

LLB (Hons) Semester IV
LAW OF TORTS
UNIT 2
JUSTIFICATION, REMEDIES AND DAMAGES IN TORTS.

QUESTION 1.
DISCUSS GENERAL DEFENCES UNDER LAW OF TORTS .

QUESTION 1 (A). WHAT THE DIFFERENCE BETWEEN GENERAL AND SPECIFIC DEFENCE ?

- i). There are some specific defences, which are peculiar to some particular wrongs, for example, in an action for defamation, the defences of privilege, fair comment or justification are available.
- ii). There are some general defences which may be taken against action for number of wrongs. For example, the general defence of 'Consent' may be taken, whether the action is for trespass, defamation, false imprisonment, or some other wrong.

QUESTION 1(B) . WHAT IS VOLENTI NON FIT INJURIA AND HOW IT IS DIFFERENT FROM SCENTI NON FIT INJURIA?

- i). When a person consents to the infliction of some harm upon himself, he has no remedy for that in tort. His consent serves as a good defence against him. Refer Hall v. Brooklands Auto Racing Club, Padmavati v. Dugganaika etc. cases.
- ii). For the maxim volenti non fit injuria to apply, two points have to be proved :
 - (a) The plaintiff knew that the risk is mere.
 - (b). He, knowing the same, agreed to suffer the harm.
- iii). Merely because the plaintiff knows of the harm does not imply that he assents to suffer it. This is scienti non fit injuria. (Refer Smith vs Baker case).

QUESTION 1(C). DISCUSS THE DEFENCE OF VIS MAJOR OR ACT OF GOD.

- i). An Act of God may be defined as an extraordinary occurrence of circumstance, which could not have been foreseen and which could not have been guarded against.
- ii). It is an accident due to a natural cause without human intervention, and which could not have been avoided by any amount of foresight and pains and care reasonably to be expected of the person sought to be made liable for it, or who seeks to excuse himself on the ground of it. (Refer cases of Nichols vs Marshland and Kalulal vs Hemchand)

QUESTION 1(D). DISCUSS PRIVATE DEFENCE UNDER TORTS.

- i). The law permits use of reasonable force to protect one's person or property. If the defendant uses the force which is necessary for self-defence, he will not be liable for the harm caused thereby.
- ii). The use of force is justified only for the purpose of defence. There should be imminent threat to the personal safety or property. The force used should not be excessive. Refer the case of Bird vs Hallbrook.

QUESTION 1(E). DISCUSS THE DEFENCE OF INEVITABLE ACCIDENT UNDER TORTS.

- i). An 'inevitable accident' is that which could not possibly be prevented by the exercise of ordinary care, caution and skill.
- ii). It means an accident physically unavoidable. It does not apply to anything which either party might have avoided.
- iii). It is an accident such as the defendant could not have avoided by use of the kind and degree of care necessary to the exigency, and the circumstances, in which he was placed.

EXERCISE-1

QUESTION 1 (A). WHAT THE DIFFERENCE BETWEEN GENERAL AND SPECIFIC DEFENCE ?

.....
.....
.....
.....
.....

QUESTION 1(B) . WHAT IS VOLENTI NON FIT INJURIA AND HOW IT IS DIFFERENT FROM SCENTI NON FIT INJURIA?

.....
.....
.....
.....
.....
.....
.....
.....

QUESTION 1(C). DISCUSS THE DEFENCE OF VIS MAJOR OR ACT OF GOD.

.....
.....
.....
.....
.....
.....
.....
.....
.....
.....
.....
.....

QUESTION 1(D). DISCUSS PRIVATE DEFENCE UNDER TORTS.

.....
.....
.....
.....
.....
.....
.....

QUESTION 1(E). DISCUSS THE DEFENCE OF INEVITABLE ACCIDENT UNDER TORTS.

.....
.....
.....
.....
.....
.....
.....
.....
.....
.....

QUESTION 2 . DISCUSS DAMAGES UNDER TORTS IN DETAIL.

QUESTION 2 (A). WHAT ARE UNLIQUIDATED DAMAGES ?

- I).** Unliquidated Damages are the kinds of compensations that are not specifically mentioned in any legally binding document.
- ii). Such compensation is payable as per the orders passed by the Court which in turn depends on the subject matter of the particular case.
- iii). Eg- medical expenses incurred by plaintiff due to defendant's negligent driving will give general damages, whereas if he claims nervous shock, then he has to prove and will get special damages.

QUESTION 2(B) DISCUSS VARIOUS TYPES OF DAMAGES WITH RELEVANT CASE LAWS-

i).Nominal Damages: Damages which are awarded by the Court to the plaintiff not by way of compensation but by way of recognition of some legal rights of plaintiff which the defendant has infringed are nominal damages.

Nominal damages are available for torts which are actionable per se. Refer *Asbhy vs White* case etc.)

ii).Contemptuous Damages: Contemptuous damages are an indication of the law court expressing an opinion of the claim of the plaintiff or its disapproval of its conduct in the matter.

iii). Exemplary Damages: Exemplary damages are awarded where there has been great injury by reason of aggravating circumstances accompanying the wrong. (Refer *Rookes v. Barnard*)

iv)..Prospective Damages: Damages which are likely to result from the wrongful act of the defendant but they have not actually resulted at the time when the damages are being decided by the Court. (Refer *Shubhas Chandra v. Ram Singh*)

V). Real or Substantial Damages: Damages which are assessed and awarded as compensation for damage actually suffered by the plaintiff, and not simply by way of mere recognition of a legal right violated are called real or substantial damages.(Refer case of *Laxminarayan vs Sumitra Bai*).

QUESTION 2(C) . DISCUSS THE MEASURES OF DAMAGES FOR PERSONAL INJURY.

When there is personal injury, compensation may be given under the following heads¹ :

- (1) Personal pain and suffering and loss of enjoyment of life;
- (2) Actual pecuniary loss resulting in any expenses reasonably incurred by the plaintiff; and
- (3) The probable future loss of income by reason of incapacity or diminished capacity for work.

QUESTION 2 (D).DISCUSS THE DAMAGES IN CASE OF REDUCTION OF LIFESPAN.

i).Whenever due to the tort committed by the defendant, the lifespan of the plaintiff is reduced, the amount of damages which will be awarded to him is calculated without taking into consideration his social status.

ii).The damages are not provided for the loss of the years of life but are provided for a happy life.

iii),The happiness of life is calculated according to the subjective expectation of a reasonable man and not of the expectations of the plaintiff or how he thought his life was going to be. The damages which are awarded to the plaintiff are moderate.

QUESTION 2(E) .DISCUSS THE THEORIES FOR DAMAGES IN CASE OF DEATH OF A PERSON.

i).Interest Theory - Here the Court determines the loss suffered by the dependant as a result of the death of the person on whom he depended.

After such amount is determined, a lump sum payment is made which if deposited should provide that much amount of interest which is equal to the sum which has been determined by the Court.

ii). **Multiplier theory**- In this theory if there is any loss which is likely to occur in the future as a result of the tort committed by the defendant, that likely loss is multiplied with a multiplier which indicates the number of years for which such a loss is likely to continue and the result of such a multiplication is the amount of damages which is awarded by the court.

EXERCISE-2

QUESTION 2 (A). WHAT ARE UNLIQUIDATED DAMAGES ?

.....
.....
.....
.....
.....

QUESTION 2(B) DISCUSS VARIOUS TYPES OF DAMAGES WITH RELEVANT CASE LAWS-

.....
.....
.....
.....
.....
.....
.....
.....
.....
.....
.....
.....
.....
.....
.....

QUESTION 2 (C) . DISCUSS THE MEASURES OF DAMAGES FOR PERSONAL INJURY.

.....
.....
.....
.....
.....

QUESTION 2 (D).DISCUSS THE DAMAGES IN CASE OF REDUCTION OF LIFESPAN.

.....
.....
.....
.....
.....

QUESTION 2(E) .DISCUSS THE THEORIES FOR DAMAGES IN CASE OF DEATH OF A PERSON.

.....
.....
.....
.....
.....
.....
.....

QUESTION 3. DEFINE JOINT TORTFEASOR IN THE LIGHT OF DECIDED CASES. DISCUSS THE LIABILITY OF THE TORTFEASOR AGAINST CHILD IN WOMB.

QUESTION 3(A). DEFINE JOINT TORTFEASORS.

Two or more persons are said to be joint tortfeasors when the wrongful act, which has resulted in a single damage, was done by them, not independently of one another, but in furtherance of a common design. (Refer *Brook v. Bool* , *Brimmed v. Harrison*)

QUESTION 3(B).DIFFERENTIATE BETWEEN INDEPENDENT TORTFEASOR AND JOINT TORTFEASOR .

JOINT TORTFEASOR	INDEPENDENT TORTFEASOR
1. There is concurrence, not only in the ultimate consequences but also mental concurrence in doing the act	1. There is merely a concurrence in the ultimate result of the wrongful act independently done.
2. There was considered to be a single cause of action and, therefore, if a judgment had been obtained against one of the joint tortfeasors, the cause of action came to an end. If the plaintiff's claim still remained unsatisfied, he could not bring an action against the remaining joint tortfeasors.	2. There were considered to be as many causes of action as the number of independent tortfeasors. Therefore, an action against one of such tortfeasors was no bar to an action against the other tortfeasors.
3. Release of one of the joint tortfeasors results in the release of all others, unless there is an express stipulation to the contrary.	3. Release of one of the independent tortfeasors does not necessarily results in the release of all others.

QUESTION 3(C) . DISCUSS THE CONCEPT OF LIABILITY IN THE MATTER OF JOINT TORTFEASORS.

- i). The liability of joint tortfeasors is joint and several. The plaintiff has a choice to sue any one of them, some of them or all of them, in an action.
- ii). Each one of them can be made to pay the full amount of compensation. Thus, for the wrong done by the agent, both the principal and the agent are jointly and severally liable.
- lii).Where the plaintiff elects to bring an action against all of them jointly, judgment obtained against all of them may be executed in full against any of them. In the event of liability of joint tortfeasors, it is no concern of the tribunal to apportion the damages between them.

QUESTION 3 (D).DISCUSS THE CONCEPT OF COMPOSITE TORTFEASOR.

- i).When two or more persons are responsible for a common damage (whether acting independently or jointly), they have been termed as composite tortfeasors.
- ii). The liability of the composite tortfeasors is joint and several. No one of the tortfeasors is allowed to say that there should be apportionment, and his liability should be limited to the extent he is at fault.
- iii). The judgment against the composite tortfeasors is for a single sum without any apportionment in accordance with the fault of various tortfeasors, and the plaintiff can enforce the whole of his claim against anyone of the defendants, if he so chooses. The defendant, who has paid more than his share of the liability may claim contribution from the other defendants.

QUESTION 3(E).DISCUSS THE LIABILITY OF THE TORTFEASOR AGAINST CHILD IN WOMB.

- i). In respect of injuries suffered by a person while in the mother's womb, in an Irish case (*Walker v. G.N. Ry. Co. of Ireland*), he was held not entitled to claim compensation for that after his birth. Such an action was allowed by the Supreme Court of Canada. (*Montreal Tramways v. Leville*).
- ii). In England, Congenital Disabilities (Civil Liability) Act, 1976 recognizes an action in case a child is born disabled due to some person's fault.
- lii)Although there doesn't exist any statute dealing with pre-natal injuries in India, India courts have recognised the legal status of an unborn child in the womb. It was held in *Union Carbide Corporation v. Union of India*, that if an unborn child is able to show that he suffered prenatal injuries due to the leak of gas in the Bhopal gas tragedy, he/she will be entitled to seek compensation from the defendant.

QUESTION 4. WRITE EXPLANATORY NOTES ON THE FOLLOWING-

QUESTION 4(A). PLAINTIFF WILL SUCCEED ONLY IF HIS INJURY IS PROXIMATE CAUSE OF DEFENDANT'S CONDUCT (REMOTENESS OF DAMAGE).

- i). No defendant can be made liable ad infinitum for all the consequences which follow his wrongful act. He is liable for those consequences only which are not too remote from his act.
- ii). There are two main tests to determine whether the damage is remote or not. They are the test of reasonable foresight and the test of directness.
- iii). According to the test of reasonable foresight, if the consequences of a wrongful act can be foreseen by a reasonable man, they are not too remote. If, however, the consequences couldn't be foreseen by a reasonable man, they are considered to be remote.
- iv). According to the test of directness, a person is liable for all the consequences which directly follow his wrongful act whether he could have foreseen them or not because the consequences which directly follow a wrongful act are considered to be not too remote.
- v). The test of directness as laid down in *Re Polemis* has been considered to be incorrect and the same was rejected by the Judicial Committee of the Privy Council in 1961 in *Overseas Tankship Ltd. v. Morts Dock and Engg. Co. Ltd.*, (*Wagon Mound Case*) and it was held that the test of reasonable foresight was the better test.

QUESTION 4(B). PARENTAL AND QUASI PARENTAL AUTHORITY

- i). Parents and other persons in loco parentis such as teacher and a lawful guardian have a right to administer punishment on a child to prevent him from doing mischief to himself and others.
- ii). Only reasonable and moderate punishment can be awarded and the use of excessive force may make the adult liable for the same. The authority of a teacher to correct his students is not limited to wrongs done by the students in the school premises, but may extend to the wrongs done by them outside the school.

QUESTION 4(C). JUDICIAL AND QUASI JUDICIAL AUTHORITY

- i). Judicial Officers' Protection Act, 1950 grants protection to a judicial officer for any act done or ordered to be done by him in the discharge of his judicial duty. The protection is also available even though he, acting honestly, exceeds his jurisdiction.
- ii). If, however, a magistrate acting mala fide, illegally and outside his jurisdiction, orders the arrest of a person, he can be made liable for the wrong of false imprisonment. (*Sailajanand Pande v. Suresh Chandra Gupta*).
- iii). The protection is available only in respect of judicial proceedings rather than mere administrative or ministerial proceedings. (*State of U.P. v. Tulsi Ram*).

QUESTION 4 (D) INJUNCTION

- i). An injunction is an order of the court directing the doing of some act or restraining the commission or continuance of some act. An injunction may be temporary or perpetual.
- ii). A temporary injunction is one which is continued until specified time, or until further orders of the court. A perpetual injunction is one by which the defendant is perpetually enjoined from the assertion of right, or from the commission of an act, which would be contrary to the rights of the plaintiff.
- iii). An injunction may also be prohibitory or mandatory. Prohibitory injunction forbids the defendant from doing of some act which will interfere with the plaintiff's lawful rights.
- iv). Mandatory injunction is an order which requires the defendant to do some positive act. For example, an order that the wall should not be constructed is a prohibitory injunction and the order that the wall should be demolished is a mandatory injunction.

