

LAW GENERAL

IBBI VALUATION EXAMINATION –

LAND & BUILDING

PLANT & MACHINERY

CEV INTERNAL APPRAISERS FOUNDATION

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REGISTERED VALUERS ORGANISATION (RVO) WITH IBBI

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LAW - GENERAL

- Indian Legal System: Salient Features of the Indian Constitution, Fundamental Rights, Directive Principles of the State Policy –
- Government: Executive, Legislature and Judiciary –
- Laws of Contract: Formation of a Contract, Parties, Void, Voidable and Unenforceable Contract, Contingent Contract, Misrepresentation and Fraud and effect thereof, Termination of a Contract, Remedies for Breach, Performance of Contract, Indemnity and Guarantee, Law of Agency –
- Tort: General Principles of Tort, Tort affecting Valuation –
- Law of Arbitration and Conciliation: Salient Features –
- Auction: Authority of Auctioneer, Duties of Vendor, Purchaser and Public, Misdescription and Misrepresentation, Advertisements, Particulars and Catalogues, Statements on the Rostrum, Conduct of Sale, Reservation of Price and Right to Bid, Bidding Agreements. Memorandum of the Sale. The Deposit, Rights of Auctioneer against Vendor and Purchaser –
- Laws of Evidence: Burden of Proof, Presumptions, Conclusive Proof

LAW - GENERAL

- Tort: General Principles of Tort, Tort affecting Valuation –

Tort

Every person in our country is entitled to some legal right. Law imposes a duty on every individual to respect the legal right of others and any person interfering with someone else's enjoyment of their legal right is said to have committed a tort. The underlying principle of the law of tort is that every person has certain interests which are protected by law. Any act of omission or commission which causes damage to the legally protected interest of an individual shall be considered to be a tort, the remedy for which is an action for unliquidated damages. In India, the law of tort is uncodified and is still in the process of development.

Important Principles of Tort

- PRINCIPLE OF DAMNUM SINE INJURIA AND INJURIA SINE DAMNUM.
- PRINCIPLE OF VICARIOUS LIABILITY
- PRINCIPLE OF VOLENTI NON FIT INJURIA
- PRINCIPLE OF NEGLIGENCE
- PRINCIPLE OF NUISANCE
- PRINCIPLE OF TRESPASS TO PROPERTY
- PRINCIPLES OF REPUTATION AND PRIVACY
- PRINCIPLE OF STRICT LIABILITY AND ABSOLUTE LIABILITY

Important Principles of Tort

- **PRINCIPLE OF DAMNUM SINE INJURIA AND INJURIA SINE DAMNUM.**

Damnum sine injuria is a Latin maxim which means damage without legal injury. When there is an actual damage caused to the plaintiff without an infringement of his legal right, no action lies against the defendant. In order to make someone liable in tort, plaintiff must prove that he has sustained legal injury. Damage without injury is not actionable in the law of torts.

Example: A sets up a rival school opposite to B's school with a low fee structure as a result of which students from B's school flocked to A's school thereby causing a huge financial loss to A. This act of A is not actionable in law of torts since it did not lead to the violation of any legal right of the plaintiff although he has sustained financial loss.

Injuria sine damnum is a Latin term which means legal injury without any damage. This implies an infringement of the legal rights of a person without any actual loss. Loss in this sense could mean loss of health, monetary loss etc. Since there is an infringement of legal right of a person, right to sue for a remedy is available against the wrongdoer regardless of the fact whether any actual loss is sustained or not.

In the leading case of *Ashby v White* the defendant, a returning officer at a voting booth refused to allow the plaintiff, a duly qualified voter from voting. The candidate for whom the plaintiff was voting got elected and therefore no loss was suffered by him. The court held that although the plaintiff did not sustain any actual loss, but his legal right to vote was violated for which he was granted a remedy.

Important Principles of Tort

- **PRINCIPLE OF VICARIOUS LIABILITY**

It is a general rule that a person is responsible for his own act of omission and commission but in certain cases a person is liable for the act of others. This is known as vicarious liability.

The essential elements of vicarious liability are as follows:

- There must be a relationship of a certain kind.
- The wrongful act must be related to the relationship in a certain way.
- The wrongful act must be done within the course of relationship.

Most common example of vicarious liability include:

1. Employers liability for the act of his servant during the course of employment:
2. Liability of partners for each other's torts

Important Principles of Tort

- **PRINCIPLE OF VOLENTI NON FIT INJURIA**

The Latin maxim *volenti non fit injuria* literally means “to one who volunteers, no harm is done”. A person who after knowing the risks and circumstances willingly and voluntarily consents to take the risk cannot ask for compensation for the injury resulting from it. A person who voluntarily abandons his rights cannot sue for any damage caused to him. It is used as a complete defence in the law of torts liberating the defendant from all kinds of liability.

Essential elements constituting *volenti non fit injuria* are as follows:

- Voluntary
- Agreement (express or implied)
- Knowledge of the risk

Example: By participating in a football match, the player willingly consents to bear the risk that may arise in the normal course of the game.

Important Principles of Tort

- **PRINCIPLE OF NEGLIGENCE**

Negligence is said to have been committed when a person owes a duty of care towards someone and commits a breach of duty by failing to perform it resulting in a legal damage caused to the complainant. In other words, a tort of negligence is committed when a person is injured due to the irresponsibility of another. The damage so caused must be an immediate cause of the act of negligence and not a remote cause.

Essential elements of negligence are as follows:

- Duty to take care
- Breach of such a duty
- Legal damage caused to the complainant due to a breach of duty

Reasonable foreseeability is the basic principle on which the tort of negligence is based. When a person before or at the time of committing an act can reasonably foresee that his act is likely to cause a damage to the other person and he still continues to do it, he is said to have committed a tort of negligence.

Example: A doctor while performing an operation leaves a pair of scissor inside the stomach of the patient.

Important Principles of Tort

- **PRINCIPLE OF NUISANCE**

The word nuisance is derived from the French word '*nurie*' which means 'to hurt' or 'to annoy'. Nuisance is an unlawful interference with a person's enjoyment of land or some rights over or in connection with it.

There are two types of nuisance:

PUBLIC NUISANCE: It is an interference with the right to enjoyment of land of a large number of people thereby causing inconvenience and annoyance. It is committed against the community at large and not any particular individual. It covers a wide variety of minor crimes that harms or threatens the safety, comfort and welfare of people at large. The extent to which the inconvenience has been caused may differ from person to person.

Examples: Fireworks in the street, construction of a structure in the middle of a public way obstructing the passage of people, etc.

PRIVATE NUISANCE: It refers to an unlawful interference with a person's use or enjoyment of his land causing inconvenience and annoyance to the person. It should be noted that while public nuisance affects the community at large, private nuisance affects an individual.

Example: Destruction of crops of an individual, a poisonous dog of a person enters into the neighbour's premises and causes destruction.

REMEDIES

- Damages
- Injunction

Important Principles of Tort

- **PRINCIPLE OF TRESPASS TO PROPERTY**

Trespass to property refers to an unjustifiable physical encroachment of land of one person by another. If a person directly enters upon another person's land without permission or remains upon the land or places any object upon the land, he is said to have committed the tort of trespass to land.

For an act of trespass to be actionable, it is necessary that the land in which the trespass has been committed must be in direct possession of the plaintiff. For example, use of camera in order to view activities on the land of another. The encroachment on plaintiff's land should arise out of the direct consequence of the act of the defendant and not any remote or indirect cause. Also, one of the most important elements of trespass to land is the intention in the mind of the defendant not to commit trespass but to commit the act that amounts to trespass. Trespass to land is actionable per se.

However, it should be noted that there is a difference between trespass to land and nuisance. Trespass is an encroachment or interference on the property of a person whereas nuisance is an interference with the right to enjoy his property.

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Important Principles of Tort

- **PRINCIPLE OF TRESPASS TO PROPERTY**

CONTINUING TRESPASS: Continuing trespass occurs when there is a continuation of the presence after the permission has been withdrawn or when the offending object remains on the property of the person entitled to possession. For example continuing to keep an object on someone's land even after the permission has been withdrawn.

Ways in which trespass to land can occur:

- Entry upon land
- Trespass to airspace (limited)
- Trespass to the ground beneath the surface

REMEDIES

- Damages: the plaintiff is entitled to full compensation of the loss incurred by him.
- Injunction: order by the court directing the defendant from doing or restraining from doing an act.

Important Principles of Tort

- **PRINCIPLES OF REPUTATION AND PRIVACY**

The principles of reputation and privacy are as follows:

DEFAMATION

Defamation means publishing false and defamatory statement about someone without any lawful justification which lowers his reputation in the eyes of the right thinking members of the society. In other words, defamation means intentional false communication either written or spoken which harms a person's reputation.

Defamation is of two types:

LIBEL: This is a written form of defamation which is actionable per se. Libel refers to the statement which intends to lower the reputation of another person without any lawful excuse. The statement must be in printed form capable of being reproduced like cartoons, drawings, recordings, etc.

SLANDER: Slander is an oral form of defamation where false and defamatory statements are made by words spoken or gestures which intend to lower the reputation of a person.

Important Principles of Tort

- **PRINCIPLE OF STRICT LIABILITY AND ABSOLUTE LIABILITY**

At times a person may be held responsible for doing a wrong even though there had been no negligence on his part or no intention to do such wrong or even if he had taken necessary steps to prevent such a wrong from happening. This is known as the principle of strict liability and is based on a no fault theory. The principle of strict liability was first laid down in the landmark case of Ryland's v. Fletcher.

“ Anyone who in the course of “non-natural” use of his land “accumulates” thereon for his own purposes anything likely to do mischief if it escapes is answerable for all direct damage thereby caused. It imposes strict liability on certain areas of nuisance law.”

The essential elements of strict liability are as follows:

- There has to be some hazardous thing brought by the defendant on his land.
- Escape of the hazardous thing from the territory of the defendant.
- There must be a non-natural use of land.

Exceptions:

- Escape of the hazardous goods was because of plaintiffs own consent
- Act of god
- Act of a stranger
- Act done by any statutory authority
- Default of the plaintiff

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Important Principles of Tort

- **PRINCIPLE OF STRICT LIABILITY AND ABSOLUTE LIABILITY**

ABSOLUTE LIABILITY:

Absolute liability is a stricter form of strict liability. It refers to the no fault theory liability in which the wrongdoer is held absolutely liable for the act of omission or commission without any defences which are available to the rule of strict liability. It is applicable only to those people who are involved in hazardous or inherently dangerous activity whereby they become absolutely liable to full compensation for the harm caused to anyone resulting from the operation of such hazardous activity. The rule of absolute liability was first laid down in *M.C Mehta v. Union of India (Oleum gas case)*.

Tort effecting Valuation

- NUISANCE
- TRESPASS TO PROPERTY
- STRICT LIABILITY AND ABSOLUTE LIABILITY

LAW - GENERAL

- Law of Arbitration and Conciliation: Salient Features –

Law of Arbitration and Conciliation: Salient Features

ARBITRATION - Features

In India Arbitration and Conciliation law is governed by Arbitration and Conciliation Act, 1996. The main features of the Act are as follows:

- A Comprehensive Statute – meaning, the said Act is a self-contained code;
- An Explanatory Code
- Prescribes Qualifications for Arbitrator, Proceedings and so on
- Abolished Umpire System
- Curtailment of Court's Powers - in the form of more autonomy to Arbitral Tribunals
- Procedure for Conduct of Arbitration and Awards thereto;
- Précised Powers of the Court
- Enhanced powers of Arbitrators
- Allowed new forms of Conciliation
- International applicability
- Provisions for Interim Reliefs and Orders (Section 9 – Power of Court and Section 17 – Power of Arbitration Tribunal)
- Finality of Orders - no provisions of Appeal except via Section 34 of the said Act, that contained specific grounds of appeal.
- Time Bound (Provision Introduce through Amendment in Year 2015)

Arbitration and Conciliation Act is divided into 4 Part. **Part I relates to domestic arbitration, Part II relates to enforcement of certain foreign awards, Part III provides for conciliation and Part IV contains certain supplemental provisions.**

Law of Arbitration and Conciliation: Salient Features

Definition of Arbitration Agreement

Section 7. Arbitration agreement.

1. In this Part, 'arbitration agreement' means an agreement by the parties to submit to arbitration all or certain disputes which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not.
2. An arbitration agreement may be in the form of an arbitration clause in a contract or in the form of a separate agreement.
3. **An arbitration agreement shall be in writing.**
4. **An arbitration agreement is in writing if it is contained in-**
 - a **document signed by the parties;**
 - b **an exchange of letters, telex, telegrams or other means of telecommunication which provide a record of the agreement; or**
 - c **an exchange of statements of claim and defence in which the existence of the agreement is alleged by one party and not denied by the other.**
5. **The reference in a contract to a document containing an arbitration clause constitutes an arbitration agreement if the contract is in writing and the reference is such as to make that arbitration clause part of the contract**

Law of Arbitration and Conciliation: Salient Features

All the dispute can't be referred for Arbitration. Some types of disputes that can be referred to Arbitration are

- Property
- Insurance
- Contract (including employment contracts)
- Business / partnership disputes
- Family disputes (except divorce matters)
- Construction
- Commercial recoveries

LAW - GENERAL

- Laws of Evidence: Burden of Proof, Presumptions, Conclusive Proof

Laws of Evidence: Burden of Proof, Presumptions, Conclusive Proof

Provision relating to Burden of Proof, Presumptions, Conclusive Proof is contained in Chapter VII (Section 101 – 114A) of Indian Evidence Act, 1872

101. Burden of proof

Whoever desires any Court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts, must prove that those facts exist.

When a person is bound to prove the existence of any fact, it is said that he burden of proof lies on that person.

Illustrations

- (a) A desires a Court to give judgment that B shall be punished for a crime which A says B has committed.
A must prove that B has committed the crime.

- (b) A desires a Court to give judgment that he is entitled to certain land in the possession of B, by reason of facts which he asserts, and which B denies, to be true.
A must prove the existence of those facts.

Laws of Evidence: Burden of Proof, Presumptions, Conclusive Proof

102. On whom burden of proof lies

The burden of proof in a suit or proceeding lies on that person who would fail if no evidence at all were given on either side.

Illustrations

(a) A sues B for land of which B is in possession, and which, as A asserts, was left to A by the will of C, B's father

If no evidence were given on either side, B would be entitled to retain his possession.

Therefore the burden of proof is on A.

(b) A sues B for money due on a bond.

The execution of the bond is admitted, but B says that it was obtained by fraud, which A denies.

If no evidence were given on either side, A would succeed, as the bond is not disputed and the fraud is not proved.

Therefore the burden of proof is on B.

Laws of Evidence: Burden of Proof, Presumptions, Conclusive Proof

103. Burden of proof as to particular fact

The burden of proof as to any particular fact lies on that person who wishes the Court to believe in its existence, unless it is provided by any law that the proof of that fact shall lie on any particular person.

Illustration

(a) A prosecutes B for theft, and wishes the Court to believe that B admitted the theft to C, A must prove the admission.

B wishes the Court to believe that, at the time in question, he was elsewhere. He must prove it.

Laws of Evidence: Burden of Proof, Presumptions, Conclusive Proof

104. Burden of proving fact to be proved to make evidence admissible

The burden of proving any fact necessary to be proved in order to enable any person to give evidence of any other fact is on the person who wishes to give such evidence.

Illustrations

(a) A wishes to prove a dying declaration by B. A must prove B's death.

(b) A wishes to prove, by secondary evidence, the contents of a lost document.

A must prove that the document has been lost.

Laws of Evidence: Burden of Proof, Presumptions, Conclusive Proof

105. Burden of proving that case of accused comes within exceptions.

When a person is accused of any offence, the burden of proving the existence of circumstances bringing the case within any of the General Exceptions in the Indian Penal Code 45 of 1860, or within any special exception or proviso contained in any other part of the same Code, or in any law defining the offence, is upon him, and the Court shall presume the absence of such circumstances.

Illustrations

- (a) A, Accused of murder, alleges that, by reason of unsoundness of mind, he did not know the nature of the act
The burden of proof is on A.,
- (b) A, accused of murder, alleges that, by grave and sudden provocation, he was deprived of the power of self control.
The burden of proof is on A.
- (c) Section 325 of the Indian Penal Code 45 of 1860 provides that whoever, except in the case provided for by section 335 voluntarily causes grievous hurt, shall be subject to certain punishments.
A is charged with voluntarily causing grievous hurt under section 325.
The burden of proving the circumstances bringing the case under section 335 lies on A.

Laws of Evidence: Burden of Proof, Presumptions, Conclusive Proof

106. Burden of proving fact especially within knowledge

When any fact is especially within the knowledge of any person, the burden of proving that fact is upon him.

Illustrations

- (a) when a person does an act with some intention other than that which the character and circumstances of the act suggest, the burden of proving that intention is upon him.
- (b) A is charged with travelling on a railway without a ticket. The burden of proving that he had a ticket is on him.

Laws of Evidence: Burden of Proof, Presumptions, Conclusive Proof

107. Burden of proving death of person known to have been alive within thirty years

When the question is whether a man is alive or dead, and it is shown that he was alive within thirty years, the burden of proving that he is dead is on the person who affirms it.

108. Burden of proving that person is alive who has not been heard of for seven years

Provided that when the question is whether a man is alive or dead, and it is proved that he has not been heard of for seven years by those who would naturally have heard of him if he had been alive, the burden of proving that he is alive is shifted to the person who affirms it

Laws of Evidence: Burden of Proof, Presumptions, Conclusive Proof

109. Burden of proof as to relationship in the cases of partners, landlord and tenant, principal and agent

When the question is whether persons are partners, landlord and tenant, or principal and agent, and it has been shown that they have been acting as such, the burden of proving that they do not stand, or have ceased to stand, to each other in those relationships respectively, is on the person who affirms it.

110. Burden of proof as to ownership

When the question is whether any person is owner of anything of which he is shown to be in possession, the burden of proving that he is not the owner is on the person who affirms that he is not the owner.

Laws of Evidence: Burden of Proof, Presumptions, Conclusive Proof

111. Proof of good faith in transactions where one party is in relation of active confidence

Where there is a question as to the good faith of a transaction between parties, one of whom stands to the other in a position of active confidence, the burden of proving the good faith of a transaction between parties, one of whom stands to the other in a position of active confidence, the burden of proving the good faith of the transaction is on the party who is in a position of active confidence.

Illustrations

- (a) The good faith of a sale by a client to an attorney is in question in a suit brought by the client. The burden proving the good faith of the transaction is on the attorney.
- (b) The good faith of a sale by a son just come of age to a father is in question in a suit brought by the son. The burden of proving the good faith of the transaction is on the father.

Laws of Evidence: Burden of Proof, Presumptions, Conclusive Proof

112. Birth during marriage, conclusive proof of legitimacy

The fact that any person was born during the continuance of a valid marriage between his mother and man, or within two hundred and eighty days after its dissolution, the mother remaining unmarried, shall be conclusive proof that he is the legitimate son of that man, unless it can be shown that the parties to the marriage had no access to each other at any time when he could have been begotten.

113. Proof of cession of territory

A notification in the official Gazette that any portion of British territory has before the commencement of Part III of the Government of India, Act, 1935 been ceded to any Native State, Prince or Ruler shall be conclusive proof that a valid cession of such territory took place at the date mentioned in such notification.

Laws of Evidence: Burden of Proof, Presumptions, Conclusive Proof

13A. Presumption as to abetment of suicide by a married women

When the question is whether the commission of suicide by a woman had been abetted by her husband or any relative of her husband and it is shown that she had committed suicide within a period of seven years from the date of her marriage and that her husband or such relative of her husband had subjected her to cruelty, the court may presume, having regard to all the other circumstances of the case, that such suicide had been abetted by her husband or by such relative of her husband.

Explanation – For the purposes of this section, "cruelty" shall have the same meaning as in section 498 A of the Indian Penal Code (45 of 1860).

113B. Presumption as to dowry death

When the question is whether a person has committed the dowry death of a woman and it is shown that soon before her death such woman had been subjected by such person to cruelty or harassment for, or in connection with, any demand for dowry, the Court shall presume that such person had caused the dowry death.

Explanation.- For the purposes of this section, "dowry death" shall have the same meaning as in section 304B of the Indian Penal Code(45 of 1860).

Laws of Evidence: Burden of Proof, Presumptions, Conclusive Proof

114. Court may presume existence of certain acts

The court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case.

Illustrations

The Court may presume—

- (a) That a man who is in possession of stolen goods soon after the theft is either the thief or has received the goods knowing them to be stolen, unless he can account for his possession.
- (b) That an accomplice is unworthy of credit, unless he is corroborated in material particulars;
- (c) That a bill of exchange, accepted or endorsed, was accepted or endorsed for good consideration.

Cont....

Laws of Evidence: Burden of Proof, Presumptions, Conclusive Proof

- (d) That a thing or state of things which has been shown to be in existence within a period shorter than that within which such things or states of things usually cease to exist, is still in existence;
- (e) That judicial and official acts have been regularly performed;
- (f) That the common course of business has been followed in particular cases;
- (g) That evidence which could be and is not produced would, if produced, be unfavorable to the person withholds it.
- (h) That if a man refuses to answer a question which he is not compelled to answer by law, the answer, if given would be unfavorable to him;
- (i) That when a document creating an obligation is in the hands of the obligor, the obligation has been discharged.

But the Court shall also have regard to such facts as the following, in considering whether such maxims do or do not apply to the particular case before it:-

Laws of Evidence: Burden of Proof, Presumptions, Conclusive Proof

As to illustration (a) –A shop- keeper has in his till a marked rupee soon after it was stolen, and cannot account for its possession specifically, but is continually receiving rupees in the course of his business;

As to illustration (b)–A person of the highest character is tried for causing a man's death by an act of negligence in arranging certain machinery. B, person of equally good character, who also took part in the arrangement, describes precisely what was done, and admits and explains the common carelessness of A and himself;

As to illustration (b)–A crime is committed by several persons. A, B and C, three of the criminals, are captured on the spot and kept apart from each other. Each gives an account of the crime implicating D, and the accounts corroborate each other in such a manner as to render previous concert highly improbable;

As to illustration (c) – A, the drawer of a bill of exchange, was a man of business. B, the acceptor, was young and ignorant person, completely under A's influence;

Laws of Evidence: Burden of Proof, Presumptions, Conclusive Proof

As to illustration (d) – It is proved that a river ran in a certain course five years ago, but it is known that there have been floods since that time which might change its course.

As to illustration (e) – A judicial Act, the regularity of which is in question, was performed under exceptional circumstances;

As to illustration (f) – The question is, whether a letter was received, it is shown to have been posted, but the usual course of the post was interrupted by disturbances;

As to illustration (g) - A man refuses to produce a document which would bear on a contract of small importance on which he is sued, but which might also injure the feeling and reputation of his family;

As to illustration (h) – A man refuses to answer a question which he is not compelled by law to answer, but the answer to it might cause loss to him in matters unconnected with the matter in relation to which it is asked;

As to illustration (i) – A bond is in possession of the obligor, but the circumstances of the case are such that he may have stolen it.

Laws of Evidence: Burden of Proof, Presumptions, Conclusive Proof

114 A. Presumption as to absence of consent in certain prosecutions for rape

In a prosecution for rape under clause (a) or clause (b) or clause (c) or clause (d) or clause (e) or clause (g) of sub-section (2) or section 376 of the Indian Penal Code, (45 of 1860) where sexual intercourse by the accused is proved and the question is whether it was without the consent of the woman alleged to have been raped and she states in her evidence before the Court that she did not consent, the Court shall presume that she did not consent.

THANKS

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