LAW OF TORTS

LECTURE :- 5

This Chapter includes :

- Introduction
- Personal Liability for Torts
- Kinds of Tortious Liability
- Torts as wrong to property
  - Equity & Trusts
- Remedies in torts

1. INTRODUCTION

- Torts → Indian word (Tortious) → wrongful wrong.
- Torts means a civil wrong which is not exclusively a breach of contract or breach of trust.
- Every tort is civil wrong but every civil wrong is not tort.
- Torts is a civil wrong as opposed to criminal wrong

Wrongs

Civil wrongs	Criminal wrongs
Tort wrongs	Public wrongs

Tort wrongs may be provided in some written law

Contract law (Eg: IPC Act)

Unwritten law (Personal principles of law)

2. Tortious Liability in Torts

- Generally tort results of some act or omission done by tortfeasor (party committing tort). Where the act is with the sole intent to cause injury to some person to other party.
- A civil wrong becomes tort only if it has following components :
  - Wrongful act + Legal damage + Legal remedy = Tort
- Wrongful act : Doing/omission which is wrong in eye of law.
- Legal Damage : Not all the damages which arise must recognise. Generally in a legal system or limitation of legal rights.
- This legal damage can be understood by way of two doctrines :
  - Doctrine Sic Tuere :
    - Bringing with mal damage.
    - Implicitness of tort because put higher value over damage.
    - Every tort is civil wrong but every civil wrong is not tort.
    - Tort is a civil wrong as opposed to criminal wrong

Wrongs

Civil wrongs	Criminal wrongs
Tort wrongs	Public wrongs

Tort wrongs may be provided in some written law

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Unwritten law (Personal principles of law)

  - Damnum Sine Injuria :
    - Damage with mal bringing.
    - Damages which are known as legal wrongs.
    - Sic Uso Tuere
    - Case Law : Gloucester Grammar School case (1410) (Law of money due to compensation)

→ Main Eg. : Person can use maximum force to protect himself and in future any person who using force unlawfully.

Actual non sale damage also not enough but damage must be legally caused to suffer in nature of legally wrong. This is not part of law.

3. Remedies in Torts

Judicial Remedies	Extra Judicial Remedies
• Injunction	• Self defence
• Damages	• Prevention of trespass
• Specific restitution of property	• Re-entry on land
	• Re-caption of goods
	• Abatement of nuisance
	• Distress damage feasant

To constitute a tort, the wrong put out must come under law. It form should be remedied in the super adjective law language.

Judicial Remedies (Remedies with help of law)

- Damages
- Injunction
- Specific restitution of property

The main remedy is a tort is an action for unliquidated damages.

Although torts then remedies in addition to damages or SR may be claimed.

Extra Judicial Remedies (Remedies with the help of law)

The common law is allowed to exercise such remedies by way of self-help with the intention to see that

i. Self Defence : person can use maximum force to protect himself and in future any person who using force unlawfully.

ii. Prevention of Trespass : Individual person may use maximum force to prevent trespass committed or to eject him.

iii. Re-Entry on Land : Person was wrongfully dispossessed of land may re-take possession of land if he can do so in peaceful & reasonable manner.

iv. Re-Caption of Goods : person is entitled to take goods either peacefully or by use of reasonable force against those who wrongfully have dispossessed it.

v. Abatement of Nuisance : occupier of land may lawfully abate (terminate) any nuisance legitimately affecting it.

vi. Distress Damage Feasant : occupier may lawfully seize trespassing beast unlawfully in his land along damage done also can detained them until compensation is paid for damage.

4. Kind of Tortious Liability

I. Strict or Absolute Liability

→ Classical Liability :

- Mason Liability with one's Tortious act : Tortious act is taken into consideration or negligence.
- To sum up based in "Blamed Wrongdoer Liability".
- Dependence lies in no only negligence but through they held liable in order of sure kind down in law.
- If dependent being in circumstances on the land belonging which likely to escape & do mischief, then he has to compensate for damages caused irrespective of any consideration on his part.
- Main Point Against to which this liability applies, etc.
- It has been also set in the case of Rylands v. Fletcher.
- It is applicable to Trespass & vicarious liability.

Exception to Rule of Strict Liability

- Intervening act in nature use of land
- Act of third party (not related in dependent in any way)
- Act under authority of law
- Consent of plaintiff
- Plaintiff's own default
- Act of God

→ Absolute Liability :

- It is the application of strict liability but with mal intention.
- It is a sub of strict liability, found in tort & criminal law of various legal jurisdictions.
- Rylands v. Fletcher (1868)
  - Only held that the rule of strict liability did not fully meet the need of modern society.
  - So a new rule called "Absolute Liability" was laid down by SC with some strict rules in the overall movement above.
  - Cases pointed out that a company's torts cause liability by showing that it had taken all precautions (care & care) not to indulge in it" law.
  - Non Rule in Rylands Case which was strict, but absolute in its scope to the problem.
  - It is applicable to Trespass & vicarious liability.

II. Vicarious Liability

- Meaning : Tortfeasor is liable for his tort but in some case, a person may be held liable for tort committed by another.
- Some cases liability arises from relations existing between

→ Master and Servant

- Our page on Common law's point of view is like our Hindu families in joint family.
- Master will be liable for wrongful act of servant committed by them in course of his service.
- Even if master acted against express instructions that per breach of master, even also master is liable.
- The wrongful act need not be for master's benefit.
- Liability is joint & several

→ Principle and Agent

- Any act done by agent in course of his duty is also liable in his authority from principle to agent.
- Authority can be express or implied

→ Firm & Firms

- If any one of partners commits any tort in ordinary course of business of firm, all other partners are personally & severally liable.

→ Employer and Independent Contractor

- I.C is not controlled by Emp. under service contract. So Emp. is not liable on act of IC.
- If in the case where per contract tort is not connected by that contract, in consulting and work.

- But the Emp. is held liable for act of IC, when he normally is deemed to have committed a tort.
- Will may happen in case of personal work :
  - Where Emp. authorised them to commit a tort.
  - In case of Absolute Liability.
  - Negligence of IC.

III. Vicarious Liability of State

It is discussed in previous chapter / date law; under topic Tortious Liability.

5. TORTS OR WRONG TO PERSONAL SAFETY AND FREEDOM

- Battery
- Assault
- False imprisonment
- Malicious prosecution
- Nuisance Tortious
- Defamation

i. Battery :

- Intentional & direct application of physical force with mal bringing justification.
- Even the least force used, that does not cause any harm is battery.
  - EG: touching a person in anger

ii. Assault :

- When an assault your, and this representation in physical mind that your may be not against him, is called Ex: pointing gun.
- Generally battery involves assault

iii. False Imprisonment :

- Confinement of a person in an enclosure & if it was done with mal bringing manner is false imprisonment
- Making a false complaint to police by defendant leading to arrest bringing with mal bringing justification

iv. Malicious prosecution :

- It means initiating a criminal prosecution or civil suit against another party with malice & with not probable cause.

- The following are conditions for it applicability :
  - Prosecution of litigation by defendant
  - Have no reasonable cause for such prosecution
  - Defendant acted maliciously
  - Litigation bringing demanded by result of prosecution
  - Prosecution must have terminated in favour of plaintiff

v. Nuisance Tortious :

- Nuisance is private or public matter by unlawful act.
- Here injury is tortious which takes place from body in its behalf of land.

vi. Bodily Harm :

- Unlawful act (or omission) of dependent
- Causing physical harm in litigation

vii. Defamation :

- It is an action for reputation of a person through publication of false statement with the bad mind
- Methods of Defamation
  - SLANDER : Involving verbally in transient form, of temporary nature. Ex: Spoken words or gesture
  - Libel : Involving permanent & this means in lesser reputation. Ex: written words / pictures

- Generally punishment for libel is more severe than for slander
- Sec 499 of IPC from libel & slander are against Crime Statute

- The defamation consists :
  - Defamatory statement
  - It must be published (to person other than defamed)
  - Statement related to plaintiff
  - Statement is false
- Defamation in tort is not a crime in India