

# LL.B 3 year 1<sup>st</sup> Sem & B.A.LL.B 5 year 5<sup>th</sup> Sem

## The Law of Torts

### Unit-1st

Evaluation of the law of torts-

Definition nature and objects

Wrongful act-violation of duty imposed by law. Duty which is owed to people generally in term(Damnum sine injuria & injuria sine damnum)

Tort distinguished from crime and breach of contract

Unliquidated damages

#### **Introduction -:**

The subject law of torts is one of the most important branches of law which owes its origin in the common law of England. The subject is well developed in UK, USA and other advanced countries. But in India it is in the process of development. It is not codified other branches of law viz. The Indian Contract Act 1872, The Indian Penal Code 1860 etc. In the absence of codified law Indian courts apply the principal of Justice, equity and good conscience. However there are various special legislations to support the progress and development of the law of torts in India.

Tort -:

Meaning and Definition \_\_\_\_

The expression tort is French origin. It is derived from the latin word "Tortum" which means twisted or deviation from straight or right conduct. It is equivalent of the English word wrong.

Wrong is of two kinds--:

- (1) public wrong
- (2) private wrong

All acts, which are identified to be punishable under the Indian Penal Code 1860 are called offences or crime or public wrongs. The rest are called private wrongs. Therefore tort is a civil wrong and is tried in Civil Court.

The term tort literally means a wrongful act committed by a person, causing injury or damage to another.

Definition:-

It is very difficult to define the term tort. However there are many definitions. Prominent among them are given below:

1:- Winfield \_\_\_\_

According to prof. Winfield eminent authority on the subject, "tortious liability arises from the breach of a duty primarily fixed by law, this duty is towards persons generally and its breach redressible by an action for unliquidated damages."

(2) Salmond's \_\_\_\_

According to Salmond tort is a civil wrong for which the remedy is common law action for unliquidated damages and which is not exclusively the breach of contract or the breach of trust or other nearly equitable obligation.

(3) Fraser \_\_\_\_

According to Fraser, a tort is an infringement of a right of a private individual giving a right of compensation to injured party.

(4):- Definition of tort under limitation act, \_\_\_\_

As per section 2(m) of limitation act 1963 tort is a civil wrong independent of contract.

Scope of law of torts \_\_\_\_

The scope of law of torts can be explained with reference to the following heads-

1-

Tort is a civil wrong:-

Wrong means violation of a right recognised by law or administration of Justice. Civil wrong means a wrong which is challenged or tried in Civil Court. Civil wrong comes under the head, private wrong, which causes injury to one person or group of persons.

All torts are civil injuries, but all civil injuries are not torts:-

To continue tort, the wrongful act must come under the category of wrongs for which the remedy is a civil action for damages. There may be other remedies such as injunction specific restitution and recovery of the property itself.

2:-

Duty primarily fixed by law:-

the basic principle of tortious

liability is that the duty from the very first must be fixed by the law itself and not by the agreement of parties. Parties therefore cannot create tortious liability by contract and also it cannot be negated by them.

3:- Duty is towards persons generally:---

The duty in tort is always general and it is an important constituent of tort. If the duty is towards specific person it cannot arise from tort.

For example:- we have a duty not to defame others or not to trespass upon the land of others in general.

4:- Action for unliquidated damages---:

Damages are the pecuniary remedy in an action for tort. It means the payment of compensation to the injured by the wrongdoer. It is very important to note that the word damage differs from the word damages. The former is the consequence of a tort while the latter is the compensation for a tort. Whereas damages means compensation which the injured is entitled to get.

The main remedy in an action for tortious liability is for unliquidated damages.

Unliquidated damages are determined by the court by exercising its discretionary power. While the liquidated damages are already determined irrespective of court discretion. Liquidated damages are claimed in an action for breach of contract, breach of trust, breach of Quasi contractual obligation etc.

Nature of tort\_\_\_\_\_

The nature of tort can be better understood by distinguishing between:

1- Tort of crime

- 2- Tort and breach of contract
- 3- Tort and breach of trust
- 4- Tort and Quasi contract
- 5- Tort and bailment

1- Distinction between tort and crime:----

(a) Tort is a private wrong which infringes the legal right of an individual or specific group of individuals.

Crime is a public wrong which violates rights and duties of public as a whole.

(b) the person who commits tort is called tortfeasor or wrongdoer.  
the person who commit crime is called offender or criminal.

(c) in tort the Civil action is brought by the injured party himself.  
in crime the proceedings are conducted in the name of the state.

(d) whatever amount paid for tortious acts in the form of compensation goes to the injured.

the amount of fine imposed in criminal acts goes to Government treasury.

(e) the place of trial is Civil Court.

the place of trial is Criminal Court.

(f)  
the remedy in tort is unliquidated damages or other equitable relief to the injured.  
the remedy is to punish the offender.

(g) Tort litigation is compoundable the plaintiff can withdraw the suit filed by him.  
Criminal cases are not compoundable. However section 320 Cr.P.C. provides for the compounding of certain offences

Distinction between tort and breach of contract-----

- (a) Rights and duties in tort are created by law.  
Rights and duties in contract are created out of an agreement between the parties.
- (b) In tort the duty is towards every person of the community or society.  
In contract the duty is towards a specific person or persons.
- (c) A tort is committed against or without consent.  
A contract is based on the consent of the parties.
- (d) It is a violation of right in rem.  
A breach of contract is a violation of right in personam.
- (e) The remedy in tort is civil action for unliquidated damages, restitution of property,

injunction etc.

The remedy is civil action for specific performance of the contract or liquidated damages in alternative.

(f)

Law relating to tort has not been codified . It is a judge made law.

Law relating to contract has been codified.

Distinction between tort and Quasi contract

(1) The right arising in tort is against persons generally i.e.against the world at large.

The right arising out of Quasi contract against a particular person or persons only

(2) The duty in tort is towards persons who are likely to be affected for a breach of such duty.

The duty in Quasi contract is against a particular person who suffers an undue loss at the act of former.

(3) Dutie is towards persons generally in rem and not to a definite person.

Right arising from Quasi contract is against particular person or persons in personam.

(4) The remedy is civil action for unliquidated damages.

The remedy is for liquidated damages.

Distinction between tort and breach of trust-----

(1) The law of torts owes its origin to the common law of England.

The law relating to trust owes its origin equity Court or the court of Chancery.

(2) The main remedy in tort is civil action for unliquidated damages.

The remedy is for liquidated damages.

(3) Tort is a civil wrong. Civil proceeding shall be instituted.

Breach of trust and other equitable obligation and criminal offences are liable for punishment with imprisonment or fine or both.

(4) Tort is a violation of a right in rem.

A breach of trust is a violation of a right in personam.

Law of torts' "Object" \_\_\_\_\_

the object of law of tort is to provide relief to the injured whose legal right is infringed. It also help in the administration of criminal justice by awarding exemplary damages. The growth and development of this branch of law promotes legal knowledge among the people.

Whenever the court is convinced that there is a lawful right of a person which is violated a remedy is provided for the same the law being, *Ubi jus ibi remedium*“( where there is right there is a remedy)

When a person commits a tort thereby another person Suffers damage or injury the injured Party Can resort to remedy by instituting a civil action. The plaintiff to be successful in his action against the defendant has to prove the following essential elements\_\_

1---

Wrongful act (act or omission)

2---

Injuria or legal damage

3---

Legal remedy

1---

Wrongful act(Act or omission):-

to constitute tort, there must be an act or omission on the part of defendant. In other words the plaintiff has to prove that the defendant has committed an act. For instance if a person enter another land unauthorisedly, it is a commission of an act and amounts to tort of trespass.

Thus to constitutes tort the act must be wrongful in the eyes of law and not according to the parties. Sometimes the question may arise that the act complaint of is wrongful according to the plaintiff while defendant contends that the act is not wrongful. Weather it is wrongful amounting to tort or not is it to be decided by the court.

2-

Legal damages(Injuria):-

damages means the harm or loss to be suffered by a person as a result of some wrongful act of another.The Concept of injuria or legal damages can be explained through the following two Maxim's --

(1)

*Injuria sine damno*

(2)

*Damnum sine injuria*

*Injuria sine damno*-----

if the plaintiff suffers injury to his legal right will have a cause of action to sue the defendant even though he has not suffered any loss or damage. in other words plaintiff legal right is affected but he has not suffered any loss or damage. In such a case the suit is maintainable even though the plaintiff suffer no damage. Relevant leading case on this point are----

Ashby vs white 1702\_\_\_\_\_

Court of appeal held that the defendant liable to pay compensation to the plaintiff. Holt CJ. In this case observed that, if the plaintiff has a right he must of necessity have a means to vindicate and maintain and a remedy if he is injured in the exercise or enjoyment of it and indeed it is a vain thing to imagine a right without a remedy for want of right and want of remedy are reciprocal.

The principle stated in ashby vs white has been followed in India in the case of Kali Kishan Tagore v/s Jadoo Lal Mullick and S.Das V/S. U Singh.

Damnum sine injuria-----

when the plaintiff suffer loss of damage without any injury to his legal right . Hence the plaintiff suit is not actionable . The term injuria means infringement of legal right . It means damage without the infringement of legal rights .

Relevant case law

1-----

Gloucester

Grammar School case( 1410):-

the court held that the plaintiff is not entitled to any remedy since the defendant in setting a School exercise his legal right without infringing the plaintiff's legal right.

Another case on this point is that of ----

Mogul steamship company versus McGregor gow and Company(1892 AC 25)

The house of Lords held that plaintiff had no cause of action as the defendants had by lawful means acted to protect and extend their trade and increase their profits.

(3): Legal remedy:-

A tort is a civil injury but all civil injuries are not torts . The wrongful act must come under the category of wrong which the remedy is a civil action for damages. Therefore the third ingredient of tort is that the wrongful act complained of must be such that it gives rise to a legal remedy in the form of civil action for damages .

According to Stephen J. In Bradlaugh versus Gossett, "where there is no legal remedy, there is no legal wrong (Ubi remedium ibi jus)

Further it is enshrined in the Latin Maxim "Ubi Jus Ibi remedium" (Where there is a right there is a remedy).

A right infringed is required to be legal and the remedy sought also is required to be legal. The legal right and the legal remedy are two sides of the same coin. There cannot be a remedy for every breach of moral or political right but there is always a legal remedy for every breach of legal right. A legal right vested in a person imposes a duty on another person. If the person who is obliged to do that duty fails to do his duty he violates the right of the first man and he should compensate for the injury caused.

Thus legal wrong and legal remedy are correlative. The principal remedy in tort is unliquidated damages. However there are other remedies in tort viz. Injunction, abatement, restitution of property etc.

Pankaj Katiyar  
Asst.Prof.  
Avadh Law  
College, Barabanki