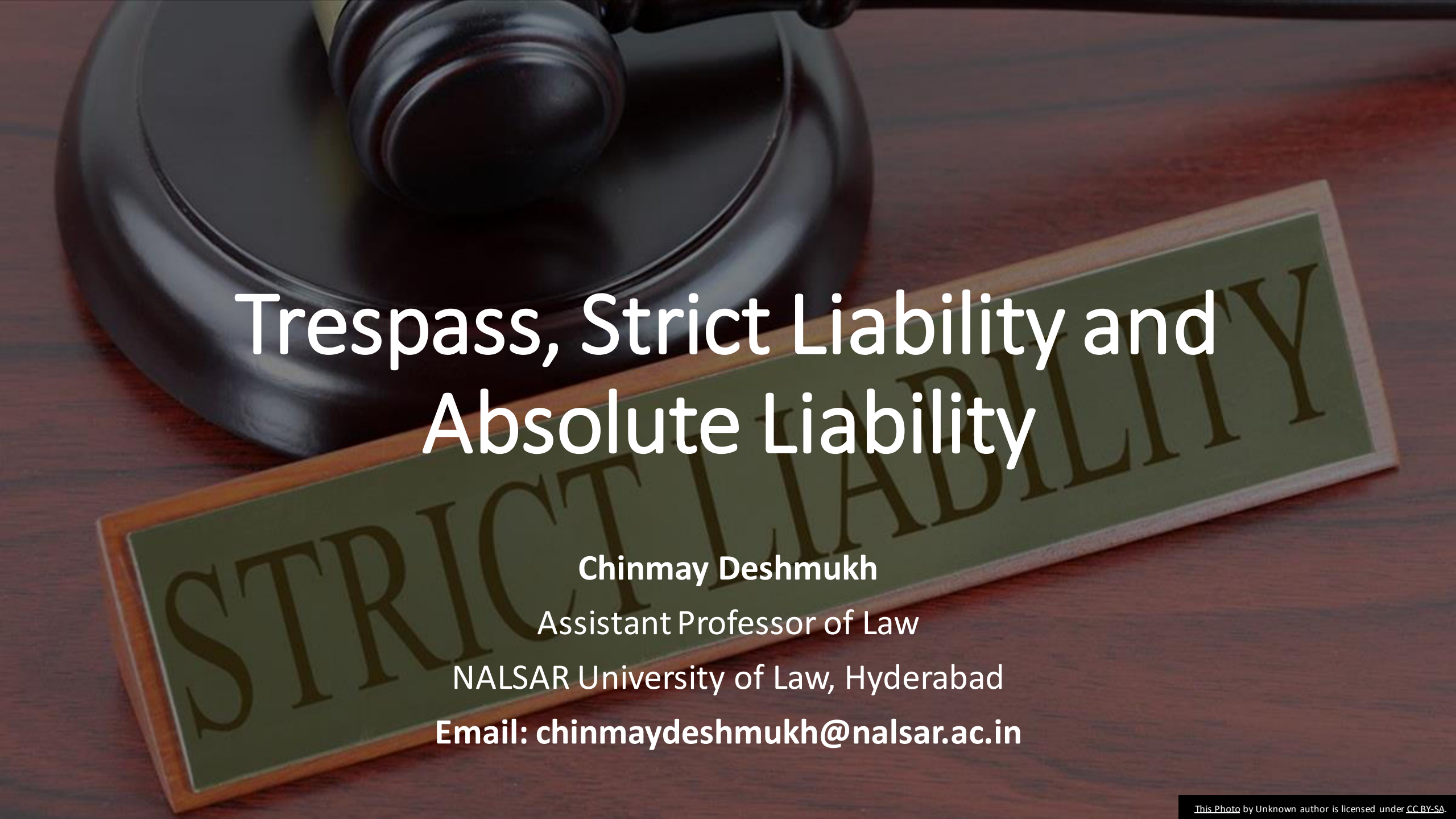




# Trespass, Strict Liability and Absolute Liability

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# Outline

## **(A) Trespass**

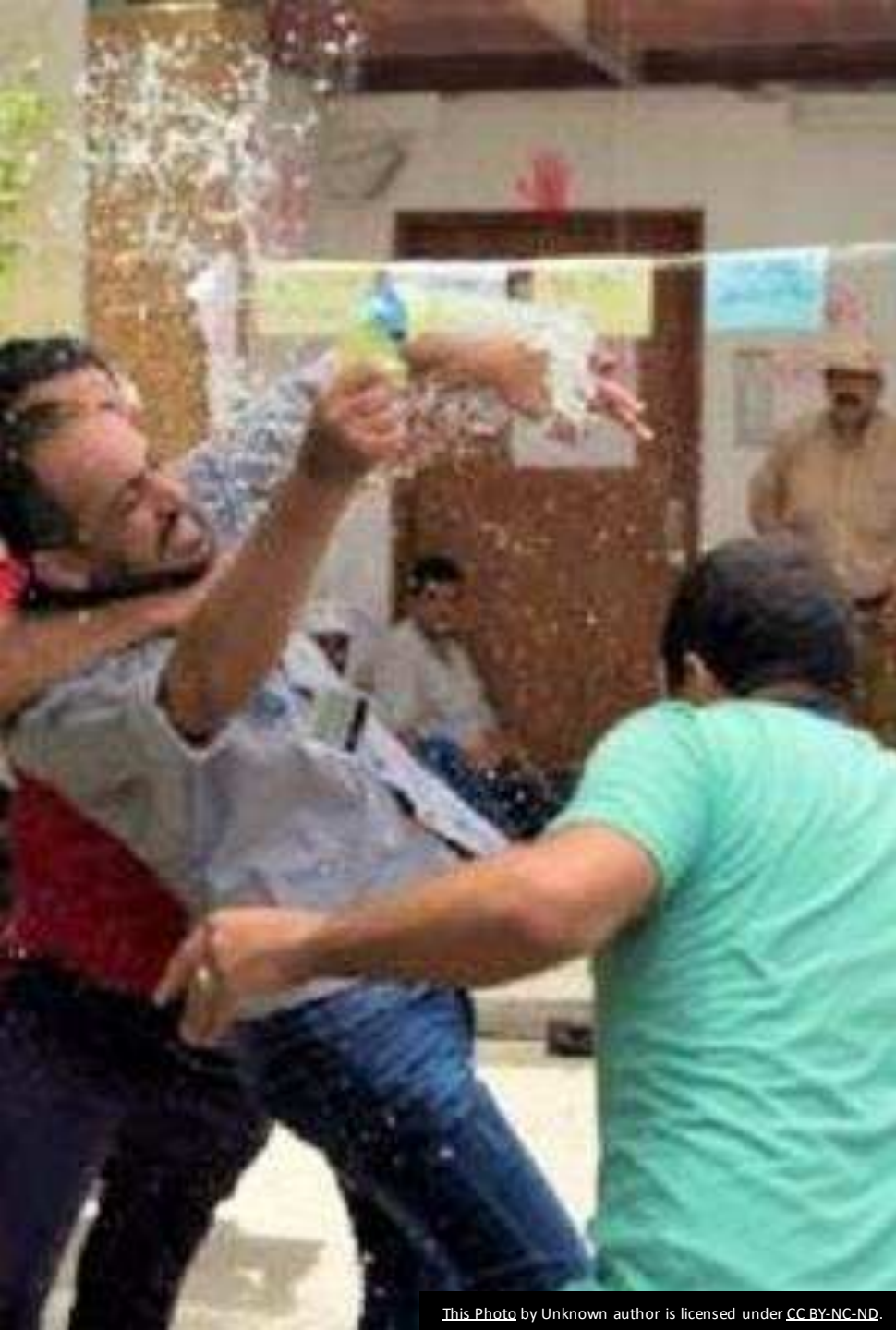
- Trespass to Person: *Battery, Assault, False Imprisonment*
- Trespass to Property: *Trespass To Land*

## **(B) Strict and Absolute Liability**

- Evolution of the law in UK
- Indian Position
- Strict liability for Animals
  - Scienet Rule: *Ferae Naturae* and *Mansuetae naturae*
  - Cattle trespass

# **(A.1) Trespass to Person**

- Battery
- Assault
- False Imprisonment



# Battery

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- The wrong of battery consists in  
(a) **intentional application of force**  
to another person (b) **without any  
lawful justification**
- Physical hurt need not be there
- Mere touching of another's body  
without any justification is battery

- Use of a stick or any other object or throwing of water or spitting in a man's face or making a person fall by pulling his chair are examples of use of force
- Use of force should be intentional and without any lawful justification
- Harm which is unintentional or caused by pure accident is not actionable

# Assault

- When the defendant by his act creates **an apprehension in the mind of the plaintiff that he is going to commit battery against the plaintiff**, the wrong of assault is completed
- Showing a clenched fist is assault but actual striking amounts to battery. Pointing a loaded pistol at another is an assault.
- The test is whether an apprehension has been created in the mind of the plaintiff that battery is going to be committed against him.



- It is also essential that there should be present prima facie ability to do the harm.
- If the fist or the cane is shown from a great distance, e.g., by a person from a moving train to another standing away on a platform, there is no assault
- Mere verbal threat is no assault unless it creates reasonable apprehension in the plaintiff's mind that immediate force will also be used
- However, if a person advancing in a threatening manner to use force is intercepted from completing his designs, his act nevertheless amounts to assault (*Stephens v Myers* [1830] EWHC J37; [1830] 4 Car & P 350)

# False Imprisonment

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- False imprisonment consists in (a) a total restraint on the liberty of another (b) without any justification
- When a person is deprived of his/her personal liberty, whether by being confined within the four walls or by being prevented from leaving the place where he is, it is false imprisonment



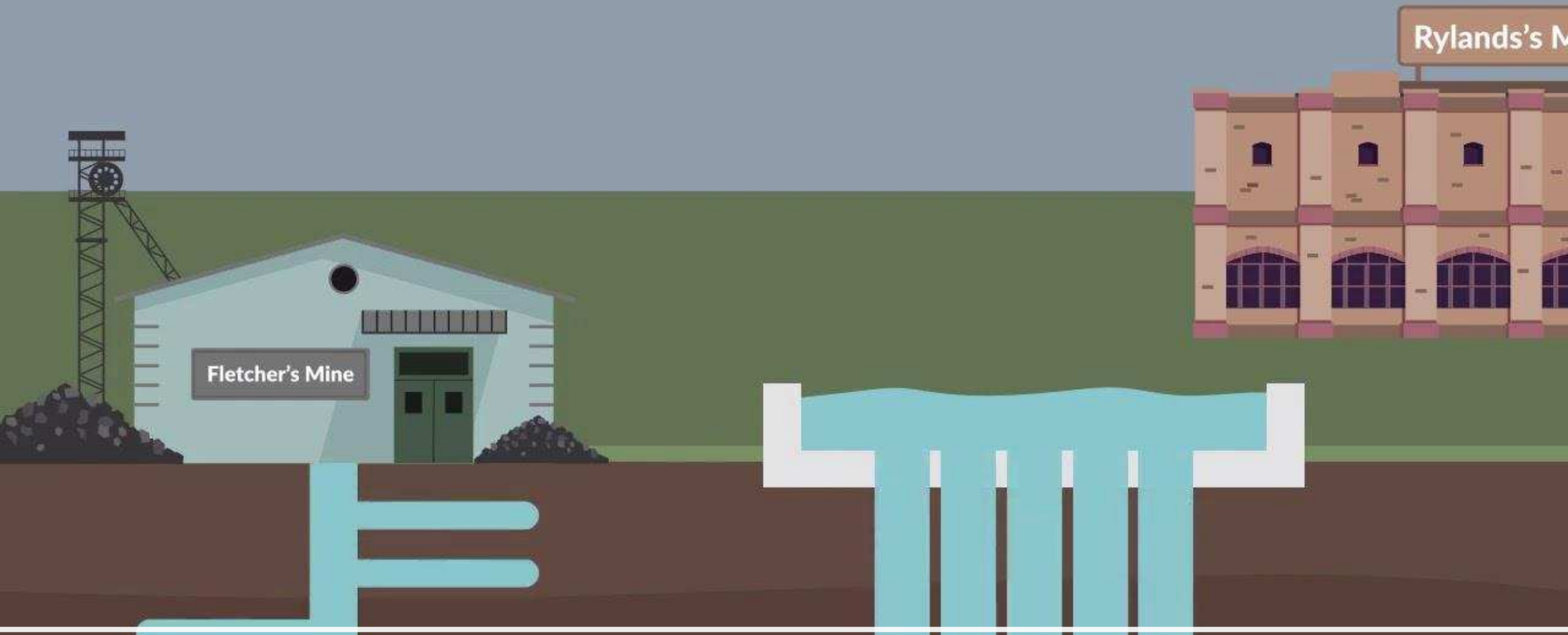
- To constitute this wrong, a person must have been completely deprived of his liberty to move beyond certain limits
- If a man is prevented from going to a particular direction but is allowed to go back, there is no false imprisonment (***Bird v Jones (1845) 7 QB 742***)
- For false imprisonment, it is not necessary that a person should be imprisoned in a jail or confined within the four walls of a building.
- Detention may be even on a highway, or in a moving object like a bus or a train.

## (A.2) Trespass to Land

- Trespass to land means interference with the possession of land without lawful justification
- Trespass could be committed either by a person himself entering the land of another or doing the same through some material object
- e.g., throwing of stones on another person's land, driving nails into the wall, placing ladder against the wall
- If a person's possession has been disturbed by a trespasser, he has a right to use reasonable force to get the trespass vacated by using reasonable force

## (B) Strict Liability and Absolute Liability

- Under each one of the rules the liability of the defendant is **‘No-fault’ liability**
- In other words, such liability can arise even if the defendant is not at fault
- i.e., he may not be negligent, or he does not cause the harm intentionally, or even if he has taken care to see that his act does not cause any harm
- Strict Liability: *Rylands v Fletcher* (1868) LR 3 HL 330
- Absolute liability: *M.C. Mehta v. Union of India* (1987)



*Rylands v Fletcher (1868) LR 3 HL 330*

# Strict Liability Principle

"Any person who for the purpose of himself keeps, collects or brings on his land anything that is likely to cause mischief on escaping the land. Such a thing should be kept at his own responsibility and he shall bear the responsibility first hand for all the harm or damage caused due to its non-natural use."

# Defences to Strict Liability

- Act of God
- Plaintiff's own negligence
- Act of a stranger/third party
- Statutory authority
- Plaintiff's own consent



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

# Strict liability for Animals

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- The Scienner Rule
- Cattle Trespass



# The Scienter Rule

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- The liability of the defendant under this rule depends upon the knowledge of the dangerous character of the animal



# The scienter doctrine

- A keeper of an animal was strictly liable, if the animal which caused the damage was a ‘wild animal’ ( *ferae naturae*) – because that keeper was irrebuttably presumed to know of the vicious propensities of that wild animal.
- That keeper was also strictly liable, if the animal which caused the damage was a ‘tame animal’ or ‘domestic animal’ ( *mansueta naturae*), and that animal had a vicious propensity known to the keeper – liability for that keeper was strict too, because it did not require proof of fault, only that the animal had a vicious propensity to do the kind of injury caused to C, and that the keeper knew of this propensity.

# Classification

**(a) animals ferae naturae, i.e., animals which are dangerous by nature**

- Lions, tigers, bears, elephants, zebras and monkeys

**(b) Animals mansuetae naturae, i.e., animals which are harmless by nature.**

- Horses, camels, cows, dogs, cats and rabbits

## *Ferae naturae*

- If any animal belonging to this class causes the harm, the defendant will be liable even though there was no negligence on his part.
- Thus, if the monkey kept by the defendant bites the plaintiff, the defendant will be liable even if there was no negligence on his part.

***(May v. Burdett 9 Q.B. 101 (1846))***

# *Manusetae naturae*

- Animals like horses, camels, cows, dogs, cats and rabbits are presumed to be harmless (*manusetae naturae*) and the person keeping them is not liable for damage done by them unless it can be proved that the particular animal in question had a vicious or savage propensity and the person having its control had the knowledge of the same
- If a cat kills pigeons, (*Buckle v. Holmes (1926) 8 K.B. 125*), or a mare bites and kicks a horse (*Manton v. Brocklebank [1923] 2 K.B. 212*), the liability under the scienter rule cannot arise because such behaviour is normal for the animals of those species

# *McQuaker v. Goddard, [1940] 1 KB 687*

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- C was visiting D's 'zoological garden' in Regent's Park, London, where a fenced enclosure contained an Arabian camel.
- C was feeding the camel apples, when the camel caught his hand in its teeth, biting and crushing it severely.
- D called expert evidence that the camel had no natural tendency to bite human beings, and that camels were not wild animals in any part of the world with a tendency to viciousness, but were only under the control and in the service of man as a domestic animal, carrying loads of people or products.



- Also, D did not know that this camel had previously bitten anyone or was otherwise dangerous.
- Held: D was not liable under the scienter principle.
- The experiences elsewhere could be taken judicial notice of, and that was that the camel was a domestic animal. Hence, if D had no knowledge that the camel in question had previously shown any vicious propensity, D could not be liable for C's injury



***Nitin Walia Minor Through (Sh. Vijay Pal Walia) v. Union Of India & Others. (2001) ACC 275, 2001***

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- This boy of three years of age-was feeling excited and jubilant when he visited National Zoological Park, Delhi along with his family members to see various animals kept in zoo.
- His joy was boundless when he reached the enclosure where the white tigress was being kept.
- He was with his father and other family members. All family members were keenly watching the tigress. The boy, at that age, who had never seen such an animal was exhilarated. It was wonder for him.

- The white tigress was kept inside iron bars. There was railing before that. Appellant reached near the railing without realizing as to what was in store for him.
- The tigress all of a sudden grabbed his hand through the railing and pulled it in. Other family members reached to the rescue of the appellant and tried to put the tigress away. However, by that time irreversible harm had been done.

"Whoever keeps an animal accustomed to attack and bite mankind, with knowledge that it is so accustomed, is prima facie liable in an action on the case at the suit of any person attacked and injured by the animal, without any averment of negligence or default in the securing or taking care of it. The gist of the action is the keeping of the animal after knowledge of its mischievous propensities. The negligence is in keeping such an animal after notice".

# Cattle Trespass Doctrine

- Apart from the scienter rule, the owner of cattle may also be liable if his cattle commit trespass on the land of another person.
- The liability is strict and there is no need to prove vicious propensity of the cattle or the owner's knowledge about the same.
- For the purpose of such liability, cattle include bulls, cows, sheep, pigs, horses, asses and poultry.

- It was necessary that they strayed – if they were driven, or controlled somehow, onto C's property, then that was an action for trespass to land, not for cattle trespass.