

Law of Torts

- The word 'tort' is a French equivalent of English word 'wrong'.
- The word tort is derived from Latin language from the word *torium*. Thus simply stated 'tort' means wrong.
- Every civil wrong is not a tort but every tort is a civil wrong.
- Tort is a kind of civil wrong as opposed to criminal wrong. Wrongs, in law, are either public or private.
- Section 2(m) of the Limitation Act, 1963 states, "Tort means a civil wrong which is not exclusively a breach of contract or breach of trust."
- Salmond, defines it as "a civil wrong for which the remedy is a common law action for unliquidated damages and which is not exclusively the breach of a contract or the breach of the trust, or other merely equitable obligation."
- Fraser, describe it as an infringement of a right in stem of a private individual giving a

right of compensation at the suit of the injured party.

- Winfield says:- Tortious liability arises from the breach of duty. Primarily fixed by law, this duty is towards persons generally and its breach is redressable by an action for unliquidated damages.

General conditions of liability for a Tort.

1. Wrongful Act or Omission of the defendant

Every person whose legal rights e.g. right of reputation, right of bodily safety, and freedom and right to property are violated without legal excuse has a right of action against the person who violated them, whose loss results from such violation or not.

2. Legal damages

- two maxims namely:-
 - (i) Damnum sine Injuria (damages without injury)
 - (ii) Injuria sine Damnum (injury without damages)

Damnum sine iniuria. (Damages without injury).

- Damnum means harm, loss or damage. In respect of money, comfort, health etc. iniuria means infringement of a right.

- This maxim means, a man may have suffered damage and yet have no action in tort, because the damage is not to an interest protected by the law of torts.

Common examples arise, where the damages result from an act done in the exercise of legal rights.

Case Laws.

1) Glasgow Corporation vs. Taylor

- In Glasgow Corporation vs. Taylor, Corporation failed to put proper fencing to keep the children away from poisonous tree. And a child plucked and ate the fruit of same tree and died. The court held Corporation is liable for such omission.

2) Gloucester Grammar School case.

- On this case, defendant after leaving plaintiff's school where he worked as a teacher, started his own school. Being a teacher of standing,

TOPT

Wrongful Act

Damages without injury

many students of plaintiff's school left and installed themselves into defendant school. Plaintiff filed a suit for monetary damages incurred by his own.

Imp Court held that defendant is not liable because competition is no ground of action even though monetary loss is caused.

Injuria Sine Damnum. (Injuria without damages).

It means injury without damages, i.e., where there is no damage resulted yet it is an injury or wrong in tort, i.e., where there is infringement of a legal right not resulting in harm but plaintiff can still sue in tort.

Case law.

Ashby vs. White.

- In this case, the plaintiff was prevented from voting at an election by the defendant. Plaintiff sued defendant for compensation even if no monetary loss was incurred by him.
- It was held that defendant was liable to pay compensation because he has violated legal right of plaintiff to cast his vote.
- Defendant had committed a tort.

Torts or wrongs to personal safety and freedom.

Types of torts.

a) Battery :- Any direct application of force to the person of another individual without his consent or lawful justification is a wrong of battery.

[touching a person with not more than reasonable force is not battery]

Battery means:-
a) using of force without consent of plaintiff and
b) without any lawful justification.

Example.

A incites a bull to spring upon Z, without Z's consent. here if A intends to cause injury, fear or annoyance to Z, he uses criminal force to Z and has thereby committed the act of battery.

b) Assault :- when the defendant by his act creates an apprehension in the mind of the plaintiff that he is going to commit battery against him is an assault.

c) Bodily Harm :- A willful Act (or statement) of defendant, calculated to cause physical harm to the plaintiff and in fact causing physical harm to him, is a tort.

d) False imprisonment :- Confining someone within four walls is a false imprisonment. False imprisonment consists in the imposition of a total restraint for some period, however ⁱⁿ short, upon the liberty of another without sufficient lawful justification.

e) Nervous shock :- when a person may get physical injury not by an impact e.g. by stick, bullet or sword but merely by the nervous shock through what he has seen or heard.

Example

A negligently drove the carriage onto the railway track while the train was on the verge of crossing the place and by this accident there was a lady received a nervous which leads to bad impact on her health.

A would be liable for damages for the consequences of the nervous shock.

f) Defamation:- Defamation is a tort as well as crime. Defamation is an attack on the reputation of a person. It means that something is said or done by a person which affects the reputation of another.

Defamation may be classified into two heads:-

(i) Libel \Rightarrow Libel is a representation made in some Permanent form e.g. written words, pictures, caricatures, cinema, films, effigy, statue and recorded words. In a cinema film both the photographic part of it and the speech which is synchronized with it amount to tort.

(ii) Slander \Rightarrow Slander is the publication of a defamatory statement in a transient form, statement of temporary nature such as spoken words, or gestures.

g) Malicious Prosecution ^{(1975) case 5211} (Dec 24/1981) ^(Karnataka)

In tort, malicious prosecution refers to a civil claim where a person sues another for initiating a legal proceeding against them without reasonable grounds or probable cause, and with malicious intent, causing harm to the plaintiff, typically when the original proceeding was terminated in favour of the plaintiff.

following are the essential elements of tort.

- (i) There have been a prosecution of the plaintiff by the defendant.
- (ii) There have been want of reasonable and probable cause for that prosecution.
- (iii) The defendant must have acted maliciously.
- (iv) The plaintiff suffered damages.
- (v) The prosecution must have terminated in favour of the plaintiff.

Example:

- A had a grudge against B. A falsely implicated B for theft.
- The prosecution was launched against the Plaintiff on the basis of a false report made by the B.
- The court subsequently acquitted A after finding that the allegation was false.
- After the acquittal, A filed a suit for recovery of damages for his malicious prosecution.
- In this case an action for malicious prosecution may be initiated.

Damage and Damages.

Damage means the legal loss or violation of legal right, i.e., infringement of legal right.

Damages means monetary, pecuniary compensation or compensation in terms of money. Further, the damages may be liquidated and unliquidated damages.

Liquidated and unliquidated damages

Liquidated damages means the pre-determined or fixed compensation for some loss.

EX:- In case of breach of contract the damages are known as i.e. pre-determined by parties.

Unliquidated damages refers to damages which are not pre-determined or decided by the parties, they are not known beforehand.

Mens Rea

Latin Maxim:- Actus non facit reum nisi mens sit rea

means, The act itself create no guilt in the absence of a guilty mind.

Liability without fault.

These are cases wherein mental state of the doer stands irrelevant and liability still falls on the shoulder of doer even if that act done without any wrongful intentions. So there can be liability under tort even if mens rea is not present.

example.

- (i) defendant is liable even if he did not intend to defame but he acted in a way that turned out to be defamatory.
- (ii) As per section 140 of motor vehicles Act 1988 where death or permanent disablement of any person has resulted from an accident arising out of use of motor vehicle or motor vehicles the owner of vehicle shall be jointly or severally liable to pay compensation in respect of such death or disablement, for death Rs. 50000 and for permanent disablement Rs. 25000.

Case Laws

- ① Dinbai R. Wadia and Ors vs. Farookh Mobeedjng and Anr the Bombay highcourt held that principal can be held liable for the fraud or illegal or malafied Act. committed by the agent, provided the agent was acting within the scope of their authority.
- ② In Laxminarayan Ram Gopal and sons vs. Govt of Hyderabad, the Supreme court distinguished between servant and independent ~~direct~~ contractor, servants are under direct control and supervision of employer and independent contractor is not subject to such control they use their own means to get specified result.
- ③ In Menesal Clinic Corporation vs. Christmas an employer fail to provide safety belt for safe system of work resulting in an employee suffering injuries. the employer shall be liable for consequences of such omission.

Strict or Absolute Liability.

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

In other words, the defendant is held liable without fault.

Rule in Rylands vs. Fletcher.

If you bring something into your land and it escapes and cause damage to other, then you are liable for it irrespective of the fact whether you have taken care or not.

Judge name:- Blackburn

Conclusion = Mill owner will be liable.

NON NATURAL USE OF LAND :- The defendant is liable if he make a non-natural use of land, if either of these conditions is absent, the rule of Strict liability will not apply.

Case

In Ryland vs. Fletcher the defendant employed independent contractor to construct a reservoir on their land. The contractor found disused mines when digging but failed to seal them properly. They filled the reservoir with water as a result water

flooded through the mine shafts into the plaintiff's mines on the adjoining property. The plaintiff secured a writ at Liverpool Assizes. The court held that defendant is liable for it irrespective of the fact whether you have taken care or not.

Exceptions to the rule of strict liability.

(i) Damages due to Natural use of the land.
= In case of Ryland vs Fletcher, making reservoir is a non natural use of land therefore defendant is liable. Natural use of land includes necessary wiring, supplying electric light, lighting of fire, installation in building etc.

(ii) ~~is~~ Consent of plaintiff
= The express or implied consent of the claimant to the presence of source of the danger, provided there has been no negligence by the defendant, will be a defense.

(iii) Act of third party.
= The defendant will not be liable if a stranger was responsible for the escape.

(iv) Statutory Authority.
= A statute may require a person or body to carry out a particular activity. Liability under Ryland vs Fletcher may be excluded upon the interpretation of the statute.

(v) Act of God

= An act of God is an event which no human foresight can provide against, and of which human ~~Prudence~~ Prudence is not bound to recognise the possibility.

(vi) Escape due to plaintiff's own default

= Damage by escape due to plaintiff's own default was considered to be good defence in Reyland vs. Trencher itself.

Also, if the plaintiff suffers damages by his own intrusion into the defendant's property, he cannot complain for the damage so caused.

Absolute Liability
Disability

Applicability of the rule in Reyland vs. Trencher.

Not applied in cases of enterprises engaged in a hazardous or inherently dangerous industry.

In MC Mehta vs. Union of India, oleum gas leaked from Shri Ram Food and Fertilisers Industries in December ~~1987~~ 1985 causing harm to people living nearby.

The Supreme Court held that industries engaged in hazardous activities must follow highest safety standards. To prevent the harm, industries are fully accountable for compensating any damage caused by their risky activities.

vicarious liability. (करे कीस और करे कीस और)

Normally, the tortfeasor is liable for his tort. But on 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 the tort of his agent and partners for the tort of a partner.

This is known as vicarious liability in tort.

Principle of vicarious liability.

person may be liable in respect of wrongful acts or omissions of others in ways as given under:-

- (i) By ratification - Ratified through law.
- (ii) By relation - Based on relationship between person or wrong doer.
- (iii) By abetment - when person assist or encourage other to commit a wrongful act.

Types of vicarious liability.

a) Principal and Agent (specific Authority).

→ Maxim:- Qui facit per alium fait per se means (one who act through other is acting himself)
case name:- Lloyd vs. Grace Smith & Co

When an agent commits a tort in the ordinary course of his duties, as an agent, the principal is liable for the same.

In Lloyd vs. Grace Smith & Co. the managing clerk of a firm of solicitors, while acting in the ordinary course of business committed fraud, against a lady client by fraudulently, inducing her to sign documents transferring her property to him.

b) Partners

= For the tort committed by a partner in the ordinary course of the business of the firm, all the other partners are liable thereto to the same extent as a guilty partner.

The liability of a partner is joint and several.
In case of Hamlyn vs. Houston & Co. One of the two partners bribed the plaintiff's clerk and induced him to divulge secrets relating to his employer's business. It was held that partners were liable for the tort committed by only one of them.

Maxim:- one who act through other is acting himself.

c) Master and servant

= In case of master servant relationship, master is liable for act of servant if following requisites are met:-

- (i) There must be an existing relationship b/w master and servant
- (ii) Servant has committed tortious act.
- (iii) The tortious act must be done within the course of Action: employment.

maxim = Qui fact per alium fact per se.
maxim = respondeat Superior = let the principal be liable.

case law:- contuagay insurance company limited vs Northern Island Road Transport Board.
In this case, the driver of a petrol lorry, while transferring petrol from the lorry to an underground tank at a garage, struck a match in order to light a cigarette and then threw it, still alight on the floor.
An explosion and a fire ensued. The House of Lords held his employer liable for the damage caused during an employment period.

Vicarious liability of the state.

a) The position in England

As per Crown Proceedings Act 1947, crown is liable for the torts committed by its servants just like a private individual.

Thus in England, the crown is now vicariously liable for the torts of its servants.

b) Sovereign function includes actions like defense, raising arm forces, managing foreign affairs and maintaining peace. These functions are political in nature and are typically outside the jurisdiction of ordinary courts.

Non Sovereign functions includes administrative and welfare related task like regulating business, education and public welfare.

State is liable for negligence of their employees in Non Sovereign functions (N. Nagendra Rao vs. State of AP).

Case laws.

In Bolitho vs. City and Hackney Health Authority it was decided that there are two factors for assessing Medical negligence.

① whether medical practitioner acted in accordance with practise accepted by competent medical professional.

② If no if the deviation from the norm can be justified as being reasonable.

Medical practitioner can face three types of liabilities:-

- for damages under consumer protection Act 1986
- can be sued for tort (negligence)
- may face criminal charges.

* Tort involves harm caused by breach of duty or neglect

Remedies in Torts.

Judicial Remedies

Three types of judicial Remedies are available to the plaintiff in an action for tort namely:-

- a) Damages
- b) injunction
- c) Specific Restitution of Property.

a) Damages:- When a plaintiff's right is violated by the defendant the court will grant the plaintiff damages, which are compensation for such infringement of the right for the loss they have suffered.

b) Injunction:- Injunction is an order of the court restraining commission, omission or amendment to act. It orders a person to do an act, to not to do an act, or correct his wrongful act.

c) Specific Restitution of Property:- This is the third kind of judicial remedy in which a court may direct for in case of any breach of rights. Restitution is the process of returning property to its rightful owner.

Extra Judicial Remedies.

(1) Self defence:- It is lawful for any person ^{to use} reasonable forces to protect himself, or any other

Law Relating to Crime and its Protection Person against any unlawful use of force.

(ii) Prevention of Trespass. ~~Apply~~ ~~Apply~~ *

=) An occupier of land or any person with his authority may be reasonable force to prevent trespasses entering or to eject them but the force should be reasonable for the purpose.

(iii) Re-entry on land

=) A person wrongfully disposed of land may retake possession of land if he can do so in a peaceful and reasonable manner.

(iv) ~~Use~~ Re-capture of Goods.

=) It is neither a crime nor a tort for a person entitled to possession of a chattel to take it either peacefully or by the use of a reasonable force from one who has wrongfully taken it or wrongfully detained it.

(v) Abatement of Nuisance

(vi) Distress damages feasant (Use)