional bench also held that MC Mehta's rule was not subject to any kind of exception was the case law, **Union of India V. Prabhakaran Vijay Kumar**<sup>19</sup>. In any circumstances, the party will be responsible for the award of damages.
- The Ryland V Fletcher Statute applies only to the non-natural use of land, but also applies to the natural use of land under the existing definition of total liability. If a person uses a hazardous substance that may be a common use of land & if that substance escapes, he will be held liable even if he has taken adequate precaution. That means proper care and caution plays no role in Absolute liability but in Strict liability, it plays a vital role in either escaping the liability the damage or atleastlessing the level of damages and compensation.

<sup>18</sup>Crowhurstvs.Amersham Burial Board, (1878) 4 Ex. D. 5; Cheater vs. Cater, (1908) 1 K.B. 247

<sup>19</sup>Union of India Vs. PRABHAKARAN VIJAYA KUMAR and others 2008(4) MLJ 323(SC)

**SUGGESTIONS**

- There is a requirement of more guidelines for absolute and strict liability that should be in effect.
- The concept of Negligence should not be present in such cases.
- There should be more penalties and punishments for absolute and strict liability.

**CONCLUSION**

Only when he's being at fault, a man is made subject. An exception can be concept of Strict and Absolute liability. In any event, the guideline overseeing these two values is that even at his responsibility, a man may be put at risk. This is referred to as the "no fault liability." rules. Under these principles, the guilty party might not have committed the act, but he would be in charge of the damage incurred by the act considering anything. There are a few exemptions on the grounds of strict liability where the respondent is not at risk. Be that as it might, no exceptions are granted to the respondent on account of absolute liability. Under the strict liability to handle anyway, the litigant would be harmed at risk. Tort is a general error by which the remedy for unliquidated harms is a precedent-based law operation that is not just the violation of an arrangement or the break of a confidence or other just equal promise. There are various norms describing the legislation Torts. For the most part, a person is liable to his own unjust actions and no fault is incurred for the act committed by another. He is at risk for that in the event that a person commits a mistake. In any situation, there is a law that asserts a party responsible without being at fault. This is the 'principle of no fault responsibility.' With this example, the entity at risk could not have any act of carelessness carried out.