

Introduction

Law of torts is a branch of law that cannot be found as a statute in India. Although it has been developed by judicial processes and can be found as a source of law in form of precedents.

The word 'tort' is derived from latin word '*tortium*', meaning 'to twist'. It implies a 'conduct that is twisted, crooked, or not straight'. In legal sense tort is a civil wrong, other than breach of contract and it attracts penalty in form of compensation given to the injured party.

The maxim which functions as a cardinal principle of law of torts is "ubi jus ibi remedium". It means where there is a right there is a remedy.

Salmond- *"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."*

Winfield- *"Tortious Liability arises from the breach of a duty primarily fixed by the law: this duty is towards persons generally and its breach is redressable by an action for unliquidated damages."*

Fraser- *"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."*

Tort is also defined Indian law under- Section 2(m) of the Limitation Act, 1963 " Tort mean a civil wrong which is not exclusively a breach of contract or breach of trust.

☞ **It may be observed that:**

1. Tort is a civil wrong
2. A tort is different from wrong which primarily arises from law of contract.
3. A person who suffered a legal injury under law of tort can claim unliquidated damages.

Distinction between Tort and Breach of Trust

BASIS	TORT LAW	CONTRACT LAW
1. Fixation of duty	Duty imposed on the person is fixed by law	Duty imposed is fixed by the parties themselves by their free consent
2. Attribution of duty	Duty is generally attributed towards public at large	Duty is attributed towards a specific person/parties of contract
3. Right	Right under law of tort is Right in rem	Right under contract law is Right in personam
4. Privity	No need of Privity	Privity between parties to be proved
5. Damages	Unliquidated Damages	Liquidated Damages

Distinction between Law of tort and Crime

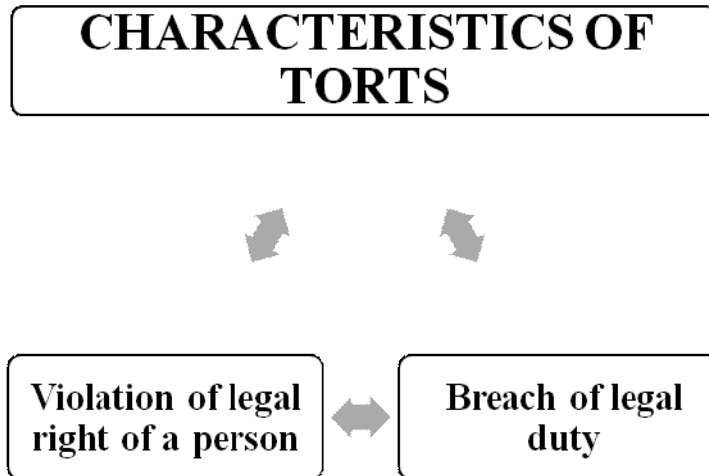
BASIS	TORT	CRIME
1. Nature of Wrong	Private Wrong/ Civil Wrong	Public Wrong/Criminal Wrong
2. Nature of Remedy	Damages	Punishment & Fine
3. Parties	Whose legal rights has been infringed	Accused & State
4. Codification	Not codified	Codified
5. Intention	Not necessary	Always important

Distinction between Tort and Breach of Trust

Basis	Tort	Breach of trust
damages	Damages in a tort are unliquidated	Damages in breach of trust are liquidated.
origin	Law of torts has its origin as part of common law.	Breach of trust could be redressed in the court of Chancery.
law of property	Law of tort is not regarded as a division of the law of property	Law of trust can be and is regarded as a division of the law of property.

Distinction between Tort and Quasi-Contract

Basis	Tort	Quasi Contract
Damages	A claim for damages under law of tort is always for an unliquidated sum of money	A claim for damages is for liquidated sum of money.
attribution of duty	Under law of torts the duty is towards persons generally.	In a quasi-contract, The duty is always towards a particular person.



A tort is infringement of a private right of person. for example right to personal safety, reputation, or possession. Simply it can be said that the injured is entitled to compensation for injury caused by wrong doer. The person who commits tort is called a “Tort Person” and the wrong or misdoing done by such person is “Tortious Act”.

For example:

A has a dog which he negligently allows to escape from his home, the escaped dog destroys the garden of his neighbour B. A’s act amounts to commission of tort of negligence. Here the act of A, not keeping the dog in his safe custody and negligently let it escape, is a tortious act. Since A did not perform his duty to keep the dog from escaping his safe custody and as a result of it, the dog has destroyed the garden of B. This tortious act of A amounts to a civil wrong. Here, the plaintiff can claim damages under the law of torts for negligence.

1. There must be an act or an omission on the part of alleged wrongdoer.
2. Breach of duty
3. The act or omission should result in a legal damage.

ESSENTIAL OF LAW OF TORT

The essentials of law of torts states that -

1. Wrongful act or omission

The first essential ingredient in constituting a tort is that a person must have committed a wrongful act or omission that is, he must have done some act which he was not expected to do, or, he must have omitted to do something which he was supposed to do. There must have been breach of duty which has been fixed by law itself. If a person does not observe that duty like a reasonable and prudent person or breaks it intentionally, he is deemed to have committed a wrongful act. In order to make a person liable for a tort he must have done some legal wrong that is, violates the legal right of another person for example, violation of right to property, right to bodily safety, right to good reputation. A wrongful act may be positive act or an omission which can be committed by a person either negligently or intentionally or even by committing a breach of strict duty for example, driving a vehicle at an excessive speed. The wrongful act or a wrongful omission must be one recognized by law. If there is a mere moral or social wrong, there cannot be a liability for the same. For example, if somebody fails to help a starving man or save a drowning child. But, where legal duty to perform is involved and the same is not performed it would amount to wrongful act. In *Municipal Corporation of Delhi v. Subhagwati*, where the Municipal Corporation, having control of a clock tower in the heart of the city does not keep it in

proper repairs and the falling of the same results in the death of number of persons, the Corporation would be liable for its omission to take care. Similarly failure to provide safe system would, also amount to omission, held in *General Cleaning Corporation Limited v. Christmas*.

2. Legal damage

The second important ingredient in constituting a tort is legal damage. In order to prove an action for tort, the plaintiff has to prove that there was a wrongful act, an act or omission which caused breach of a legal duty or the violation of a legal right vested in the plaintiff. So, 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. If there has been violation of a legal right, the same is actionable whether the plaintiff has suffered any loss or not. This is expressed by the maxim, "*Injuria sine damnum*" 'Injuria' refers to infringement of a legal right and the term 'damnum' means substantial harm, loss or damage. The term 'sine' means without. However, if there is no violation of a legal right, no action can lie in a court despite of the loss, harm or damage to the plaintiff caused by the defendant. This is expressed by the maxim '*Damnum sine injuria*'.

Maxims for law of torts:

1. *Injuria Sine Damnum*
2. *Damnum sine Injuria*

Injuria Sine Damnum

This maxim means infringement or violation of a legal private right of a person even if there is no actual loss or damage. In such a case the person whose right is infringed has a good cause of action. It is not necessary for him to prove any special damage. The infringement of private right is actionable per se. What is required to show is the violation of a right in which case, the law will presume damage. Thus, in cases of assault, battery, false imprisonment, libel etc., the mere wrongful act is actionable without proof of special damage. The Court is bound to award to the plaintiff at least nominal damages if no actual damage is proved.

Thus, this maxim provides for,

- 1) Infringement of a legal right of a person.
- 2) No actual loss or damage is required to prove.
- 3) Infringement of a private right is actionable per se.

For Example:

If A walks around the garden at B's house without his knowledge. Here A is guilty of tortious act. Although, A has not caused any damage to B but he has infringed his legal right.

In **Ashby Vs. White (1703)**, In this case the plaintiff was a qualified voter at the parliamentary elections. The defendant, a returning officer wrongfully refused to let the plaintiff cast his vote. Here the plaintiff did not suffer any damage as the candidate he wanted to vote for turned out victorious in the elections. But, the act of the returning officer of wrongfully refusing to let him exercise his legal right to cast vote resulted in legal injury to the plaintiff. The defendants were held liable. The court held the defendant liable it was concluded by the court, that the damage caused is not only pecuniary in nature but an injury caused to persons legal rights also amounts to damage. So the act of returning officer refusing the plaintiff to cast his vote hindered of his rights and he is entitled to remedies.

In **Municipal Board of Agra v Asharfi Lal**, the facts are, the Plaintiff (Asharfi Lal) was entitled to be entered as an elector upon the electoral roll. His name was wrongfully omitted from the electoral roll and he was deprived of his right to vote. It was held by the court that if any duly qualified citizen or person entitled to be on the electoral roll of an constituency is omitted from such roll so as to be deprived of his right to vote, he has suffered a legal

wrong, he has been deprived of a right recognised by law and he has against the person so depriving him, a remedy, that is, an action lies against a person depriving him of his right

In **Marzetti Vs. Willaims**, In this case a banker had dishonoured a cheque of the plaintiff despite the customer having sufficient funds in his account. The banker handling the account of that customer wrongfully dishonoured the cheque of plaintiff inspite of having enough funds to cash the cheque at his hands. Although the plaintiff did not suffer any damage but his legal right was infringed. The court held that there was violation of legal right of the plaintiff and so the banker is liable.

In **Bhim Singh v. State of J&K (1986)**, the petitioner, Bhim Singh, a member of the legislative assembly of Jammu and Kashmir, filed a petition in the Supreme Court of India alleging that he had been wrongfully arrested and detained by the police for political reasons. The court held that the arrest and detention of the petitioner were in violation of his fundamental rights under the Constitution of India. The court further held that the state government was liable to pay compensation to the petitioner for the harm suffered by him as a result of the wrongful arrest and detention.

DAMNUM SINE INJURIA

Damnum sine injuria means an actual and substantial loss without infringement of any legal right. In such a case no action lies. There are much harm of which loss takes no account and mere loss of money's worth does not by itself constitute a legal damage. The essential requirement is the violation of a legal right.

There are many forms of harm of which the law takes no account,

- 1) Loss inflicted on individual traders by competition in trade,
- 2) Where the damage is done by a man acting under necessity to prevent a greater evil,
- 3) Damage caused by defamatory statements made on a privileged occasion,
- 4) Where the harm is too trivial, too indefinite or too difficult of proof,
- 5) Where the harm done may be of such a nature that a criminal prosecution is more appropriate for example, in case of public nuisance or causing of death,
- 6) There is no right of action for damages for contempt of court.

For Example:

A, sells milk in his area, B living two lanes away starts the same business and sells the milk at a lower price than A use to sell milk for. A suffers loss in his business and sues B for damages. Here, no cause of action lies in favour of A though, A has suffered loss in his business but no legal injury has been caused to A. So, A cannot claim damages as his case lies within the ambit of damnum sine injuria.

In, **Mayor & Co. of Bradford vs. Pickles (1895)**, In this the corporation of Bradford filed a suit against the defendant alleging that the corporation has suffered financial losses because of the act of plaintiff. The plaintiff had dug a well in the adjoining land of which the defendant is owner. The act of digging well on his land had cut the water supply for the well on the corporation's land. This resulted in monetary losses for the plaintiff since there was no adequate supply of water to discharge for the people living under the jurisdiction of the corporation. It was held that the defendant is not liable since they had not violated any legal right of the plaintiff.

In **GlucosterGrammer School (1410)**, In this case a schoolmaster, has established a rival school to that of the plaintiff. Because of the increased competition in his field of business the plaintiff had to reduce their fees from 40 pence to 12 pence per quarter. Thus, plaintiff sued defendant schoolmaster for damages and claimed for compensation from the defendants for the losses suffered because of the reduced fees. It was held that the plaintiff has no

legal remedy in this case because all though the plaintiff had suffered financial losses because of the reduced fees due to the act of the defendant. The act of the defendant can be seen as a moral wrong but it has not violated legal right of the plaintiff. So, the plaintiff cannot claim any remedy for the damages.

In Chesmore v. Richards (1859), the plaintiff, a mill owner was using water for over 60 years from a stream which was chiefly supplied by the percolating underground water. The defendants dug a well on their land deep enough to stop the larger volume of water going to plaintiff's stream. Held, that the plaintiff has no right of action since it was a case of *damnum sine injuria*.

In, Dickson v. Renter's Telegraph Company(1877), 'A' sent a telegram to 'B' for the shipment of certain goods. The telegraph company mistaking the registered address of 'C' for that of 'B', delivered the telegram to 'C'. 'C', acting on the telegram sent the goods to 'A' who refused to accept the goods stating that he had ordered the goods not from 'C' but from 'B'. 'C' sued the Telegraph Company for damages for the loss suffered by him. Held, that 'C' had no cause of action against the company for the company did not owe any duty of care to 'C' and no legal rights to 'C' could, therefore, be said to have been infringed.

In Rogers v.. Rajendera Dutt (1860), the plaintiff owned a tug which was employed for towing the ships in charge of Government Pilots in Hoogly. The plaintiff demanded exorbitant price for towing the ship. Consequently, the Superintendent of Marine issued an order prohibiting the use of that tug in future whereby the owner was deprived of the profits.

Held, that they had no legal right to have their tug employed by the Government.

In Town Area Committee v. Prabhu Dayal(1975), a legal act, though motivated by malice, will not make the defendant liable. The plaintiff can get compensation only if he proves to have suffered injury because of an illegal act of the defendant. The plaintiff constructed 16 shops on the old foundations of a building, without giving a notice of intention to erect a building under section 178 of the Uttar Pradesh Municipalities Act and without obtaining necessary sanction required under section 108 of that Act. The defendants (Town Area Committee) demolished this construction. In an action against the defendant to claim compensation for the demolition the plaintiff alleged that the action of the defendants was illegal as it was *malafide*, the municipal commissioner being his enemy .

Decision

It was held that the defendants were not liable as no "injuria" (violation of a legal right) could be proved because if a person constructs a building illegally, the demolition of such building by the municipal authorities would not amount to causing "injuria" to the owner of the property.

In Action v. Blundell (1843), the defendants by digging a coal pit intercepted the water which affected the plaintiff's well, less than 20years old, at a distance of about one mile. Held, they were not liable. It was observed, "The person who owns the surface may dig therein and apply all that found to his own purposes, at his free will and pleasure, and that in the exercise of such rights he intercepts or drains off the water collected from underground springs in the neighbour's well, this inconvenience to his neighbour falls within description *damnum sine injuria* which cannot become the ground of action."

In Mogul Steamship Co Ltd v McGregor, Gow & Co (1889), the plaintiffs were independent shipowners who sent their ships to the cargo port to obtain cargo. An association (the defendants), also in the business of owning cargo ships, sent more ships down to the port and reduced their freights so low that the plaintiffs were unable to make a profit. They further threatened to dismiss any agents who loaded the plaintiff's ships. The plaintiff

brought action alleging a conspiracy to injury and requested damages. The House of Lords held that the plaintiff had no cause of action as the defendants had by lawful means acted to protect and extend their trade and increase their profits.

Basis	Injuria sine damnum	Damnum sine injuria
meaning	Injuria sine damnum means violation of a legal right without actual loss or damages	Damnum sine injuria means actual or substantial Damages without infringement of a legal right
action	Injuria sine damnum is always actionable	Damnum sine injuria is never actionable
nature of wrong	Injuria sine damnum contemplates legal wrongs where there is a remedy	Damnum sine injuria contemplates only moral wrongs without any remedy

Ubi jus ibi remedium

Ubi jus ibi remedium- *where there is a right, there is a remedy*

“Ubi jus ibi remedium” is a Latin phrase that means “where there is a right, there is a remedy.” This maxim is often used in legal contexts and expresses the idea that when someone’s legal rights are violated, they are entitled to a remedy under the law. In other words, the law provides a way for individuals to seek redress for wrongs done to them. The principle of “ubi jus ibi remedium” is an essential component of the rule of law. It refers to the idea that everyone, regardless of their status or position, is subject to the law, and no one is above it.

The maxim “ubi jus ibi remedium” is an important part because it ensures that individuals can rely on the law to protect their rights. When someone’s legal rights are violated, they have a right to a remedy, which means that they can seek compensation or other forms of relief.

For example, if someone is injured in a car accident caused by another driver, they may be entitled to compensation for their medical expenses and other damages. Similarly, if someone’s property is damaged or destroyed, they may be able to recover the cost of repairing or replacing it.

The principle of “ubi jus ibi remedium” reflects the idea that the law must provide a remedy when someone’s legal rights are violated. This principle is essential for promoting the rule of law, ensuring access to justice, and promoting social justice.

DIFFERENCE BETWEEN LAW OF TORT AND LAW OF TORTS

Law of tort

Law of torts (Pigeon Hole theory)

<ul style="list-style-type: none"> • According to Law of tort, Tort = any wrongful act for which there is no justification or excuse 	<ul style="list-style-type: none"> • According to Law of torts, Torts = specific no. of wrongs beyond which no liability arises
<ul style="list-style-type: none"> • Propagated by Winfield 	<ul style="list-style-type: none"> • Propagated by Salmond
<ul style="list-style-type: none"> • Example: If A injures B, he can sue A in law of tort whether the wrongful act has a particular name like assault, battery etc or falls under no particular category of wrongs under law of torts. 	<ul style="list-style-type: none"> • Example: If A injures B, B sues A under law of torts. Here B would have to prove that the wrongful act falls within some specific and established rule of liability defined under law of torts.

MENTAL ELEMENTS IN LAW OF TORTS

As already seen, Criminal Law seeks to punish the wrong-doer, i.e., an offender. Therefore, one of the cardinal principles of Law of Crimes is well expressed by the Latin legal maxim *actus non facit reum nisi mens sit rea*, which is vaguely translated as "to constitute a crime act and intent must concur". In other words, to hold a person liable in Criminal Law, the prosecution has to prove both *actus reus* (effect of the offender's act) and *mens rea* (guilty mind on the part of the offender).

Mens rea may take any one of the following three forms:

1. Intention
2. Rashness (Recklessness)
3. Negligence.

On the other hand, Civil Law of Obligations, of which Law of Torts is a part, seeks mainly to compensate the victim of a wrong committed by another person. Therefore, the question as to whether the wrong-doer had committed the wrong with a guilty mind is not relevant to Law of Torts.

The obligation to make reparation for the damage caused wrongful act arises from the fault, and not from the intention. Any invasion of the civil rights of another person is in itself a legal wrong, carrying with it liability to repair its necessary or natural consequences, in so far as these are injurious to the person whose right is infringed, whether the motive which prompted it be good, bad, or indifferent.

It is no defence to an action in tort for the wrong-doer to plead that he did not intend to cause damage, if damage has resulted owing to an act or omission on his part which is actively or passively the effect of his volition. A want of knowledge of the illegality of his act or omission affords no excuse. Every man is presumed to intend and to know the natural and ordinary consequences of his acts (*Guille v. Swan, the balloon case and Scott v. Shepherd the lighted squib case.*) But in some cases fraud or malice are the essence

of that act or omission. Only in such cases knowledge of facts will be relevant to hold the alleged wrong-doer guilty or otherwise.

INTENTION

Where a person can foresee the natural consequences of his own act and also desires those natural consequences, he is said to have committed that act intentionally.

For example, A shoots at B knowing well that by doing so he may injure or even kill B, and with a desire that B should be injured or killed. Here A has intentionally shot at B. If the defendant must have acted consciously and of his own free will and has intended some injury to the plaintiff's interest, then he is said to have committed a wrong intentionally.

1. Conduct is not intentional where it results from unconscious or involuntary movement.
2. Nor is it intentional for the purpose of Law of Torts where although the defendant has acted of his own free will, yet he intended no harm to the plaintiff.

Two points need to be noted, however, which diminish the importance of this rule.

1. In law a man's intention are adjudged by objective standards.
2. A man is taken to intend to harm the plaintiff when the consequence which he intends would constitute an injury to a legally protected interest of the plaintiff, regardless of whether he realizes that such a consequence would constitute such injury or not.

Thus, if A sees B sitting in front of him in the bus and taps him on the head to attract his attention, then A commits the tort of battery. A consciously and voluntarily moves his hand over B's head and taps it. A intends both the act, and the consequence the application of force, to B's person. Technically, there is a tort committed. This is equally true if A taps C's head in mistake for B's. If the defendant must have acted consciously and of his own free will and must have intended some injury to the plaintiff's interest.

RASHNESS

But where he can foresee those consequences but does not desire them, he is said to have acted rashly or recklessly. For example, A drives a vehicle at an excessive speed on a crowded street knowing full well that he may cause accident and injure somebody, but without desiring that accident should take place and hoping that no one will be injured. Here A is driving the vehicle rashly or recklessly.

NEGLIGENCE

In case of negligence, there is neither foresight nor desire of the consequences of one's own natural acts. However, there is failure to take adequate care as demanded by the circumstances in which the act is done.

Negligence is the breach of a duty caused by the omission to do something which a reasonable man, guided upon those considerations which ordinarily regulate the conduct of human affairs, would do, or by doing something which a prudent and reasonable man would not do, whereby damage has resulted to a person.

The word "negligence" is used in two senses.

1. It is the name of a tort, so that the plaintiff can sue in negligence where an interest of his which the law protects by that tort is injured.
2. Negligence is itself sometimes an ingredient of other torts.

It is therefore both a tort and a concept of the law of torts. Here we look at negligence as a concept. Negligence is a type of behaviour. It is distinguishable from other behaviour by the notional mental attitude of the defendant. Negligence exists where the defendant did not intend to injure the plaintiff, and yet he disregarded or did not fulfil a duty imposed upon him by the law. It is akin to carelessness, but is a vastly more complicated concept.

As observed by Lord Wright, “In strict legal analysis negligence means more than needless or careless conduct, whether in omission or commission: it properly connotes the complex concept of duty, breach and damage thereby suffered to the person to whom the duty was owing.”

An action for negligence proceeds upon the idea of an obligation or duty on the part of the defendant to use care, and a breach of it to the plaintiff’s injury. It is not necessary that the duty neglected should have arisen out of a contract between the plaintiff and defendants. However the duty may arise, whether by a statute or otherwise, if it exists and is neglected to the injury of the plaintiff, he has a right to sue for damages. There cannot be a liability for negligence unless there is a breach of some duty.

Mere omission to exercise active interference on behalf of another to prevent harm, however open to moral censure, is not a civil wrong. There is no absolute or intrinsic negligence; it is always relative to some circumstances, of time, place, or person.

The test is not whether this particular defendant actually foresaw the possibility of harm to the plaintiff. It is whether a hypothetical reasonable man would have foreseen it had he been in the defendant’s position. This means that a defendant must sometimes foresee even acts of stupidity or forgetfulness on the part of the plaintiff.

MOTIVE

Motive is defined as ulterior intention. If we say that A has intentionally shot at and killed B, the next question would be why did A intend to kill B? In other words, what was the reason behind A’s intention to kill B? It may be because the legal heir of B and wanted to inherit the property quickly by killing B. Or, it may be that A had some enmity against B and due to that hatred he killed B. Or, may be A wanted to take some revenge against B. Such intention to acquire B’s property through inheritance, enmity or hatred, or intention to take revenge are said to be motive behind the killing of B by A.

Motive is almost always irrelevant in the English law of tort. A man’s reasons for doing an act do not make a lawful act unlawful, nor vice versa.

MALICE

Malice is a term with many meanings. Firstly, it is often used to mean spitefully or with ill-will. Like other motives, malice in this sense is invariably irrelevant in Law of Torts, and therefore, is not essential to the maintenance of an action for tort.

Bradford Corporation v. Pickles, Mr. Pickles was annoyed at the Bradford Corporation’s refusal to purchase some land from him at the inflated price he demanded. In order to force their hand, he sank a shaft on his land, which interfered with water percolating from higher land belonging to the Corporation. The Corporation unsuccessfully sought an injunction to restrain him from polluting and diminishing their water. The House of Lords rejected the claim, Lord McNaughton remarking that “It is the act, not the motive for the act that must be regarded. If the act, apart from motive, gives rise merely to damage without legal injury, the motive, however reprehensible it may be, will not supply that element.”

In this first sense, malice is occasionally relevant as a necessary element required to establish the defendant’s liability, e.g. to rebut the defence of qualified privilege in libel or slander.

Malice has a second meaning. In this legal sense, malice means the intentional commission of an act with any improper motive. This is much wider than the layman’s use of the word malice. Malice is usually used in this sense in the few contexts in which it is relevant in tort. For example, in the tort of malicious prosecution, malice is constituted by any motive other than that of simply instituting a prosecution for the purpose of bringing a person to justice. Sometimes malice is used in its archaic sense to mean simply an intentional performance of a tortious act. It is in this sense that pleaders in libel and slander actions traditionally allege

that the defendant “falsely and maliciously.” In fact, this means merely that the defendant’s publication of the defamatory matter was either intentional or negligent.

Malice in this sense would appear to be a confusing and unhelpful use of the word, and hence, should be avoided.

MALICE IN FACT AND MALICE IN LAW

It is of two kinds, ‘malice in fact’ (or express malice or actual malice) and ‘malice in law’ (or implied malice). The first is what is called malice in common acceptance, and means ill-will against a person. The second means a wrongful act done intentionally without just cause or excuse where a man has a right to do an act; it is not possible to make his exercise of such right actionable by alleging or proving that his motive in the exercise was spite or malice in the popular sense. An act not otherwise unlawful cannot generally be made actionable by an averment that it was done with evil motive. A malicious motive per se does not amount to an injuria or legal wrong.



IMPORTANT PREVIOUS QUESTION



1. Define ‘tort’ giving two illustrations and distinguishing it from breach of contract.
2. Choose any of the two topics given below and elucidate the distinction:
 - a) Tort and Breach of Contract,
 - b) Tort and Quasi Contract.
 - c) Tort and Bailment.
3. What is tort? Define it. Is it possible to have an universal definition of tort? Justify thereof. Differentiate tort with crime.
4. “The key note of the law of torts lies in wrong doing set in a civil, as opposed to a criminal, framework.” Elucidate
5. Define a tort. How does a Tort differ from a crime and breach of contract?
6. Is it necessary that to become a crime, an act must be tort? Discuss.
7. Write short note on tort.
8. Explain the difference between Malice in law and Malice in fact.
9. Define ‘tort’ giving two illustrations and distinguishing it from breach of contract.
10. Enumerate the rights in the law of torts, the exercise of which even if they cause damage, are not actionable (damnum sine injuria), Illustrate your answer.
11. Explain the following: Ubi jus ibi remedium.
12. Though, the concept of tort is essentially based on the principle of Equity and Justice, but the essence of tortious liability lies in violation of legal right. Discuss.
13. What do you mean by the term legal damage? In this reference explain the following with illustrations
 - (i) Injuria Sine Damnum.
 - (ii) Damnum sine Injuria.
14. “Legal damage is neither identical with actual damage, nor is it necessarily pecuniary.” In the light of this statement discuss the significance of legal damage with suitable example from case law.
15. Write short note on following Injuria sine damno.
16. ‘Damnum Sine Injuria’ and ‘Injuria Sine Damnum’ are two different principles of law, agreed upon a same principle of law.” briefly.

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17. Which of these two expressions, Law of Torts or Law of Tort, is correct and why?
18. “The King can do no wrong.” Explain this principle in the Indian context of sovereign immunity and acts of the State.



INTRODUCTION

In the law of torts, a defendant may be held liable for a wrongful act that causes harm to another person or their property. However, there are certain situations where a defendant can raise what are known as general defences to avoid liability for the tortious acts. These defences are available in a wide range in tort cases and are not specific to any particular type of tort.

For example: The general defence of consent can be taken in case of a lot of tortious acts like trespass, defamation, false imprisonment or some other wrongs.

Suppose a person goes to a tattoo parlour to get a tattoo. Before the tattoo is applied, the person signs a consent form that acknowledges the risks associated with the procedure. During the tattooing process, the tattoo artist accidentally scratches the person's skin with the needle, causing an infection. The person then files a lawsuit against the tattoo artist, claiming that they were negligent in their actions and caused them harm.

In this case, the tattoo artist can use the defence of consent to argue that they are not liable for the person's injuries. Since the person signed a consent form before the tattoo was applied, they voluntarily assumed the risks associated with the procedure, including the risk of infection. Therefore, the tattoo artist may be able to avoid liability for any harm caused to the person.

GENERAL DEFENCES

- ⇒ **Volenti non fit Injuria**
- ⇒ **Plaintiff, the wrongdoer**
- ⇒ **Inevitable Accident**
- ⇒ **Act of God**
- ⇒ **Private Defence**
- ⇒ **Mistake**
- ⇒ **Necessity**
- ⇒ **Statutory Authority**

1. Volenti Non Fit Injuria

When a person consents or assents to inflict the harm upon him, he has no remedy for that in the tort. The defence of volenti non fit injuria is a Latin phrase that means "to a willing person, no injury is done". This defence is based on the principle that if a plaintiff voluntarily accepts the risks associated with an activity, they cannot later claim that they were wronged

or injured by those risks. In other words, if a plaintiff knowingly and willingly exposes themselves to a dangerous situation or activity, they cannot later claim that they were wronged or injured by the risks they knowingly assumed.

CONSENT OF THE PLAINTIFF CAN BE:

Implied Consent: Implied consent refers to a type of consent that is not expressly given but can be inferred from a person's actions or behaviour. In other words, the person's behaviour implies that they have given their consent. For example: A spectator went to watch a cricket match and got injured by the ball hit by the batsman cannot sue for damages because when he bought the ticket to watch the match he impliedly consented to the risks associated as a spectator.

Express Consent: Express consent refers to clear and explicit consent that is given verbally or in writing, or through other direct means, such as clicking a "yes" or "I agree" button on a website. This means that the person has given their consent in a specific and direct manner, without any ambiguity.

For example : Express consent is when a patient signs a consent form for a medical procedure. The form clearly outlines the details of the procedure, the risks and benefits, and the patient's rights. By signing the form, the patient is giving their explicit and informed consent for the procedure to be performed.

In **Hall v. Brooklands Auto Racing Club**, the Brooklands Auto Racing Club organized a motor race at their racetrack. The race featured a variety of high-speed vehicles. During the race, two cars collided with a wall and crashed into the spectator area, injuring the defendant. One of the injured spectators was a man named Mr Hall, who sued the racing club for damages. It was held that the defendant will not be entitled to claim damages as the he had impliedly consented to the risks such injury and the defendant is not liable.

In **Padmavati v. Dugganaika**, one of the defendants in this case, the driver of the car, was on his way to the petrol pump. Two strangers took a ride in his car on the way. Suddenly, one of the bolts holding the right wheel to the axle gave away, causing the jeep to topple. This resulted in serious injuries to the strangers, one of whom died as a result of his injuries. The plaintiff, a stranger took the lift, filed a claim for damages from the accident against the driver of the vehicle and the owner of the vehicle, who was his master. The Court held that neither the driver nor his master could be made liable under the principle of Volenti Non Fit Injuria, which means that if a person voluntarily does some act in which he knows there may be some danger, he has voluntarily agreed to bear the danger if it occurs as firstly it was inevitable accident and secondly, the strangers had voluntarily got into the deep.

In **Illot v. Wilkes**, the plaintiff was a trespasser and he trespassed on the land of the defendant who had spring guns installed on his land. The plaintiff had knowledge about the spring guns and still trespassed. While trespassing the plaintiff got shot by the spring gun. He later sued the defendant. The plaintiff could not recover any damages for the injury caused by the spring gun as he had the knowledge thereby voluntarily given implied consent by entering upon the land. This situation is similar to the situation where a trespasser cannot bring any action against the defendant if such trespasser is injured by glass spikes on a wall or is mauled by a ferocious dog.

In **Wooldrige v. Sumner**, the Plaintiff was a photographer taking photos in the horse show. While taking the photos the plaintiff stood at the boundary of the arena. While the horse

show was going on, one of the horses which belonged to the defendant rounded the bend too fast and galloped furiously, the plaintiff got scared and fell into the horse course and was injured by the galloping horses. It was held that the plaintiff was not entitled to any claim from the defendants because the defendants had exercised full caution and care. In such cases the spectator watching the competition takes the risk of such damage even though there has been an error of judgement or lapse of skill.

In Lakshmi Rajan v. Malar Hospital Ltd, the complainant, Lakshmi Rajan, experienced a painful lump in her breast and during her treatment she was suggested surgery. During the surgery her uterus was removed although the lump was in her breast had nothing to do with the uterus, her uterus was removed during surgery without any prior permission or reasoning. The defendant used the defence of Volenti non-fit injuria, which was rejected and the court held that the defendants cannot contend this defence. The hospital was found guilty by the court for deficiency of its services. In the opinion of the court, the patient's consent for the treatment does not imply.

UTERINE REMOVAL.

For the defence to be available to the defendant, it is necessary the consent given should be free and not vitiated by fraud, compulsion or under mistake of fact. Act done by the defendant should be same for which the consent is given. In the above case, where the consent was given for the surgery for the lump, removal of uterus is not a valid act under the consent. And no implied consent can also be assumed in such cases.

CONSENT OBTAINED BY FRAUD

Consent obtained by fraud is not real and does not serve a good ground of defence. For instance, if someone obtains someone's consent to a financial investment by presenting false documents or misleading statements about potential returns, it can be considered consent taken by fraud. In *R. v. Williams*, the music teacher had made his 16 year student believe that an act of sexual intercourse with him would help to improve her voice under the pretence that his act was an operation later the music teacher was accused of rape. The music teacher took the defence of volenti not fit injuria the court rejected the defence and held the music teacher to be guilty of rape because the girl misunderstood the nature of the act and performed the act under the believe that the act would strengthen her vocal cords. The consent given by the girl was vitiated by fraud and was not free hence the defence of volenti non fit injuria will not be applicable. ? Consent Given Under Compulsion When the consent is given by the plaintiff under circumstances where the person giving consent is forced to give consent. It's important to note that the consent obtained under compulsion is not legally or ethically valid. Consent should be given willingly and without any form of coercion to ensure that it is genuine and respects the autonomy and free will of the individual.

Imagine a scenario where a person is being threatened with physical harm unless they agree to participate in a particular activity. In this case, the person may feel compelled to give their consent out of fear for their safety, rather than genuinely wanting to engage in the activity. Their consent is obtained under compulsion because it is not freely given, but rather coerced through the threat of violence.

THE DEFENDANT MUST NOT BE NEGLIGENT

When the plaintiff agrees to assume certain risks, the common presumption is that the defendant will not be negligent. If the defendant is negligent in any way, he can be held accountable for the act, and the Volenti non-fit injuria concept is not applicable.

For example: The plaintiff voluntarily takes lift in the car of the defendant and the defendant being negligent causes an accident due to texting while driving, disregarding traffic laws and safety precautions. In this case the defendant cannot take the defence of volenti non fit injuria because negligence was on his part.

In Slater v Clay Cross Co. Ltd, the Plaintiff was injured while walking through a railway tunnel which was owned by the defendant company. She noticed a train approaching from behind her and jumped to the ground in attempt to dodge it, but her legs got stuck in the tracks and were ran over by the train driver. The company had knowledge that the Locals in the neighbourhood routinely and habitually utilized the railway tunnel as a shortcut, and the railway corporation had instructed its employee that while approaching the tunnel the drivers had to blow a whistle and slow down the speed of the train; however, this caution was not exercised by the driver on this occasion and the accident occurred. The court ruled in favour of the plaintiff. Lord Denning stated that by going through the tunnel, the lady voluntarily accepted the risk of danger from the usual and anticipated operation of the railway, but she did not accept the risk of driver's negligence. The railway corporation had impliedly agreed to the villager's use of the tunnel as a shortcut by failing to take any action over the years.

Scienti non fit injuria = Mere Knowledge of the Risk

Mere Knowledge does not imply assent

Merely having knowledge of a potential harm or danger does not automatically imply consent or agreement to assume the risk. To successfully invoke the defence of volenti non fit injuria, the defendant must demonstrate that the plaintiff voluntarily and with full understanding exposed themselves to the risk and freely accepted the potential consequences.

For Example, there is a construction site with prominent warning signs indicating the presence of heavy machinery and the need for proper safety precautions. Despite these warnings, A knowingly enters the construction site without permission or legitimate reason. While inside, A is injured by a piece of falling debris. In this case, the defendant (the owner or operator of the construction site) could invoke the defence of volenti non fit injuria. They could argue that the plaintiff had knowledge of the potential risks associated with entering the site and that they willingly and without permission exposed themselves to those dangers. Therefore, the plaintiff's act of entering the construction site demonstrated their acceptance of the risks involved, and they cannot later claim that they were wronged or injured by it.

In Bowater v Rowley Regis Corporation, the defendants asked the Cart Driver to drive a horse, both the defendant and the plaintiff were aware that the horse was likely to bolt. Initially the plaintiff refused to drive the horse and objected, but subsequently brought the horse out in accordance to the instruction given to him. As a result, the horse bolted, injuring the plaintiff. The court ruled that the theory of Volenti non-fit Injuria did not apply and that the plaintiff was entitled to the compensation amount.

In Smith v Baker, the plaintiff was an employee of the defendants who cut rock with a drill. The crane passes over plaintiff's head while it moved stones from one side to other. The incident occurred when the plaintiff was busy with his work and a stone fell from the crane injuring the plaintiff. Although the plaintiff was generally aware of the risk, his employers were negligent in failing to alert him to the on-going danger. The defendants contented the defence of Volenti non fit injuria but according to the House of Lords, there was only a passing awareness of risk in this situation; no assumption of risk was made. Therefore, the Volenti non-fit Injuria doctrine is inapplicable, and the defendants were responsible.

In Dann v. Hamilton, the plaintiff was an employee of the defendants who cut rock with a drill. The crane passes over plaintiff's head while it moved stones from one side to other. The incident occurred when the plaintiff was busy with his work and a stone fell from the crane injuring the plaintiff. Although the plaintiff was generally aware of the risk, his employers were negligent in failing to alert him to the on-going danger. The defendants contented the defence of Volenti non fit injuria but according to the House of Lords, there was only a passing awareness of risk in this situation; no assumption of risk was made. Therefore, the Volenti non-fit Injuria doctrine is inapplicable, and the defendants were responsible.

EXCEPTION TO THIS DOCTRINE:

The defence of the doctrine of volenti non fit injuria will not apply in the following cases-

(i) Rescue cases

Rescue cases form an exception to the application of this doctrine. When the plaintiff voluntarily takes the risk to rescue somebody from an imminent danger created by the defendant, later defendant is bound to pay compensation to the plaintiff for any injury suffered during the rescue procedure and defendant cannot take the defence of volenti non fit injuria.

In Haynes v. Harwood, the defendant's servant left two unattended horse van in a street. A small boy threw the stone towards the horse and they bolted thereby causing grave danger to the women and children on the road. On seeing the same, a police constable who was at duty managed to stop the same and while doing the same he suffered serious injuries. Defendant claimed the defence of volenti non fit injuria, which was denied by the court as the case falls under rescue cases which is an exception to this doctrine.

In Baker v. T.E. Hopkins & Son, due to the employer's negligence, a well was filled with poisonous fumes of petrol driven pump and two of his workmen were overcome by fumes. Dr. Baker was called to help the workers though he was told not to enter the well as it is filled with poisonous fumes.

Even with such warning, doctor entered the well to help and rescue the workers but was overcome of fumes and was taken to the hospital. On the way to the hospital, he died and the workers died inside the well itself. Widow of the doctor sued the defendant company who claimed the defence of volenti non fit injuria. It was held that the act of rescuer was the natural and probable consequence of the defendant's wrongful act which the latter could have foreseen, and therefore, the defence is not available. Hence, they would be held liable.

2. Mistake

The defence of mistake is not typically recognized as a standalone defence. Generally, the law of tort focuses on the actions and behaviours of individuals, rather than their mental

states or subjective beliefs. However, there are certain situations where a mistake may be relevant in determining liability or damages in a tort case. One such situation is the defence of mistake of fact. If a defendant can show that they made an honest and reasonable mistake regarding a material fact, and that mistake led to the alleged tortious conduct, it may be a defence to liability. For example for the wrong of malicious prosecution it is necessary to prove that the defendant has acted maliciously and without reasonable cause and if the prosecution of an innocent man is mistaken it is not actionable. Mistake of fact Mistake of fact is a legal concept that refers to a situation where a person holds a mistaken belief about a material fact that affects their actions or decisions. Mistake of fact refers to an honest and reasonable error in understanding or perceiving a particular fact.

Mistake of fact can sometimes serve as a defence or mitigating factor in legal proceedings. For example, if a defendant can demonstrate that they honestly and reasonably believed a certain set of circumstances to be true, and their mistaken belief led them to engage in criminal conduct, it may be a defence to criminal liability.

For Example: Jane, a homeowner, hires a contractor named Bob to install a new fence around her property. However, due to a mix-up in the address, Bob mistakenly believes that he has been hired by the neighbour, John, to install the fence on John's property. Based on this mistaken belief, Bob proceeds to install the fence on John's property without John's consent. As a result, John incurs damages, such as the cost of removing the fence and repairing any damage caused during its installation.

In this scenario, Bob's mistaken belief about his contractual obligations and the property ownership constitutes a mistake of fact. Bob genuinely and reasonably believed that he had the right to install the fence on John's property based on the incorrect information he received. If John decides to pursue a claim against Bob for trespass or property damage, Bob may raise the defence of mistake of fact. He can argue that he honestly believed he had the authorization to install the fence on John's property and that his mistaken belief led to the trespass and damages. The outcome of such a case would depend on various factors, including the reasonableness of Bob's mistake, whether he made any efforts to confirm the property ownership, and the extent of John's damages.

MISTAKE OF LAW

Mistake of law refers to a situation where a person misunderstands or is ignorant of the law, and this misunderstanding or ignorance leads to their actions or decisions. Mistake of law is generally not recognized as a valid defence.

For Example: Alice, a driver, parks her car in what she believes to be a legal parking spot in a certain area. Unbeknownst to Alice, the local municipality has recently changed the parking regulations in that area, making it illegal to park there during certain hours.

Alice receives a parking ticket for parking in the prohibited zone and decides to contest the ticket, arguing that she was unaware of the recent change in parking regulations.

Alice's mistake of law may not absolve her of liability for the parking violation Consolidate Co. v. Curtis The defendant auctioneer had sold items at auction which were given to him by his customer, believing that the customer was the real owner the defendant auctioneer sold the goods and then sent him the money raised.

The auctioneer was found responsible for the tort of conversion in a lawsuit brought by the actual owner, and his defence of "mistake of fact" was rejected.

3. Statutory Authority

Statutory authority refers to a legal provision or statute that grants certain powers, rights, or immunities to individuals or entities. It is a concept that recognizes that certain actions that would otherwise be considered tortious may be legally authorized or protected by specific statutes. When an act is committed by a statutory authority it is a complete defence and the injured party has no remedy except for claiming compensation as provided under the law. Statutory authority acts as a defence or justification for an individual or entity accused of committing a tort. It allows them to argue that their actions were lawful and authorized under the applicable statute, even if those actions would have otherwise constituted a tort in the absence of such statutory authorization.

For Example: where Z, a police officer is driving a patrol car in response to an emergency call. While driving at a high speed, the officer unintentionally collides with another vehicle, causing damage to the vehicle and injuring its occupants. The occupants of the vehicle bring a claim against the police officer for negligence.

In this case, the police officer may assert the defence of statutory authority. He can argue that he was acting within the scope of his duties and in accordance with specific laws or regulations that authorize emergency

VEHICLE OPERATIONS.

In Vaughan v. Taff Valde Rail Co., The respondent's railway company was authorized to run the railway, the sparks produced from the railway engine set fire to the appellant's woods on the adjoining land. The court held that since the respondents have exercised proper care to prevent the emission of sparks and the railway corporation was doing nothing more than what was authorized so nothing can be claimed for the damage suffered as it was done as per the statutory provisions.

In Hammer Smith Rail Co. v. Brand, The value of the property of the plaintiff depreciated due to the loud noise, smoke and vibrations produced from the power. The court held that nothing can be claimed for the damage suffered as the damage caused was incidental to the running of the train and the act was done authorized by the statutory provisions

Conditional

The harm which can be caused to the defendant can be obvious or incidental harm.

4. Plaintiff the Wrongdoer

In the law of torts, the principle "ex turpi causa non oritur actio" applies to situations where the plaintiff's claim is based on their own illegal or immoral conduct. It serves as a defence that can prevent the plaintiff from seeking damages or any other legal remedy.

The principle recognizes that the court should not aid a plaintiff who is seeking to benefit from their own wrongful behaviour. If the plaintiff's claim arises directly from an illegal act they committed, the court may refuse to provide compensation or any form of relief.

For Example: A person decides to engage in an armed robbery and, during the course of the crime, they are injured due to the negligence of the property owner they are robbing. The injured person subsequently files a lawsuit against the property owner, seeking compensation for their injuries.

In this scenario, the principle of "ex turpi causa non oritur actio" would likely be invoked as a defence by the property owner. The defence would argue that the plaintiff's claim should

be barred because it arises from their own illegal conduct, namely participating in an armed robbery. The court may agree with the defence and refuse to provide any legal remedy or compensation to the plaintiff based on the principle that a person should not be allowed to benefit from their own illegal actions.

Bird v. Holbrook (1828)

Holbrook, the defendant was an owner of a garden which was a mile away from his home in which he had a small dwelling and he used to grow tulips over there. Once a theft occurred there and his valuable tulips and roots worth Rs. 20 pounds got stolen.

To avoid other future circumstances, he fixed/ placed a spring gun to protect his garden without putting any notice board for awareness.

A 19 aged boy named Bird, the plaintiff mistakenly entered into his garden to chase the peafowl with no intention of robbery.

Bird got hurt just above the knee by the spring gun and he claimed damages for the hurt or injury caused to him due to the wrongful act of the defendant.

The plaintiff was entitled to recover damages suffered by him due to the spring-guns set by him in his garden without any notice for the same.

5. Inevitable Accident

In tort law, the concept of an inevitable accident refers to an unforeseeable and unavoidable event that occurs without negligence or fault on the part of any party involved. It recognizes that certain accidents can happen despite reasonable care and precautions being taken. In such cases, the party responsible for causing the accident may not be held liable for any resulting harm or damages.

Inevitable Accident = Unforeseeable + Unavoidable Event

According to Pollock

“It does not mean absolutely inevitable but it means not avoidable by any such precautions as a reasonable man, doing such an act then and there, could be expected to take”.

For Example:

If ‘K’ was driving a car and he was all in his senses and took all due care, but suddenly due to mechanical part failure his car loses his balance and hits a passer-by. In this case, the driver would not be liable as he took all precautions from his side. The accident was unavoidable.

ESSENTIALS OF INEVITABLE ACCIDENT

1. There must be unexpected, unintended and un avoidable accident
2. There must be no negligence on the part of the defendant i.e. reasonable care and caution to be taken by him
3. Injury, loss or damage was suffered by the plaintiff In Stanley v. Powell, Both the plaintiff and the defendant in this case went hunting for pheasants as part of a shooting party. The plaintiff was injured when the defendant's shot, who intended to hit a pheasant but was missed, as the shot bounced off a tree. It was held that this injury was unintentional and outside of the defendant's control, he was not found to be liable.

In Assam State Coop., etc. Federation Ltd. v. Smt. Anubha Sinha, The buildings belonging to the plaintiff were rented to the defendant. The defendant tenant requested the landlord to

repair the damaged electrical wiring of the building, but the landlord did not take the request seriously and did not comply with it. A short circuit caused a fire that accidentally spread throughout the entire building. It was observed that the tenant did not act carelessly at any point. This was deemed to be an unavoidable accident for which the tenant was not at fault in a lawsuit filed by the landlord.

In Shridhar Tiwari v. U.P. State Road Transport Corporation, A U.P.S.R.T.C bus unexpectedly encountered a cyclist in front of it as it approached a village. A wet lane existed due to heavy rain. In an effort to stop the bus from veering off the road and hitting the cyclist, the driver applied the brakes, which caused the bus's rear end to collide with the front end of another bus that was approaching from the opposite direction. Although both buses were being driven with reasonable care at the time of the accident, it was observed that both were traveling at a reasonable speed at the time. It was observed that the accident was determined to have occurred as a result of an unforeseeable accident, and the defendant Company was not held liable for it on the basis of negligence.

6. Act of God

The concept of an "act of God" refers to an event or circumstance that is caused by natural forces or occurrences beyond human control. Act of God is also known as "Vis major/Force majeure"

"Vis major" is a Latin term that translates to "superior force" or "act of God" and is related to the law of torts.

An act of God is typically an unforeseeable and unavoidable event that could not have been prevented or anticipated by reasonable human foresight or care. These events are considered to be outside the realm of human influence and are often characterized by their suddenness, force, and unpredictability.

Examples of acts of God include earthquakes, floods, hurricanes, lightning strikes, storms, avalanches, or other natural disasters.

ESSENTIALS OF ACT OF GOD

1. **External and Uncontrollable Force:** The event must be caused by an external force or factor that is beyond human control. It could include natural disasters like earthquakes, floods, storms, or other events resulting from uncontrollable forces of nature.
2. **Un-foreseeability:** The event should be unforeseeable or impossible to predict by a reasonable person exercising due care. It means that the occurrence could not have been reasonably anticipated or guarded against with the available knowledge and resources.
3. **Absence of Human Fault:** The event must not be caused or contributed to by any human action or negligence. It should be solely due to the force majeure event and not due to any fault or omission on the part of the defendant.

In Ramalinga Nadar v. Narayana Reddiar, The plaintiff had booked goods with the defendant for transportation. The goods are looted by a mob, the prevention of which was beyond control of defendant. It was decided that an incident beyond the defendant's control could not be called an Act of God. It was also held that the destructive acts of an unruly mob cannot be considered an Act of God.

In Nichols v. Marsland, The defendant had created an artificial lake by collecting water from natural stream but due to extraordinarily heavy rainfall, the embankments got destroyed and the water washed away all bridges of plaintiff. It was recognised by the court that it being an extraordinary natural event, the defendant could not be held liable.

In Kallu Lal v. Hemchand, Due to a normal rainfall, the building's wall collapsed resulting in the death of children of the plaintiff. The court observed that a rainfall of 2.66 inches is normal and not extraordinary and thus the essential of the defence of Act of God are not met and the defendant would be held liable.

7. Private Defence

Private defence is the most commonly used general defence in torts. When a defendant uses reasonable force to protect his or her body or property or the property of another person when there is no time to immediately report to the authorities and there is an imminent danger, it is private defence. The harm should be proportionate according to the nature of the circumstances.

For example, A would not be justified in using private defence as against B if he thinks that B will someday cause him injury.

Essentials of Private Defence

1. The use of force is justified only for the purpose of self-defence.
2. There should be an imminent threat to a person's life or property.
3. The force used must be reasonable and to repel an imminent danger.

For example, if A tried to commit a robbery in the house of B and B shoot him, then this act of A would not be justified and the defence of private defence cannot be pleaded

The law only permits taking actions that are required to eliminate a threat in order to protect property.

For instance, it is legal to fix broken glass on a wall and keep a vicious dog etc.

In Bird v. Holbrook, The plaintiff, a trespasser, was injured by the spring gun's automatic discharge because the defendant installed them in his garden without displaying any notice of them. The court held that the action of the defendant is not justified and the plaintiff is entitled to get compensation for the injuries suffered by him.

In Ramanuja Mudali v. M. Gangan, The defendant, a landowner, had installed network of live wires on his property. At ten o'clock at night, the plaintiff attempted to cross his land to get to his own land. Due to the live wire, which was present without any warning, he received shock and suffered serious injuries. The defendant was held liable and the use of live wires was not justified.

In Collins v. Renison, For the purpose of nailing a board to a wall in the defendant's garden, the plaintiff climbed a ladder. He was knocked off the ladder by the defendant, who claimed in court that all he had done was gently push the man down. It was held that the force used was not justifiable as the defence.

8. Necessity

In order to avoid or prevent a great loss or harm, a defendant can cause lesser harm that is justified. The act of the defendant may be unlawful but if it is done to avoid major damage then he can plead the defence of necessity.

ESSENTIALS OF NECESSITY

1. In order to avoid significant risk of harm
2. Causing lesser justified harm

For example, even if a patient is unconscious, a surgeon may still perform a surgery to save patient's life. There will be no way to hold the doctor accountable.

In Kirk v. Gregory, After P's death, P's sister-in-law 'K' hid some jewellery in the room where he was lying dead thinking that it would be a secure location. The jewellery was stolen from there and P's sister-in-law 'K' was charged with trespassing on the valuables. The Court held that since the interference was not reasonably necessary, she was liable.

1. Statutory Authority

Statutory authority refers to a legal provision or statute that grants certain powers, rights, or immunities to individuals or entities. It is a concept that recognizes that certain actions that would otherwise be considered tortious may be legally authorized or protected by specific statutes. When an act is committed by a statutory authority it is a complete defence and the injured party has no remedy except for claiming compensation as provided under the law. Statutory authority acts as a defence or justification for an individual or entity accused of committing a tort. It allows them to argue that their actions were lawful and authorized under the applicable statute, even if those actions would have otherwise constituted a tort in the absence of such statutory authorization.

For Example: Where Z, a police officer is driving a patrol car in response to an emergency call. While driving at a high speed, the officer unintentionally collides with another vehicle, causing damage to the vehicle and injuring its occupants. The occupants of the vehicle bring a claim against the police officer for negligence.

In this case, the police officer may assert the defence of statutory authority. He can argue that he was acting within the scope of his duties and in accordance with specific laws or regulations that authorize emergency vehicle operations.

In Vaughan v. Taff Valde Rail Co., The respondent's railway company was authorized to run the railway, the sparks produced from the railway engine set fire to the appellant's woods on the adjoining land. The court held that since the respondents have exercised proper care to prevent the emission of sparks and the railway corporation was doing nothing more than what was authorized so nothing can be claimed for the damage suffered as it was done as per the statutory provisions.

In Hammer Smith Rail Co. v. Brand, The value of the property of the plaintiff depreciated due to the loud noise, smoke and vibrations produced from the power. The court held that nothing can be claimed for the damage suffered as the damage caused was incidental to the running of the train and the act was done authorized by the statutory provisions.

In Metropolitan Asylum District v. Hill, The appellants a local Municipal Corporation were authorised to set up a smallpox hospital had authority to set up a smallpox hospital. The appellants constructed the hospital in a residential area which created the danger of disease to the residents of the area. It was held that to establish a smallpox hospital in a residential area was a nuisance and the appellants were prevented from constructing the hospital by issuing an injunction. In such cases, the statutory authority is conditional. The harm which can be caused to the defendant can be obvious or incidental harm.

Absolute Authority	Conditional Authority
<p>Absolute authority refers to a type of statutory authorization that provides complete immunity or protection from liability for certain actions or omissions. When an individual or entity has absolute authority, they are shielded from any legal consequences or liability, even if their actions would otherwise be considered tortious.</p>	<p>Conditional authority, on the other hand, imposes certain conditions, limitations, or requirements on the statutory authorization. It allows an individual or entity to invoke statutory authority as a defence against a tort claim only if they have satisfied the prescribed conditions or requirements set forth in the statute.</p>
<p>For Example: The government has authorized to set up a hospital for highly communicable disease anywhere in the district.</p>	<p>For Example: The government has authorized to set up a hospital for highly communicable disease anywhere in the district except residential areas.</p>
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IMPORTANT PREVIOUS QUESTION



1. Discuss citing case law the maxim. 'Volenti non fit injuria' highlighting the point that the maxim is 'Volenti non fit injuria, not scienti non fit injuria'.
2. Discuss the liability of minors and lunatics in an action against them in tort.
3. Explain with illustrations the maxim "Volenti non fit injuria".
4. Comment on the following: That to what a person assents are not deemed in law an injury.
5. "Necessity knows no law." Comment.