

**LLB (Hons) Semester IV
LAW OF TORTS
UNIT 3
TORT RELATING TO PERSON AND PROPERTY**

QUESTION 1.”In the tort of negligence the question as to whether the whether the defendant acted as a reasonable man depends on many factors “.Discuss.

QUESTION 1 (A). What are the essentials of negligence ?

Essentials of Negligence

In an action for negligence, the plaintiff has to prove following essentials:

1. That the defendant owed a duty of care to the plaintiff.
2. That the defendant made a breach of the duty i.e. he failed to exercise due care and skill.
3. That plaintiff suffered damage as a consequence thereof.

QUESTION 1(B) .Discuss the concept of res ipsa loquitur.

- i).There is a presumption of negligence according to the Latin maxim ‘res ipsa loquitur’ which means the thing speaks for itself.
- ii). In such a case it is sufficient for the plaintiff to prove accident and nothing more. The defendant can, however, avoid his liability by disapproving negligence on his part.

QUESTION 1(C).Discuss the concept of contributory negligence.

- i). when the plaintiff by his own want of care contributes to the damage caused by the negligence or wrongful conduct of the defendant, he is considered to be guilty of contributory negligence .
- ii).It does not mean breach of a duty towards other party but it means absence of due care on his part about his own safety.

QUESTION 1(D). Discuss the concept of last opportunity rule.

- i).The last opportunity rule may be stated as: “When an accident happens through the combined negligence of two persons, he alone is liable to the other who had the last opportunity of avoiding the accident by reasonable care”.
- ii).The rule was applied in Davies v.Mann, in this case, the plaintiff fettered the forefeet of his donkey and left it in a narrow highway. The defendant was driving his wagon too fast and the donkey was run over and killed. In spite of his negligence the plaintiff was entitled to claim compensation because the defendant had the last opportunity to avoid the accident.

EXERCISE-1

QUESTION 1 (A). What are the essentials of negligence ?

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QUESTION 1(B) .Discuss the concept of res ipsa loquitur.

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QUESTION 1(C).Discuss the concept of contributory negligence.

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QUESTION 1(D). Discuss the concept of last opportunity rule.

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QUESTION 2 . Even if the master cannot actually control the way in which the servant does his work because the servant is a skilled professional who knows his job and will carry it out in his own way, the master never the less remains liable for the negligence of servant. Comment.

QUESTION 2 (A). What is vicarious liability ?

i). As a general rule, a man is liable only for his own act but there are certain circumstances in which a person is liable for the wrong committed by others. This is called "vicarious liability", that is, liability incurred for another.

ii). The most common instance is the liability of the master for the wrong committed by his servants. In these cases liability is joint as well as several. The plaintiff can sue the actual wrong-doer himself, be he a servant or agent, as well as his principal.

QUESTION 2(B) Discuss the concept of course of employment.

i). Course of employment, A servant is said to be acting in the course of employment

if,

1) the wrongful act has been authorised by the master, or

2) the mode in which the authorised act has been done is wrongful or unauthorised.

It is the general rule that master will be liable not merely for what he has authorised his servant to do but also for the way in which he does that which he has authorised to do.

ii). An employee in case of necessity is also considered as acting in the course of employment, if he is performing his employer's business.

QUESTION 2(C) . Discuss the ways in which a master becomes liable for the wrong done by servants in the course of their employment.

1. The wrong committed by the servant may be the natural consequence of something done by him with ordinary care in execution of his master's specific orders.

2. Master will be liable for the negligence of his servant.

3. Servant's wrong may consist in excess of mistaken execution of lawful authority.

QUESTION 2 (D). Describe Respondent superior

i). This maxim means that, the superior must be responsible or let the principal be liable. In such cases not only he who obeys but also he who command becomes equally liable

ii). This rule has its origin in the legal presumption that all acts done by the servant in and about his master's business are done by his master's express or implied authority and are, in truth, the act of the master. It puts the master in the same position as if he had done the act himself.

EXERCISE-2

QUESTION 2 (A). What is vicarious liability ?

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QUESTION 2(B) Discuss the concept of course of employment.

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QUESTION 2(C) . Discuss the ways in which a master becomes liable for the wrong done by servants in the course of their employment.

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QUESTION 2 (D).Describe Respondent superior.

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QUESTION 3.Explain the elements of tort of private nuisance.

QUESTION 3(A). What are the essentials of private nuisance?

To constitute the tort of nuisance, the following essentials are required to be proved:

1. Unreasonable interference.
2. Interference is with the use or enjoyment of land.
3. Damage.

QUESTION 3(B).Differentiate between private and public nuisance.

- i).Public nuisance is a crime whereas a private nuisance is a civil wrong.
- ii).Public nuisance is interference with the rights of the public in general and is punishable as an offence.
- iii). Obstructing a public way by digging a trench, or constructing structures on it are examples of public nuisance. Although the obstruction may cause inconvenience to many persons, there cannot be hundreds of civil actions for the same wrong. In certain cases, when any person suffers some special or particular damage, different from what is inflicted on public as a whole, right of civil action is available to the person so injured.

QUESTION 3(C) .Does Nuisance Connote state of affairs?

- i). Nuisance is generally continuing wrong. A constant noise, smell, vibration is a nuisance and ordinarily an isolated act of escape cannot be considered to be a nuisance.
- ii). Thus, in *Stone v. Bolton*, the plaintiff, while standing on a highway, was injured by a cricket ball hit from the defendant's ground, but she could not succeed in her action for nuisance.
- iii). At first instance, Oliver J. said:" An isolated act of hitting a cricket ball on to the road cannot, of course, amount to a nuisance.
- iv). Malice: If the act of the defendant which is done with evil motive, becomes an unreasonable interference it is actionable.

QUESTION 3 (D).Discuss the effectual defences in the case of nuisance.

- i).1. Prescriptive right to commit nuisance A right to do an act, which would otherwise be a nuisance, may be acquired by prescription. If a person has continued with an activity on the land of another person for 20 years or more, he acquires a legal right by prescription, to continue therewith in future also
- ii). Statutory Authority An act done under the authority of a statute is a complete defence. If nuisance is necessarily incident to what has been authorised by a statute, there is no liability for that under the law of torts.

EXERCISE-3

QUESTION 3(A). What are the essentials of private nuisance?

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QUESTION 3(B).Differentiate between private and public nuisance.

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QUESTION 3(C) .Does Nuisance Connote state of affairs?

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QUESTION 3 (D).Discuss the effectual defences in the case of nuisance

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