

## TORTIOUS: AN OVERVIEW OF TORTS

Shubham Bharti<sup>1</sup>

### **Abstract**

*This article basically contains what Law of Torts is all about, how law of torts originated, what are the different elements of torts. It also gives the overall view of the nature and scope of Tort. The Law of torts is primarily concerned with compensation, hence the researcher tries to analyse this relation and study the legal, moral as well as social aspects in some details. This report contains some common type of torts and law cases based on them and include even the defences which can be taken up by defendant. The report is thus a sincere effort by the researcher to get an idea about this sector of law.*

**Keywords:** Civil Wrong, Compensation, Damage, Injury, Unliquidated, Wrongdoer

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<sup>1</sup> Student (BBA LLB (Hons.)), Symbiosis Law School, Pune, Email: shubhamenter8@gmail.com.



## Introduction

The term 'tort' is derived from a Latin term 'tortum' which means to twist or crooked. Torts basically is a civil wrong for which the remedy is compensation to the plaintiff. The word 'tort' was first used in a legal context in 1580's, although different words were used for similar concept prior to this time. In very simple and most general sense, 'tort' is a wrong. A civil injury for which an action of damage does not lie is not a tort. The law of torts which is followed in India in modern times is English law which is modified according to Indian condition and as per Act of the Indian Legislature. The concept on which Law of Torts is based upon is 'justice, equity and good conscience'. A person responsible for damages either individually or vicariously is known as the Tortfeasor.

Every wrongful act is not a tort. To constitute a tort three things must concur:

- i) A wrongful Act by the defendant
- ii) Legal damage to the plaintiff
- iii) The wrongful act must be of such a nature as to give rise to a legal remedy in the form of an action for damages

## **Methodology**

For the purpose of analysing, various secondary resources such as books, websites and case laws were used.

Different documents on torts were analysed deeply in order to evaluate an overview about torts. These documents included graphs as well as questionnaires.

## Observation

### Torts: Meaning and Definition

A tort is a civil action for unliquidated damages brought by person who have suffered injury or loss from the act statement or omission of others in breach of a duty or in contravention of breach of a right imposed or conferred by law.”

The word tort has been derived from the Latin term ‘tortum’ which means to twist. Law of torts is of restorative nature i.e. providing compensation to the plaintiff. In torts the focus is always on the Plaintiff.

The definition attempted by Salmond is ‘A Tort is a civil wrong for which the remedy is a common law action for unliquidated damages, and which is not exclusively the breach of a contract or the breach of trust or other merely equitable obligation.’

Basically the law is divided in to two types

- 1) Civil Law
- 2) Criminal Law

### Difference between Tort and Crime

There is a huge difference between a tort and a crime. Tort is an infringement of the private rights belonging to individual or considered as individuals whereas a crime is a breach of public rights and duties which affect the whole community or considered as a community.

The law of torts aims at providing compensation and on the other hand crime deals with punishment. In tort intention is subordinate but in crime intention is of paramount importance. Proof of reasonable doubt is enough in torts whereas in crime proof beyond reasonable doubt is necessary. A tort is a private wrong whereas a crime is a public wrong.

Action is brought by the injured party in torts but in crime action is brought by the state as it affects the society on whole.

### Difference between Tort and Contract

The definition attempted by Winfield is ‘Tortious liability arises from the breach of a duty primarily fixed by law, this duty is towards persons generally and its breach is redressable by an action for unliquidated damages.’ This definition has brought out clearly the distinction between a tort and a contract. A tort is in rem i.e. you have a right against everybody but contract is in personam i.e. between two persons. In torts there are unliquidated damages whereas in contract there are liquidated damages. Rights and obligations are fixed by law in torts and rights and laws are agreed between two parties.

There are basically two types of damages i.e. liquidated and unliquidated damages. Liquidated damages means where the money value of the damages are fixed whereas on the other hand unliquidated damages means the value of damages are not fixed .

## Elements of Torts

One of the elements which is required in torts is a wrongful act. An Act is said to be wrongful if it invades the private rights of a person, viz-

- 1) The right of a good reputation;
- 2) The right of bodily safety and freedom;
- 3) The right of property

An act becomes wrongful when the person sought to be liable was under some legal duty, which he did not perform and the default caused loss to the victim. The concept of wrong involves a value judgement.

Legal damage is not the same as actual damage. Every invasion of the plaintiff's right, or unauthorised interference with his property leads to legal damage.

Another element of tort is that the wrongful act must be of such a nature that there is a legal remedy available for it.

- ❖ **Injuria sine Damnum** means injury without damages. The import of this maxim is that if the right of the plaintiff has been infringed he will have an action even if the actual physical damage is not there. It is sufficient to show that there is violation of a legal right and the law will presume damage. In the famous leading case of **Ashbay V White**<sup>2</sup>, the defendant, a returning officer at a voting booth, wrongfully refused to register a duly tendered vote of the plaintiff, who was a qualified voter. The candidate for whom the vote was sought to be tendered was elected. So no loss was suffered by the plaintiff for rejection of his vote. The Court held that violation of the plaintiff's right was an injury to him for which he must have a remedy without proof of actual damage.
- ❖ **Damnum sine Injuria** means an actual and substantial loss without infringement of any legal right. In such a case no action lies. Damnum sine injuria basically means damage without injury. In the famous case of **Gloucester V Grammar School**<sup>3</sup>, the defendant, a schoolmaster, set up a rival school next to that of the plaintiff, with the result that the boys from the plaintiff's school flocked to the defendant's. The plaintiff sued the defendant for the loss. It was held that no suit could lie, because bonafide competition can afford no ground of action, whatever damage it may cause.
- ❖ **Malice** means parties intention to cause injury to another person. It can be either expressed or implied.
- ❖ **Motive** means a person intention. Motive is irrelevant in case of torts.

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<sup>2</sup>92 ER 126

<sup>3</sup> [1410] Y B 11 Hen 4

## Some common Types of Torts

- **Assault:** The tort of assault occurs when the defendant does something that causes a reasonable apprehension of battery in the mind of the plaintiff. This means that assault occurs when the defendant does something that scares the plaintiff into thinking that he or she is going to be subjected to unjustified use of force i.e. assault.

The following are the three main ingredients of assault:

- i) There must be gesture or preparation to constitute a threat of force.
- ii) The gesture or preparation must cause a reasonable apprehension of force.
- iii) The offender must have present ability to carry out the threat into action.

In the leading case of *Stephens V Myers*<sup>4</sup>, the plaintiff was chairman of a meeting of a local Church – committee. The defendant having been very vociferous, a resolution was passed, and carried by a large majority, that he should be turned out. Upon this, the defendant said he would rather pull the chairman out of the chair than be turned out of the room, and immediately advanced with his fist clenched towards the chairman with an intention to strike him. Justice Tindal observed that it was an assault in the eye of law.

- **Battery.** Battery deals with the actual use of unlawful force against a person.

Following are the essential ingredients of battery:-

- i) There must be use of force by the wrongdoer to the victim's body either directly or through any object.
- ii) The force must be used intentionally.

In the famous case of *Hurst V Picture Theatre Ltd.*<sup>5</sup>, the plaintiff purchased a ticket for a seat at a cinema show. However, he was forcibly turned out of his seat under the directions of the theatre manager who was under the mistaken belief that the plaintiff had not paid for the seat. The Court held that the plaintiff was entitled to damages.

- **Defamation:** Any statement whether written or oral, that injures a third party reputation is termed as defamation. If you cause injury to a person's reputation without any lawful justification, then the tort of defamation is committed. English law recognises two form of defamation:
  - ❖ **Libel:** If the statement that cause the injury to the person is in written form or permanent form.
  - ❖ **Slander:** If the statement that causes the injury to a person is made in a non-permanent or in a transient form.

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<sup>4</sup>[1830] 172 ER 735

<sup>5</sup> [1915] 1 KB 1

In one of the famous case of *Charleston V News Group News Papers Ltd*<sup>6</sup>, that where the defamatory statement consisted of an article with a headline and photograph, the House of Lord said that the whole article including the headline and photograph must be taken together.

- **Nuisance:** Nuisance is anything done to the hurt or annoyance of lands, tenements, or hereditaments of another, and not amounting to a trespass. The word 'nuisance' is derived from the French word nuire, to do hurt, or to annoy. Black stone describes nuisance as something that 'worketh hurt, inconvenience, or damage'.

Nuisance are of two varieties:

❖ **Public Nuisance:**

The term public nuisance covers a wide variety of minor crimes that threaten the health, morals, safety, comfort, convenience, or welfare of a community. Violators may be punished by a criminal sentence, a fine, or both. A defendant may also be required to remove a nuisance or to pay the costs of removal.

❖ **Private Nuisance:**

A private nuisance is an interference with a person's enjoyment and use of his land. The law recognizes that landowners, or those in rightful possession of land, have the right to the unimpaired condition of the property and to reasonable comfort and convenience in its occupation.

In the case of *Ware V Garston Haulage Co Ltd*<sup>7</sup>, a motor-cyclist at night ran into the back of a trailer which was attached to a stationary lorry standing on the near side of a highway. The lorry and trailer were unattended and no rear light showed from the trailer. It was held that the lorry and trailer were an obstruction on the highway, and as such constituted an actionable nuisance. There was a dangerous obstruction in the highway and consequently there was an absolute duty on the defendants to light it or otherwise efficiently guard it to prevent accidents.

- **Trespass:**In the law of torts, to trespass on land means to interfere with someone's possession of land without any lawful justification. Trespass can be committed by the trespasser himself entering the land, or by the trespasser doing it through the use of some object.

In order to prove a tort of trespass, the plaintiff does not have to show that he suffered damage. The mere fact of trespass is enough. Some of the popular remedies for a tort of trespass are Return of Possession, Profit Recovery. By return of possession, the plaintiff can ask the court to eject the trespasser who continues to remain on the Plaintiff's premises.

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<sup>6</sup>[1995] 2 AC 65

<sup>7</sup>[1914] KB 20



In *Basely v Clarkson*<sup>8</sup>, the D owned land adjoining P's, and in mowing his own land he involuntarily and by mistake mowed down some grass on the land of P.

### Defenses available to an action of tort

- **Consent:** If a plaintiff participates in the defendant's conduct or even displays his willingness to participate in such an act, and then suffers injury, the defendant can be excused from the wrongdoing. Consent can both be expressed as well as implied.
- **When a plaintiff is a wrongdoer:** The defense takes its birth from the maxim "**ex turpi causa non oritur action**" which means no action arises from an immoral cause. In general terms the defense would mean that, if a plaintiff was doing an act which was at first instance illegal or wrong and then got injured because of some other act of the defendant which was in continuation of the previous act, the defendant can escape the wrongdoing.
- **Act of God:** Act of God or **Vis Major** is a defense used in cases when an event occurs which the defendant has no control over. Damages caused is by the forces of nature. In the case of *Nichols v. Marshland*<sup>9</sup> the defendant has a number of artificial lakes on his land. Unprecedented rain such as had never been witnessed in living memory caused the banks of the lakes to burst and the escaping water carried away four bridges belonging to the plaintiff. It was held that the plaintiff's bridges were swept by act of God and the defendant was not liable.
- **Inevitable Accident:** An inevitable accident is a one which could not have been possibly avoided even by due care and caution. In this defense the defendant has to prove that accident which occurred, the defendant had no control and the consequences could not have been avoided by the exercise of care or skill.
- **Private Defense:** Another defense which is available is private defense. A person has a right to protect his life as well as his property and in doing so he might use reasonable force if necessary. The word reasonable force holds great importance in the private defense. If the force which happens to be unreasonable, the defense cannot be used. In order to claim such defense three conditions should be fulfilled:
  - i) The threat should be real and imminent.
  - ii) The force was used for protection and not for revenge.
  - iii) The force used should be in proportion of the act committed.
- **Necessity:** This is based on the principle of "**Salus Populi Suprema Lex**" which means the welfare of the people is the Supreme Law. This defense is somewhat closely related to private defense. It can be invoked only against intentional torts such as

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<sup>8</sup>[1681] 3 Lev 37

<sup>9</sup>[1876] 2 ExD 1

conversion, trespass to land or trespass to chattel. In case of *Surroco v. Geary*<sup>10</sup> a spreading fire was stopped by demolishing the house of the plaintiff. The defense of necessity could be claimed.

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<sup>10</sup>3 Cal. 69

## Conclusion

The conclusion that the researchers drew from this writing is that a tort, in common law jurisdictions, is a civil wrong. Tort law in India is a relatively new common law development supplemented by codifying statutes including statutes governing damages. In India the tort law is not well developed. Tort is breach of some duty independent of contract which has caused damage to the plaintiff giving rise to civil cause of action and for which remedy is available. If there is no remedy it cannot be called a tort because the essence of tort is to give remedy to the person who has suffered injury. Tort law in India is at its beginning stage. Damages in the law of torts in India are premised on the concept of *restitutio ad integrum*. India adopts a compensatory method and advocates "full and fair compensation" in all cases.

The law of torts in India is definitely not unnecessary but merely requires enactments to make it more ascertainable. If there is elimination of the all the difficulties which obstructs the aggrieved parties in obtaining the remedies which the law seeks to provide then India might also witness a growth in tort litigation

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