



# AN INTRODUCTION TO LAW OF TORTS

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# MEANING OF TORT

- The term 'tort' is the French equivalent of the English word 'wrong', and of the Roman Law term 'delict'
- It is introduced into the English law by Norman jurists.
- The word 'tort' is derived from the Latin term '*tortum*', twisted, and implies conduct which is twisted or tortious.
- It means a breach of some duty independent of contract between citizens giving rise to a civil cause of action and for which compensation is recoverable.
- **Public nuisance is an instance of a civil injury for which an action for damages in tort will not lie except when it becomes a private nuisance as far as the person suffering special damage is concerned**

# DEFINITIONS OF TORT

- **Fraser** lagel a fo tmemegnirfni na si trot A :*right in rem* of a **private individual** a gnivig ,**right of compensation** of the suit of the injured party.
- **Prof. P H Winfield:** Tortious Liability arises from breach of a duty primarily fixed by law; this duty is towards persons generally and its breach is redressable by an action for unliquidated damages.
- **Sir John Salmond:** "Tort is a civil wrong for which the remedy is common law action for unliquidated damages and which is not exclusively the breach of contract or the breach of trust or other merely equitable obligation"
- **Section** si hcihw gnorw livic a snaem troT" :**1963 ,tcA noitatimiL fo (m)2** .tsurt fo hcaerb ro tcartnoc fo hcaerb a ylevisulcxe ton"

# CONSTITUENTS OF TORT

- In the ordinary course of time an act may be consideration as wrongful act when certain conditions exist in that act. For example, under Indian penal code to determine the act of offence of murder various conditions such as guilt of intention, motive etc., are considered. In the same way to constitute a wrongful act such as tort these conditions are in existence then only, the person concerned maybe hold liable in the tort. These conditions are as follows:

A. Wrongful Act.

B. Legal Damage.

C. Legal Remedy.

# A. WRONGFUL ACT/ OMISSION

- To constitute a tort there must be a wrongful act, whether of omission or commission, but not such acts as are beyond human control and as are entertained only in thoughts.
- An omission is generally not actionable but it is so exceptionally. Where there is a duty to act an omission may create liability.
- A wrongful act is one which violates the legal right of another, violation of moral, social, and religious duties does not come under the category of tort, Thus in tort the plaintiff has to prove that his legal rights have been violated by the act of the defendant.
- Example- **Construction on ones own land of anything which obstructs the light to a neighbours house.**

# B. LEGAL DAMAGE

- Damage means the harm or injury caused to one person by the wrongful act of the other.
- It is different from Damages which means the compensation which is given to a person for the harm or injury that was caused to him due to the wrongful act of another.
- In the eyes of law for every damage compensation is not given. Only in case of legal damage damages may be given as compensation.
- The real meaning of legal damage may be ascertained by the following two maxims:
  - Damnum Sine Injuria and Injuria Sine Damnum.

# INJURIA SINE DAMNUM

- Injuria Sine Damnum (Injury Without Damage) is where a person's legal right is violated but the person may not have suffered a damage or loss.
- In this case, a person doesn't have to prove the damage. It is sufficient to show the violation of a legal right in which case the law will presume damage.
- For e.g., assault, libel, trespass on land, etc.

## *Ashby v. White, (1703) 2 Ld. Raym. 938*

The defendant, a returning officer, wrongfully refused to register a duly tendered vote of the plaintiff, a legally qualified voter, at a parliamentary election and the candidate for whom the vote was tendered was elected, and no loss was suffered by the rejection of the vote.

**Held- Defendant Liable.**

**CONTD.....**

***BHIM SINGH v. STATE OF JAMMU & KASHMIR, AIR 1986***

On the opening day of the Budget Session of the Legislative Assembly, Shri Bhim Singh was suspended from the Assembly. He questioned the suspension in the High Court of Jammu & Kashmir. The order of suspension was stayed by the High Court. The next day, he was arrested and was taken away by the police. His wife filed the present application for the issue of a writ to direct the respondents to produce Shri Bhim Singh before the court, to declare his detention illegal and to set him at liberty.

HELD: The court held that the detention was illegal and qualified as false imprisonment.



# *Damnum Sine Injuria*

Damnum Sine Injuria (Damage without Injury) is when a damage suffered without breach of a legal right but such claim of damage is not valid in court of law.

In **Gloucester Grammar School Master case**, a teacher opened a school named XYZ to teach grammar to the students. After few days, another teacher opened a school named ABC which was right opposite XYZ. Most of the students from XYZ school took admission in ABC thereby causing monetary damages XYZ. The teacher of XYZ filed a suit but the court dismissed the petition because even though damage was suffered, the legal right was not violated

## C. LEGAL REMEDY

- The law of torts is said to be a development of the maxim *ubi jus ibi remedium* (For every wrong, the law provides a remedy.)
- *Jus* signifies here the legal authority to do or to demand something; and *remedium* may be defined to be the right of action, or the means given by law, for the recovery or assertion of a right.

# Tort and Contract

- A tort is a violation of a **right in rem**, *i.e.*, of a right vested in some determinate person, either personally or as a member of the community, and available against the world at large. E.g. If A assaults B, or damages B's property without lawful cause or excuse, it is a tort.
- Breach of contract is an infringement of a **right in personam**, *i.e.*, of a right available only against some determinate person or body, and in which the community at large has no concern. Example- But if A agrees to sell goods to B for a price, and either party fails to perform the contract, the case is one of a breach of contract.
- In the case of a tort, the duty violated is one imposed by the law and is owed to the community at large.
- In the case of a contract, the duty is fixed by the will and consent of the parties, and it is owed to a definite person or persons.

# Tort and Crime

- A tort is an infringement or privation of the private or civil rights belonging to individuals considered as individuals; whereas a crime is a breach of public rights and duties which affect the whole community.
- In tort, the wrongdoer has to compensate the injured party: whereas, in crime, he is punished by the State in the interests of society.
- In tort, the action is brought by the injured party: in crime, the proceedings are conducted in the name of the State and the guilty person is punished by the State.
- Criminal Courts are authorised within certain limits and in certain circumstances to order payment of a sum as compensation to the person injured out of the fine imposed on the offender.

The compensation so awarded resembles the award of unliquidated damages in a tort action but there is a marked difference. The award of compensation in a criminal prosecution is **ancillary to the primary purpose of punishing the offender but in a tort action generally it is the main purpose.**

Only exemplary damages allowed in a tort action are punitive in nature and one of the reasons for severely restricting the categories of cases in which they can be awarded is that they import a criminal element in civil law without proper safeguards.

# GENERAL EXCEPTIONS

- Volenti Non Fit Injuria
- Plaintiffs default;
- Inevitable Accident;
- Act of God
- Necessity
- Private defence;
- Statutory Authority.

# **VOLENTI NON-FIT INJURIA**

Defense of consent is general defence under the law of tort according to the doctrine of volenti non-fit injuria, if a person voluntarily gives consent to suffer from harm himself then he is not entitled to remedy under law of torts. It means if a person is aware about risk and voluntarily accept any task then he cannot claim and remedy.

## **Essentials**

Consent must be free;

Consent cannot be given to an illegal act;

Knowledge of risk is not the same thing as consent to run the risk.

## **Hall vs Brooklands auto racing club Case , (1939) 1 KB 205**

In this case, the Plaintiff was a spectator, during car race, there was collision between two cars, one of the car thrown among the spectators, thereby injuring the plaintiff. The defendant was not held liable . The maxim volenti non-fit injuria was applied.

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## PLAINTIFF'S DEFAULT

- The mere fact that plaintiff was wrong doer doesn't entitle him from recovering damages from defendant for wrongful act.
- Maxim Used : "Ex turpi causa non oritur actio" From an immoral cause, no action arises.
- **Case Law : Bird V. Holbrook**

Bird (Defendant) set a spring gun trap in his garden to protect his property. The spring gun trap injured Holbrook (Plaintiff) innocent trespasser. Plaintiff sued the defendant and claimed for damages. Defendant was held liable

## INEVITABLE ACCIDENTS

- The doctrine of inevitable accident is a significant defence in the law of torts and especially in the area of road accidents. It concerns a situation where a person, exercising due care, diligence and ordinary prudence, could not have foreseen or avoided an accident
- **Stanley V. Powell**

Plaintiff and defendants were the members of a shooting party. Defendant was focusing on a pheasant. One of his pellet from his gun hit the branch of the tree that changed its direction and accidentally wounded the plaintiff. Since it was sheer case of accident, and was not foreseeable defendant was not held liable

# ACT OF GOD

- Extra ordinary occurrence of circumstances which could have not been foreseen and guarded against, or more accurately, due to natural cause directly or exclusively without human intervention.
- Two Essentials of Act Of God :
  1. There must be working of natural forces.
  2. Occurrence must be extra ordinary and not one which could have been guarded against.
- **Nichols V. Marsland** is the famous case of Act of God.

In this case, the defendant constructed three artificial lakes which were fed by a natural stream. The lakes were well constructed and adequate in al normal circumstances. However, they were destroyed by a very heavy rainfall of quite exceptional violence, with the result that the plaintiff's bridges were damages. It was held that the defendant was not negligent and the accident was due to an act of God.



# NECESSITY

- An act causing damage, if done under the necessity to prevent a greater evil is not actionable even though it was caused intentionally.
- Salus Populi is Supreme Law which means welfare of people is supreme law.

- **Cope v. Sharpe, (1912)**

In this case, A fire broke out on A's land. A's servants were busy in extinguishing the fire, the gamekeeper of C (who had shooting rights over A's land) set fire to some strips of heather extinguished between the fire and some nesting peasants of C, in a shot, while the fire was by A's servants. A sued the gamekeeper for trespass.

The Court held that the gamekeeper was not liable for there was a real and imminent danger to the game which justified the action taken by the defendant.

# PRIVATE DEFENSE

- The law permits use of reasonable force to protect one's person or property. If defendant uses force which is necessary for self defence, he will not be liable for the harm caused thereby.
- The use of force should be justified only for the purpose of defence. There should be imminent threat to the personal safety or property.
- **Morris v. Nugent**, (1836) 7 C & P 572

The defendant was passing by the plaintiff's house. The plaintiff's dog ran out, and bit the defendant. On the defendant's turning round, raising his gun, the dog ran away and he shot the dog as it was running away.

It was held that the defendant was not justified in doing so. To justify the shooting of the dog, he must be actually attacking the party at the time.

# **STATUTORY AUTHORITY**

- Statutory authority means an authority or power given by law to do certain acts and if a tort is committed in the course of any such act, the injured person will have no claim unless the act has been done negligently.
- The basic philosophy behind the statutory immunity is that the lesser private right must yield to the greater public interest.
- Statutory authority may be absolute or conditional for doing of an act even though nuisance or some other harms necessarily results, there is not liability for the same.
- Such a condition may be express or implied.
- In case of absolute statutory authority the immunity is available against both the act and it's natural consequences.
- e.g. to acquire land for the laying down of the railway track; the noise and vibration will be caused by running the train on it.

THANK YOU