

**LLB ( Hons) Semester IV**

**LAW OF TORTS**

**UNIT 1**

**INTRODUCTION IN TORT : GENERAL CONDITIONS OF LIABILITY IN TORT**

**QUESTION 1. DEFINE TORT AND HOW IS TORT DISTINGUISHED FROM CRIME AND CONTRACT?**

**QUESTION 1(A). WHAT IS THE MEANING OF TORT ?**

- A).Tort is a civil wrong and has been derived from the Latin term 'tortum', which means 'to twist'. It includes that conduct which is not straight or lawful, but, on the other hand, twisted, crooked or unlawful. It is equivalent to the English term 'wrong'.
- B). This branch of law consists of various 'torts' or wrongful acts whereby the wrongdoer violates some legal right vested in another person.
- C). For example, violation of a duty to injure the reputation of someone else results in the tort of defamation .

**QUESTION 1 (B). WHAT ARE THE VARIOUS DEFINITIONS OF JURIST OF THE TERM TORT?**

Some of the important definitions, which indicate the nature of this branch of law, are as under :

1. 'Tort means a civil wrong which is not exclusively a breach of contract or breach of trust"—S. 2(m), the Limitation Act, 1963.
2. "It 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 a trust or other merely equitable obligation." —Salmond.
3. "Tortious Liability arises from the breach of a duty primarily fixed by the law : this duty is towards persons generally and its breach is redressible by an action for unliquidated damages."—Winfield.
4. "It is an infringement of a right in rem of a private individual giving a right of compensation at the suit of the injured party."—Fraser.

**QUESTION 1(C) . WHAT THE ESSENTIAL ELEMENTS OF LAW OF TORTS?**

To constitute a tort, it is essential that the following conditions are satisfied :

1. There must be some act or omission on the part of the defendant, and
2. The act or omission should result in legal damage (injuria), i.e., violation of a legal right vested in the plaintiff.
- 3.The remedy is unliquidated damages( compensation fixed by the court of law).

**QUESTION 1(D). DISCUSS THE DIFFERENT TYPE OF TORT.**

- A). Torts may be classified into those involving intention, those involving negligence, and the wrongs of strict liability.
- B). They may also be classified into torts affecting the person (e.g.,trespass, negligence), the family (wrongful death of a relative), reputation (libel and slander), property (e.g., trespass to land or goods, nuisance, conversion), economic rights (deceit, inducement of breach of contract, injurious falsehood).

**QUESTION 1(E). DISTINGUISH BETWEEN CRIME AND TORT.**

TORT	CRIME
1.Less serious wrongs are considered as private wrongs and labelled as civil wrongs.	1. More serious wrongs have been considered public wrongs and know as crimes.
2. The suit is filed by the injured party himself.	2. Case is brought by the state.
3. In the case of tort, the ends of justice are met by awarding compensation to the injured party. The idea of awarding compensation to the injured party under civil law is to make good the loss suffered by him.	3. In the case of crime, the wrongdoer is punished. The punishment under criminal law protects the society by preventing the offender from committing further offences and deterring him and other potential offenders from committing wrongs.
4. The person who commits tort is the tortfeasor.	4. The person who commits crime is the offender.
5. Here the cases are compoundable.	5. Not all criminal cases are compoundable.

**QUESTION 1(F). DISTINGUISH BETWEEN CONTRACT AND TORT**

TORT	CONTRACT
1. It occurs from breach of duties imposed by law.	1. It results from breach of duty undertaken by parties themselves.
2. Duties imposed by law of torts are towards world at large ( Right in rem).	2. Each party owes duty to the other. ( Right in personam).
3. Damages are unliquidated.	3. Damages are liquidated.
4. It provides unlimited remedy.	4. It provides limited remedy.

**QUESTION 1. DEFINE TORT AND HOW IS TORT DISTINGUISHED FROM CRIME AND CONTRACT?**

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**QUESTION 2 . WRITE SHORT NOTES ON THE FOLLOWING -**

**QUESTION 2 ( A). INJURIA SINE DAMNUM**

- A). Injuria sine damnum means violation of a legal right without causing any harm, loss or damage to the plaintiff. For a successful action, the only thing which has to be proved is that the plaintiff's legal right has been violated, i.e., there is injuria.
- B). Ashby v. White and Bhim Singh v. State of J. & are leading case explaining the maxim injuria sine damnum.

**QUESTION 2( B) . DAMNUM SINE INJURIA**

- A).It means damage which is not coupled with an unauthorised 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.
- B).Gloucester Grammar School Case and Mogul Steamship Co. v. McGregor Gow and Co explains the point.

**QUESTION 2( C). Law of Tort vs. Law of Torts.**

- A).The question is whether-
- (i) Is it the Law of Tort, i.e., Is every wrongful act, for which there is no justification or excuse to be treated as a tort; or
  - (ii) Is it the Law of Torts, consisting only of a number of specific wrongs beyond which the liability under this branch of law cannot arise.
- B). Winfield preferred the first of these alternatives and according to him, it is the Law of Tort.According to this theory, if I injure my neighbour, he can sue me in tort whether the wrong happens to have particular name like assault, battery, deceit, slander, or whether it has no special title at all; and I shall be liable if I cannot prove lawful justification.
- C). Salmond, on the other hand, preferred the second alternative and for him, there is no Law of Tort, but there is Law of Torts. The liability under this branch of law arises only when the wrong is covered by anyone or the other nominate torts. There is no general principle of liability and if the plaintiff can place his wrong in any one of the pigeon-holes, each containing a labelled tort, he will succeed. This theory is also known as 'Pigeon-hole' theory.

**QUESTION 2 ( D) . DIFFERENTIATE BETWEEN TORT AND BREACH OF TRUST.**

TORT	BREACH OF TRUST
1. The damages under this are unliquidated.	1. Here the damages are liquidated.
2. Law of tort is the part of common law.	2. Law of trust was part of Court of Chancery.
3. It is only partly related to property.	3. Trust is the branch of law of property.



### **QUESTION 3. DISCUSS THE RELEVANCE OF MOTIVE AND MENS REA UNDER TORTS.**

#### **QUESTION 3 (A ). DESCRIBE MOTIVE.**

A). Motive means an ulterior reason for the conduct. It is different from intention, which relates to the wrongful act itself.

B). The immediate intention of a person may be to commit theft, the motive for the theft may be to buy food for his children or to help a poor man.

#### **QUESTION 3 ( B). How far is the motive of a person relevant in determining his liability in tort?**

A). As a general rule, motive is not relevant to determine a person's liability in the Law of Torts. A wrongful act does not become lawful merely because the motive is good.

Similarly, a lawful act does not become wrongful because of a bad motive, or malice.

B). The case of South Wales Miners' Federation v. Glamorgan Coal Company is an illustration to explain the first aspect of the rule

C). Bradford Corporation v. Pickels is an authority which explains the other aspect, i.e., a lawful act does not become unlawful merely because of an evil motive.

#### **QUESTION 3(B). DISCUSS THE EXCEPTIONS TO THE ABOVE RULE.**

In the following exceptional cases, the malice or evil motive becomes relevant in determining liability under the law of torts :

(1) When the act is otherwise unlawful and wrongful intention can be gathered from the circumstances of the case

(2) In the torts of deceit, conspiracy, malicious prosecution and injurious falsehood, one of the essentials to be proved by the plaintiff is malice on the part of the defendant.

(3) In certain cases of defamation, when qualified privilege or fair comment is pleaded as a defence, motive becomes relevant. The defence of qualified privilege is available if the publication was made in good faith. The presence of malice or evil motive negatives good faith and the defendant cannot avoid his liability by the defence of qualified privilege in such a case.

(4) Causing of personal discomfort by an unlawful motive may turn an otherwise lawful act into nuisance.

(5) Malice or evil motive may result in aggravation damages.

#### **QUESTION 3 (D). IN WHICH CASES MENS REA IS RELEVANT UNDER THE TORT LAW.**

A). In many of the branches of law of torts like assault, battery, false imprisonment, deceit, malicious prosecution and conspiracy, the state of mind of a person is relevant to ascertain his liability. We may have to see whether a particular wrongful act was done intentionally or maliciously.

B). Sometimes, we may compare the conduct of the defendant with that of a reasonable man and make him liable only if his conduct falls below the standard expected of a reasonable man. When the circumstances demand care and a person fails to perform the duty to take care, he is liable for the tort of negligence.

C). On the other hand, if the defendant has taken such care as was expected from him, he is not liable for the damage to the plaintiff. Mental element may become relevant in another way also. If the defendant's conduct is innocent in so far as the act done was due to an inevitable accident, he may be excused from liability.

#### **QUESTION 3 (E) . DISCUSS THE ASPECT OF NO- FAULT LIABILITY UNDER TORT LAW.**

A). There are certain areas where the mental element is quite irrelevant and the liability arises even without any wrongful intention or negligence on the part of the defendant. In such cases, innocence of the defendant or an honest mistake on his part is no defence. Tort of conversion is an example of the same.

B). In case of defamation also, the defendant can be made liable when he did not intend to defame but his act turns out to be defamatory. In case of vicarious liability also, a person may be held liable when he himself was not at fault.

C). Rylands v. Fletcher laid down the rule of strict liability.





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