

# 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.

# Bombay HC sets aside BMC notices to

## Kangana Ranaut 271120

A division bench of Justices S J Kathawalla and R I Chagla noted that the action undertaken by the civic body leaves hardly “any manner of doubt” that it was unauthorised. The BMC had alleged Ranaut of unauthorised construction in her office, a portion of which was razed. **The high court said it has compared the photographs and found no unauthorised construction**//The high court said the demolition action at her office **had malafide intent**, passing an order for a valuer to be appointed to ascertain the damage caused in the demolition.//reaction to her opinions expressed on social media

- **Problem : Snoopy is a pet dog of Jaiveer. Snoopy has a vicious or savage propensity (dangerous and harmful by nature) but the same is not within the knowledge of Jaiveer. At around 7 A.M. in the morning Jaiveer takes his pet dog for a walk. On 1-6-2021, Jaiveer as usual was taking snoopy for a walk. It was tied to a chain and the chain was in the control of Jaiveer. There was a call on the mobile of Jaiveer and in the process of answering the phone call Jaiveer left the chain and thus lost control of snoopy. Before Jaiveer could take control of Snoopy, it attacked Naresh a passerby. Discuss the liability of Jaiveer.**

# Scienter rule

- For the purpose of the scienter rule, the animals have been divided into two categories: (a) animals dangerous by nature (Lions, tigers, bears, elephants, zebras, monkeys etc.,) (b) animals harmless by nature (Horses, camels, cows, dogs, cats, rabbits etc.,).
- Liability for animals harmless by nature
  - 1) *the particular animal in question had a vicious or savage propensity*
  - 2) *the person having its control had knowledge of the same*

Note: IF INSTRUCTION TO HARM GIVEN=?

# Scienter rule

- In case of dangerous animals, the knowledge as to its dangerous nature is conclusively presumed and the person having their control will be liable for the damage caused by their escape even without any proof of negligence on his part. With respect to animals harmless by nature, the person having their control (keeper of the animal) is not liable for damage done by them unless it can be proved that the particular animal in question had a vicious or savage propensity and the person having its control had knowledge of the same. ///Strict Liability where negligence based on foreseeable harm presumed

# 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.