

Prof. (Dr.) K.V.S. SARMA,
PROFESSOR OF LAW &
VICE CHANCELLOR,
MAHARASHTRA NATIONAL
LAW UNIVERSITY,
AURANGABAD.

LAW OF TORTS

- 1) The 'Tort' has been derived from the word 'Tortum' which means 'to twist'.
- 2) Not 'straight forward' or 'wicked' or 'cunning'.
- 3) It is 'Civil Wrong'. It is 'Wrong against an individual'.
- 4) This branch of law consists of various 'torts' or 'wrongful acts' whereby the

The wrong doer violates some legal right vested in the members of the society and the person making a breach of that duty is said to have done the wrongful act.

5) The law imposes a duty to respect the legal rights vested in the members of the society and the person making a breach of that duty is said to have done the wrongful act.

6) A 'breach of contract is the 'non-performance of a duty undertaken by a party to a contract'.

7) A tort is a breach of duty imposed by law.

8) In law of torts an obligation is imposed by law that every individual should not cause inconvenience to others by his conduct.

9) A tort is a wrong against an individual and a crime is a wrong against the society.

10) Tort and Privity of Contract –Donoghue v. Stevenson.

11) Essentials of Law of Torts: a) There must be some act or omission on the part of the defendant, and b) The act or omission should result in legal damage (injuria) i.e., violation of a legal right vested in the plaintiff.

a) Act or Omission: Legal Damage: “Injure sine damno”. Violation of a legal right without causing any harm, loss or damage to the plaintiff.

-) Ashby v. White:

b) Damnum Sine Injuria: Damage which is not coupled with an unauthorized interference with the plaintiff’s lawful right. Causing of damage, however substantial, to another person is not actionable in law unless there is also violation of a legal right of the plaintiff.

-) Gloucester Grammar School Case.

12) EXAMPLES FOR TORS:

A) TRESSPASS TO THE PERSON:

a) Battery: There should be use of force. The same should be without any lawful justification. Even though the force used is very trivial and does not cause any harm, the wrong is still constituted. Physical hurt need not be there.

b) Assault: When the defendant by his act creates an apprehension in the mind of the plaintiff that he is going to commit battery or hurt, it may be either simple or grievous against the plaintiff, the wrong of assault is completed.

B) FALSE IMPRISONMENT:

a) False imprisonment consists in the imposition of a total restraint for some period, however short, upon the liberty of another, without sufficient lawful justification. It is also called "Total Restraint".

C) Defamation:

Defamation is an injury to the reputation of a person. A man's reputation is his property, and if possible, more valuable, than other property.

English Law divides actions for defamation into Libel and Slander. Slander is the publication of a defamatory statement in a transient form. Examples of it may be

Libel is representation made in some permanent form, i.e., writing, printing, picture, effigy or statute.

Essentials of Defamation:

- i) The statement must be defamatory.
- ii) The said statement must refer to the plaintiff.
- iii) The statement must be published.

Defences: i) Justification or Truth.

ii) Fair Comment: Making fair comment on matters of public interest is a defence to an action for defamation. It must be a comment i.e., an expression of opinion. The comment must be fair. The matter commented upon must be of public interest.

iii) Privilege: There are certain occasions when the law recognises that the right of free speech outweighs the plaintiff's right to reputation. It is of two kinds: a) Absolute Privilege b) Qualified Privilege.

D) NUISANCE: Nuisance as a tort means an unlawful interference with a person's use or enjoyment of land, or some right over, or in connection with it. Acts interfering with comfort, health or safety are the examples. The interference may be any way, e.g., noise, vibrations, heat, smoke, smell, fumes, water, gas, electricity, excavation or disease producing germs.

KINDS OF NUISANCE: a) Public or Common Nuisance; b) Private Nuisance;

a) Public Nuisance: Public Nuisance is a crime whereas Private Nuisance is a civil wrong. A public nuisance also becomes a private nuisance so far as the person suffering

“SPECIAL DAMAGE” concerned.

b) Private Nuisance: Essentials: i) Unreasonable interference; ii) Interference is with the use of enjoyment of land and personal discomfort with reference to the enjoyment of his property; iii) Damage;

Defences: i) Prescriptive right to commit nuisance; ii) Statutory Authority;

E) ABUSE OF LEGAL PROCEDURE:

MALICIOUS PROSECUTION:

Malicious Prosecution consists in instituting unsuccessful criminal proceedings maliciously and without any reasonable and probable cause. When such prosecution

Causes actual damage to the party prosecuted, it is a tort for which he can bring an action.

F) Maintenance and Champerty:

G) NEGLIGENCE: Negligence is considered as a separate tort. It means a conduct which creates a risk of causing damage, rather than a state of mind. In an action for negligence, the plaintiff has to prove the following elements:

i) The plaintiff has to establish that the defendant owed to him a specific legal duty to take care of which he has made a breach. It is also necessary that the defendant's breach

Of duty must cause damage to the plaintiff.

H) LIABILITY FOR DANGEROUS CHATTELS:

When the chattel is transferred under a contract, the liability of the parties is regulated by the terms of the contract.

i) Things dangerous per se; ii) Things not dangerous per se but known to be so by the transferor; iii) Things neither dangerous

Per se nor known to be dangerous to the transferor but dangerous in fact;

I) LIABILITY FOR ANIMALS:

a) The Scienler Rule; b) Cattle-Trespass; c) Ordinary liability in Tort;

M) TRESPASS TO LAND: Trespass to land means interference with the possession of land without lawful justification.

N) TRESPASS TO GOODS, DETINUE AND CONVERSION:

a) Trespass to Goods: It consists in direct physical interference with the goods which are in the plaintiff's possession, without any lawful justification.

b) Detinue: When the defendant is wrongfully detaining the goods belonging to the plaintiff and refuses to deliver the same on lawful demands, the plaintiff can recover the same by bringing an action for detinue.

c) Conversion: Wilfully and without any justification dealing with the goods in such a manner that another person, who is entitled to immediate use and possession of the same, is deprived of that.

O) INTERFERENCE WITH CONTRACT OR BUSINESS:

- a) Inducing breach of contract:
- b) Intimidation-Threat;
- c) Conspiracy:
- d) Malicious falsehood;
- e) Passing off;
- P) LIABILITY FOR MISSTATEMENTS:
 - a) Deceit or Fraud;
 - b) Negligent mis-statements;
 - c) Innocent mis-statements
- Q) DEATH IN RELATION TO TORTS:
- R) THE RULE OF STRICT LIABILITY:

i) The Rule in Ryland v. Fletcher;

ii) The Rule of Absolute Liability:

M.C. Mehata v. Union of India;

S) VICARIOUS LIABILITY:

i) Master and Servant;

ii) Partners;

iii) Principal and Agent;

T) GENERAL DEFENCES:

i) Volenti non fit injuria- Consent

- ii) Plaintiff, the wrong doer;
- iii) Inevitable accident;
- iv) Act of God;
- v) Private Defence;
- vi) Mistake;
- vii) Necessity;
- viii) Statutory Authority;

V) CAPACITY:

- a) Act of State; b) Corporations;
- c) Minor; d) Indian and Joint Tortfeasors;
- e) Husband and Wife; f) Persons having Parental and Quasi-Parental authority;

g) Persons having judicial and executive authority;
W) Remedies: a) Damages: i) Nominal Damages; ii) Contemptuous Damage; iii) Compensatory damages; iv) aggravated damages; v) Exemplary damages; vi) Injunctions;