Law of Torts: Meaning, Definition and Nature

• The word ‘tort’ is derived from latin term ‘tortus’ which means twisted or crooked or wrong.
• In English the word ‘tort’ has a purely technical legal meaning – a legal wrong for which the law provides a remedy.
• **Winfeild’s definition**: Tortious liability arises from the breach of a duty primarily fixed by law; this duty is towards persons generally and its breach is redressible by an action for unliquidated damages.
• Tort is a civil wrong but every civil wrong is not a tort.
• Tort and crime distinguished
• Tort and breach of contract distinguished
• Indian law of torts is practically English Law.
• The chief source is judicial decisions. It has the strengths and weaknesses of judicial law making.
• Is it ‘law of tort’ or ‘law of torts’?
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,
  2. the act or omission should result in legal damage to the plaintiff.

• The real significance of ‘legal damage’ can be illustrated by two maxims:
  1. damnum sine injuria = damage without infringement of a legal right
     Gloucester Grammar School case
     Bradford Corporation v. Pickles
  2. Injuria sine damnum = infringement of a legal right without damage
     Ashby v. White
     Constantine v. Imperial London Hotels
Enumeration of Specific Torts

- Trespass to the person: Assault and Battery
- False imprisonment
- Defamation
- Trespass to land
- Trespass to goods
- Negligence
- Nervous shock
- Nuisance
- Abuse of legal procedure: Malicious Prosecution
- Liability for animals
- Liability for dangerous premises
- Liability for dangerous chattels
- Torts of strict liability
- Tort of misfeasance in public office
Different forms of liability recognised

• Liability for intentional wrongs
• Liability for negligent wrongs
• Liability without fault i.e. strict or absolute liability
• Vicarious liability i.e. liability for acts of another
• Liability for defective products i.e. product liability
• Occupiers liability
• Liability for breach of statutory duty
General Defenses

• Plaintiff the wrongdoer
• Volenti non fit injuria
• Inevitable accident
• Act of God
• Private defence
• Mistake
• Necessity
• Statutory Authority
Parties to tortious litigation

- State
- Corporations
- Minor
- Lunatics
- Drunken persons
- Married women
Vicarious Liability

• Vicarious liability = liability of one person for the act done by another
• Liability of the master for the tort of his servant.

Reason for the rule:
• *Qui fais deemed cit per alium facit per se* = he who does an act through another is deemed to act in person
• *Respondeat superior* = let the principal answer
• Express command theory
• Implied command theory
• In the course of employment theory
• Doctrine of common employment
Vicarious liability of State

- P&O steam Navigation Case
- State of Rajasthan v. Vidyawathi
- Kasturilal v. State of UP
- Nagendra Rao v. State of AP
- State of AP v. Ramakonda Reddy
- Rudal Sah v. State of Bihar
- Bhim Singh v. State of J&K
- Lucknow Development Authority v. M K Gupta
Remedies

Judicial Remedies:
• Damages
• Injunctions
• Specific restitution of property

Extra judicial remedies:
• Abatement of nuisance
• Re-entry on land
• Re-caption of chattels
• Distress damage feasant