

Tort

Q-Define Tort, and its essentials.

Q- *injuria sine damno and damnum sine injuria*.

Q- write a short note s on the following in the light of two latin maxims-

- Gloucester Grammar School Case.
- Ashby V white

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.

It is equivalent to the English term **wrong**. Tort is the breach of duty recognized by law.

Definition of Tort-

-Salmond- 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 a breach of a trust or other merely equitable obligations.

Winfield- tortious liability arises from the breach of a duty primarily fixed by the law; this duty is towards persons generally and its breach is repressible by an action for unliquidated damages.

Analysis of definitions

- Tort is a civil Wrong.
- Every civil wrong is not a tort like breach of contract and breach of trust
- Tort is redressible by an action for unliquidated damages

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

Tort is a 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 institutes civil proceedings against the wrongdoer.

The Tort is other than a breach of contract- Tort is that civil wrong which is not exclusively and other kind of civil wrong like breach of contract or breach of trust.

Tort is redressible by an action for unliquidated damages- Damage is the most important remedy for a tort. 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 was already been caused. The only thing which can be done is that is the money equivalent to the harm. Damage in

the case of Tort are unliquidated means a compensation which had not been previously determined.

A scientific definition of tort is not possible; Tort can be defined by mentioning various elements the presence of which could be considered to be tort.

All the definition of tort follow the **negative approach**. It explain the trout by distinguishing it from other wrong or by mentioning some of the elements, which are found in a tort, but are not there in other wrong.

The term tort in common law systems for a civil actionable harm or wrong.

Analytically Meaning of Tort -the law of tort is a branch of the law of obligations, where the obligation to refrain from harm to another and, if harm is done, to repair it or compensate for it, are imposed not by agreement.

Social Meaning of Tort- the functions of tort is to shift loss sustained by one to the person who is deemed t have caused it or been responsible for its happenings

Historically- there was no general principle of tortuous liability, but Kings court gave remedies for various forms of trespass for direct injuries.

Nature of Tort- the nature of tort can be understood by distinguishing

- **Tort and Crime**
- **Tort and duty in other civil wrongs**

Basis	Tort	Crime
Species	Civil wrong	Criminal wrong
Effect	Plaintiff is the injured party	Victim is the injured party
Violation of Rights	Private right and duty	Public rights and duties
Remedy	Compensation in the form of money or other wise	Punishment
Parties	Individual	Individual and State
Purpose	To compensate the loss suffered by him	To protect the society by preventive and deterring effect.
Nature of punishment	Competitively less, or lighter	Heavy and serious
Intention factor	Intention generally immaterial	Intention or mens rea is play an important role
Burden of proof	Lies with the complaint or injured	Lies with the state.
Principle of Natural justice	Plan an important role in fixing the wrong doer liability	Strict rules principles and procedure followed in fixing the wrong doer liability.
Codification	It is not the codify law	It is the codify law.
Moral element	Moral element has no place in tort. the wrong doer punished by way of damages for the	To some extant moral elements are treated in the same.

	better social welfare and efficiency.	
--	---------------------------------------	--

Basis	Tort	Contract / Quasi Contract
Nature of Damage	Unliquidated damage, means the damage which has not been agreed upon before	Liquidated damages, which has been agreed upon on non discharging the contract liability
Nature of Rights	In tort the violation of rights in rem, i.e. of a right vested in public generally.	In case of contract in the right in personam, i.e. a right available only against some determinate person or body of person.
Motive	In tort some time in tort motive play an important role	In contract motive has no place, jut the breach of contractual obligation is the consideration point.
Codification of law	There is no codification of law in tort	It is a codify law.
Non occurrence damages	Injured may be entitle for non occurrence damages, which he has not actually suffered.	The injured party is only entitle for actual damages.
Kind of damages	Exemplary or vindictive damages are awarded in tort	Such kind of damage are not awarded in contract.

Law of Tort and law of TortS

Law of tort- every wrongful act, for which there is no justification or excuse to be treated as tort.

Law of torts-consist only of **a number of specific wrong** beyond which the liability under law cannot arises.

Essentials of Tort-

Act of omission- in order to make a person liable under tortuous liability he must have done or omission unlawfully which he was supposed to do.

For example- A cannot allowed to trespass into once's property.

Legal Damage- the second condition in tort is there must be some legal damage. Unless there has been no violation of a legal right there is no action or damages claimed under law of tort.

It has been expressed by the maxim – *injuria sine dmno and damnum sine injuria*.

– injuria sine dmno and damnum sine injuria

The principle rules that *–every wrong doer should pay the compensation to the aggrieved party.*

In some cases there are plaintiff sustained injures but his legal rights has not been violated which is called **demno sine injuria** in such case no damage are payable.

In some cases the plaintiff does not face any damages, but his legal right is violated. This is called **injuria sin demnum**.

Injuria- Legal injury

Sine- without.

Damnum- Damage

Injuria sine demno- means- violation of legal right without causing any legal harm to plaintiff.

For example-

Trespass- trespass to another land does not cause any harm, loss or damage but it violate the right of privacy of another.

Defamation- in this case as well one does not harm anybody directly but it violet the rights of another.

Ashby V white-

Brief Fact- the plaintiff was a qualified voter at a parliamentary election. The defendant was a returning officer. The defendant wrongfully refused to plaintiff vote. The candidate to whom the plaintiff wanted to vote won the election. In this case the plaintiff did not suffered any damage or harm. But his legal right has been violated.

Principle laid down- every injury imports a damage, when a person hindered of onece right.

Bhim sing V. State of J.k

Brif Fact- Bhim sing was an MLA of J&K Assembly, he has been wrongfully detained by the police while he was going to attend the assembly session. The SC held that it is against the FR to personal liberty under Art 21.

In above cases reference there is no direct damage or loss but the plaintiff sustain the violation of his legal rights.

Damnum Sine Injuria

Damnum – Damage

Sine- without

Injuria- legal injury.

Meaning- causing damage without legal injury.

Gloucester Grammar School Case-

Brief Fact- the plaintiff were maintain a school. They charged X amount per student. The defendant established a rival school near to plaintiff school. Due to the competition defendants reduce the fee from X to X-12 per student. It cause a considerable loss to plaintiff.

Judgment- Plaintiff had no remedy for the loss thus suffered by them.

the court held that if I have a mill and my neighbor builds another mill and my profit of my mill diminished, I shall have no right to action against him, unless the neighbor disturb me or create any nuisance.

Acton vs. Blundel

The defendants dug the coal pit of their own. This affected the plaintiff well, at a distance of about 1 mile. The defendant not held liable.

Q- What are the general defenses available in tort.

Q-Volenti non fit injuria.

Q-Res ipsa loquitur.

General defenses in Tort-

1. Volenti non fit injuria, or the defenses of Consent.
2. Plaintiff the wrong doer.
3. Inevitable accident.
4. Act of God.
5. Private Defense.
6. Mistake
7. Necessity.

8. Statutory authority.

Volenti non fit injuria- Damage suffered by consent is not a cause of action. When a person consents to the infliction of some harm upon himself he has no remedy for that in tort. consent to suffer the harm may be express or implied.

For example-

You invite somebody to your house you cannot sue him for the trespass.

You can not sue a surgeon after giving the consent to perform certain act.

A going to on a highway he presume a risk of high accident.

For the defense to be available, the act causing the harm must not go beyond the limit of what he has been consented.

Thomas v.s quartermaine- court held that defendant was not liable because the danger was visible and the plaintiff appreciated and voluntarily encountered the same.

For example-

A is drowning in a water pool. To rescue him B jumped into the water. While doing so B sustain some injuries. B cannot claim compensation from A, as he done this act voluntarily.

Essential of Consent-

The consent must be free from coercion, undue influence, fraud, and misrepresentation. If the consent influence by such characteristic then the plaintiff entitle for the damage.

Lakshmi Rajan v.s Malar Hospital Ltd.

the complaint A 40 years women noticed a development of a painful lump in her breast. But the hospital during operation also remove his uterus which has no connection whit hir lumps.

The hospital is liable for deficiency of service. It was also held that the patients consent for the operation did not imply.

Volenti fit non injuria maxim declare two essential-

1. The injured knew that there was a risk in the act.
2. Knowingly there was a risk he invited it.

In wooldrige vs summer- court held that the plaintiff himself invited the risk of photography the horse. He is not entitle for any damages.

Limitation of volenti non fit injuria.

It is the responsibility of the owner of the place where every time risk of potential dangerous or it is hazardous area.

Smith v.s Baker – court held that mere knowledge on the part of plaintiff was not sufficient. The defendant ought to have taken due care and diligence.

Principle laid down- A person willingly undertake to do the work which is intrinsically dangerous notwithstanding that care has been taken to make it as little intrinsically dangerous as possible.

Dann v.s Hamilton- court rejected the defense of *volenti fit non injuria*- as the lady knew the driver was under the effect of alcohol agreed to travel with him and the driver met an accident.

Case reference-

Rylands v. Fletcher- *Principle of strict liability- use of unnatural use of land which on the harm of other rights.*

Vicarious liability

Generally a person is liable for his own wrongful act and one does not incur any liability for the acts done by other. In vicarious liability one's liability of act done by other.

Principle and its agent. (joint liability)- when an agent commits a tort in the course of performance of his duty as an agent, the liability of the principle arises for such wrongful act. It is based on the general **principle of qui facit per alium facit per se.** which means that the act of an agent is the act of the principle and done by the agent both are jointly liable. The authority to do the act may be express or implied. The agent performs such act in the course of his normal course of duty.

In State of India v.s Shyam Devi- SC held that employee when he committed the fraud, was not acting in the scope of bank's employment but in his private capacity as the depositor's friend, therefore the bank is not liable vicariously.

1. **Partners-** in ordinary course of business other partner is vicariously liable.
2. **Master and servant-** the doctrine of vicarious liability is based on the **maxim respondent superior**- let the principle liable. It was held in **limpus v. London general omnibus cp-** the liability arises even though the servant acted against the express instructions, and for no benefit of the master.
For the liability to the master to arise, the following two **essentials**
 1. The tort **committed by the Servant.**
 2. The servant who committed the tort in the **course of the employment.**

Who is the servant- A person employed by another to do work under the **direction and control of his master.**- Master is liable only for his servant and not for the tort of **independent contractor.**

Exceptions-

Rylands v.s Fletcher- the employer could not escape from the damage caused to plaintiff.

Servant not under control of the master- Example- Captain of a ship or a Surgeon in the Hospital

Make liable to the master sustain the damage caused.

- Negligence of the servant.
- Fraud.
- Theft
- Delegation of authority by servant.
- Effect of Express prohibition.
- Doctrine of Common Emplacement-

Master is not liable for servant act-

- In forbidden act.
- Express prohibition (Position in India)

Vicarious liability of the state

Position in England

The crown could not be sued in tort. Either for wrong actually authorized by it or committed by its servant. No action could lie against the head of the department or the superior officials for the acts of their subordinates.

The position has been entirely changed

after the passing of the **Crown Proceedings Act 1947**. Now the crown is liable for a tort committed by its servant.

Position in India.

Art 300 of Constitution of India define that the Union and the State legislature is the Jurist Person for the purpose of suit or proceedings.

Although the UOI and State Government can sue and be sued but the circumstances under which that can be done have not been mentioned.

A/c Art 300- the UOI and the State government can sue and can be sued before the commencement of the constitution.

To know the present position as regards the liability of the state for tortuous acts, we have to go to the pre constitution days. **Sec 176 of Government of India Act 1935** says – **the present constitution does not give the circumstances of the government liability.**

In Stem Navigation Company v. s Secretary of State for India- the plaintiff filed a suit against the Secretary of State for India for the damage caused by the servant of East India Company.

The court held that- if the act was done in the exercise of sovereign functions, the East India Company would not have been liable, but if the function not sovereign then the company is liable.

In Rup Ram v.s State of Punjab- could held that rejected the plea of the government that – the truck was carrying materials for the construction of a bridge and was under the discharge of sovereign function as government along could not be liable of tort.

Court held that- State was held to be exactly similar in exactly similar in extent and nature to that of an ordinary employer.

In Vidyawati v.s Lokumal- Rajashtan high court held the same view.

Kasturi Las v.s State of UP- State is not liable.

Negligence of Military Servant- State liable.

Doctrine of res ipsa loquitur-

Defamation-

Defamation is injury to the reputation of a person. **English Law-** English defines defamation into

1. Libel
2. Slander

Libel- publication of defamatory statement into some permanent form, e.g writing, printing, picture effigy or statue. Some time cinema film also consider the libel. Is the subject of eye.

In Youssouppoff v.s MGM pictures. It is permanent nature of eye, and it is proper subject of an action of libel.

Section 1 Defamation Act 1952- broadcasting of word by means of wireless telegraphy shall be treated as publication in permanent form.

Slander- publication of defamatory statement in to temporary form, e.g. spoken by words or gesture. Is the subject of ear.

Deference under English in Slander and Libel

Bases	Libel	Slander
Criminal Law	Recognized as an offence	Recognized no offence.
Tort	Always actionable, per se without any proof.	In some exception actionable which on the proof of special damages
Exception for actionable slander		• Imputation of criminal offence to someone. • Imputation of contagious or an infectious disease to the plaintiff, which has the effect of preventing other form associating with the plaintiff. • Imputation that of a person is incompetent, dishonest or unfit in regard to office, profession calling trade etc. • Imputation of unchastely or adultery to any woman.
Indian Law	Crime u/s 499 IPC	Civil wrong

Essentials of Defamation-

- 1. Defamatory Statement.**
- 2. Defamation Statement referred to Plaintiff.**
- 3. Statement must be published.**

In DP Choudhar v.s Manju lata- run with her boy friend, news paper is liable.

NAVEEN KUMAR SHELAR'S NOTES