

LAW OF TORTS

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SYNOPSIS

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• Introduction :-

The word tort has been derived from the Latin term '**tortum**', which means '**to twist**'. It includes that conduct which is **not straight or lawful**, but, on the other hand, **twisted, crooked or unlawful**.

It is equivalent to the English term '**wrong**'. The law imposes a duty to respect the legal rights vested in the members of the society and the person making a breach of that duty is said to have done the wrongful act.

'crime' is a wrongful act, which results

from the breach of a duty recognized by criminal law, a 'breach of contract' is the non-performance of a duty undertaken by a party to a contract, similarly, 'tort' is a breach of duty recognized under the law of torts.

For example, violation of a duty to injure the reputation of someone else results in the tort of defamation, violation of a duty not to interfere with the possession of land of another person result in the tort of trespass to land

• **Definitions of Tort:-**

- 1) "Tort means a civil wrong which is not exclusively a breach of contract or breach of trust"—S. 2(m), the Limitation Act, 1963.
2. "It is 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." —Salmond.
3. "Tortious Liability arises from the breach of a duty primarily fixed by the law : this duty is towards persons generally and its breach is redressible by an action for unliquidated damages."—Winfield.
4. "It is an infringement of a right in rem of a private individual giving a right of compensation at the suit of the injured party."—Fraser

Tort:-

- 1) law of tort (or torts) is a branch of the law of obligations,
- 2) law of tort is a collection of circumstances in which the courts will give a remedy, normally by way of damages, for legally unjustified harm or injury done by one person to another.

We may define tort as a civil wrong which is redressible by an action for unliquidated damages and which is other than a mere breach of contract or breach of trust. Thus,

it may be observed that :

- (1) Tort is a civil wrong;
- (2) This civil wrong is other than a mere breach of contract or breach of trust;
- (3) This wrong is redressible by an action for unliquidated damages.

1) Tort is civil wrong:-

Tort belongs to the category of civil wrongs. The basic nature of civil wrong is different from a criminal wrong. In the case of a civil wrong, the injured party, i.e., the plaintiff, institutes civil proceedings against the wrongdoer, i.e., the defendant. In such a case, the main remedy is damages. The plaintiff is compensated by the defendant for the injury caused to him by the defendant. In the case of a criminal wrong, on the other hand, the criminal proceedings against the accused are brought by the State. Moreover, in the case of a criminal wrong, the individual, who is the victim of the crime, i.e., the sufferer, is not compensated. Justice is administered by punishing the wrongdoer in such a case.

It is, however, possible that the same act done by a person may result in two wrongs, a crime as well as a tort, at the same time. In such a case, both the civil and the criminal remedies would concurrently be available. There would be civil action requiring the defendant to pay compensation as well as a criminal action awarding punishment to the wrongdoer.

- **2) Tort is other than a mere breach of contract or breach of trust:-**
- A breach of contract results from the breach of a duty undertaken by the parties themselves. The agreement, the violation of which is known as a breach of contract is made by the parties with their free consent. A tort, on the other hand, results from the breach of such duties which are not undertaken by the parties themselves but which are imposed by law.
- For example, I have a duty not to assault or defame anyone, or to commit nuisance or trespass over another person's land, not because I have voluntarily undertaken anyone of these duties, but because the law imposes such duties on me, or rather on every member of the society. The breach of these duties, imposed by law, is a tort.
- But if I undertake to supply you a radio set and then fail to perform the obligation which I have voluntarily undertaken, it is a breach of contract.
- So tort means civil wrong which is not breach of contract or breach of trust.

- **(3) Tort is redressible by an action for unliquidated damages:-**

Liquidated damages:- it means such compensation which has been previously determined or agreed to by the parties.

When the compensation has not been so determined but the determination of the same is left to the discretion of the court, the damages are said to be **unliquidated**

- Damages is the most important remedy for a tort. After the wrong has been committed, generally it is the money compensation which may satisfy the injured party. After the commission of the wrong, it is generally not possible to undo the harm which has already been caused. If, for example, the reputation of a person has been injured, the original position

cannot be restored back.

The only thing which can be done in such a case is to see what is the money equivalent to the harm by way of defamation and the sum so arrived at is asked to be paid by the defendant to the plaintiff.

It is also just possible that sometimes the other remedies may be more effective than the remedy by way of damages. For example, when a continuing wrong like nuisance is being committed, the plaintiff may be more interested in the remedy by way of 'injunction' to stop the continuance of nuisance rather than claiming compensation from time to time

- **Tort and Crime distinguished**

TORT

- 1) In tort, there is an infringement of a civil right or a private right of the party. Hence, a tort is a private wrong.
- 2) In torts, the wrong-doer (tortfeasor) should pay compensation to the plaintiff according to the decision of the court.
- 3) In tort, the affected or injured party may sue.

CRIME

- 1) In crime, there is an infringement of a public right affecting the whole community. Hence, a crime is public wrong.
- 2). In crime, the criminal is punished by the state in the interests of the society, punishment may be death, imprisonment or fine as the case may be.
- 3). In crime, the state is under a duty to institute criminal proceedings against the accused.

- Law of Tort or Law of Torts.

Winfield

Is it the **Law of Tort**, i.e., Is every wrongful act, for which there is no justification or excuse to be treated as a tort.

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Pollock also supported this view

Salond

The liability under this branch of law arises only when the wrong is covered by anyone or the other nominate torts. There is no general principle of liability and if the plaintiff can place his wrong in anyone of the pigeonholes, each containing a labelled tort, he will succeed.

This theory is also known as 'Pigeon-hole' theory. If there is no pigeon-hole in which the plaintiff's case could fit in, the defendant has committed no tort

- 1) **Ashby v. White(1702)- clearly established in favour of the first theory, recognizing the principle ubi jus ibi remedium.**
- 2) **Pasley v. Freeman (1789)- the tort of deceit in its present form had its origin in this case.**
- 3) **Lumley v. Gye (1853) - inducement of breach of contract**
- 4) **Rylands v. Fletcher (1868) - the rule of strict liability**
- 5) **Winsmore v. Greenbank (1745) - inducement to a wife to leave her husband.**

Dr. Jenks favoured Salmond's theory. He was, however, of the view that Salmond's theory does not imply that the courts are incapable of creating new tort. According to him, the court can create new torts but such torts cannot be created unless they are substantially similar to those which are already in existence.

Glanville Williams also makes a some remark regarding Salmond's theory. According to him, "To say that the law can be collected into pigeon-holes does not mean that those pigeon-holes are incapable of being added to

Essentials of a Tort

To constitute a tort, it is essential that the following two conditions are satisfied :

1. There must be some **act or omission** on the part of the defendant, and
2. The act or omission should result in legal damage (injuria), i.e., violation of a legal right vested in the plaintiff.

1) Act or Omission --

In order to make a person liable for a tort, he must have done some act which he was not expected to do, or, he must have omitted to do something which he was supposed to do. Either a positive wrongful act or an omission which is illegally made, will make a person liable.

For example, A commits the act of trespasser publishes a statement defaming another person, or wrongfully detains another person, he can be made liable for trespass, defamation or false imprisonment, as the case may be. Similarly, when there is a legal duty to do some act and a person fails to perform that duty, he can be made liable for such omission.

Essentials of a Tort

1) Glasgow Corp. v. Taylor, (1922) – corporation, which maintains a public park, fails to put proper fencing to keep the children away from a poisonous tree and a child plucks and eats the fruits of the poisonous tree and dies, the Corporation would be liable for such omission.

2) Municipal Corporation of Delhi v. Subhagwanti, (1966)-- the Municipal Corporation, having control of a clock tower in the heart of the city does not keep it in proper repairs and the falling of the same results in the death of a number of persons, the Corporation would be liable for its omission to take care in the matter.

It may be noted that the wrongful act or a wrongful omission must be one recognized by law. If there is a mere moral or social wrong, there cannot be a liability for the same. For example, if somebody fails to help a starving man or save a drowning child, it is only a moral wrong and, therefore, no liability can arise for that unless it can be proved that there was a legal duty to help the starving man or save the drowning child.

2. Legal Damage:-

In order to be successful in an action for tort, the plaintiff has to prove that there has been a legal damage caused to him. In other words, it has got to be proved that there was a wrongful act—an act or omission— causing breach of a legal duty or the violation of a legal right vested in the plaintiff.

Unless there has been violation of a legal right, there can be no action under law of torts. If there has been violation of a legal right, the same is actionable whether, as a consequence thereof, the plaintiff has suffered any loss or not.

This is expressed by the maxim "Injuria sine damno." Injuria means infringement of a right conferred by law on the plaintiff or an unauthorized interference, howsoever trivial, with the plaintiff's right. Damnum means substantial harm, loss or damage in respect of money, comfort, health or the like. Thus, when there has been injuria or the violation of a legal right and the same has not been coupled with a damnum or harm to the plaintiff, the plaintiff can still go to the court of law

the plaintiff. In such cases, there is no need to prove that as a consequence of an act, the plaintiff has suffered any harm. For a successful action, the only thing which has to be proved is that the plaintiff's legal right has been violated, i.e., there is injuria.

1) Ashby v. White--

The plaintiff was a qualified voter at a Parliamentary election, but the defendant, a returning officer, wrongfully refused to take plaintiff's vote. No loss was suffered by such refusal because the candidate for whom he wanted to vote won the election in spite of that. It was held that the defendant was liable.

2) Bhim Singh v. State of J. & K(1986):-

the petitioner, an M.L.A. of J & K. Assembly, was wrongfully detained by the police while he was going to attend the Assembly session. He was not produced before the Magistrate within requisite period. As a consequence of this, the member was deprived of his constitutional right to attend the Assembly session. There was also violation of fundamental right to personal liberty guaranteed under Article 21 of the Constitution. By the time the petition was decided by the Supreme Court, Bhim Singh had been released, but by way of consequential relief, damages amounting to Rs. 50,000 were awarded to him

lawful right. Causing of damage, however substantial, to another person is not actionable in law unless there is also violation of a legal right of the plaintiff. This is generally so when the exercise of legal right by one results in consequential harm to the other.

1) Grant v. Australian Knitting Mills, (1935):-

"The mere fact that a man is injured by another's act gives in itself no cause of action; if the act is deliberate, the party injured will have no claim in law even though the injury is intentional, so long as the other party is exercising a legal right

2) Gloucester Grammar School Case:-

There the defendant, a schoolmaster, set up a rival school to that of the plaintiffs. Because of the competition, the plaintiffs had to reduce their fees from 40 pence to 12 pence per scholar per quarter. It was held that the plaintiffs had no remedy for the loss thus suffered by them.

Hankford J. said : if I have a mill and my neighbour builds another mill whereby the profit of my mill is diminished, I shall have no action against him, although I am damaged....but if a miller disturbs the water from going to my mill, or does any nuisance of the like sort, I shall have such action as the law gives"

the tea-carrying trade by offering reduced freight. The House of Lords held that the plaintiff had no cause of action as the defendants had by lawful means acted to protect and extend their trade and increase their profits.

4) Ushaben y. Bhagyalaxmi Chitra Mandir(1978):-

the plaintiffs sued for a permanent injunction against the defendants to restrain them from exhibiting the film named "Jai Santoshi Maa". It was contended that the film hurt the religious feelings of the plaintiff in so far as Goddesses Saraswati, Laxmi and Parvati were depicted as jealous and were ridiculed. no person has a legal right to enforce his religious views on another or to restrain another from doing a lawful act, merely because it did not fit in with the tenets of his particular religion.

5) Chesmore v. Richards(1975):-

Chesmore v. Richards cannot be questioned. Mr. Pickles has acted within his legal rights throughout; and is he to forfeit those rights and be punished for their legal exercise because certain motives are imputed to him? If his motives were the most generous and philanthropic in the world, they would not avail him when his actions were illegal. If his motives are selfish and mercenary, that is no reason why his right should be confiscated when his actions are legal."

6) Town Area Committee v. Prabhu Dayal, A.I.R. 1975

the plaintiff constructed 16 shops on the old foundations of a building. The said construction was made without giving a notice of intention to erect a building under Section 178 of the U.P. Municipalities Act and without obtaining necessary sanction required under Section 180 of that Act. The defendants demolished this construction. In an action against the defendants to claim compensation for the demolition, the plaintiff alleged that the action of the defendants was illegal as it was mala fide. It was held that the defendants were not liable as no "injuria" could be proved because if a person constructs a building illegally, the demolition of such building by the municipal authorities would not amount to causing "injuria" to the owner of the property

a legal act, though motivated by malice, will not make the defendant liable. The plaintiff can get compensation only if he proves to have suffered injury because of an illegal act of the defendant and not otherwise