

### KEY CONCEPTS

- Liquidated Damages ■ Unliquidated Damages ■ Strict Liability ■ Vicarious Liability ■ Tortfeasor ■ Battery
- Assault ■ Libel ■ Slander ■ Restitution ■ Abatement ■ Collateral ■ Negligence

### Learning Objectives

#### To understand:

- The applicability and operation of Law of Torts
- Essential elements which constitute and fixes liability under Law of Torts
- Kinds of Liabilities
- The role of mens rea in fixing liability under Law of Torts
- Liability of the State under Law of Torts
- Torts against safety and freedom of individuals
- Remedies available against the torts

### Lesson Outline

- Introduction to Law of Torts
- Kinds of Tortious Liability and General Condition of Liability for a Tort
- Torts or wrongs to personal safety and freedom
- Remedies in Torts
- Lesson Round-Up
- Glossary
- Test Yourself
- List of Further Readings & References

*The purpose of law is not to prevent a future offense, but to punish the one actually committed.*

*Ayn Rand*

The new criminal laws i.e. Bharatiya Nyaya Sanhita 2023, Bharatiya Nagarik Suraksha Sanhita 2023 and Bharatiya Sakshya Adhiniyam 2023 have repealed Indian Penal Code 1860, Criminal Procedure Code 1973 and Indian Evidence Act 1872 (old criminal laws) respectively.

Therefore, by virtue of Section 8 of General Clauses Act 1897, the references to the old criminal laws, unless a different intention appears, be construed as references to the provision of new criminal laws.

## REGULATORY FRAMEWORK

- Judicial Precedents
- Section 2(m) of the Limitation Act, 1963

## INTRODUCTION TO LAW OF TORTS

“Law is the great civilizing machinery. It liberates the desire to build and subdues the desire to destroy. And if war can tear us apart, Law can unite us – out of fear, or love or reason, or all three. Law is the greatest human invention. All the rest, give man mastery over his world. Law gives him mastery over himself”. *Lyndon B. Johnson, TIME September 24, 1965 page 48.*

Justice has been regarded as one of the greatest concerns of mankind on this planet. Edmund Burke said, that justice is itself the “great standing policy of civil society”. Scholars of political Science and legal theory tell us, that the administration of justice is one of the primary objects for which society was formed. Our Constitution, in its preamble, speaks of justice as one of the great values which its makers have cherished.

The word ‘tort’ is a French equivalent of English word ‘wrong’. The word tort is derived from Latin language from the word *Tortum*. Thus, simply stated ‘tort’ means wrong. But every wrong or wrongful act is not a tort. Tort is really a kind of civil wrong as opposed to criminal wrong. Wrongs, in law, are either public or private.

Broadly speaking, public wrongs are the violations of ‘public law and hence amount to be offences against the State, while private wrongs are the breaches of private law, i.e., wrongs against individuals. Public wrongs or crimes are those wrongs which are made punishable under the penal law which belong to the public law group.

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 a trust or other merely equitable obligation.”

*Fraser* describes it as “an infringement of a right *in rem* 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”.

Two important elements can be derived from all these definitions, namely:

- (i) that a tort is a species of civil injury of wrong as opposed to a criminal wrong, and
- (ii) that every civil wrong is not a tort.

Accordingly, it is now possible to distinguish tort from a crime and from a contract, a trust and a quasi-contract. The distinction between civil and criminal wrongs depends on the nature of the appropriate remedy provided by law.

## Elements of Tort

1. A civil wrong.
2. This civil wrong is not a breach of contract or breach of trust.
3. This wrong is redressible by an action for unliquidated damages.

**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 Pre-determined or fixed compensation for some loss. Example – in case of breach of contract the damages are known 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.

**Question:** Which type of wrong the torts is?

- Option:** (A) Civil Wrong
- (B) Criminal Wrong
- (C) Both Civil & Criminal Wrong
- (D) Constitutional Wrong

**Answer:** (A)

**CASE LAW**

In the case of *Jay Laxmi Salt Works (P) Ltd vs State Of Gujarat, 1994 SCC (4) 1, JT 1994 (3) 492 judgement dated 4 May, 1994* the Supreme Court of India observed that " Truly speaking entire law of torts is founded and structured on morality that no one has a right to injure or harm others intentionally or even innocently. Therefore, it would be primitive to class strictly or close finality the ever-expanding and growing horizon of tortious liability. Even for social development, orderly growth of the society and cultural refineness, the liberal approach to tortious liability by courts is more conducive" .....

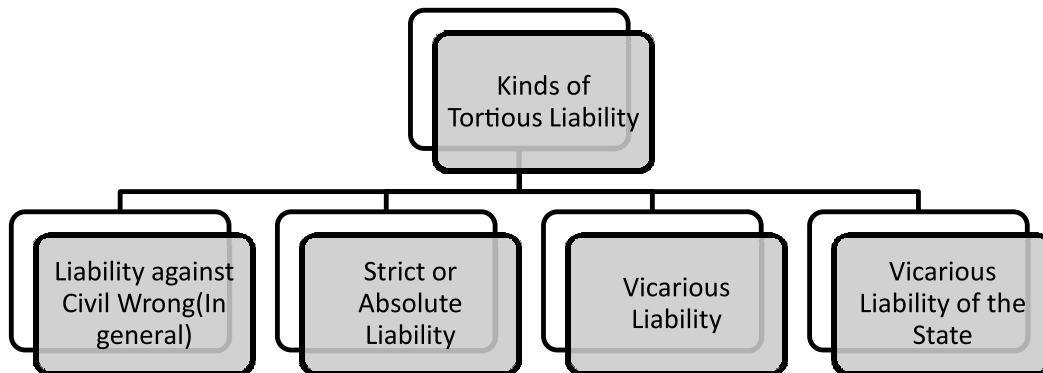
**Example**

An action against the railway company for loss of goods in carriage is due to presence of contract but any action by a passengers for any injuries occurred due to negligence of the railway employees is tort.

**Example**

A patient while getting operated his injuries got seriously injured due to the negligence of surgeon. The surgeon shall be liable for breach of contract as well as in law of torts because his negligence caused the harm to other person without any lawful justification.

**KINDS OF TORTIOUS LIABILITY & GENERAL CONDITIONS**

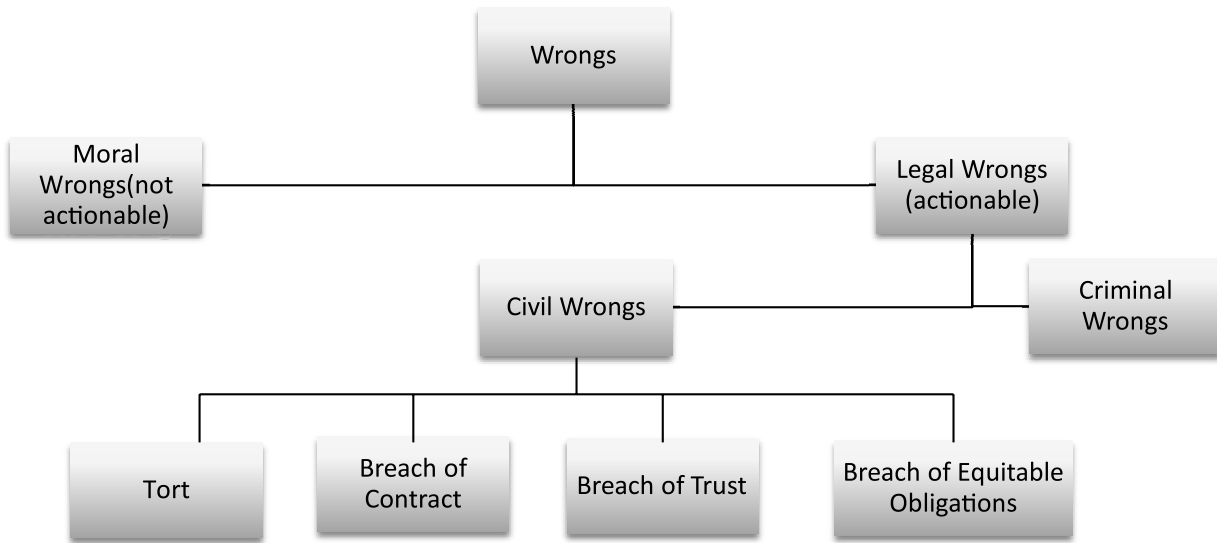


**(A) Liability against Civil Wrong (In general)**

**Civil Wrong**

Civil wrong refers to those, which satisfies the condition of liabilities and are remedied by law, when someone loses money due to the negligence of another, this is known as a civil wrong. Damage to property or reputation, failure to fulfil contractual duties, physical or mental harm, etc. are all examples of wrongful losses. The victim of a civil wrong has the right to sue the offending party in order to recover damages for the harm suffered.

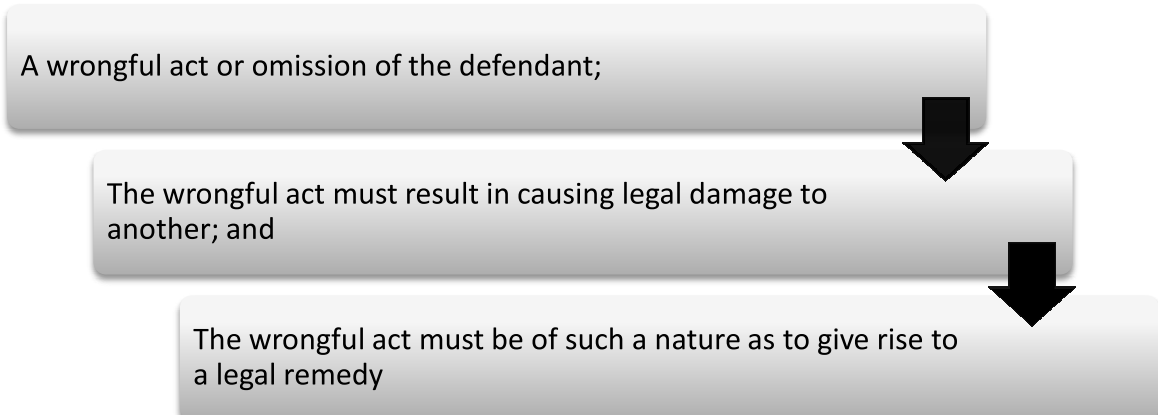
It includes Tort, Breach of Contract, Breach of Trust and Breach of Equitable Obligation.



**General Conditions of Liability for a Tort**

As stated earlier, there is no fixed catalogue of circumstances, which along and for all time mark the limit of what are torts. Certain situations have been held to be torts and will continue to be so in the absence of statutory repeal, and others have been held not to be torts. However, certain general conditions for tortious liability can be laid down.

In general, a tort consists of some act or omission done by the defendant (tortfeasor) whereby he has without just cause or excuse caused some harm to plaintiff. To constitute a tort, there must be:



- (i) **Wrongful act:** The act complained of, should under the circumstances, be legally wrongful as regards the party complaining. In other words, it should prejudicially affect any of the above mentioned interests, and protected by law. Thus, 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, whether loss results from such violation or not.

#### CASE LAW

*In a case, Glasgow Corporation v. Taylor, 1922*, a corporation failed to put proper fencing to keep the children away from a poisonous tree and a child plucked and ate the fruit of the same tree and died. Court held corporation liable for such omission.

*In a case, General Cleaning Corporation v. Christmas, 1953*, an employer failed to provide safety belt for safe system of work resulting in an employee suffering injuries. The employer shall be liable for the consequences of such omission.

- (ii) **Legal damages:** It is not every damage that is a damage in the eye of the law. It must be a damage which the law recognizes as such. In other words, there should be legal injury or invasion of the legal right. In the absence of an infringement of a legal right, an action does not lie. Also, where there is infringement of a legal right, an action lies even though no damage may have been caused. As was stated in *Ashby v. White, (1703) 2 Ld. Raym. 938* legal damage is neither identical with actual damage nor is it necessarily pecuniary.

Two maxims, namely :

- (a) *Damnum sine injuria* (Damage without injury), and  
 (b) *Injuria sine damnum* (injury without damage),

explain this proposition.

#### **Damnum Sine Injuria**

*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. The maxim means that in a given case, 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. Therefore, causing damage, however substantial to another person is not actionable in law unless there is also a violation of a legal right of the plaintiff. Common examples are, where the damage results from an act done in the exercise of legal rights.

#### CASE LAW

##### **Gloucester Grammar School Case, 1410**

In this case, defendant after leaving Plaintiff's School where he worked as a teacher, started his own school. Being a teacher of standing, many students of Plaintiff's school left and enrolled themselves into defendant's school. Plaintiff filed a suit for monetary damages incurred by his own. Court held that defendant is not liable because competition is no ground of action even though monetary loss is caused.

##### **Chesmore V Richards, 1859**

In this case, water supply to Plaintiff's mill was disrupted due to defendant's digging of his well. This resulted in cutting of water supply to plaintiff's mill due to which it was shut down. Court held defendant not liable because although monetary losses were incurred there was no violation of legal right.

***Injuria Sine Damnum***

It means injury without damage, 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.

Some rights or interests are so important that their violation is an actionable tort without proof of damage. Thus when there is an invasion of an “absolute” private right of an individual, there is an *injuria* and the plaintiff’s action will succeed even if there is no *Damnum* or damages. An absolute right is one, the violation of which is actionable *per se*, i.e., without the proof of any damage. *Injuria sine Damnum* covers such cases and action lies when the right is violated even though no damage has occurred. Thus the act of trespassing upon another’s land is actionable even though it has not caused the plaintiff even the slightest harm.

**Case Law*****Ashby V White, 1703***

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.

- (iii) **Legal remedy:** The third condition of liability for a tort is legal remedy. This means that to constitute a tort, the wrongful act must come under the law. The main remedy for a tort is an action for unliquidated damages, although some other remedies, e.g., injunction, may be obtained in addition to damages or specific restitution may be claimed in an action for the detention of a chattel. Self-help is a remedy of which the injured party can avail himself without going to a law court. It does not apply to all torts and perhaps the best example of these to which it does apply is trespass to land.

**Example :**

if “A” finds a drunken stranger in his room who has no business to be there in it, and is thus a trespass, he (A) is entitled to get rid of him, if possible without force but if that be not possible with such force as the circumstances of the case may warrant.

**Mens Rea**

*How far a guilty mind of persons is required for liability for tort?*

*Mens Rea* or guilty mind creates liability on the principle that mere act of the person is not enough to create his liability. 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 a guilty mind. It does not mean that for the law or Torts, the act must be done with an evil motive, but simply means that mind must concur in the Act, the act must be done either with wrongful intention or negligence. It is not so easy to make such generalization about liability in tort. *Mens rea* can be interpreted into two ways –

- a) **Fault/ state of mind when relevant:** Many branches of law of torts like assault, battery, false imprisonment, deceit, malicious prosecution and conspiracy, the state of mind of other person is taken into account to ascertain his liability. Defendant’s conduct may be innocent and the act done might be due to an accident. That all should be taken into account.

- b) Liability without fault:** There are cases wherein the mental state of the doer stands irrelevant and the liability still falls on the shoulder of the doer even if that act was done without any wrongful intentions or malice. So, liability under law of torts may also be fixed even if *mens rea* is not present.

**Example**

1. In case of defamation, the defendant is liable even when he did not intend to defame but acted in a way that turned out to be defamatory.
2. The provisions regarding no fault liability are covered in Section 140 of Motor Vehicle Act, 1988, it says.

Where death or permanent disablement of any person has resulted from an accident arising out of the use of a motor vehicle or motor vehicles, the owner of the vehicle shall, be jointly and severally, liable to pay compensation in respect of such death or disablement. The amount of compensation in respect of the death is fifty thousand rupees and in case of permanent disablement twenty-five thousand rupees.

**(B) 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's part. In other words, the defendant is held liable without fault. These cases fall under the following categories:

- (i) *Liability for Inevitable Accident* – Such liability arises in cases where damage is done by the escape of dangerous substances brought or kept by anyone upon his land. Such cases are where a man is made by law an insurer of other against the result of his activities.
- (ii) *Liability for Inevitable Mistake* – Such cases are where a person interferes with the property or reputation of another.
- (iii) *Vicarious Liability for Wrongs committed by others* – Responsibility in such cases is imputed by law on grounds of social policy or expediency. These case involve liability of master for the acts of his servant.

**Rule in Rylands v. Fletcher**

The rule in *Rylands v. Fletcher* (1868) L.R. 3 H.L. 330 is that a man acts at his peril and is the insurer of the safety of his neighbour against accidental harm. Such duty is absolute because it is independent of negligence on the part of the defendant or his servants. It was held in that case that: "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. If it does not escape and cause damage he is responsible, however careful he may have been, and whatever precautions he may have taken to prevent damage."

The facts of this case were as follows: B, a mill owner employed independent contractors, who were apparently competent to construct a reservoir on his land to provide water for his mill. There were old disused mining shafts under the site of the reservoir which the contractors failed to observe because they were filled with earth. The contractors therefore, did not block them. When the water was filled in the reservoir, it bursts through the shafts and flooded the plaintiff's coal mines on the adjoining land. It was found as a fact that B did not know of the shafts and had not been negligent, though the independent contractors, had been, B was held liable. Blackburn, J., observed; "We think that the true rule of law is that the person, who for his own purposes 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 is, *prima facie* answerable for all the damage which is the natural consequence of its escape."

Later in the case of *Read v. Lyons* [(1946) 2 All. E.R. 471 (H.L.)], it has been explained that two conditions are necessary in order to apply the rule in *Ryland v. Fletcher*, these are:

- (i) **Escape from the Control:** Escape from a place of which the defendant has occupation or over which he has a control to a place which is outside his occupation or control or something likely to do mischief if it escapes; and
- (ii) **Non-natural use of Land:** The defendant is liable if he makes a non-natural use of land. If either of these conditions is absent, the rule of strict liability will not apply.

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

### Exceptions to the Rule of Strict Liability



The following exceptions to the rule of strict liability have been introduced in course of time, some of them being inherent in the judgment itself in *Ryland v. Fletcher*:

#### (i) **Damage due to Natural Use of the Land**

In *Ryland v. Fletcher* water collected in the reservoir in such large quantity, was held to be non-natural use of land. Keeping water for ordinary domestic purpose is 'natural use'. Things not essentially dangerous which is not unusual for a person to have on his own land, such as water pipe installations in buildings, the working of mines and minerals on land, the lighting of fire in a fire-place of a house, and necessary wiring for supplying electric light, fall under the category of "natural use" of land.

#### **Example**

Establishing a reservoir for generating power on a residential land amounts to the non-natural use of land. Building a swimming pool, or water storage tanks for domestic use is a natural use of land.

#### (ii) **Consent of the plaintiff**

Where the plaintiff has consented to the accumulation of the dangerous thing on the defendant's land, the liability under the rule in *Ryland v. Fletcher* does not arise. Such a consent is implied where the source of danger is for the 'common benefit' of both the plaintiff and the defendant.

**Example**

A and B living in the same housing complex gives permission to install water pipes. One of the water pipes leaks thereby causing leakage problem. Neither A nor B will can seek for damages under Law of Torts.

**(iii) Act of Third Party**

If the harm has been caused due to the act of a stranger, who is neither defendant's servant nor agent nor the defendant has any control over him, the defendant will not be liable. Thus, in *Box v. Jubh (1879) 4 Ex. D. 76*, the overflow from the defendant's reservoir was caused by the blocking of a drain by stranger, the defendant was held not liable. But if the act of the stranger, is or can be foreseen by the defendant and the damage can be prevented, the defendant must, by due care prevent the damage. Failure on his part to avoid such damage will make him liable.

**Example**

A has a bull tied in his garden which is properly fenced. B, a passerby opens the fence and the bull is on the loose. Bull ends up hitting C, A will not be liable under law of tort since he had taken due care for the safe keep of the bull.

**(iv) Statutory Authority**

Sometimes, public bodies storing water, gas, electricity and the like are by statute, exempted from liability so long as they have taken reasonable care.

Thus, in *Green v. Chelzea Water Works Co. (1894) 70 L.T. 547* the defendant company had a statutory duty to maintain continuous supply of water. A main belonging to the company burst without any fault on its part as a consequence of which plaintiff's premises were flooded with water. It was held that the company was not liable as the company was engaged in performing a statutory duty.

**Example**

Sudden bursting of water lines after taking due care causes flooding in nearby areas. It will not impose a liability on the water authorities if they have taken due care to prevent such situations.

**(v) Act of God**

If an escape is caused, through natural causes and without human intervention circumstances which no human foresight can provide against and of which human prudence is not bound to recognize the possibility, there is then said to exist the defence of Act of God.

**Example**

The artificial lake of plaintiff overflowed due to excessive rainfall and caused damage to the nearby crops. Defendant cannot be held liable as heavy rainfall is an act of god.

**(vi) Escape due to plaintiff's own Default**

Damage by escape due to the plaintiff's own default was considered to be good defence in *Rylands v. Fletcher* itself. Also, if the plaintiff suffers damage by his own intrusion into the defendant's property, he cannot complain for the damage so caused.

**Example:** A dangerous chemical stored in the containers was kept in basement of a building. A, a thief went inside the building for committing theft. He arranged the containers one on the other for the purpose of reaching at one place. He fell and chemical in the containers spilled on him.

He cannot claim damages as this escape was due to his own default.

### Applicability of the rule in *Rylands v. Fletcher* in cases of enterprises engaged in a hazardous or inherently dangerous industry

The Supreme Court has discussed the applicability of the rule of *Rylands v. Fletcher* in the case of *M.C. Mehta v. Union of India and Others* (1987)<sup>1</sup>. Comp. L.J. p. 99 S.C., while determining the principles on which the liability of an enterprise engaged in a hazardous or inherently dangerous industry depended if an accident occurred in such industry.

“We have to evolve new principle and lay down new norms which would adequately deal with the new problems which arise in a highly industrialized economy. We cannot allow our judicial thinking to be constricted by reference to the law as it prevails in England or for the matter of that, in any other foreign country”.

On the question of the nature of liability for a hazardous enterprise the court while noting that the above rule as developed in England recognizes certain limitations and responsibilities recorded it’s final view as follows:

“We are of the view that an enterprise which is engaged in a hazardous or inherently dangerous industry which poses a potential threat to the health and safety of the persons working in the 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 inherently dangerous nature of the activity which it has undertaken. The enterprise must be held to be under an obligation to provide that the hazardous or inherently dangerous activity in which it is engaged, must be conducted with the highest standards of safety; and if any harm results on account of such activity, the enterprise must be absolutely liable to compensate for such harm; and it should be no answer to the enterprise to say that it had taken all reasonable care and that the harm occurred without negligence on its part.”

Thus, while imposing absolute liability for manufacture of hazardous substances, the Supreme Court intended that the requirement of non-natural use or the aspect of escape of a dangerous substance, commonly regarded as essential for liability under *Rylands v. Fletcher*, need not be proved in India.

#### CASE LAW

##### ***M. C Mehta & Ors. v. Union of India, AIR 1987 SC 1086***

Commonly known as Oleum Gas Leak, this case law changed the face of applicability of the rule of strict liability in India. There was an escape of Oleum gas from Units of Shriram Food & Fertilizers Industries on 4th and 6th December, 1985 and applications were filed for award of compensation to the persons who had suffered harm on account of escape of oleum gas. Court held that an industry is required to make sure that no one is harmed when engaging in risky operations that could endanger the health and safety of adjacent workers and residents. As part of the social cost of conducting such risky activities on its property, this industry is required to carry out its operations in accordance with the highest standards of safety and must be fully accountable for compensating for any harm caused.

#### (C) Vicarious Liability

Normally, 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 the tort of his agent and partners for the tort of a partner. This is known as vicarious liability in tort.

##### Principle of Liability

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

1. By ratification – having ratified through particular law, act or statute

2. By relation – through standing of one person to another by the relation they share
3. By abetment – having abetted any tortious act committed by others.

### Essential elements of Vicarious Liability

In case of a master servant relationship, master is liable for the act of servant if following requirements are met with:

- a) There must be an existing relationship between master and servant
- b) Servant has committed some tortious act
- c) This tortious act must be done during the course of employment

### Types of vicarious liability

The common examples of such a liability are:

#### (a) **Principal and Agent [Specific authority]**

*Qui facit per alium facit per se* – he who acts through another is acting himself, so that the act of the agent is the act of the principal. 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 v. Grace, Smith & Co.* (1912) A.C. 716, 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. He had done so without the knowledge of his principal who was liable because the fraud was committed in the course of employment.

#### (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 therefore to the same extent as the guilty partner. The liability of the partners is joint and several. In *Hamlyn v. Houston & Co.* (1903) 1 K.B. 81, 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 both the partners were liable for the tort committed by only one of them.

#### (c) **Master and Servant [Authority by relation]**

A master is liable for the tort committed by his servant while acting in the course of his employment. The servant, of course, is also liable; their liability is joint and several.

In such cases

- (1) liability of a person is independent of his own wrongful intention or negligence
- (2) liability is joint as well several
- (3) In case of vicarious liability, the liability arises because of the relationship between the principal and the wrongdoer but in case of absolute or strict liability the liability arises out of the wrong itself.

A master is liable not only for the acts which have been committed by the servant, but also for acts done by him which are not specifically authorized, in the course of his employment. The basis of the rule has been variously stated: on the maxim **Respondent Superior** (Let the principal be liable) or on the maxim **Qui facit per alium facit per se** (he who does an act through another is deemed to do it himself).

The master is liable even though the servant acted against the express instructions, for the benefit of his master, so long as the servant acted in the course of employment.

**(d) Employer and Independent Contractor**

It is to be remembered that an employer is vicariously liable for the torts of his servants committed in the course of their employment, but he is not liable for the torts of those who are his independent contractors.

A servant is a person who is employed by another (the employer) to perform services in connection with the affairs of the employer, and over whom the employer has control in the performance of these services. An *independent contractor* is one who works for another but who is not controlled by that other in his conduct in the performance of that work. These definitions show that a person is a servant where the employer “retains the control of the actual performance” of the work.

**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 if he himself is deemed to have committed a tort. This may happen in one of the following three ways:

- (i) When employer authorizes him to commit a tort.
- (ii) In torts of strict liability
- (iii) Negligence of independent contractor

Employers of independent contractors are liable for the “collateral negligence” of their contractors in the course of his employment. Where A employed B to fit casement windows into certain premises. B’s servant negligently put a tool on the sill of the window on which he was working at the time. The wind blew the casement open and the tool was knocked off the sill on to a passer by. The employer was held to be liable, because the harm was caused by the work on a highway and duty lies upon the employer to avoid harm.

**Where Employer is not Liable for the acts of an Independent Contractor**

An employer is not liable for the tort of an independent contractor if he has taken care in the appointment of the contractor. In *Philips v. Britania Hygienic Laundry Co. (1923)*, the owner of lorry was held not liable when a third-party’s vehicle was damaged, in consequence of the negligent repair of his lorry by a garage proprietor.

**(e) Liability for the acts of Servants/Employees**

An employer is liable whenever his servant commits a tort *in the course of his employment*. An act is deemed to be done in the course of employment if it is either:

- (i) a wrongful act authorized by the employer, or
- (ii) a wrongful and unauthorized mode of doing some act authorized by the employer.

So far as the first alternative is concerned there is no difficulty in holding the master liable for the tort of his servant. A few examples, however, are necessary to explain the working of the rule in the second. These are as follows:

In *Century Insurance Co. Ltd. v. Northern Ireland Road Transport Board (1942) A.C. 509*, 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 employers liable for the damage caused, for he did the act in the course of

carrying out his task of delivering petrol; it was an unauthorized way of doing what he was employed to do.

Similarly, in *Bayley v. Manchester, Sheffield and Lincolnshire Rly. Co.* (1873) L.R. 7 C.P. 415, erroneously thinking that the plaintiff was in the wrong train, a porter of the defendants forcibly removed him. The defendants were held liable.

### CASE LAWS

#### ***Dinbai R. Wadia and Ors. v. Farukh Mobedjna and anr. AIR 1958 Bom 218***

In this case Bombay High Court stated that a principal may be held liable for fraud or any other illegal or malafide activity committed by his agent well within his authority. Also, whether any particular act falls within the scope of his employment or not must necessarily depend upon the merits of each case.

#### ***Lakshminarayan Ram Gopal and Sons v. Govt of Hyderabad, AIR 1954 SC 364***

In this case, Supreme Court stated that “A servant acts under the direct control and supervision of his master, and is bound to conform to all reasonable orders given him in the course of his work; an independent contractor, on the other hand, is entirely independent of any control or interference, and merely undertakes to produce a specified result employing his own means to produce that result. An agent, though bound to exercise his authority in accordance with all lawful instructions which may be given to him from time to time by his principal, is not subject in its exercise to the direct control or supervision of the principal. An agent, as such is not a servant, but a servant is generally for some purposes his master’s implied agent, the extent of the agency depending upon the duties or position of the servant”

### (D) Vicarious Liability of the State

#### (a) *The Position in England*

At Common Law the Crown could not be sued in tort, either for wrongs actually authorized by it or committed by its servants, in the course of their employment. With the passing of the Crown Proceeding Act, 1947, the 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) *The Position in India*

Unlike the Crown Proceeding Act, 1947 of England, we have no statutory provision with respect to the liability of the State in India.

When a case of Government liability in tort comes before the courts, the question is whether the particular Government activity, which gave rise to the tort, was the sovereign function or non-sovereign function. If it is a sovereign function it could claim immunity from the tortious liability, otherwise not. Generally, the activities of commercial nature or those which can be carried out by the private individual are termed as non-sovereign functions.

### Role of the State in Law of Torts<sup>1</sup>

In any modern society, interactions between the State and the citizens are large in their number, frequent in their periodicity and important from the point of view of their effect on the lives and fortunes of citizens. Such interactions often raise legal problems, whose solution requires an application of various provisions and doctrines. A large number of the problems so arising fall within the area of the law of torts. This is because, where relief through a civil court is desired, the tort law figures much more frequently, than any other branch

1. A Consultation Paper on Liability of the State in Tort of National Commission to Review the Working of the Constitution.

of law. By definition, a tort is a civil wrong, (not being a breach of contract or a breach of trust or other wrong) for which the remedy is unliquidated damages. It thus encompasses all wrongs for which a legal remedy is considered appropriate. It is the vast reservoir from which jurisprudence can still draw its nourishing streams. Given this importance of tort law, and given the vast role that the State performs in modern times, one would reasonably expect that the legal principles relating to an important area of tort law, namely, liability of the State in tort, would be easily ascertainable.

The law in India with respect to the liability of the State for the tortious acts of its servants has become entangled with the nature and character of the role of the East India Company prior to 1858. It is therefore necessary to trace the course of development of the law on this subject, as contained in article 300 of the Constitution.

Article 300(1) of the Constitution provides first, that the Government of India may sue or be sued by the name of the Union of India and the Government of a State may sue or be sued by the name of the State; secondly, that the Government of India or the Government of a State may sue or be sued in relation to their respective affairs in the like cases as the Dominion of India and the corresponding Provinces or the corresponding Indian States might have sued or be sued, "if this Constitution had not been enacted", and thirdly, that the second mentioned rule shall be subject to any provisions which may be made by an Act of Parliament or of the Legislature of such State, enacted by virtue of powers conferred by the Constitution.

So far as the Supreme Court is concerned, ***State of Rajasthan vs. Vidyawati, AIR 1962 SC 933*** is the first post- Constitution judgment on Liability of the State in Tort. That was a case where the driver of a Government jeep, which was being used by the Collector of Udaipur, knocked down a person walking on the footpath by the side of a public road. The injured person died three days later, in the hospital. The legal representatives of the deceased sued the State of Rajasthan and the driver for compensation / damages for the tortious act Committed by the driver. It was found by the court, as a fact, that the driver was rash and negligent in driving the jeep and that the accident was the result of such driving on his part. The suit was decreed by the trial court, and also by the High Court. The appeal against the High Court judgment was dismissed by the Supreme Court.

The Supreme Court in ***State of Rajasthan vs. Vidyawati, AIR 1962 SC 933*** which held as under:

"The State of Rajasthan has not shown that the Rajasthan Union, its predecessor, was not liable by any rule of positive enactment or by Common Law. It is clear from what has been said above, that the Dominion of India, or any constituent Province of the Dominion, would have been liable in view of the provisions aforesaid of the Government of India Act, 1858. We have not been shown any provision of law, statutory or otherwise, which would exonerate the Rajasthan Union from vicarious liability for the acts of its servants, analogous to the Common Law of England. It was impossible, by reason of the maxim "The King can do no wrong", to sue the Crown for the tortious act of its servant. But it was realised in the United Kingdom, that that rule had become outmoded in the context of modern developments in statecraft, and Parliament intervened by enacting the Crown Proceedings Act, 1947, which came into force on January 1, 1948. Hence the very citadel of the absolute rule of immunity of the sovereign has now been blown up. Section 2 (1) of the Act provides that the "Crown shall be subject to all those liabilities, in tort, to which it would be subject, if it were a private person of full age and capacity, in respect of torts committed by its servants or agents, subject to the other provisions of this Act..."

"Viewing the case from the point of view of first principles, there should be no difficulty in holding that the State should be as much liable for tort in respect of tortious acts committed by its servant within the scope of his employment and functioning as such, as any other employer. The immunity of the Crown in the United Kingdom was based on the old feudalistic notions of justice, namely, that the King was incapable of doing a wrong, and, therefore, of authorising or instigating one, and that he could not be sued in his own courts. In India, ever since the time of the East India Company, the sovereign has been held liable to "be sued in tort or in contract, and the Common law immunity never operated in India. Now that we have, by our Constitution, established

a Republican form of Government, and one of the objectives is to establish a Socialistic State with its varied industrial and other activities, employing a large army of servants, there is no justification, in principle, or in public interest, that the State should not be held liable vicariously for tortious acts of its servant. This Court has deliberately departed from the Common Law rule that a civil servant cannot maintain a suit against the Crown. In the case of *State of Bihar vs. Abdul Majid*, (1954) SCR 786: (AIR 1954 SC 24 5), this Court has recognised the right of a Government servant to sue the Government for recovery of arrears of salary. When the rule of immunity in favour of the Crown, based on Common Law in the United Kingdom, has disappeared from the land of its birth, there is no legal warrant for holding that it has any validity in this country, particularly after the Constitution. As the cause in this case arose after the coming into effect of the Constitution, in our opinion, it would be only recognising the old established rule, going back to more than 100 years at least, if we uphold the vicarious liability of the State.

However, a different note was struck by the Supreme Court itself in ***Kasturi Lal vs. State of UP*, AIR 1965 SC 1039**. In that case, the plaintiff had been arrested by the police officers on a suspicion of possessing stolen property. On a search of his person, a large quantity of gold was found and was seized under the provisions of the Code of Criminal Procedure. Ultimately, he was released, but the gold was not returned, as the Head Constable in charge of the malkhana (wherein the said gold was stored) had absconded with the gold. The plaintiff thereupon brought a suit against the State of UP for the return of the gold (or in the alternative) for damages for the loss caused to him. It was found by the courts, that the concerned police officers had failed to take the requisite care of the gold seized from the plaintiff, as provided by the UP Police Regulations. The trial court decreed the suit, but the decree was reversed on appeal by the High Court. When the matter was taken to the Supreme Court, the court found, on an appreciation of the relevant evidence, that the police officers were negligent in dealing with the plaintiff's property and also, that they had also not complied with the provisions of the UP Police Regulations in that behalf. In spite of the said holding, the Supreme Court rejected the plaintiff's claim, on the ground that "the act of negligence was committed by the police officers while dealing with the property of Ralia Ram, which they had seized in exercise of their statutory powers. The power to arrest a person, to search him and to seize property found with him, are powers conferred on the specified officers by statute and in the last analysis, they are powers which can be properly categorized as sovereign powers; and so, there is no difficulty in holding that the act which gave rise to the present claim for damages has been committed by the employee of the respondent during the course of its employment; but the employment in question being of the category which can claim the special characteristic of sovereign power, the claim cannot be sustained."

Having thus rejected the claim, the Supreme Court made the following pertinent observations in ***Kasturi Lal vs. State of UP* (AIR 1965 SC 1039)**:

"Before we part with this appeal, however, we ought to add that it is time that the Legislatures in India seriously consider whether they should not pass legislative enactments to regulate and control their claim from immunity in cases like this, on the same lines as has been done in England by the Crown Proceedings Act, 1947.

#### **Distinction between Sovereign and Non-Sovereign Functions**

This distinction between sovereign and non-sovereign functions was considered at some length in ***N. Nagendra Rao vs. State of AP* (AIR 1994 SC 2663); (1994) 6 SCC 205**. All the earlier Indian decisions on the subject were referred to. The court enunciated the following legal principles, in its judgment:

"In the modern sense, the distinction between sovereign or non-sovereign power thus does not exist. It all depends on the nature of the power and manner of its exercise. Legislative supremacy under the Constitution arises out of constitutional provisions. The legislature is free to legislate on topics and subjects carved out for it. Similarly, the executive is free to implement and administer the law. A law made by a legislature may be bad or may be ultra vires, but, since it is an exercise of legislative power, a person affected by it may challenge its

validity but he cannot approach a court of law for negligence in making the law. Nor can the Government, in exercise of its executive action, be sued for its decision on political or policy matters. It is in (the) public interest that for acts performed by the State, either in its legislative or executive capacity, it should not be answerable in torts. That would be illogical and impracticable. It would be in conflict with even modern notions of sovereignty”.

The court in the above case suggested the following tests –

“One of the tests to determine if the legislative or executive function is sovereign in nature is, whether the State is answerable for such actions in courts of law. For instance, acts such as defence of the country, raising (the) armed forces and maintaining it, making peace or war, foreign affairs, power to acquire and retain territory, are functions which are indicative of external sovereignty and are political in nature. Therefore, they are not amenable to jurisdiction of ordinary civil court. No suit under Civil Procedure Code would lie in respect of it. The State is immune from being sued, as the jurisdiction of the courts in such matters is impliedly barred.”

The court proceeded further, as under:

“But there the immunity ends. No civilized system can permit an executive to play with the people of its county and claim that it is entitled to act in any manner, as it is sovereign. The concept of public interest has changed with structural change in the society. No legal or political system today can place the State above (the law) as it is unjust and unfair for a citizen to be deprived of his property illegally by negligent act of officers of the State without any remedy.

...Any watertight compartmentalization of the functions of the State a “sovereign and non-sovereign” or “governmental and non-governmental” is not sound. It is contrary to modern jurisprudential thinking. The need of the State to have extraordinary powers cannot be doubted. But with the conceptual change of statutory power being statutory duty for (the) sake of society and the people, the claim of a common man or ordinary citizen cannot be thrown out, merely because it was done by an officer of the State; duty of its officials and right of the citizens are required to be reconciled, so that the rule of law in a Welfare State is not shaken”.

The court emphasised the element of Welfare State in these words:

“In a Welfare State, functions of the State are not only defence of the country or administration of justice or maintaining law and order, but it extends to regulating and controlling the activities of people in almost every sphere, educational, commercial, social, economic, political and even marital. The demarcating line between sovereign and non-sovereign powers, for which no rational basis survives, has largely disappeared. Therefore, barring functions such as administration of justice, maintenance of law and order and repression of crime etc. Which are among the primary and inalienable functions of a constitutional Government, the State cannot claim any immunity.

The Court linked together the State and the officers:

“The determination of vicarious liability of the State being linked with (the) negligence of its officers, if they can be sued personally for which there is no dearth of authority and the law of misfeasance in discharge of public duty having marched ahead, there is no rationale for the proposition that even if the officer is liable, the State cannot be sued.”

In the case of **Jay Laxmi Salt Works (P) Ltd vs. State Of Gujarat, 1994 SCC (4) 1, JT 1994 (3) 492** judgement dated 4 May, 1994 the Supreme Court of India observed that injury and damage are two basic ingredients of tort. Although these may be found in contract as well but the violations which may result in tortious liability are breach of duty primarily fixed by the law while in contract they are fixed by the parties themselves. Further in tort the duty is towards persons generally. In contract it is towards specific person or persons. An action for tort is usually a claim for pecuniary compensation in respect of damages suffered as a result of the invasion of a legally protected interest. But law of torts being a developing law its frontiers are incapable of being strictly

barricaded. Liability in tort which in course of time has become known as 'strict liability', 'absolute liability', 'fault liability' have all gradually grown and with passage of time have become firmly entrenched. 'Absolute liability' or "special use bringing with it increased dangers to others"(Rylands v. Fletcher) and 'fault liability' are different forms which give rise to action in torts. The distance (sic difference) between 'strict liability' and 'fault liability' arises from presence and absence of mental element. A breach of legal duty wilfully, or deliberately or even maliciously is negligence emanating from fault liability but injury or damage resulting without any intention yet due to lack of foresight etc. is strict liability. Since duty is the primary yardstick to determine the tortious liability its ambit keeps on widening on the touchstone of fairness, practicality of the situation etc.

### CASE LAW

#### ***Anita Bhandari and Ors. v. Union of India (2005) ACC 780***

In this case, the husband of the petitioner went to bank to deposit the cash and alongside cash box of the bank was also being carried inside, the security guard in a haste ended up firing the petitioner's husband thereby killing him. The petitioner claimed that the bank was vicariously accountable for the incident since the security guard had committed the conduct while on the job, but the bank argued that it had not given the employee permission to fire. The bank was found to be responsible by the court because providing the guard with a gun amounted to giving him permission to shoot when he felt it was necessary, even though the guard had acted too vigorously in the performance of his duty.

### TORTS OR WRONGS TO PERSONAL SAFETY AND FREEDOM

***An action for damages lies in the following kinds of wrongs which are styled as injuries to the person of an individual:***

Battery

Assault

Bodily Harm

False Imprisonment

Malicious Prosecution

Nervous Shock

Defamation

Negligence

**(a) Battery**

Any direct application of force to the person of another individual without his consent or lawful justification is a wrong of battery. To constitute a tort of battery, therefore, two things are necessary:

- (i) use of force, however, trivial it may be without the plaintiff's consent, and
- (ii) without any lawful justification.

Even though the force used is very trivial and does not cause any harm, the wrong is committed. Thus, even to touch a person in anger or without any lawful justification is battery.

**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.

**Defence**

According to the decision of the case *Coward v. Baddeley*, touching a person with not more than reasonable force is not battery.

This principle has also been implied in Indian decision in the case *Sitaram v. Jaswant Singh 1951 NLJ 477*, it was held that an occupier is entitled to expel a trespasser and if necessary even forcibly remove from his premises. But the force exercised should be reasonable and not greater than necessary, quite disproportionate to the evil to be prevented.

**(b) Assault**

Assault is any act of the defendant which directly causes the plaintiff immediately to apprehend a contact with his person. Thus, 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 of assault is committed. The law of assault is substantially the same as that of battery except that apprehension of contact, not the contact itself has to be established. Usually when there is a battery, there will also be assault, but not for instance, when a person is hit from behind. To point a loaded gun at the plaintiff, or to shake fist under his nose, or to curse him in a threatening manner, or to aim a blow at him which is intercepted, or to surround him with a display of force is to assault him clearly if the defendant by his act intends to commit a battery and the plaintiff apprehends it, is an assault.

**Example**

A shakes his fist at Z, intending or knowing it to be likely that he may thereby cause Z to believe that A is about to strike Z. A has committed an assault.

**(c) Bodily Harm**

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

**Example**

Z is riding in a chariot. A lashes Z's horses, and thereby causes them to quicken their pace. Here A has caused change of motion to Z by inducing the animals to change their motion. A has therefore used force to Z; and if A has done this without Z's consent, intending or knowing it to be likely that he may thereby injure, frighten or annoy Z, A has used criminal force to Z with an intention to cause bodily harm.

**Question:** When the defendant by his act creates an apprehension in the mind of the plaintiff that he is going to commit battery against him. He commits .....

- Options:** (A) Attempt to Battery  
(B) Assault  
(C) Slander  
(D) Defamation

**Answer:** (B)

**(d) False Imprisonment**

False imprisonment consists in the imposition of a total restraint for some period, however short, upon the liberty of another, without sufficient lawful justification. It means unauthorized restraint on a person's body. What happens in false imprisonment is that a person is confined within certain limits so that he cannot move about and so his personal liberty is infringed. It is a serious violation of a person's right and liberty whether being confined within the four walls or by 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.

**Example**

A causes Z to go within a walled space, and locks Z in, Z is thus prevented from proceeding in any direction beyond the circumscribing line of wall. A wrongfully confines Z thereby making false imprisonment.

**(e) Malicious Prosecution**

Malicious prosecution consists in instigating judicial proceedings (usually criminal) against another, maliciously and without reasonable and probable cause, which terminate in favour of that other and which results in damage to his reputation, personal freedom or property.

The following are the essential elements of this tort:

- (i) There must have been a prosecution of the plaintiff by the defendant.
- (ii) There must have been want of reasonable and probable cause for that prosecution.
- (iii) The defendant must have acted maliciously (i.e. with an improper motive and not to further the end of justice).
- (iv) The plaintiff must have suffered damages as a result of the prosecution.
- (v) The prosecution must have terminated in favour of the plaintiff.

To be actionable, the proceedings must have been instigated actually by the defendant. If he merely states the fact as he believes them to a policeman or a magistrate he is not responsible for any proceedings which might ensue as a result of action by such policeman or magistrate on his own initiative.

**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.

**(f) Nervous Shock**

This branch of law is comparatively of recent origin. It provides relief 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. Causing of nervous shock itself is not enough to make it an actionable tort, some injury or illness must take place as a result of the emotional disturbance, fear or sorrow.

**Example**

A negligently drove the carriage onto the railway tracks while the train was on the verge of crossing the place and by this accident there was a lady received a nervous shock which leads to bad impact on her health. A would be liable for damages for the consequences of the nervous shock.

**(g) Defamation**

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. It is defined as follows:

“Defamation is the publication of a statement which tends to lower a person in the estimation of right thinking members of society generally; or which tends to make them shun or avoid that person.”

Defamation may be classified into two heads: Libel and Slander. *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 films both the photographic part of it and the speech which is synchronized with it amount to tort.

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

Generally, the punishment for libel is more severe than for slander. Defamation is tort as well as a crime in India.

In India both libel and slander are treated as a crime. Section 356 of the Bharatiya Nyaya Sanhita, 2023 recognizes both libel and slander as an offence. However, torts in criminal law are stricter than in law of tort.

**Example**

A is asked who stole B's watch. A points to Z, intending to cause it to be believed that Z stole B's watch. This is defamation, unless it fall within one of the exceptions.

A newspaper publishes the photo of Mr X and Miss Y together stating their engagement has been announced. Mrs A, wife of X filed a suit for defamation against the newspaper company. She was entitled for compensation.

**(h) Negligence**

Negligence means inadvertence or carelessness. Negligence refers to the situation when a person might be innocent but has failed to act in reasonable manner. Negligence has become an independent tort with the changes in technology and regulatory environment. Negligence in treatment of patients is an important example of Tort of Negligence. Negligence has been defined by Winfield “Negligence as a tort is the breach of a legal duty to take care which results in damage, undesired by the defendant, to the plaintiff. The Consumer Protection Act has also been developed and provides for the unliquidated damages in cases of Negligence.

Following the ruling of the Supreme Court in the landmark judgement of *Indian Medical Association v. V.P. Shantha & Ors.*, services rendered by medical practitioners were brought under the ambit of Section 2(1)(o) of the Consumer Protection Act, 1986 i.e. medical treatment was to be considered to be a service and accordingly, medical practitioners could be liable for deficiency of service.

As per the decision of *Poonam Verma vs. Ashwin Patel & Ors 1996 AIR 2111, 1996 SCC (4) 332*, the definition of negligence involves the following constituents:

- (1) a legal duty to exercise due care;
- (2) breach of the duty; and
- (3) consequential damages.

**CASE LAW**

*Poonam Verma vs. Ashwin Patel & Ors 1996 AIR 2111, 1996 SCC (4) 332*

The court was of the opinion that Respondent No.1, having practised in Allopathy, without being qualified in that system, was guilty of Negligence per se and, therefore, the appeal against him has to be allowed in consonance with the maxim *Sic Utere tuo ut alienum non loedas* (a person is held liable at law for the consequences of his negligence)...

The court also observed that if a person practices medicine without possessing either the requisite qualification or enrollment under the Act on any State Medical Register, he becomes liable to be punished with imprisonment or fine or both.

This matter has earlier been raised before the National Consumer Disputes Redressal Commission.

**LIABILITY OF A CORPORATE ENTITY/COMPANY IN TORTS**

Corporates contribute significantly in the growth and economic activities of any country. The quantum of business companies engaged in are comparably complex than the proprietors. Therefore, the companies are exposed to the risk under Law of Torts. However, the companies are not natural persons therefore, liability has to be fastened after considering the lifting of corporate veil. In general, the companies are responsible for the wrongs committed by the employees. The liabilities of the companies are fastened on the basis of principle in legal maxim "*Qui facit alium facit per se*" which means He who acts through another, acts through himself.

**CASE LAW**

*Union Carbide Corporation vs. Union of India 1987 AIR 1086, 1987 SCR (1) 819*

On the night intervening 2nd and 3rd of December 1984 there occurred at Bhopal in the State of Madhya Pradesh in India the worst and the most tragic industrial disaster known to mankind. There was a massive escape of a night noxious and abnormally dangerous gas called Methyl Isocyanate (hereinafter called 'MIC'). Thousands of persons sustained serious, and permanent injuries including acute respiratory distress syndrome, ocular and gastro-intestinal injuries and pain, suffering and mental distress. Court upheld the No Fault Liability or Absolute Liability Rule. Court stated –

*"where an enterprise is engaged in a hazardous or inherently dangerous activity and harm results to anyone on account of an accident in the operation of such hazardous or inherently dangerous activity resulting, for example, in escape of toxic gas the enterprise is strictly and absolutely liable to compensate all those who are affected by the accident and such liability is not subject to any of the exceptions which operate vis-a-vis the tortious principle of strict liability under the rule in Rylands v. Fletcher"*

**Consumer Protection Act and liabilities of torts**

The Consumer Protection Act has widened the scope and provides more protection to the consumer as compared to Old Act which can be seen from the definition of the term 'Consumer' and 'Unfair Trade Practice'. The New Act has introduced the new concept of unfair contracts which includes those contracts whose terms and conditions are in favour of the manufacturer or service provider and are against the interest of the consumer. This concept would help to keep check on the business including banks and e-commerce sites that take advantage of their dominance in the market. The other significant addition that has taken place in 2019 is establishment of Central Consumer Protection Authority (CCPA) to regulate, protect and enforce the interest of the consumer and matters related to unfair trade practice.

Ministry of Consumer Affairs, Food and Public Distribution, Government of India, in exercise of the powers conferred has enacted the various rules including Consumer Protection (E-Commerce) Rules, 2020.

### CASE LAW

*Branch Manager, Indigo Airlines and Anr. v. Kalpana Rani Debbarma and ors*

The Complainants/respondents were the family members and were returning from Kolkata to Agartala through the Indigo Airlines. Boarding passes were issued to the complainants. The Airlines left all the complainants at Kolkata Airport without informing them despite all the Complainants being the Airport premises. A written complaint was lodged at Indigo Office at Kolkata Airport but the office staff as well as the Airport staff at their counter did not accept the Complaint Application and forcibly snatched away their boarding passes and further did not pay heed to their request for making alternate arrangements for their flight to Agartala. The Complainant Approached the District Forum and was awarded with the compensation. State forum also enhanced the compensation. Aggrieved by the decision, the Indigo Arline's filed this Revision Petition contended that the Airport Manager has stated that there were many announcements at regular intervals and that the Indigo Airlines is not responsible if the passengers did not report at the gate on time.

The NCDRC held that Indigo Airlines not only forcibly taking the boarding passes from the Complainants, no effort was made by the Airline to compensate them by arranging for their travel in the next scheduled flight to Agartala. It is not in dispute that the Complainants were put to lot of mental agony and inconvenience as they had to stay in a hotel for two days. The NCDRC dismissed the Revision Petitions with cost of Rs. 20,000/- to be paid to Complainants.

According to the decision in a case *Bolitho v. City and Hackney Health Authority*, the factors which have to be assessed in medical negligence are:

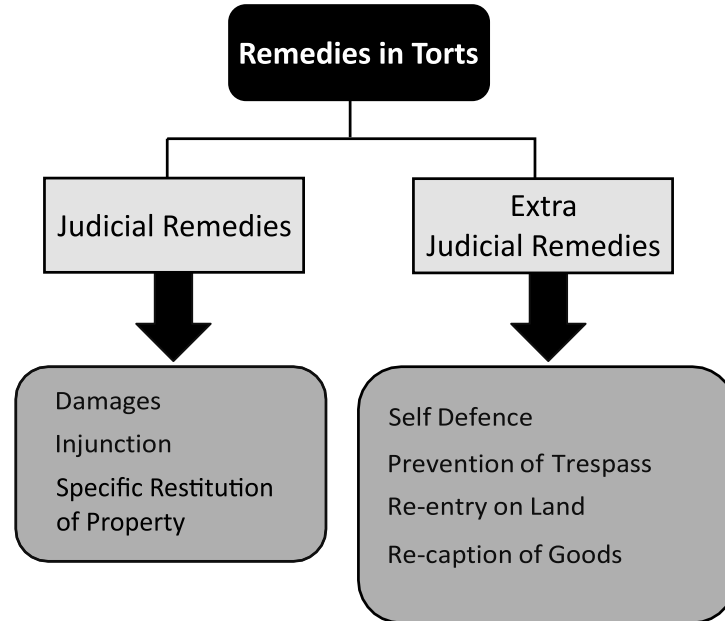
1. Whether the medical practitioner acted as per a practice accepted by a competent medical practitioner.
2. If no, if the deviation from the norm can be justified as being reasonable

It must be noted that the liability of the medical practitioner is three-fold: liability under the Consumer Protection Act, 1986 for payment of damages; civil liability for tort of negligence where the provisions of the Consumer Protection Act, 1986 do not apply; or criminal proceedings under the Bharatiya Nyaya Sanhita, 2023.

According to Statement and Objects for the law relating to consumer protection, the emergence of global supply chains, rise in international trade and the rapid development of e-commerce have led to new delivery systems for goods and services and have provided new options and opportunities for consumers. Equally, this has rendered the consumer vulnerable to new forms of unfair trade and unethical business practices. Misleading advertisements, tele-marketing, multi-level marketing, direct selling and e-commerce pose new challenges to consumer protection and will require appropriate and swift executive interventions to prevent consumer detriment. Therefore, it has become inevitable to amend the Act to address the myriad and constantly emerging vulnerabilities of the consumers.

On analysis of the cases and object of the Consumer Protection Act, it can be said that the complaints under the Consumer Protection are in the nature that may be covered under Law of Torts in absence of Law relating to Consumer protections.

## REMEDIES IN TORTS



### Judicial Remedies

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

- (i) Damages,
- (ii) Injunction, and
- (iii) Specific Restitution of Property.

#### (i) 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. Only those damages can be recovered which are directly the result of the act of defendant. It is based on the legal maxim, *In jure non remota causa sed proxima spectator* which means law considers the direct or immediate cause and not the remote one. Damages are the primary judicial remedy served in torts.

#### (ii) Injunction

Injunction is an order of the Court redirecting commission, omission or amendments to an act. It orders a person to do an act, to not to do an act or correct his wrongful act. It is done entirely upon the discretion of the Court. It can be prohibitory, mandatory, interim or perpetual in nature. Rule 1 Order 39 of Civil Procedure Code 1908 provides for the Cases in which temporary injunction may be granted. Injunctions can also be granted under Specific Relief Act, 1963.

#### (iii) 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. A person is entitled to the restitution of his property when it has been unfairly taken away from him. Wrongly dispossession of certain property invokes this remedy.

For example, in case of immovable property, plaintiff may bring an action for restitution under Section 6 of Specific Relief Act, 1963.

### Extra Judicial Remedies

In certain cases it is lawful to redress one's injuries by means of self help without recourse to the court. These remedies are:

**(a) Self Defence**

It is lawful for any person to use reasonable forces to protect himself, or any other person against any unlawful use of force.

**Example**

X seeks a restraining order against F due to stalking, fearing injuries. This recourse is a part of self defence.

**(b) Prevention of Trespass**

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

**Example**

A uses fence to avoid people from entering his personal garden. The fencing will be taken as reasonable force to prevent trespass.

**(c) 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.

**Example**

X trespasses into B's property, his home. B has the right to use reasonable force to remove him from his property and re-enter himself.

**(d) 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 wrongly taken it or wrongfully detained it.

**Example**

A wrongfully acquires the possession of B's watch, B is entitled to use reasonable force to get it back from A. only reasonable force may be used.

**(e) Abatement of Nuisance**

The occupier of land may lawfully abate (i.e. terminate by his own act), any nuisance injuriously affecting it. Thus, he may cut overhanging branches as spreading roots from his neighbour's trees, but (i) upon giving notice; (ii) by choosing the least mischievous method; (iii) avoiding unnecessary damage.

**Example**

X and Y are neighbors. Branches of a tree growing in X's garden enter B's personal pathway from over the wall. After giving due notice to X, Y cuts the branches as they were causing him nuisance. Y is entitled to do so.

**Question:** Which of the following is not an Extra Judicial Remedy of law of Torts.

- Options:** (A) Abatement of Nuisance  
(B) Prevention of Trespass  
(C) Injunction  
(D) Self Defence

**Answer:** (C)

**(f) Distress Damage Feasant**

An occupier may lawfully seize any cattle or any chattel which are unlawfully on his land doing damage there and detain them until compensation is paid for the damage. The right is known as that of distress damage feasant-to distrain things which are doing damage.

**Example**

C's cattle wrongfully move to D's property and spoil his crops, the D is entitled to take possession of the cattle until he is compensated for the loss suffered by him.

**LESSON ROUND-UP**

- Tort means wrong. But every wrong or wrongful act is not a tort. Tort is really a kind of civil wrong as opposed to criminal wrong. Wrongs, in law, are either public or private.
- A tort consists of some act or omission done by the defendant (tortfeasor) whereby he has without just cause or excuse caused some harm to plaintiff. To constitute a tort, there must be: (i) a wrongful act or omission of the defendant; (ii) the wrongful act must result in causing legal damage to another; and (iii) the wrongful act must be of such a nature as to give rise to a legal remedy.
- Tortious Liabilities may be of Four types (a) Liability against Civil Wrong(In general) (b) Strict or Absolute Liability, (c) Vicarious Liability and (d) Vicarious Liability of the State.
- An action for damages lies in the following kinds of wrongs which are styled as injuries to the person of an individual:
  - Battery
  - Assault
  - Bodily harm
  - False imprisonment
  - Malicious prosecution
  - Nervous shock
  - Defamation
  - Negligence
- Remedies in tort are of two type judicial remedies and extra judicial remedies. Three types of judicial remedies are available to the plaintiff in an action for torts are:
  - (i) Damages,
  - (ii) Injunction, and
  - (iii) Specific Restitution of Property.
- Extra judicial remedies are:
  - (i) Self Defence,
  - (ii) Prevention of Trespass,

- (iii) Re-entry on Land,
- (iv) Re-capture of Goods,
- (v) Abatement of Nuisance and
- (vi) Distress Damage Feasant

- The liabilities of the companies are fastened on the basis of the principle in the legal maxim "*Qui Facit alium Fact Per Se*".

### GLOSSARY

**Right in rem:** Right against the public.

**Right in personem :** Right against the individual.

**Damnum sine injuria:** Damages without legal injury.

**Injuria sine damnum:** Legal injury without damage.

**Strict liability:** No fault liability.

**Vicarious liability:** Liability for the act of other in a case of relationship of Master-Servant and alike.

**Qui facit per alium facit per se :** He who acts through another is acting himself, so that the act of the agent is the act of the principal.

**Respondeat Superior :** Let the principal be liable.

### TEST YOURSELF

*(These are meant for re-capitulation only. Answers to these questions are not to be submitted for evaluation)*

1. What are the general conditions of liability for a tort?
2. Distinguish between *Damnum Sine Injuria* and *Injuria Sine Damnum*.
3. Discuss the types of tortious liability.
4. Explain the rule of Strict Liability or Absolute liability with the help of case *Ryland v. Fletcher*.
5. Explain Vicarious Liability with the help of examples.
6. State the conditions where employer is liable for the acts of Independent Contractor.
7. Write a short note on:
  - (a) Battery
  - (b) Assault
  - (c) Malicious Prosecution
8. P is an owner of the shop and Q is the employee. P asks Q to destroy certain article since they were found to be unfit for consumption. Q instead of destroying them, sold them off and as a result A fell gravely ill and sued P for the damages. Examine the liability of P along with cases laws.

9. XYZ Limited is a company engaged in the business of manufacturing of Sun glasses. It has stored 1000 litres of transparent spirit which is dangerous, if consumed by humans. A with the intent to committing theft, entered into the property of XYZ Limited. After entering into the premises, he changed his mind and dropped the idea of theft and decided to go back. While leaving the premises, he saw the spirit and drank one glass out of it, misconceiving it with water. He had to hospitalize for 6 Months due to this. A intends to claim damages under Law of Torts.

Advice 'A' the chance of his succeeding under Law of Torts in this case.

10. An autonomous body was entrusted with the duty of constructions of dams. It constructed a Dam near the property of XYZ Limited. XYZ requested the autonomous body to change the location of the dam on ground of anticipated loss to its property due the dam. The request of the company was not acceded to. The overflow of the water caused a loss to the valuable property of the company. The company intends to claim damages.

Advice the company in the light with the decided case 'Jay Laxmi Salt Works (P) Ltd. v. State of Gujarat'.

11. A disaster occurred in a cricket stadium. Security agency was held responsible for allowing large number of spectators. The scenes were boroacasted live on television. The viewers of the match on television brought the claims against the defendant for nervous shock resulting in psychiatric injury.

Discuss the criteria laid down in the case *Alcock & Ors. v. Chief Constable of South Yorkshire [1992] AC 310* House of Lords for secondary victims.

#### LIST OF FURTHER READINGS

- W.V.H. Rogers, Winfield & Jolowicz on Tort (Sweet & Maxwell, 19th edn., 2016)
- Avtar Singh (Rev.), P.S. Atchuthen Pillai Law of Torts (Eastern Book Company, 9th edn., 2022).
- Law of Torts
- Ramaswamy Iyer : The Law of Torts; N.M. Tripathi, Private Ltd., Bombay

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#### OTHER REFERENCES (INCLUDING WEBSITES / VIDEO LINKS)

- <https://www.icsi.edu/cs-journal/>
- <https://www.icsi.edu/students/student-company-secretary/>

