

Liability,kinds and Conditions imposing Liability .

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The concept of liability in jurisprudence occupies a pivotal position, serving as the linchpin that connects legal rights, duties and accountability within a legal framework. Liability, in its essence, encapsulates the notion of legal responsibility, wherein individuals or entities are held answerable for their actions or omissions under the purview of the law.

What is Liability in Jurisprudence?

Liability comes about when someone breaks the law. The law sets out rights and responsibilities for individuals. It grants legal rights to one person and places obligations on another. People should not violate the legal rights of others. If someone does violate these rights, they are considered to have done something wrong and this leads to liability.

Definition of Liability in Jurisprudence

Defining liability in jurisprudence is not easy, but some legal experts have tried:

Sir John Salmond

Sir John Salmond defines liability as the necessary connection between a wrongdoer and the remedy for the wrong. In simpler terms, it's the link between

someone who did something wrong and the solution to make it right.

Markby

According to Markby, the term 'liability' describes the situation when a person has a duty to fulfill, whether that duty is their main responsibility or a secondary or enforcing one. It's about having a job to do.

Austin

Austin prefers to use the term 'imputability' instead of 'liability.' He says that certain actions, omissions, or acts, along with their consequences, are attributed to the people who did or didn't do them. In other words, it's about holding people responsible for their actions or inactions.

Kinds of Liability in Jurisprudence

Civil and Criminal Liability in Jurisprudence

Civil Liability

Civil liability refers to the legal responsibility one person or entity may have towards another in matters related to non-criminal issues. It arises from violations of civil laws or regulations, typically involving disputes between individuals or entities over issues such as

contracts, property rights, personal injury, or family matters.

When someone is found civilly liable, they may be required to compensate the injured party through remedies like monetary damages or specific performance (fulfilling a contractual obligation). Civil liability cases are usually initiated by private individuals or organisations seeking compensation or resolution of a dispute.

Criminal Liability

Criminal liability pertains to the legal responsibility an individual or entity bears for actions that violate criminal laws and regulations established by the government. Crimes are generally offences against society as a whole and the government, represented by prosecutors, initiates criminal proceedings.

If someone is found criminally liable, they may face penalties such as fines, imprisonment, probation, or other punitive measures. The purpose of criminal liability is to punish the wrongdoer for violating laws that are intended to protect public safety and order.

Remedial and Penal Liability in Jurisprudence

Liability can be further classified into two categories:

- **Penal Liability:** When the wrongdoer is subjected to punishment such as fines or imprisonment after a successful proceeding, it is termed penal liability in jurisprudence. Criminal liability falls under this category.
- **Remedial Liability:** This type of liability in jurisprudence involves remedies that are not punitive in nature. After a successful proceeding, the defendant may be ordered to pay damages, settle a debt, or perform a specific action. Civil liability generally falls under this category.

Two Essential Conditions of Penal Liability

There are two main conditions for someone to be held criminally liable: actus reus and mens reus.

Act (Actus Reus)

An act is considered a voluntary physical movement, caused by the will or desire of the person. It involves bodily movement resulting from a person's intention, provided the body part involved is in a normal

condition. In simpler terms, it's a willed bodily action. Some legal scholars, like Holmes, narrow it down to a voluntary muscular contraction.

However, Salmond has a broader perspective, defining an act as "any event subject to the control of human will." An act comprises three aspects: its origin in mental or physical activity, its circumstances and its consequences. For example, in the case of theft, there are five essential elements, including the dishonest intention to take property and the actual physical movement of the property.

Mens Rea

Mens rea translates to "guilty mind" and represents the mental element required to establish criminal liability. It delves into the mental attitude of the person accused of the crime. Various mental states can be included in mens rea, such as intention, recklessness, malice, negligence, heedlessness and rashness.

Salmond, however, narrows it down to just two mental attitudes: intention and recklessness. In essence, a person can be held liable for a wrongful act

only if they do it willfully (intentionally) or recklessly. Sometimes, inadvertent negligence can also lead to liability in jurisprudence. However, for someone to be held criminally liable, their actions must align with one of these mental attitudes.

The concept of mens rea has evolved over time and in some cases, it has been replaced by legal standards set by the law. Additionally, different classes of offences may have varying requirements regarding mens rea.

For example, in some cases, an honest and reasonable belief held by the accused may not be a valid defence in [IPC](#), as illustrated by the example of kidnapping a girl under the age of 18. This demonstrates that the level of subjective guilt or intent required for criminal liability can differ depending on the specific offence and legal standards in place.

