

---

## CONCEPT OF LIABILITY IN JURISPRUDENCE

---

Mukul Bhati, Bennett University

A civil wrong is a wrong committed against a private person or people, whereas a crime is a wrongdoing committed against society. While damages are the remedy for legal errors, imprisonment is the solution for crimes. The procedure is a final distinction between the two. Criminal proceedings are those that occur in cases of crime, whereas civil proceedings are those that occur in cases of legal wrongs, and both types of procedures are conducted in separate sets of courts. In a criminal offense, the wrongdoer's purpose determines the In civilised communities, the majority of interactions between a person and the state are regulated by laws that are either created or upheld by the state. The rule of law establishes each person's obligations and privileges. In simple terms, it lays out what one is required to do, what one is not required to do, and what one is allowed to accomplish. This rule's violation is referred to as incorrect. An individual is said to be liable when they have done something illegal.

Liability is thus the state of the party who has done wrong. By "the bond of obligation that links the offender and the correction of the wrong," Salmond defined liability. In addition to establishing obligations and rights, the law also guarantees their safeguarding, regulation, and remedy. Liability is thus a crucial aspect of the field of law. The concepts that need to be understood in this regard are the different types of liability, when one becomes responsible, or, to put it another way, when liability arises, and the extent of liability. Categories of Liability

There are **two types** of liability: civil and criminal.

### **Differentiating between criminal and civil liability**

Different legal scholars have expressed various opinions regarding the distinction between the two. According to Austin, a civil harm is a crime that is followed at the victim's or his officials' choice. Crimes are acts that are carried out by the ruler or by his or her agents. Criminal sanctions are used to implement all mandatory duties.

According to **Salmond**, the differentiation between a criminal and civil wrong is not dependent on the type of right that was violated but rather on the type of redress used.

According to one perspective, the method is where the two vary most significantly. There have been proposed four areas of distinction between the two:

liability, whereas in a civil wrongdoing, the unlawful conduct determines the liability, and the liability relies on the on the deed itself, not the deed itself. Unfounded points of difference. Most of these grounds of distinction between the two, it is argued, are unjustified. To elaborate on the initial point, there are errors committed against society as a whole that are not crimes, such as when a person violates a deal they have with the government.

Similar to this, there are injustices that are only committed against a single private person but are still regarded as offences. Second, a penalty is occasionally a consequence of a criminal case; on contrary, discipline may be the outcome of a civil lawsuit.

### **Remedial Liability**

This theory states that if a legal obligation is established, the law should ensure that it is fulfilled. A person can be made to follow the law of the land by using the power of the rule to persuade him to do so. If a right is violated, the harm can be fixed by requiring the person who is obligated to uphold it to do so. The remedial liability theory does not include the concept of discipline. The standard principle that a man must be compelled to do what he is required to do by a rule of law by the power of law has three exceptions. The first exception pertains to an imperfect responsibility or duty. An action cannot be brought for the violation of an imperfect obligation. A debt that has passed its expiration date produces a defective responsibility that cannot be upheld in court. The second exception pertains to situations in which particular execution of duties is not feasible. Once a libel or defamatory has been done, it is impossible to specifically enforce it. The damage is irreversible once it has been done. Making plans for the years to come is the only activity that can be done. The third exception pertains to situations where it would be unwise or impractical to specifically implement the duty. The law is willing to award penalties but does not require that a pledge made during matrimony be carried out specifically.

### **Penal liability**

The punishment of wrong is a topic covered by the idea of penal liability. There are four different types of penalty: known to inhibit prophylactic, known to inhibit and militant. The main goal of penalty is to discourage. A civil or criminal wrong may give rise to a penal obligation. The circumstances, prevalence, and measure of penal liability are the three

components of penal liability. The maxim "Actus non facit reum, nisi mens sit rea" refers to the requirements for criminal responsibility. This implies that if an act is performed with a view to commit a crime, it does not indicate guilt. The act and the mens rea, or guilty mentality, of the perpetrator of the act, are the two things that must be taken into account in this relationship. Mens rea necessitates taking into account both carelessness and willfulness. The deed is referred to as the official requirement for criminal responsibility and the mens rea is referred to as the actual state.

When a person commits a forbidden or mandated act with a guilty mind, the law considers them to be suitable subjects for punishment. An unlawful deed cannot be committed unless it is done with a mind that is guilty. Before establishing penal accountability, there must be two prerequisites. The actus reus, or specified deed, is the first prerequisite. The physical or material state of liability is how Salmond refers to it. There can be no penalty if there is no deed. Mens rea, or culpable intent, is the second prerequisite for criminal responsibility. Only when something is done deliberately or recklessly can it be punished. The alternative ways that mens rea can manifest its own are through intentionality and carelessness. "Injury or error, guilt or longevity, encroachment or breach of duty or obligation, intent or ignorance is an essentially essential part of injury or incorrect," Austin once said. The presence of that situation or predicament known as guilt or inviolability is contingent upon either intentionality or negligence. If someone commits a crime either deliberately or negligently, they may be held accountable for their actions. Punitive measure will function as an incentive in the event that a wrongdoing is committed on purpose. If it is done haphazardly or with negligence, the punishment will make the offender more cautious and watchful going forward. Only when the perpetrator of a harmful act displays a mental state that makes penalty effective is punishment warranted. Absolute responsibility wrongs result in punishment even when mens rea is not present. A violation can also include attempting to conduct a crime. An action taken with the purpose of perpetrating a crime is called a criminal effort. Regardless of whether the deed was not guilty it is now criminal. An attempt is made punishable because it causes social alarm, which is a harm in and of it self, and the perpetrator is just as morally guilty as if he had actually committed the offence. There is no clear line dividing planning from effort, and whether something is one or the other relies on the specifics of each situation.

No criminal charges can be brought in cases where the law assumes there can be no will at all. According to the legislation, boys' rooms are not permissible for children under the age of seven. The same holds true for those who are crazy. Penal liability cannot be applied in either

scenario. There can be no accountability if the will does not mention the act. For a mistake to be accepted as a basis for responsibility exception, it must meet three requirements. The error must be such that, if the alleged Events had actually occurred, they would have shielded the individual in question from any culpability for what he did. The error should be understandable. It should be factual and not legal in nature. Three parts make up an act: Its genesis can be traced back to the doer's emotional, physical, or passive behaviour. Its surroundings Effects of it.

**Vicarious Liability** - Normally, only the offender is responsible for a wrong that was done by him or her. One individual can still be held accountable for the wrongs done by another in some circumstances. Vicarious responsibility can be seen in situations like these. Except in extremely rare situations, vicarious responsibility never exists in criminal offences. Vicarious responsibility is, however, recognised by civil law in two categories of situations. A leader is accountable for the actions that his employees take while performing their responsibilities. Additionally, lawyers are accountable for the deeds of the clients they are representing. The lawful presumption that all actions taken by a master's servants in and around the master's company were taken with the explicit or implicit permission of the master forms the basis of the master's liability for the actions of his servants. Given the conditions, the master can be held legally accountable for the actions of the servant. Salmond notes that the vicariously liable concept has two defenses. Real authority is extremely challenging to establish and, in every instance, very simple to refute. The process of establishing the real authority, which is required to create an overwhelming belief of it, is fraught with challenges. That is because employees generally have limited financial resources; nevertheless, if a judgement is obtained against the employer, there are higher possibilities of reclaiming the money because of the employer's greater assets. In accordance with common law, an individual cannot be penalized in death. According to the facts, it was decided that all legal actions for penal redress must be filed against the perpetrator while he is still alive and must pass away with him. The previous regulation has been replaced, though. The representatives of a deceased individual are attending. Criminal liability expires with the wrongdoer in criminal cases, so this is only feasible in civil matters. In criminal law, vicarious responsibility is uncommon. A individual cannot be imprisoned for an offense that another person did. He may be punished for aiding and abetting the commission of another person's crime, but in that instance, the punishment is for the abetment itself rather than the offense itself. According to Section 155 of the Indian Penal Code, wherever a riot is carried out for the advantage of or on the behalf of any person who is the proprietor or tenant of the property valuing which such revolt occurs or who asserts

a stake in such property, in the context of any dispute giving development to the riot, or who has consented to or obtained any advantage there from, If that he or his representative or supervisor, having evidence to suppose that such revolt was likely to be dedicated or that the illegal construction by which such riot occurred was probable to continue, does not use every legal tool in his or their control to avoid such assemblage or riot from implementing effect and for reducing and spreading the same, then he or they will be fined.

Strict or Absolute Liability Mens rea, or having a guilty mentality, is required in both criminal and civil law in order to hold someone accountable. There are a few exceptions to the overall trend, though. These situations, in which a person is held accountable regardless of whether they had malicious purpose or were careless, are referred to as total responsibility injustices. In these situations, a person is punished for wrongdoing even though they are not culpable in their hearts. Whether the wrong was done deliberately, carelessly, or naively is irrelevant to the law.

It simply assumes that the legal requirements for liability are present. There are many justifications for the existence of absolute liability, but the main one is the difficulty of obtaining sufficient evidence of the wrongdoer's purpose or neglect. The three categories of errors of law, errors of reality, and mishaps comprise the most significant errors of absolute responsibility. (1) The legal maxim that ignorance of the law is no defence is the foundation for complete accountability in the event of an error in law. Even if a person violates the law due to an error, that is not an acceptable defence in the eyes of the law. Even though he did not have a guilty mentality when the crime was committed, he is still subject to punishment. A legal error is not regarded as an acceptable defence for perpetrating the crime for a variety of factors. Law must be followed because it embodies natural justice and conventional reason. The scope of the law can and ought to be constrained. Salmond asserts: "The law is in legal thought defined and known to inhibit; it is the responsibility of every man to know that portion of it that applies to him; consequently, harmless and unavoidable neglect of the law is unattainable. Men are categorically assumed to be familiar with the law, and they are treated accordingly because, in overall, they can and should. According to Austin, the party's misunderstanding of the law is not commonly the case, and his lack of understanding of the law is unavoidable. But the operation of law would be suspended if misunderstanding of the law served as a defence for relief. For almost always, a claim of legal negligence would be made. And the courts were forced to address enigmatic and protracted matters of truth in order to determine the truth and the root of the confusion. The principle that the party is considered to have mandatory knowledge of the legislation, or, to use a different communication, that his

negligence shall not excuse him, appears to be so essential that the law would cease to be effective if it was widely utilized by courts. The standard rule that legal illiteracy is not an excuse has a few exceptions though. The aforementioned rule only pertains to general laws; it does not apply to any special laws. It is acceptable to be ignorant of a specific rule. No one can be found culpable of breaking an international rule from any nation. Additionally, it is unrelated to the English-developed fairness laws.

(2) A factual error is a strong defence against absolute liability in criminal instances. A mistake of truth entails absolute liability in civil law, though. "It is a rule imposed by law that one who interferes with another's person, property, positioned or other legal rights does so in jeopardy and will be subject to repercussions," not be noticed arguing that he thought in a sincere manner and on adequate grounds that there existed certain conditions which defended his act," asserts Salmond. It is not a defence for me if I infringe on someone else's property that I had a reasonable belief that it was mine.

3) In both civil and criminal instances, the concept of an unavoidable occurrence is frequently used as a defence to avoid responsibility. A mishap is both avoidable or at fault. When it is the result of carelessness, it is guilty. When avoiding it would take more caution than is required by law, it is unavoidable. The aforementioned norm has one significant exemption under civil law. In some circumstances, the law dictates that a man must proceed at his own risk and assume the risk of a accident.

**Mens rea (guilty mind)** A basic tenet of criminal law is that a simple act does not automatically create a crime. Mens rea, or a guilty thought, must be present. The maxim *nctus non facit reum, nisz' mens sit rea*—which states that an act is not grounds for guilt unless a guilty mind exists—is the foundation for this concept. Prior to an illegal penalty is applied, two requirements must be met. The existence of an illegal deed is the initial circumstance, which is physical in nature. Mens rea, also known as the guilty mentality, is an additional state. No criminal liability arises until and unless both criteria are fulfilled at the same moment. A guilty thought must be either deliberate or careless. Because a person's emotional state can only be determined by his behaviour and it can be tricky to tell if something is done deliberately or with awareness of the effects, it is very common to assume that even awareness of the consequences is a component of the guilty mind. The act's nature or motivation are not usually relevant to the guilty mind. The act of instant purpose or carelessness must constitute guilt. Mens rea must encompass all three aspects of an action, including the actual doing or not doing, the setting, and the results.

There should not have been a guilty mind behind the deed if mens rea did not apply to any portion of it. All three elements are present during the firing action. Physical action can be taken or avoided. The revolver has ammunition and there is an individual in its line of fire. The bullet penetrates the target's body after the button is pulled, causing the consequences. When the law forbids a particular action, it forbids it regardless of how it was done, why, or what happened as a result. The law chooses some of the many factors and the never-ending series of effects as substance, and they alone form the unlawful act, with the remainder being unimportant. According to Section 456 of the Indian Penal Code, getting into a house at night is an aggravating crime; however, simply getting into a house is not considered an additional offence.

**Phases of a Crime's Commital** Every crime is committed in four stages: the desire to commit it, preparing for it, an attempt to commit it, and the actual commission.

If an act is not performed as a result of the intention to conduct, the intention itself does not amount to a crime. If there is some exterior action that demonstrates progress has been made in that path or regarding developing and influencing it, the Will is not to be regarded as the deed.

Creating a plan of action to commit a crime is known as preparation. Acts committed during the mere period of planning are not punishable under Section 511 of the Indian Penal Code. Only planning for engaging in war toward the State (Section 152) or engaging in treason is criminal as mere planning. (Section 399). A person may decide against performing an offense before moving past the stage of planning and getting to the phase where he actually does it. In that situation, the Indian Penal Code does not have any sanctions for him. A individual who is thinking about killing someone will purchase a gun and purchase an airfare to the location of his intended victim. He has not advanced past the planning step, so he is not in violation of the law.

An attempt is when someone moves directly in the direction of the task at hand after arrangements have been made. An act must be performed with the intent to conduct a crime for it to qualify as an effort. Only actions that would result in the commission of the crime were it not for external factors beyond the control of the person constituting the attempt to commit it. Even when the intended crime cannot be done, a plan is still conceivable. A crime is carried out if the effort to do it is effective. Section 511 of the Indian Penal Code is applicable if the intended impacts are not met by the effort. A rick of corn is going to be lit on fire. He pulls a

cigarette out, ignites it, and extinguishes the match. Lighting a match was an overt, direct action that changed planning into effort. The guy had attempted to set fire to the known to inhibit which was against the law. The distinction between planning to conduct a crime and actually trying to do so is significant. The act of creating or planning the means or steps required for the commission of a crime is referred to as planning. The direct approach to the committee is an effort.

The extent of the responsibility The definition of criminal liability varies across juridical systems depending on the idea of justice and the notion of the State. Several factors are taken into account when determining the known to inhibit's size.

First, the theory—or, in other words, the objective of the penalty acknowledged in the society—determines the level of responsibility in an organization. If the penalty is intended to exact revenge, the law will examine the wrongdoer's motivation and regard it as the primary indicator of liability. The wrongdoer's integrity and timeliness would be used to determine the culpability if the goal of the penalty is to change the wrongdoer.

Second, the idea of the government's responsibility and the type of authority that exists in the community in question determine the extent of the liability. Being a Jew in Nazi Germany was the known to inhibit criminal activity, and speaking or acting in opposition to dictator's wishes was also a very severe transgression. The most serious crimes in a socialist state are those that jeopardise the welfare of society. Third, the beliefs that are acknowledged in a specific neighborhood also influence how much liability is owed. The penalty for sexual offenses has been very harsh in India, where sex morality is regarded as an important goodness, as the beginning, but in England, where the sex morality is not the same as it is in India.

As a result, the following variables are taken into account when deciding liability: Motive: When establishing liability, the motive for the offence is a crucial consideration. If there is a powerful driving force behind the crime, the penalty must be harsh as it is intended to neutralize the driving forces that led the offender to perpetrate the crime. The severity of the crime: All other considerations being equivalent, a serious penalty should be meted out if an offence has a particularly bad outcome or a propensity for evil. Several disagree with this viewpoint and contend that responsibility ought not to be decided by the harm done to an individual, but rather by the advantages received by the perpetrator through his wrongdoing. According to the argument, if given the option of committing just one wrongdoing out of many of the same kind, a criminal would pick the act that would result in a lighter punishment. This significantly aids

in the prevention of crimes. Because of the severe punishment for grave crimes, the perpetrator is discouraged from performing them. The known to inhibit's reputation is also taken into account when deciding the degree of accountability, or how harshly the penalty will be administered. The severity of consequence is greatly diminished for repeat offenders who have already received punishment, and moderate punishment does not discourage them. As a result, they receive harsh penalties. Other variables are also taken into account when choosing the appropriate penalty. The type of the crime is one of these factors. Serious penalties should be applied to crimes that are vile and inhumane. The known to inhibit's sensitivity is also taken into account. A informal perpetrator who committed a wrong out of enthusiasm or rage might be deterred from doing it again by a simple censor or reproach, but someone who does it repeatedly will not be deterred by either, so he should receive severe consequences for the exact same offence. According to the Indian Penal Code, a prior offender should receive an increased sentence. First-time criminals are frequently pardoned or given very light punishments. Because of their maturity, personality, history, mental or physical state, or the events surrounding the offense, criminals may occasionally be released on probation for good behaviour.