

UNIT - I

Law of Torts

Delta

* Definition: Law of Torts.

o Tort

→ Derived → Latin term "TORTUM"
↳ (to twist)

→ Any (wrongful act), or (injury),
Redressible → Action for damages.

↳ at the instance of
person wronged or
injured.

o Dr. Winfield.

→ Tortious liability (liability in torts)

↳ arises from "BREACH OF DUTY"
↳ primarily fixed by law.

→ Duty

Such duty is towards persons generally.

→ Breach

Redressible: By an action for "UNLIQUIDATED
DAMAGES".

o Salmond

→ Civil wrong: Redressible by an action for unliquidated damages.
↳ other than a mere:

↳ "Breach of CONTRACT"
↳ Breach of TRUST.

o Frederick Pollack.

→ (Act), or (Omission)

→ Resulting in, "BREACH OF DUTY", to an individual.

entitled to: get reparation
from wrongdoer

↓
UNLIQUIDATED.

o Section 2 (m) : INDIAN LIMITATION ACT (1963)

→ Civil Wrong.

→ not exclusively ~~×~~ Breach of Contract, or
~~×~~ Breach of Trust.

* Main Characteristics of a Tort. (4)

(1) Civil Wrong → Legal Right of a Person violated.
→ Breach of Duty.

(2) Not Exclusively
→ Breach of Contract.
→ Breach of Trust.

(3) Redressible → Civil action for UNLIQUIDATED DAMAGES.

(4) Action for tort.

→ Not necessary → Plaintiff suffered any ^(monetary) pecuniary damages
due to wrongful act of the defendant.

→ Mere violation of any legal right of plaintiff →
Defendant liable to pay damages.

Tort

- Civil Wrong → not a Criminal offence.
- Action for tort → Civil Proceedings → Civil Suit
- Remedy → Unliquidated damages

(I) Civil Wrong — Crime.

- Criminal Proceedings.
- State against accused.
- Punishment of accused if proven guilty.

Wrongs — Both tort and crime.

- Civil action against defendant → Damages.
- Criminal proceedings → Punishment by Court.

(II) X not a 'Breach of Contract' — X not a 'Breach of Trust'.

eg:- A gives B some money to look after A's kids's school while he is abroad but he misuses the money. — NOT A TORT.

eg:- A agrees to buy a house but does not fulfil his obligation — NOT A TORT.

(III) Redressible → Unliquidated damages.

- cannot be pre-determined.
- eg:- Value of Pain or Suffering in a tort.

Court deciding the amount of damages → consideration:

- Harm (or Injuria) caused to the plaintiff.
- Conduct of defendant.

* Distinction between TORT and CRIME.

TORT

- Violation of Civil / Personal Rights.
- Plaintiff awarded damages.
- Plaintiff can himself begin (institute) civil proceedings against the offender.
- Barring a few exceptions; motive of defendant
→ NOT RELEVANT.
- Breach of Duty.
→ Damages can be recovered.

CRIME

- Violation of Public Duty, affects the society as a whole.
- Offender is punished.
- Criminal proceedings against offender
→ started by State.
→ offender if found guilty, punished by the Court.
- Mens Rea (Guilty intention is proved)
Motive of accused
→ essential ingredient.
- Unlawful act, prohibited by the law → PUNISHMENT.

* Distinction between TORT and QUASI-CONTRACT

TORT

- Damages in tort -
→ Unliquidated
- Duty.
→ Towards people in general.

QUASI-CONTRACT

- Gives right with respect to money.
→ liquidated sum, generally.
- Duty
→ towards a particular person.

* Distinction between TORT and BREACH OF CONTRACT.

TORT

- Violation of a right
In Rem
 ↳ (against the society).

◦ Duty → towards people in general.

◦ Duty imposed by → ~~AW~~ / AN

- Action
 ↳ unliquidated damages.

- Damages:
 ↳ no monetary loss
 ↳ just violation of civil rights. } MONETARY DAMAGES

- Motive
 ↳ NOT RELEVANT.

- Principle of VICARIOUS LIABILITY applicable.
 ↳ master liable → wrongful acts of servant.
 ↳ Principal - Agent.

- Tort are also CRIMES
 ↳ Slander.
 ↳ Malicious Prosecution.
 ↳ Nuisance.

BREACH OF CONTRACT

- Violation of right
In personum
 ↳ (against the person).

◦ Duty → parties entering in contract

◦ Duty imposed by → Concerned parties

- Action
 ↳ Pre-determined.
 ↳ terms of Contract.

- Damages: Represent
 ↳ Money = Loss caused.
 ↳ No money = No loss.

- Motive
 ↳ Considered while determining liability.

- No application of this principle.
 ↳ Only the parties contracting are liable.

- Contracts can never be crimes.
 ↳ always a CIVIL WRONG.