

* Chapter 5th *

* Law of Torts *

* Introduction :-

- 'Tort' is a french word which means 'wrong'.
- It is derived from Latin language from the word 'Tortum.'
- Law of tort is a common law.
- It can be defined as civil wrong, where unliquidated damages are claimed.

• Section 2 (m) of Limitation Act, 1963

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

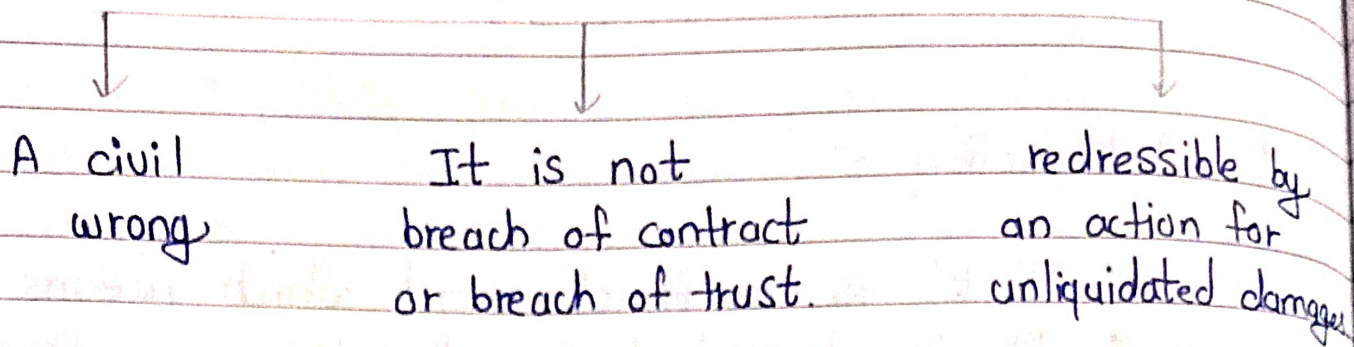
↳ Salmond :- "A civil wrong in which the remedy is common law, action for unliquidated damages and which is not exclusively breach of contract or breach of trust or not equitable obligation."

2) Fraser :- "It is an infringement of right of rem of a individual giving a right of compensation at the suit of the injured party."

3) Winfield :- "Tortious liability arises from breach of ~~trust~~ duty, this duty is towards persons generally & its breach is redressable by action for unliquidated damages."

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Elements of tort



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Damages.

Damages

Liquidated

It means pre-determined or fixed compensation on some loss.

Unliquidated.

It refers to the damages which are not pre-determined or decided by parties.

* kinds of tortious liability.

1] Liability against civil wrong -

Civil wrong refers to those, which satisfies the condition of liabilities and which have remedy by law.

- General conditions of liability for a Tort. :-

1) Wrongful act :-

- The complaint must be legally wrong as a matter of law as far as complaining party is concerned.
- It should prejudicially affect any of above mentioned interests, and protected by law.
- Thus, every person whose rights has been violated has right to take action against the person who violated them.
- Legal rights are as follows -
 - Right of reputation,
 - Right of bodily safety and freedom.
 - Right to property, etc.

If this rights are violated without any legal excuse, then person can take action.

2) Legal damages :-

- In eyes of law, every damage is not a damage. It should be the damage which the law recognizes as damage.
- There should be injury or invasion of legal rights.
- The legal damages can be understood by two doctrines.

i] Damnum sine injuria :-

- 'Damnum' means any loss, harm or damage with respect to money, comfort, health etc.

- 'injuria' means infringement of a right conferred by law on plaintiff.

- Damnum sine injuria means damages without injury.

- It means causing damage to another person is not actionable in eyes of law, unless there is also violation of his legal rights.

Case law :- Gloucester Grammar school case.

In this case, defendant started his own school, and started working as teacher. Many students from plaintiff's school left and enrolled themselves into defendant's school. Plaintiff filed suit against defendant for monetary damages. Court held that defendant is not liable because defendant has not violated any legal rights of plaintiff even though monetary loss is caused.

ii] Injuria sine damnum :-

- It means injury without damages.

- Where there is no damage but injury or wrong in tort.

- It means if there is infringement of a legal right and not any harm or damage to plaintiff but still plaintiff can sue in tort.

Case law :- Ashby Vs. White.

In this case, the plaintiff was prevented from voting at election. Plaintiff sued defendant for damages even there is no monetary loss incurred by him. The court held that defendant is liable to pay compensation because he violated the legal rights of the plaintiff and he has committed a tort.

3) Legal remedy :-

- Legal remedy is the third condition for liability of tort.

- Constitute a tort and wrongful act must come under the law.

- The main remedy of tort is to claim for unliquidated damages or self help is a remedy of which the injured party can avail without going to court.

* Mens rea

- maxim "actus non facit reum nisi mens sit rea," it means act itself create no guilt unless done with a guilty mind.

- It does not mean that in tort the act must be done with a evil motive, in eyes of law.

- It does not matter if you have bad intention or ~~tort~~ not in tort for the law.

2] Strict or Absolute liability.

- i] Liability for inevitable accident arises where damage is caused by escape of dangerous or hazardous substance. The person who kept hazardous substance in his land is absolutely liable, and there is no exception in this case.
- ii] Liability for inevitable mistake arises where someone interferes with property or reputation of another.
- iii] Vicarious liability for wrongs committed by others such as cases imputed by law on basis of social policy or expediency. It involves liability of master for the act of servant.

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Rylands Vs. Fletcher.

If you bring something in your land and if it escapes and causes damage to another then you are liable for it, irrespective of fact whether you have taken care or not.

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Exceptions to the rule of Rylands Vs. Fletcher.

- i] Damage due to natural use of land.
- ii] Act of God i.e., extraordinary rain, storm, etc.
- iii] Plaintiff's own default

iv) Consent of plaintiff.

v) Act done under authority of a statute.

vi) Act of third party.

3] Vicarious liability :-

i) Master and Servant -

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

Case law - Century Insurance company, Ltd. Vs. Northern Ireland Road transport board.

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

ii) Principal and Agent.

'Qui facit per alium facit per se' it means one who acts through other is acting himself.

If agent committed a tort in his duties as agent then principal is liable for same.

Case law :- Lloyd Vs. Grace, Smith and company.

The managing clerk of firm committed fraud, against a lady client while acting in course of business by inducing her to sign on documents transferring her property to him. It was held that he had done without knowledge of his principal who was liable, because fraud was committed in course of employment.

ii) Partners for the tort committed by a partner in the ordinary course.

If a partner has committed a tort while acting in course of business then all other partners are also liable for it.

The liability of partners are joint and several.

Case law :- Hamlyn Vs. Houston and company.

One of two partners bribed the plaintiff's clerk and induced him secrets of employer's business. It was held that both the partners are liable for the tort committed by only one of them.

iii) Employer and independent contractor

Generally, independent contractor is liable for the tort committed by him or his servant while acting in course of employment.

Independent contractor is the one who works for another but not controlled by that other.

But in following cases employer is liable for tort committed by independent contractor.

When there is strict liability

When employer authorize him to commit tort.

Negligence of independent contractor.

4] Vicarious liability of state :-

In England by passing crown proceeding Act, 1947, the crown is liable for the tort committed by its servants. Crown i.e. government is vicariously liable for the torts of its servants.

When case of government liability in tort comes before the courts, the question arises whether the particular government activity is sovereign or non-sovereign function. If it is sovereign function then government is not liable. If it is non-sovereign function then government is liable.

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* Types of torts.

1) Battery.

- Battery is use of force on someone without lawful justification and consent of plaintiff.

- To constitute battery two things are necessary

- 1) using of force without consent of plaintiff.
- 2) use of force without any lawful justification.

To touch any person in ~~age~~ anger or without lawful justification is battery.

2) Assault.

- Assault is apprehension in mind of plaintiff that someone is going to commit battery.

- Usually, where there is battery there can be also the assault.

- If defendant intends to commit battery and it is in mind of plaintiff then it is an assault.

3) False imprisonment.

- It is confining the liberty of a person within 4 walls.

- It consist in imposition of restraint upon the liberty of person without any lawful justification.

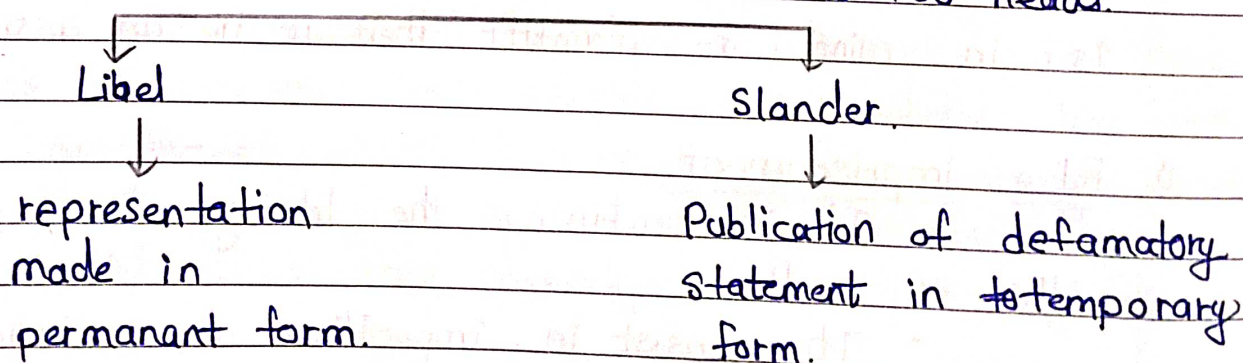
- It is infringement of right to life and personal liberty of a person.

4) Malicious Prosecution :-

- Consists in instigating judicial proceedings against another which results in damage to his reputation, personal freedom or property.
- There must have been a prosecution of the plaintiff by the defendant.
- There must be want of reasonable cause.
- The defendant must be acted maliciously and plaintiff have suffered damages.
- Prosecution must have terminated in favour of plaintiff.

5) Defamation :-

- Defamation is the attack on reputation of a person.
- Something is said or done by a person which affects on reputation of another person.
- Defamation is classified into two heads.



* Nervous shock :- Here, does not gets physical injury by stick, bullet or sword but get a nervous shock through what he has seen or heard, and some injury or illness take place as a result of emotional disturbance fear or sorrow.

* Bodily harm

A wrongful act of defendant which causes physically harm to the plaintiff is a bodily harm.

* Liability of a corporate entity / Company in torts.

- Company is liable for the tort committed by its employees.

- The companies are exposed to risk under law of torts.

- The liabilities of company is bounded on the basis of maxim "Qui facit alium facit per se," which means one who act through another is acting himself.

* Consumer protection Act and liabilities of torts.

Unfair contracts which includes those contracts where terms and conditions are in favour of service provider and are against the interest of the consumer.

If company neglects the interest of consumer or makes any unfair trade practice then company is liable for it.

Case law :- Branch manager indigo airlines Vs. kalpana rani debbarma.

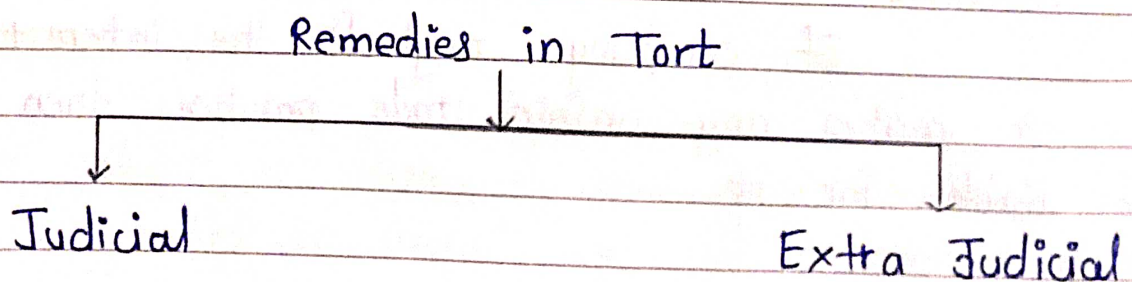
Complainants were family members and were returning from Kolkata to Agartala through indigo airlines boarding passes were issued but airline left all complainants of Kolkata airport without informing them and even they were at airport premises.

Complaint was made at Kolkata airport and airport staff snatched away their boarding passes and didn't hear them.

Complainant approached district forum and was awarded compensation indigo airlines made appeal to state forum state forum even enhanced compensation finally made to national forum (NCDRC) they also dismissed the petition and asked airlines to pay 20 to complainants as there were inconvenience.

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Remedies in Torts.



• Judicial remedies :-

1) Damages or compensation - When the person's right is violated by another person then he can claim the damages. The court will grant him compensation or damages.

2) Injunction - It is an order of a court to redirect commission or amendments to an act. The court orders the person to do an act or not to do or correct his wrongful act.

3) Specific restitution of property - Specific restitution of property means returning property to its rightful owner.

• Extra Judicial remedies :-

1) Self defense - Any person can use reasonable forces to protect himself.

2) Prevention of Trespass - The owner of land may use reasonable force to prevent trespasser entering, but for the reasonable purpose.

3) Re-entry on land - A person can retake possession of land if he can do in peaceful & reasonable manner.

4) Re-capture of goods - A person can take possession of goods by use of reasonable force from the one who has taken them wrongfully.

5) Abatement of nuisance - The owner of the land may lawfully abate i.e terminate any nuisance which is affecting injuriously. He can cut overhanging branches as spear spreading roots from neighbour's trees.

6) Distrect damage feasant - The owner may lawfully seize any private property which are unlawfully on his land and causing damage to him until the compensation is paid.

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