

# **Law of Torts1/ASR**

# THE NATURE OF A TORT

- The term “Tort” has been derived from the Latin term “Tortum” which means to twist. *It means twisted, crooked, unlawful, or a wrongful act rather than an act which is straight or lawful.* Tort may be defined as a *civil wrong which is repressible by an action for unliquidated damages and which is other than a mere breach of contract or breach of trust.*
- *Liquidated damages= fixed in advance*

# Is it Law of Tort or Law of Torts

The question is

1. 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; or (WINFIELD) // A new wrong can be recognised as tort/
2. Is it the Law of Torts, consists only of a number of specific wrongs beyond which the liability under this branch cannot arise (SALMOND)

Law of Torts=Pigeon hole theory= If there is no pigeon-hole in which the plaintiff's case could fit in, the defendant has committed no tort

# TORT & CRIME

- I. Tort is *infringement of a private or a civil right* and, therefore, it is considered to be a wrong against the person to whom the damage has been caused. Crime, on the other hand, is a *public wrong*.
- II. In a tort, the *injured party himself brings an action* against the wrongdoer whereas in a crime, the *wrongdoer is prosecuted by the State even though victim in this case is also an individual.*
- III. In a tort *the injured party is awarded compensation or damages*. In a crime the wrongdoer is punished.

# TORT AND BREACH OF CONTRACT

- I. In a contract, the parties, with their free consent, ***undertake to perform certain duties***. In a tort, the ***duties are imposed by law***. For example, I promise to sell you a radio set, the duty is contractual and I have voluntarily undertaken it. On the other hand, I have a duty not to commit trespass on your land. ***Such duty is imposed by law and the breach of it is a tort.***
- II. In a contract, ***the contracting parties owe a duty to each other only***. ***A duty not to commit a tort is owed to persons generally and not to any particular individual***

# Both Tort & Breach of Contract

- When A and B have entered into a contract and A makes a breach of contract, B can bring an action for the breach of the contract. It is **also possible that the breach of the contract by A also results in the commission of a tort against C.** It has now been established by **Donoghue v. Stevenson**, that C can also bring an action against A. C has **not to prove his privity of contract with A as his action is based on tort, which is quite independent of a contract between A and B.**

# Donoghue v. Stevenson(1932)

- A went to a restaurant with a woman friend and bought one bottle of ginger beer manufactured by the defendants. The woman consumed part of the contents but when the remainder was poured into the glass, she observed the decomposed body of a snail in it. The ginger-beer bottle being opaque and sealed, the presence of the snail could not have been observed earlier. The woman brought an action against the manufacturer for negligence and alleged by taking a part of the contaminated drink, she had contracted serious illness. The House of Lords held that the manufacturer owed her a duty to take care that the bottle did not contain noxious matter injurious to health

## Tort –Breach of Trust

- With respect to trust, there must be a trust in existence.
- With respect to trust, the wrongdoer must be the trustee of such trust.

# Essentials of a tort

1. Act or Omission
2. Injury(Legal Damage/infringement of a legal right)

**Note:** “Legal damage” and “damage” are different.  
Damage means material loss

# Act or Omission

- In order to make a person liable, he must have either done **some positive act or made an omission in the performance of his legal duty**. For example, entering on the land of another without justification, or publishing a defamatory statement are examples of positive acts resulting in the torts of trespass and defamation. Omission to perform a duty, e.g. **omission to cover a trench may make a person liable if somebody falls into it and gets injured.**

# Injury(Legal Damage)

- To be successful in an action for tort, the plaintiff has also to prove legal damage. Unless there is violation of a legal right, an action under the law of torts cannot lie. **When there is violation of a legal right, it is actionable even without the proof of any damage** (injuria sine damno). But when there is no violation of a legal right, no action lies even though damage may have been caused to the plaintiff (**damnum sine injuria**). Thus, setting up a rival school by the defendant was not actionable even though plaintiffs suffered loss because of competition (**Gloucester Grammar School case** ).
- **DAMAGE= Material loss**

# Injuria Sine Damno

- It means *violation of a legal right without causing any damage*. Since there is violation of a legal right, it can be actionable in a court of law even though no damage has been caused.
- In **Ashby v. White(1703)**, the defendant, a returning officer in a Parliamentary election, wrongfully refused to take the vote of the plaintiff. The plaintiff did not suffer any loss by this refusal because the candidate for whom he wanted to vote won in spite of that. Was the defendant liable?.

# Mental element in tortious liability

- Generally, under criminal law, guilty mind (mens rea) is a necessary element for liability. No such generalization is possible for liability under law of torts. ***In torts like assault, battery, false imprisonment, deceit, malicious prosecution and conspiracy, the state of mind of a person is relevant to ascertain his liability.*** For ascertaining the liability of a person for the tort of ***negligence, we compare the conduct of the defendant with that of a reasonable man*** and make him liable only if he fails to perform the duty of due care. ***Mental element is relevant in another way also, i.e., when the defendant is innocent and the damage has been caused due to and inevitable accident.*** In such a case, he is not liable.

# Mental element in tortious liability

- In certain areas, on the other hand, mental element is quite irrelevant. *In an action for conversion or defamation, the innocence of the defendant is no defence.*
- *Richardson v. Atkinson* : The defendant drew out some wine out of the plaintiff's cask( a large container for storing liquids) and mixed water with the remainder to make good the deficiency. He was held liable for the *conversion* of the whole cask.
- *Motive:-An idea, belief, or emotion that impels a person to act in accordance with that state of mind.*

# Evil motive(MALICE)

- It means the motive for doing a wrongful act. *When the defendant does an act with a feeling of spite, vengeance or ill will, the act is said to be done maliciously.*
- As a general rule, motive is quite irrelevant in determining a person's liability under the law of torts. *A wrongful act does not become lawful merely because the motive is good. Similarly, a lawful act does not become wrongful because of a bad motive or malice*
- Mayor of Bradford Corporation v. Pickles(1895)
- Town Area Committee v. Prabhu Dayal(1975)

# Mayor of Bradford Corporation v. Pickles

- In **Mayor of Bradford Corporation v. Pickles**, the defendant made *certain excavations on his own land out of ill will* for the plaintiffs, who had refused to purchase defendant's land at an exorbitant price. *By these excavations the water flowing underground from the land of the defendant to the adjoining land of the plaintiff corporation was discoloured and diminished.* Here, the damage had been caused maliciously but since the defendant was making a lawful use of his own land, he was held not liable.

# Town Area Committee v. Prabhu Dayal

- In Town Area Committee v. Prabhu Dayal, the defendants demolished the construction illegally made by the plaintiff. The plaintiff in his suit claimed that the demolition was illegal as it was **mala fide**. The Allahabad High Court held that if the demolition is otherwise valid, it cannot become invalid, merely because of malice on the part of some of the officers of the committee. The court did not go into the question of malice at all and held that the demolition was valid and the defendants were not liable.

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**GENERAL  
DEFENCES**

## A)Volenti non fit injuria

- It means voluntary assumption of risk. When the plaintiff suffers some harm with his own consent, it is a complete defence for the defendant. If I invite somebody to my house, I cannot sue him for trespass. Similarly, when I submit to a surgical operation, the surgeon cannot be sued for assault or battery. Such consent may be express or implied. A player in the game of cricket or football is deemed to be agreeing to any hurt which may be likely in the normal course of the game. Consent in such cases is to the risks of pure accidents. If one of the players deliberately hits and injures another player, he will be liable because there is considered to be no consent to such deliberate harm.

# Hall v. Brooklands Auto-Racing Club(1932)

- In Hall v. Brooklands Auto-Racing Club, the plaintiff, a spectator at a car race, being conducted by the defendants, was injured when a car was accidentally thrown into the spectator's enclosure. It was held that the plaintiff impliedly took the risk of such injury, the danger being inherent in the sport, and, therefore, the defendants were held not liable.

## B) Inevitable Accident

- Accident means an unexpected injury
  1. Should not be intentional
  2. Defendant should have taken reasonable care
- It is, therefore, a good defence if the defendant can show that he neither intended to injure the plaintiff nor could he avoid the injury by taking reasonable care. In Brown v Kendall, the plaintiff's and the defendant's dogs were fighting. While the defendant was trying to separate them, he accidentally hit the plaintiff in his eye, who was standing nearby. The defendant was held not liable.

## C)Act of God

- Working of natural forces like *unusual heavy rainfall, storm, tides tempests or volcanic eruptions* should be there. In **Nichols v. Marsland(1876)**, four bridges belonging to the plaintiff had been washed away by an ***unprecedented heavy rainfall*** which made the water to escape from the defendant's artificial lakes. The defendant was not liable as the escape of water and consequential loss was due to an act of God.// ***If a building collapses after a rainfall of about 2 to 3 inches and causes damages, the defence of act of God is not available because such a rainfall is not an unusual thing.*** (Kallulal v. Hemchand 1958).

# D)Private defence

- The law permits the **USE OF REASONABLE FORCE TO PROTECT one's person or property.** The force must be to repel an imminent invasion. **Use of force, therefore, cannot be justified either in anticipation of some threat or by way of retaliation.** The force used by way of defence should be such as is **absolutely necessary to repel the invasion.** Fixing of broken glass or spikes on a wall, or keeping of fierce dog can be justified for the protection of property, but fixing up of spring guns without any warning to trespasser (**See Bird v. Holbrooke and I lot v. Wilkes**), or live electric wire to keep the trespassers away (**R. Mudali v. M. Gangm and Cherubin Gregory v. State of Bihar**) cannot be justified

## E)Necessity

- An act causing damage, if done under necessity to *prevent a greater evil* is not actionable even though harm was caused intentionally. *Throwing goods overboard a ship to lighten it for saving the ship and persons on board the ship, or pulling down a house to stop further spread for fire are its common examples.* Similarly, it would not be actionable to *pull out a drowning person from water or for a competent surgeon to perform an operation on an unconscious person to save his life.*

## F)Statutory Authority

- When an act is done under the authority of an Act, it is a complete defence and the injured party has no remedy except for claiming such compensation as may have been provided by the statute. Immunity is not only for the harm which is obvious, but also for that which is incidental to the exercise of such authority. When a railway line is constructed under the authority of a statute, there is no liability in respect of interference with land, there is also no liability for incidental harm due to noise, vibration, smoke, emission of sparks, etc., which would be there by the running of the trains.

# CAPACITY

**(A) Minor.** - He can sue like an adult but in his case the action is to be brought through his **NEXT FRIEND**. **A minor is liable in the same manner and to the same extent as an adult for a tort committed by him**

- **LIABILITY OF PARENTS FOR CHILDREN'S TORTS**

As a general rule , a parent or guardian cannot be made liable for the torts of the child. There are two exceptions to the rule

# Child is Father's Servant or Agent

- When the child is father's servant or agent, the father is vicariously liable. It may be noted that, in such a case, the father is liable for son's torts, not as his father, but in the **capacity of an employer or principal.**

# Parent's Negligence

- When the father himself, by his own **negligence, affords his child an opportunity to commit a tort**, he is liable.
- BEBEE v. (1916)
- The father supplied an airgun to his son aged 15 years. Even after some complaints of mischief caused by the use of the gun, he allowed the gun to remain with the boy, who , thereafter, accidentally wounded the plaintiff. The father was held liable.
- **ALLOWING A CHILD TO DRIVE A CAR**

## **(B) Act of State:-**

- An act done in exercise of sovereign power *in relation to another State or subject of another State is an act of State.* It cannot be questioned by municipal courts. There can be no such thing as an act of State between a sovereign and his own subjects *(NOT BETWEEN THE INDIAN STATE & INDIAN SUBJECTS)*

# © Corporations

- It was at one time doubtful whether a corporation could be sued for torts like *malicious prosecution or deceit*, where a wrongful intention was a necessary element. It is *now held that even though the corporation may not have the requisite mental element for a tort requiring malice, its agents are capable of having the same and, therefore, if the act is done within the course of their employment*, a corporation is liable for their acts like an ordinary employer.
- *EVEN IF MENTAL ELEMENT IS A REQUIREMENT*

# D)Independent & Joint Tortfeasors (Composite Tortfeasors)

- When *two or more persons commit a tort acting in furtherance of a common design*, they are known as joint tortfeasors. They are to be differentiated from independent tortfeasors. *Independent tortfeasors act independently of each other but concur to produce a single damage(2 media channels /defaming)*. Joint tortfeasors are also known as composite tortfeasors. The common *examples of joint tortfeasors are: principal and agent, master and servant, and partners.*

## F) Persons having Judicial and Executive authority

- Judicial Officers' Protection Act, 1850 grants protection to a judicial officer *for any act done or ordered to be done by him in the discharge of his judicial duty.* The protection is also available even though he, *acting honestly, exceeds his jurisdiction.* If, however, a *MAGISTRATE ACTING MALA FIDE, illegally and outside his jurisdiction, orders the arrest of a person, he can be made liable for the wrong of false imprisonment.* (**Sailajanand Pande v. Suresh Chandra Gupta**). The protection is available only in respect of judicial proceedings rather than mere administrative or ministerial proceedings. (**State of U.P. v. Tulsi Ram**).

# Persons having Judicial and Executive authority

- Executive officers also enjoy certain protections. Public servants are not liable for acts done by them in the their duties, e.g., *a police officer acting on a warrant which appears to be valid has absolute protection for acts done in the execution of that warrant.*

# DEFAMATION/ASR

- Defamation consists in injury to the reputation of a person.
- Mental suffering caused to the person defamed is the gist of this wrong.
- Lowering him in other's estimation.
- Defamation is the act of saying false things in order to make people have a bad opinion of someone.
- The plaintiff's right to reputation outweighs the right of free speech.

# ENGLISH LAW

- English Law divides actions for defamation into Libel and Slander. Libel is a representation made in some permanent form ,e.g., writing, printing, picture, effigy or statute. Slander is the publication of defamatory statement in a transient form. In English Law, the distinction is material for 2 reasons:-
  1. Slander is only a civil wrong whereas a libel is both a crime and a tort
  2. Slander is actionable, save in exceptional cases, only on proof of special damage. Libel is actionable per se.

SLANDER=CONVEYED BY SPOKEN WORDS/GESTURES

# **INDIAN LAW**

- Unlike English law, under Indian law, libel and slander are treated alike, both of them constitute a crime as well as a tort. Moreover, weight of various decisions is to make slander like libel, actionable per se.
- **ESSENTIALS OF DEFAMATION**
  1. The statement must be defamatory;
  2. The statement must refer to the plaintiff; and,
  3. The statement must be published

Sec 294 IPC-utter obscene words in a public place

# **The statement must be defamatory**

- Whether a statement is defamatory or not depends upon how the right thinking members of the society are likely to take it. If the likely effect of the statement is the injury to the plaintiff's reputation, it is no defence to say that it was not intended to be defamatory.

**The Innuendo( latent /secondary meaning/HIDDEN /Concealed):-** To say "But King's second wife is good" indicates that the first wife is not good. To say that X is a honest man and he never stole my watch

# The Innuendo( latent /secondary meaning/HIDDEN /Concealed):-

- To say "But King's second wife is good" indicates that the first wife is not good. To say that X is a honest man and he never stole my watch may be defamatory if the persons to whom the statement is made understand from this that X is a dishonest man having stolen the watch.
- "Come to my guest house in the evening"  
"We need to go deeper"

# The statement must refer to the plaintiff

- If the statement is taken to be referring to the plaintiff, the defendant will be liable and *it will be no defence that the defendant did not intend to defame the plaintiff.*
- If a newspaper publishes that *Rahul singh, a resident of Mussoorie is convicted for bigamy and if there is a rahul singh in Mussoorie not convicted for bigamy, he can bring an action for defamation.*

# The statement must be published

- Publication means making the defamatory matter known to some person other than the person defamed. Sending the defamatory letter to the plaintiff is no defamation. If a third person wrongfully reads a letter meant for the plaintiff, the defendant is not liable. /When the defamatory matter is contained in a postcard or a telegram, the defendant is liable. /Communication of a matter defamatory of one spouse to the other spouse is defamation./Every person who repeats the defamatory matter is liable in the same way as an originator, because every repetition is a fresh publication giving rise to fresh cause of action.

# **DEFAMATION-- DEFENCES**

1. Justification or Truth,
2. Fair Comment,
3. Privilege- Absolute or Qualified

# 1.JUSTIFICATION OR TRUTH

- Under the law of torts, truth of the defamatory matter is complete defence. The defence is available even though the publication is made maliciously. Under Criminal Law, merely proving that the statement was true is no defence. First exception to sec. 499,IPC requires that besides being true, the imputation must be shown to have been made for public good.

# Fair Comment

Required Essentials:-

1. It must be a Comment, i.e., an expression of opinion rather than assertion/statement of fact;
2. The comment must be fair; and
3. The matter commented must be of public interest

*A has been held guilty of breach of trust and, therefore, he is a dishonest man”*

## 1.COMMENT:-

- For example, A says of a book published by Z—"Z's book is foolish : Z must be a weak man./Z's book is indecent ; Z must be a man of impure mind. These are only comments based on Z's book and A will be protected if he has said that in good faith. But if A says—" *I am not surprised that Z's book is foolish and indecent, for he is a weak man and a libertine*'(a man, who freely indulges in sensual pleasures without regard to moral principles). **It is not a comment on Z' book but is rather a statement of fact**

**Comment(continued):-** It is also essential that the facts commented upon must be either known to the audience addressed or the commentator should make it known along with his comment. For example, *X says that “A has been held guilty of breach of trust and, therefore, he is a dishonest man”, the latter words are a comment on the former*

ii) **The comment must be fair:** The comment cannot be fair when it is based upon untrue facts. If due to malice on the part of the defendant, the comment is a distorted one, the comment ceases to be fair and no defence. **(1. Truthful/2. No Malice)**

### **iii)The matter commented upon must be of public interest**

- Administration of Govt. departments, public companies , courts, conduct of public men like ministers or officers of State, public institutions and local authorities, public meetings ,pictures, theatres, public entertainments, textbooks, novels , etc.

## **3 PRIVILEGE:-**

The law treats some occasions to be privileged and a defamatory statement made on such occasions is not actionable. Privilege is of 2 **kinds: (1)ABSOLUTE,(2)QUALIFIED**

ABSOLUTE PRIVILEGE: In matters of absolute privilege, no action lies for the defamatory statement even though the statement is false or has been made maliciously.(Can be false/made with malice)

**ABSOLUTE PRIVILEGE:-**(i) Parliamentary Proceedings  
(ii) Judicial Proceedings(judges,counsels,witnesses,or parties, for words written/spoken in the course of)  
(iii) State Communications.

**QUALIFIED PRIVILEGE:-**Unlike the defence of absolute privilege, in this case it is necessary that the statement ***must have been made without malice.***

(i)Statements should be made in discharge of a duty or protection:- Former employer to new employer/ creditor to creditor(**CIBIL**)/Interview Board/DPC  
(ii)Reports of Parliamentary, Judicial or other public proceedings(***truthful/without malice /public good***)

# Arun Jaitley- Arvind Kejriwal - Ram Jethmalani

- Jaitley had filed a defamation suit seeking Rs 10-crore in damages after Kejriwal and five other AAP leaders accused him of alleged irregularities and financial bungling in the DDCA, of which Jaitley was the president for about 13 years until 2013.
- Union Finance Minister Arun Jaitley sued Delhi Chief Minister Arvind Kejriwal today under an additional defamation suit worth Rs 10-crore, after the latter's Counsel Ram Jethmalani confirmed that Jaitley was called a 'crook' after being instructed by his client to do so./ Jethmalani accused Jaitley of being 'guilty of crimes and crookery'

67	Publishing information which is <u>obscene</u> in electronic form.	Imprisonment up to five years, or/and with fine up to ₹1,000,000
67A	Publishing images containing <u>sexual acts</u>	Imprisonment up to seven years, or/and with fine up to ₹1,000,000

71	<u>Misrepresentation</u>	Imprisonment up to 2 years, or/and with fine up to ₹100,000
72	Breach of confidentiality and privacy	Imprisonment up to 2 years, or/and with fine up to ₹100,000

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Publication for fraudulent purpose

Imprisonment up to 2 years, or/and with fine up to ₹100,000