

CHAPTER - 5

LAW OF TORTS

The word 'tort' is a french equivalent of eng. word 'wrong'.

Tort is derived from latin language word 'Tortum'.

Simply tort means wrong. It's a kind of civil wrong.

But every wrong or wrongful act is not tort. Tort is a civil wrong which is repressible by an action for unliquidated damages and which is other than a breach of trust.

As per Section 2(m) of Limitation Act, 1963

Tort means a civil wrong which is not exclusively a breach of contract or breach of trust.

~~General Conditions of Liability for a Tort~~

Damnum sine injuria -

Means Damage without injury. Damnum means harm, loss or damage in respect of money, comfort, health etc.

Injuria means infringement of a right conferred by law on the plaintiff.

Causing damage sustantial to another person is not actionable in law unless there is a violation of a legal right of the plaintiff.

Thus this is not an action of tort.

Case Law - Gloucester Grammar School case
 (Head master school)

Injuria sine damnum^u

Means Injury without damage. when there is no damage resulted yet it is an injury or wrong in tort.

where there is infringement of a legal right not resulting in harm but plaintiff can still sue in tort.

Case Law :- Ashby vs White (voting election)

Torts or wrongs to personal safety and freedom^u

Battery^u

Any direct application of force to the person without his consent or lawful justification is a wrong of battery.

Tort of battery constitute two necessary-

- (i) Use of force, however trivial it may be without the plaintiff's consent.
- (ii) without any lawful justification, even if it doesn't cause any harm, the wrong is committed.

Assault^u

when the defendant by his act creates an apprehension in the mind of the plaintiff that he is going to commit battery against him, the tort assault is committed.

When there is a battery, there will also be assault. but not for instance, when a person is hit from behind.

False Imprisonment or wrong confinement ~

It is a serious violation of a person's right and liberty whether being confined within the four walls or being prevented from leaving place where he is.

If a man is restrained, by a threat of force from leaving his own house or an open field there is false imprisonment. It means unauthorized restrain on a person's body, his personal liberty is infringed.

Malicious Prosecution ~

It consists in instigating judicial proceedings against another, maliciously (bad intention) and without reasonable and probable cause, which terminate in favour of that other and result in damage to his reputation, personal freedom or property.

For applicability of this tort, following condition must exist -

- 1) There must have been a prosecution of the plaintiff by the defendant.
- 2) want of reasonable cause for that prosecution.

- 3) Must be acted maliciously.
- 4) Suffered damages as a result of prosecution
- 5) must terminated in favour of plaintiff.

Defamation

Defamation is an attack on the reputation of a person.

It means something is said or done by a person which affects the reputation of another.

Defamation is of two types -

Libel :- Libel is a representation made in some permanent form.

e.g written words, caricatures, effigy, statue, recorded words etc.

Slander :- Slander is publication of a defamatory statement in a transient form, statement of temporary nature such as spoken words or gestures.

Punishment of libel is more severe than for slander.

Bodily harm

A wilful act of defendant, calculated to cause physical harm to the plaintiff and in fact causing physical harm to him, is a tort.

Nervous shock ~

Person does not get physical injury but gets a nervous shock through what he has seen or heard and some injury & illness has taken place as a result of emotional ~~disturb~~ disturbance fear or sorrow.

Negligence ~

It refers to a situation where a person might be innocent but has failed to act in a reasonable manner.

MAXIM - Sic utere tuo ut alienum non laedase (person be held liable in law for consequence of his negligence.)

Battery -

In Sitaram v. Jaswant Singh it was held that occupier is entitled to expel a trespasser and if necessary even forcibly remove from his premises. But force should be reasonable and not greater than necessary.

As per Section 140 of Motor Vehicle Act, if death or permanent disablement of has resulted from an accident arising out of the use motor vehicle, then owner of vehicle shall be jointly and severally liable to pay compensation of ₹ 50,000 in case of death and ₹ 25,000 in case

of permanent disablement.

Mens Rea

The General principle lies in the maxim "*actus non facit reum nisi mens sit rea*" i.e. "the act itself creates no guilt in the absence of guilty mind."

It does not mean that for the law of torts. To this principle cases of absolute or strict liability are exceptions.

Strict or Absolute Liability -

In some torts the defendant is liable even though the harm to the plaintiff occurred without intention or negligence of the defendant.

The defendant will be held liable without fault.

These cases are fall under this category -

Inevitable Accident - Such liability arises in cases where damage is done by the escape of dangerous substance brought or kept by anyone on his land.

Such cases are when a man is made by law an insurer of other against the result of his activities.

something which cannot be prevented from happening

Liability for Inevitable mistake - Such cases where a person interferes with the property or reputation of another.

Vicarious liability for wrongs committed by others - Responsibility in such cases is imputed by law on grounds of social policy or expediency. These cases involve liability of master for the act of his servant.

Rule in Rylands v. Fletcher

If a person brings or accumulates on his land anything which, if it should escape, may cause damage to his neighbours, he does so at his own peril (risk). If it does not escape and cause damage he is responsible.

Blackburn J observed: "we think that the true rule of law is that the person, who for his own purpose brings on his lands and collects and keeps there anything likely to do mischief if it escapes, must keep it at his peril and if he does not do so it is prima facie answerable for all the damages which is the natural consequence of its escape."

In case of Read v. Lyons -

It has been explained that two conditions are necessary in order to apply the rule of above case -

Escape from a place of which the defendant has occupation or over which he has a control to a place outside his occupation or control.

Non-natural use of land: The defendant is liable for if he makes a non-natural use of land.

If either of these conditions is absent, the rule of strict liability will not apply.

Exception to the rule of Rylands v. Fletcher

Damage due to natural use of land

Act of god i.e. extraordinary

Plaintiff's own default

Consent of the plaintiff

An act done under the authority of statute

Act of third party.

Applicability of the rule in Rylands v. Fletcher is case of enterprises engaged in a hazardous or inherently dangerous industry.

The Supreme court discussed the applicability of the rule of Rylands v. Fletcher in case of *M.C. Mehta v. Union of Indian and Others* while determining the principles on which the liability of an enterprise engaged in hazardous or inherently dangerous industry depended on accident occurred in industry.

An enterprise which is engaged in a hazardous or inherently dangerous industry which poses a potential threat to the health and safety of the person working in factory and residing in the surrounding areas, owes an absolute and non-delegable duty to the community to ensure that no harm results to anyone on account of hazardous or dangerous nature of activity. The enterprise held under an obligation to provide highest standards of safety and if any harm results, then the enterprise must be absolutely liable to compensate for such harm.

Vicarious liability -

The tortfeasor is liable for his tort. But in some cases a person may be held liable for the tort committed by another. A master is vicariously liable for the tort of his servant, principal for tort of his agent and partners for tort of partner. This is known as vicarious liability.

Principle and agent -

Qui facit per alium facit per se. -

The who acts through another is acting himself, so, the act of agent the principal's act. When agent commits a tort in the ordinary course of business / duties as an agent the

principal is liable.

Case Law - *Lloyd v. Guise Smith & Co.*

The clerk while acting in ordinary course of business committed fraud, against a lady by fraudulently inducing her to sign documents transferring his property. The principal was liable even if it was committed without his knowledge.

Partners for the tort committed by a partner in ordinary course -

All other partners of the firm will be held liable for the tort committed by any of his partner in the ordinary course of business, whether the liability of partners are joint and several.

Case Law - *Hamlyn v. Huston & Co.*

One of the partner bribed the plaintiff's clerk and induced him to divulge secrets relating to employer's business. It was held that both partners will be held liable.

Master & Servant ~

Master is held liable for the tort committed by his servant while acting in the course of his employment, whether liability is joint or several.

Master is also liable for those acts of the servants which is not authorised to him.

of the

The basic rule has been variously stated on the maxim "Respondent Superior (Let the principal be liable)

Case Law - Century Insurance Co. v. Northern Ireland Road Transport Board

The director of a petrol lorry, while transferring petrol from lorry to underground tank struck a match ~~in~~ to light a cigarette and threw it. An explosion and fire ensued. It was held that the employer will liable for the damage caused.

where Employer is liable for the acts of Independent Contractor -

The employer is not liable merely because an independent contractor commits a tort in the course of his employment, the employer is liable only when he himself is deemed to have committed a tort.

The following condition when employer will liable -

- > When employer authorised him to commit a tort
- > In torts of strict liability
- > Negligence of Independent contractor
- > Collateral negligence.

where Employer is not liable for the acts of an Independent contractor -

Employer will not be liable, if he has taken

Care in the appointment of the contractor.
 Case law - Philips v. Britannia Hygienic Laundry Co.

Owner of the lorry was not liable when a third party's vehicle was damaged, in consequence of negligence of repair of his lorry by a garage proprietor.

Vicarious Liability of the state

We have no statutory provision with respect to the liability of the state in India. When a case of gov. liability in tort comes before the court, the que. arises whether activity was sovereign or not. If the activity was sovereign the gov. can claim immunity (gov. will not liable) but if the activities were non-sovereign then the gov. will be held liable.

Activities which can be carried out privately by individuals are termed as non-sovereign functions.

Liability of a Corporate Entity / Company -

The companies are not natural persons therefore liability has to be fastened after considering the lifting of corporate veil. In general, the co. are liable for the wrongs committed by the employees. Liabilities of companies are fastened on the basis of legal maxim 'Qui facit alium facit per se' means who

act through another, acts through himself.

Case Law - Union Carbide Corporation v. Union of India. (Bhopal gas tragedy)

Consumer Protection Act and liabilities of Tort

To protect the customers from Tort.

Establishment of Central Consumer Protection Authority [CCPA] to regulate, protect and enforce the interest of the customer and matter related to unfair trade practice.

Trilogo Branch member v. Kalpana Debbarma

Judicial Remedies -

- 1) Damages & Compensation - when a plaintiff's right is violated by the defendant, the court will grant the plaintiff damages, which are compensation for infringement.
- 2) Injunction - Injunction is an order of the court it order a person to do an act, to not to do an act or correct his wrongful act.
- 3) specific restitution of property - This is the third kind of judicial remedy which court makes in case of any breach of rights. Restitution is the process of returning property to its rightful owner. A person is entitled to retribute his property when it was

unfairly taken away by someone.

Extra Judicial remedy -

Remedies by means of self-help without recourse of court.

Self defence

Prevention of trespass

Retake possession of land if wrongfully disposed from land.

Abatement of nuisance

Occupier may lawfully seize any cattle or chattel which are unlawfully on his land causing damages.

Breach of Duty "

Dinbai R. wadiya V. Farukh Mobe djna
 it was held that the principle may be liable for fraud or other illegal activities committed by their agents within the scope of their authority.

In case of *Lakshmi narayan Ram Gopal & Son V. Government of Hyderabad*. Supreme court emphasises distinction between employee & independent contractor.

servants acts under direct control & supervision of master and he is bound to conform the reasonable orders and on other hand

independent contractor is entirely independent of control or interference and undertakes to produce specified results using their own means.

Sovereign functions -

In case of *N. Nagendra Rao v. State of AP* Supreme court talked about when government can be held responsible.

- 1) In modern sense distinction between sovereign and non-sovereign power doesn't exist. It all depends on nature of power and manner exercised.
- 2) If government makes law that harm someone that person can't sue the government for negligence in making the law.
 Government cannot be sued for its decision on politics or policies.
- 3) It's not practical for the government to be held responsible for everything it does in interest of public like defending the country or dealing with foreign affairs.
 But if gov. causes harm without a good reason it should be responsible.

In case of *Bolitho v. City & Hackney Health Authority* factors which have to be assessed in medical negligence are -

Date: _____

Whether medical practitioner acted in accordance with a practice accepted by competent medical professional.

If no, whether medical practitioner deviates from accepted practice, can be justified as reasonable.

Liability of medical practitioner is 3 folded under →

COPRA

Tort

Indian Penal Code (IPC)