

TORT

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WHAT IS A TORT?



- A tort is a civil wrong
- That (wrong) is based a breach of a duty imposed by law
- Which (breach) gives rise to a (personal) civil right of action for for a remedy not exclusive to another area of law

Tort is a French word for “wrong.” The Tort is of French origin. The root is ‘Tortum’ in Latin which means ‘twist’. It implies a conduct which is ‘tortious’ , or, twisted.. The equivalent word in English is “Wrong”. In Roman it is “delict” and in Sanskrit it is “Jimha” which means ‘crooked’.

How word “Tort” came to India

It came to India through England. In 1065 England was conquered by Normans who were the French speaking people of Normandy, a region of France. After Norman conquest, French became the spoken language in the Courts in England, and thus many technical terms in English law owe their origin to French, and ‘Tort’ is one of them.

TORT LAW IS BASED ON THE IDEA THAT EVERYONE IN OUR SOCIETY HAS CERTAIN RIGHTS

Along With Having Certain Rights, Everyone Has The Duty to Respect the Rights of Others.

The Purpose of Tort Law is to Enforce Those Rights and Duties

CONSTITUENTS OF TORT

- Wrongful act,
- Legal Damage
- Legal remedy

CONSTITUENTS OF TORT

WRONGFUL ACT-I

- A person must have committed a wrongful act.
- This refers to an act of commission or omission
- This is 'wrongful' because, there must have been a breach of duty which has been fixed by law itself.
- If a person does not observe that duty or breaks it either intentionally or unintentionally
- In tort, "intention", usually has no role, except in cases like malicious prosecution.
- Person must have done some legal wrong violates the legal right of another to be liable for a tort

CONSTITUENTS OF TORT

WRONGFUL ACT-II

- More often than not, ‘unintentional acts of wrong arise out of acts of ‘negligence’.
- In legal sense, ‘negligence’ denotes, “a legal duty owed and neglected”.
- The wrongful act must be recognized by law.
- If there is a mere moral or social wrong, there cannot be a liability for the same.

CONSTITUENTS OF TORT

WRONGFUL ACT-III

- where legal duty to perform is involved and the same is not performed it would amount to wrongful act.
- *Municipal Corporation of Delhi v Subhagwanti* [AIR 1966 SC 1750] where the Municipal Corporation, having ownership and control of a clock tower in the heart of the city, does not keep it in proper repairs and the failure to do of the same results in the death of number of persons, the Corporation would be liable for its omission to take care

CONSTITUENTS OF TORT

LEGAL DAMAGE

- There must be violation of a legal right of a person and, if it is not, there can be no action under law of torts.
- Legal Rights are conferred by the State on all its citizens.
- There are two types of Legal rights, viz, public rights and Private rights.
- Public rights are those which belong in common to all members of the state like Public peace, Public safety etc subject of Criminal Law,
- Private rights are vested in persons in general by virtue of law. It can be further divided into two types, namely,.

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 some one liable in tort, plaintiff must prove that he has sustained legal injury. Damage without injury is not action able 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 there by 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.

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 their responsibility 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
- Beach 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 : Fire works 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.

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 an other 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.

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.

IMPORTANT PRINCIPLES OF TORT

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

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 an other 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 maybe 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 land mark case of Ryland'sv.Fletcher.

“Anyone who in the course of “non-natural” use of his land “accumulates” there on 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

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 wrong doer 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 any one 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

Thank

You

