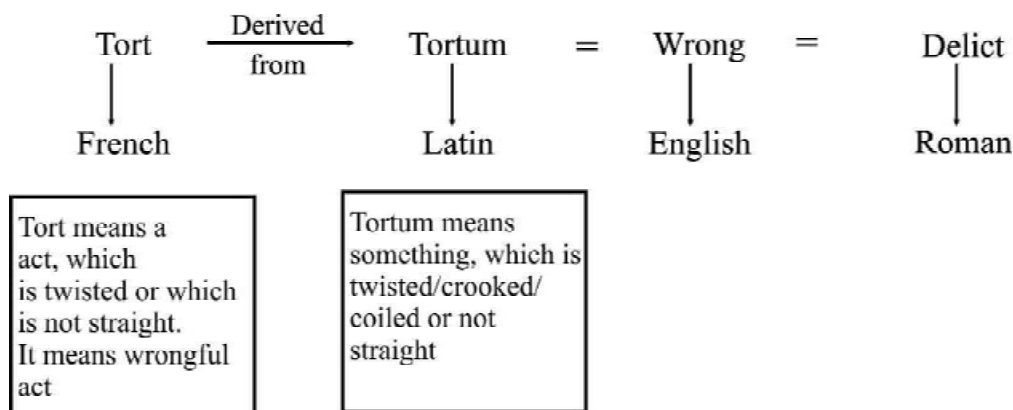


Introduction

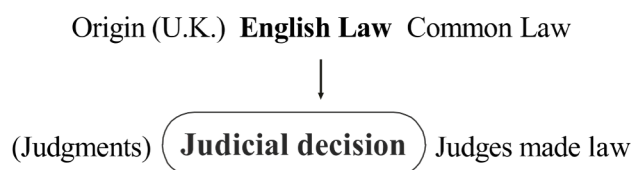
Tort is a *civil wrong*, other than breach of contract and it attracts penalty in form of compensation given to the injured party. The word ‘tort’ is derived from ‘*tortum*’, a latin term meaning ‘*to twist*’. It implies a ‘conduct that is twisted or not straight’. The law of torts is based on the principle “*ubi jus ibi remedium*” which means that” for every wrong, there is a remedy.”



Why Law of Tort is required?

Law of Tort is based upon the concept of EQUITY AND JUSTICE as well as DOCTRINE OF PERFECT RIGHTS. A right for which there is no remedy provided is no right i.e. whenever there is a right created, it is a state’s duty to provide an equitable remedy in case of violation of such rights.

The concept of Ubi Jus Ibi Remedium i.e. where there is a right, there is a remedy can be said to be the jurisprudential basis of law of Torts. The law has its origin in British origin courts which were not guided by any fixed statutory provisions rather they gave decision on the principle of Justice& Equity as suited to the circumstances of each case.



↓
Principal of Justice, equality and good conscience.

The rights that are conserved by Law of Torts are essentially in the nature of public rights i.e. Right in Rem i.e. the Right available against the whole society at large. In the Indian context, the Constitution provides for the fundamental and constitutional rights and these rights find their manifestations and extensions in the form of legal rights. However, Rights are dynamic in nature and therefore statutory remedies might not be able to cover all such rights. In such a situation which can be termed as a situation of Non-liquet i.e. absence of law, it is the duty of the Courts to provide suitable remedies until the legislature comes up with some statutory remedy.

The basic purpose of law is to do a balancing between the rights of various individuals in the society so this balancing is what has been termed as Social Engineering (hereinafter referred to as S.E.) by Roscoe Pound and William L. Prosser. The act of S.E. is basically a dynamic process and in the specific circumstances, the Court has to draw a balance between the rights involved. The freedom of action guaranteed by the state is not universal and unlimited. It needs to be curtailed in the light of similar freedom of action of the other individuals as well as in the societal interest. This is where balancing is required.

The purpose of Law of Torts is:-

- i. To distribute losses among the Plaintiff and Defendant by evaluating the loss suffered by such Plaintiff.
- ii. To establish a normative set of public rules that governs the social interaction among the society. That is why Law of Tort is based on two legal maxims:



Sicutere Tuo at alienum non laedus i.e. enjoy your own in such a manner as not to injure another.

Actus legis nemini est damnasus i.e. an act in law shall not prejudice anyone

Definitions of Tort:

- a. **Winfield:** Tortious liability arises from the breach of duty primarily fixed by law. Such duty is towards persons generally and its breach is redressed by an action for unliquidated damages.
Criticism- i. It is based on only fault based liability.
ii. Only remedy provided is unliquidated damages.
iii. Makes only individual liable . Therefore, the said definition is not applicable today.
- b. **Salmond:** “It is a civil wrong which is redressible by an action for unliquidated damages and which is other than a mere breach of contract or breach of trust.”

Criticism- i. Only remedy provided is unliquidated damages. Hence, not applicable today.

c. **Section 2(m) of Indian Limitation Act, 1863:** Tort is a civil wrong which is not exclusively the breach of contract or the breach of trust.

Criticism- No remedy is given.

d. **Pollock:** An act or omission resulting in breach of duty to an individual for which he is entitled to get reparation (to be compensated for) for the wrong doer and such reparation is unliquidated.

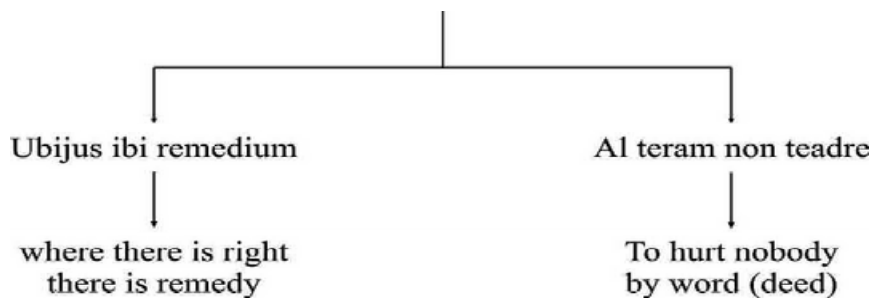
e. **Frazer:** Tort is a violation of legal right which justifies the aggrieved party to bring an action for damages against the wrong doer.

f. **Keeton and Keeton:** Tort law is a body of law concerned with granting or denying claims of individuals or legal entities against each other for award of damages by injured person.

Uncodified nature of torts

The most distinguishing features of law of tort is that it is uncodified, this is to insure its dynamic character and to keep it arisen. Expanding & open torts rely on the concept of justice and equity which can never be codified the needs of justice keeps on changing – what is not a wrong today might become a Tort tomorrow and hence the concept is not caged into a law book.

Underlying principles of Torts



Wrong

There are two types of wrong:-

- ☉ **Public Wrong:** Crime is a public injustice or public wrong. These are the acts that are punishable by law, under Indian Penal Code, 1860
- ☉ **Private Wrong:** Tort is a private wrong. These are crimes committed against an individual or a group of people and are tried in civil courts.

Objectives of Torts

- ☉ To ascertain the rights of the disputing parties.
- ☉ To prevent the continuation or repetition of harm i. e by orders of Injunction.
- ☉ To safeguard certain legal entitlements, including a person's reputation.
- ☉ To return its property to its rightful owner after it has been wrongfully taken from its

owner.

Nature of Torts

☞ **Tort is a civil wrong:** Tort belongs to the category of civil wrong. The fundamental

BASIS	TORTS	CRIME	CONTRACT
Nature of Law violated	Public and Private Law	Public Law	Private Law
Nature of Right's involved	Right in Rem + Personam (Remedy in form of Personam)	Right in Rem	Right in Personam
Nature of Remedy provided	Unliquidated damages, injunction,	Punishment – Imprisonment and fine abatement	Liquidated Damages
Who provides the remedy	Generally individual and in certain cases, State also.	State	Individual

characteristic of civil wrong is that in such cases the main remedy is damaged. The defendant pays the plaintiff restitution for the harm it has done to him.

- ☞ **Tort and Breach of Contract:** The liability under the tort arises from breach of duty fixed by law whereas in a contract, the obligation is decided by the parties themselves.
- ☞ In tort, the obligation is set by law, and as a result, a person may be held liable for the actions of his servant even though he did not intend to harm anyone else or because he did not commit any wrongdoing.
- ☞ **A Tort is redressible by an action of Unliquidated damages:** Damage is the most important remedy for a tort. This is due to the fact that it is typically impossible to reverse the damage caused by an act of wrongdoing.

In tort cases, damages are unliquidated. Unliquidated damages are those for which the amount of compensation has not yet been determined, but the court has the discretion to do so.

Distinction between Tort, Crime and Contract:

Essentials of Tort:

There has to be a wrongful act by the Defendant and this act shall infringe the legal right of Plaintiff and cause some damage (physical damage or actual damage).

.What does the damage include?

In case of *Rogers v. Rajendra*, it was observed that it is essential to bring an action in tort that the act complained under the circumstances be legally wrongful as regards the party complaining

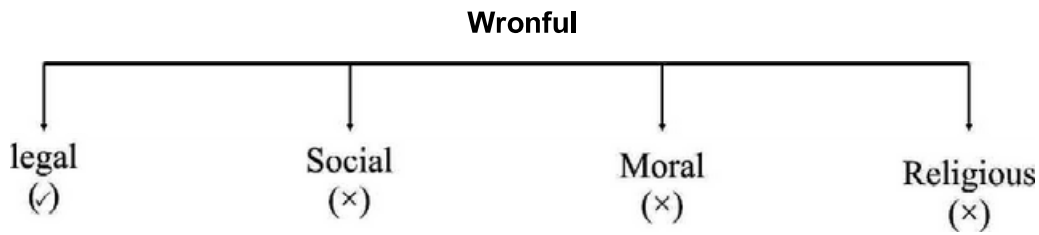
must pre-judicially affect him in some legal right, merely that it will however do a man harm in his interest is not enough.

Justice cave in the case of *Allen v. Flood* says- “The personal rights with which we are most familiar with are-

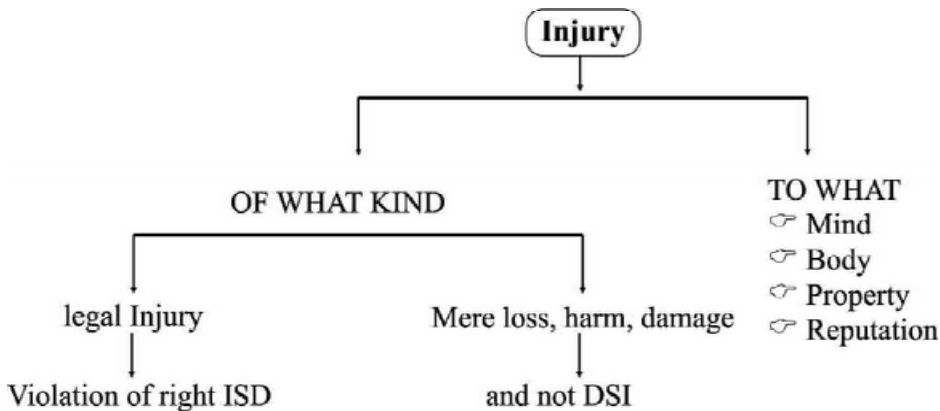
- Right of Repetition
- Right of Bodily safety and freedom
- Right of property

Wrongful act by Defendant:

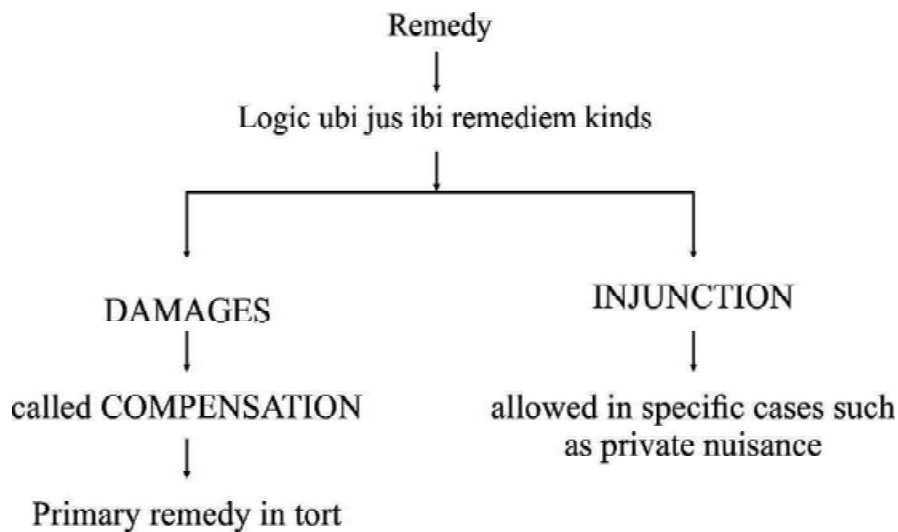
It is one of the essential elements to prove the wrongful act of the defendant. The main test to check such wrongful act is to see the prejudice effect on the legal right of the plaintiff. The burden of proof lies upon the plaintiff.



Such wrongful act must result into an injury to the other person.



The person who has suffered injury gets entitled to a remedy



Damnum sine Injuria	Injuria sine Damnum
<ul style="list-style-type: none"> ⇒ It means damage or loss without violation of rights. ⇒ Not recognised as torts. ⇒ Not actionable ⇒ No compensation ⇒ Social, moral, religious wrongs ⇒ Logic: Every act on part of one person is bound to be detrimental to the interest of another person in view of the conflict of interest. But as long as such act does not affect the right of another, the law takes no notice because otherwise it would be impossible to carry on common affairs of life. This is also harmful for social harmony & adjustments. Example:- Coaching enter case (inrivalry) ⇒ Defendant's act + P's loss – Plaintiff's injury. 	<ul style="list-style-type: none"> ⇒ It means violation of rights & accomplished by loss or harm ⇒ Torts ⇒ Action lies ⇒ Compensation allowed ⇒ Legal wrongs ⇒ Logic: ubi jus ibe remedium. ⇒ Example:- <ol style="list-style-type: none"> (1) Qualified voter not allowed to vote. (2) Cheque dishonour case despite availability of funds (3) Trespass (4) Illegal detention of MLA (5) Non-entry in restaurant on ground of caste. ⇒ Defendant's act + Plaintiff's injury – Plaintiff's loss

Infringement of Legal right of the Plaintiff:

For an action of Tort, there must be an act or an omission on the part of alleged wrongdoer. A person must have done some act which he was not supposed to do.

The act or omission should result in a **legal damage**, hereinafter referred as ‘damage’ which means that the act or omission, should result in a violation of legal right of the plaintiff of the complainant.

.Injuria Sine Damnum

CIVIL LAW	CRIMINAL LAW
<p>1. Civil matters are private wrongs in which the dispute is primarily between 2 individuals and the society as a whole is not concerned.</p> <p>2. In civil matters the action has to be taken by the affected person. The role of the state is limited to providing the mechanisms of Police and Courts. The purpose of Civil law is compensation to the affected person. Primary remedy: e.g.; nuisance, nerve us shock.</p>	<p>1. Criminal matters are public wrongs in which direct or immediate victim might be one person or his family but the ultimate victim is the society as a whole. This is based on the theory of social abhorrence hate.i.e. society hates the crime and criminals.</p> <p>2. In the Criminal matters the action is initiated by the state this is based on the theories of parents partial. i.e. the state is the parent of all the citizens and being the guardian. It is the duty of the state to protect the citizen against crimes. The purpose of Criminal law is punishment to the wrong doer.</p>

This maxim means ‘**legal injury without damage.**’ According to this maxim, whenever there is a violation of a legal right, the person in whom the right is vested is entitled to bring an action though he has not suffered any damage and may recover damages. It is sufficient to show violation of legal right and the law will presume damage. Violation of legal right gives rise to legal action.

In a famous leading case of *Ashby v. White*, the defendant, a returning officer at a voting booth wrongfully refused to register a duly tendered vote of the plaintiff. Even though the person for whom the plaintiff wanted to vote won the election, the court held that there was an injury to the legal right of the plaintiff and he was entitled to compensation.

In another interesting case of *Marzetti Vs. Willaims*, a banker though having sufficient funds in his hands belonging to the customer dishonoured the cheque of the plaintiff. The plaintiff did not suffer any damage but the court held that there was violation of legal right of the plaintiff and so the banker is liable.

These examples clearly explain the meaning of the maxim, though there may not be any damage but if there is an injury to the legal right of a person, he is entitled to bring an action.

4.2.Damnum Sine Injuria

This maxim means that there is “**actual damage without any violation of legal right**”. In such cases, there is an actual and substantial loss without the infringement of any legal right.

Consider this example:

I run a school in my locality. It’s called ‘St. GCS: Good, Cheap School’. I charge rupees 100 per student. I get good teachers for them, a nice playground and a computer room!

10/DHYEYALAW

A competitor school opens up very near to my school. It's called 'Better, Cheaper'. The fees is rupees 50 per student.

TORT	CONTRACT
1. In torts, rights are in rem (right in torts are rights in rem) i.e., available against the world at large. Example:- A has a right to reputation against B, C, D, Z and no person can defame him.	1. Contract creates rights in personam (e.g.: If A has pays Haldiram's he has a right to take the food only at Haldiram's – A has a right to reputation against B, C, D, Z and every person.) i.e. against a specific person. e.g.: If A enrolls for coaching at XYZ C.Cs. He (A) has a right only against only XYZ and not other C.Cs. Similarly XYZ coaching has only right against A.
2. In torts, damages are always unliquidated i.e., never predetermined and always decided by the court depending upon the facts and circumstances of the case.	2. In contract damages can be either liquidated, i.e. predecided by the parties or it can be even unliquidated i.e., not predetermined and later decided by the court.
3. Law of tort is uncodified.	3. The rules related to contract had been clearly laid down in the Indian Contract Act 1872.
4. In torts obligations are created by law. e.g.: It is the mandate of law that no person should defame another and that no person should trespass into the land of another.	4. In contract the obligations are created by the parties themselves. e.g.: If A enters into a contract into XYZ centre for coaching. A has created an obligation to pay and XYZ has created an obligation to teach.

I suffered damage in the form of economic Loss. But my legal rights were **NOT** infringed and I have no cause of action to take this case to a court of law.

Let us consider another example. Mr. Halim runs a highly profitable mill in a small town. Mr. Zouk is his neighbor. They do not like each other at all. Now, Mr. Zouk starts a rival mill in the same locality. As a result of this, Mr. Halim's profits decrease. In this situation, although Mr. Halim suffered damage, he cannot bring a suit against Mr. Zouk has no legal right of him is infringed.

Features of Torts:

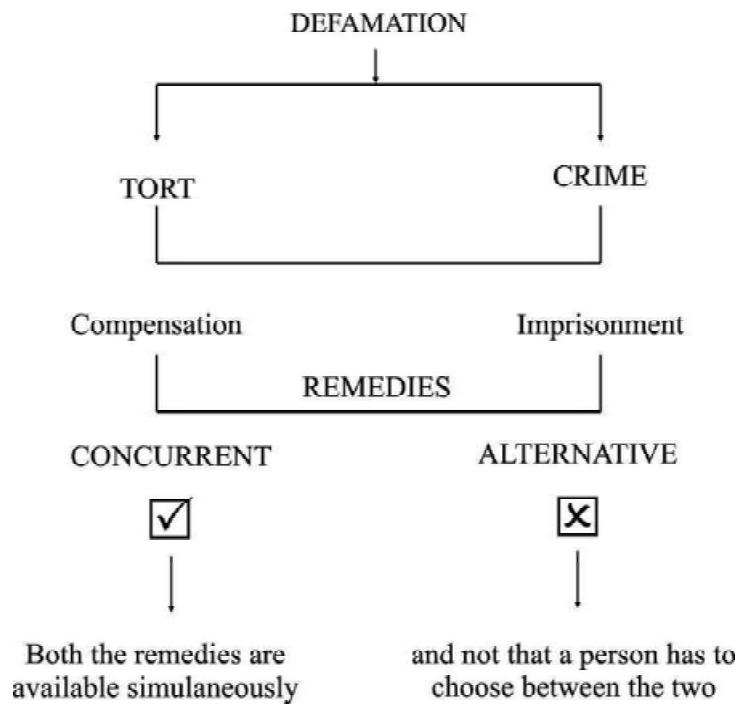
1. Tort is a civil wrong.

WRONGS which are torts as well as Crimes.

Example:

- ☉ Defamation ☉ Public nuisance
- ☉ Assault ☉ Battery

➤ Trespass

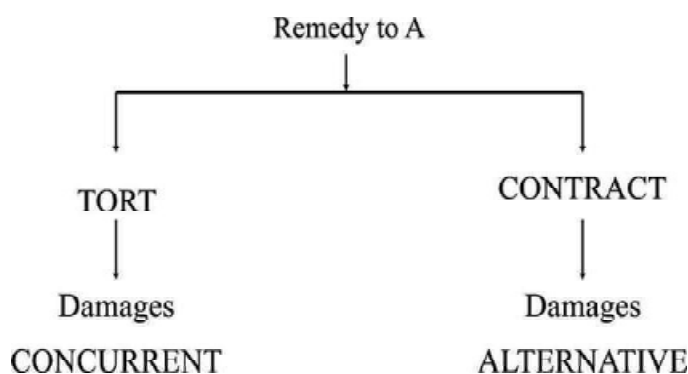


TORT is a civil wrong other than a contract.

Can an Act falls under category of TORT as well as Breach of Contract?

There can be a case where wrongful act falls in category of tort as well as Breach of Contract.

Example:- A enters into a contract with B company to buy a tricycle. The vehicle is defective. A falls down from it and is severely injured B. Co. has committed Breach of Contract as they have supplied defective tricycle and also they are guilty to TORT of negligence as they didn't properly checked the vehicle before delivery.



General Principles of Liability in Tort

Torts are basically civil wrongs which lead to civil damages. People typically have these rights against the entire world. The law recognizes certain principles of tort liability in order to enforce

these rights. Since the law of tort is not codified, we need to rely on precedents and jurisprudence to understand these principles.

Principles of Tort Liability

Even though the majority of tort law's fundamentals are derived from English common law, Indian courts have adapted them to meet local needs.

A legal obligation is that requires a person to pay for a wrongdoing they may have done. A person who is required by law and justice to perform a task that can be carried out through action. Contracts, whether explicit or implied, or torts themselves may result in this liability under the Tort Law. Most of the time, a man's obligations are only transferred to his representatives when they reach his estate.

For Example: A master is responsible for the actions of his servant while they are working for him, as long as they were done in the normal course of business. However, unless the actions were actually authorized by him, he is only accountable on a civil basis and not on a criminal one. Liability without blame: – Legal liability for an injury that can be imposed on the wrongdoer even if there is no evidence of negligence or fault.

Vicarious liability under Law of Torts

Under the Torts Law, a situation in which one person is held accountable for the actions or omissions of another person is known as vicarious liability. A person is only responsible for his or her own actions in tort law.

1. The principal's responsibility for his agent's wrongdoing.
2. Partners' respective tort liability.
3. The master's responsibility for his servant's wrongdoing
4. Either the state's or the administration's responsibility.

Liability of the Principal for the Tort of his Agent

A person grants another person legal authority to act on their behalf in a business relationship. A person who has the legal authority to act as a third party in a business transaction is an agent.

'**Qui facit per se alium facit per se**', Act of an agent is the act of principle where one person authorized another to commit a tort. The liability for that will not only of the person who has committed but also who authorized it.

Due to the principle-agent relationship between them, the principle is liable vicariously. They're referred to as joint tortfeasers. The plaintiff in such a case has the option of suing either the agent or the principle, or both.

Liability of the Master for the tort of his Servant

The maxim "Respondent Superior" serves as the foundation for the tort liability doctrine of masters under the Law of Torts. This put the master in the same position as if he had performed the act himself (let the principle be liable).

There are two fundamental for the obligation of expert –

- I. Tort was committed by the worker.
- II. In the course of his employment, the servant committed the tort.

In general, only when all four conditions are met can the principle be held liable for the agent's actions.

1. That particular kind of action was carried out by an agent.
2. The agent's action was motivated by a fundamental intention.
3. The principle might have anticipated the agent method.
4. The agent act took place at an authorized location and during the authorized employment period.

Mistake or Fraud of the Servant

- ☉ Depending on the nature of the act, the master servant will be liable if a servant who has the legal authority to perform a task on behalf of his master abuses that authority, resulting in loss for the plaintiff.
- ☉ The servant has implicit authority to safeguard his master's assets.

Partners in a partnership Firms

Relationship between the Partner as an agent and a principle. All other partners are held liable to the same extent as the guilty party for a tort committed in the normal course of business.

In the case,

Lloyd versus Grace Smith and Company a lady (plaintiff) sells her property to a company, she just signed a few documents. Following that, the company sent his agent to obtain the plaintiff's (the lady's) signature on property paper. The agent forged a gift deed for plaintiff property and signed it fraudulently. The lady then sues the company. Here, the company will be held vicariously liable for their Agent's wrongdoing.

Strict Liability under Law of Torts

It says that anyone who keeps hazardous materials on their property will be held responsible if those materials get out and cause damage. The rule established in *Ryland v. Fletcher* (1868) served as the foundation for the Strict Liability principle in tort law.

In the case,

Ryland v. Fletcher

There is a mill on the land of the "defendant," and he wanted to build a reservoir there, so he hired some independent contractors to do so. The contractor dug up the entire land while building the reservoir, and he discovered a pipe line that led to the coal mine (plaintiff) through the land. As a result, the contractor built the reservoir, and the heavy weight caused the pipe to burst, causing plaintiff's coal mine to lose money. After that, the owner of the coal mine—the plaintiff—files a civil suit against the defendant. The plaintiff in this case pleaded that he was not claiming damages under vicarious liabilities but rather claiming under the strict liability concept, and the court strictly made the defendant liable for the act of the independent contractor. In this case, the defendant offered the defense that it was a part of the wrongful act of the independent contractor.

Exceptions to Strict Liability under Law of Torts

1. Plaintiff's own fault
2. Act of God
3. Consent of Plaintiff
4. Act of third party
5. Statutory authority

Absolute Liability under Law of Torts

Absolute liability replaces strict liability without exception. In the case of *M.C. Mehta*, Absolute Liability was applied in India. The defendant bears the entire burden of proof.

In the case, **M.C Mehta v. Union of India**, there was a U.S. company that manufactures oleum gas in India. One day, a third party failed to press the safety measure buttons, resulting in an oleum gas leak that harmed India and killed many people. After that, the plaintiff brought a lawsuit against the American company; however, the American company admitted under the strict liability rule that the damage was caused by the third party's default. Additionally, the American company was not required to compensate the victims.

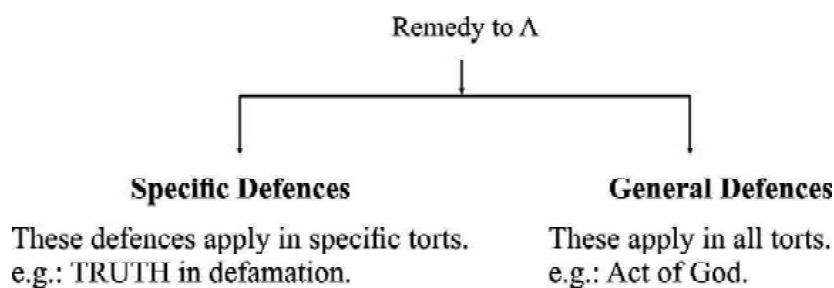
However, if no compensation is paid to the victims, they will have no recourse. As a result, the court developed the concept of "Absolute Liability" over time, making the US company absolutely liable for paying the victims' damages and ignoring the exception to strict liability.

□□□□□



Generals Defences

Defences to Tort means certain pleas which can be taken up by a person to avoid this liability in torts. These defences have been designed for the defendant. (against whom a case has been filed).



General defences are listed below:

- ☉ Volenti Non Fit Injuria
- ☉ Act of God
- ☉ Self- defence/ Private Defence
- ☉ Mistake
- ☉ Necessity
- ☉ Statutory Authority
- ☉ Plaintiff's own fault
- ☉ Accident

Volenti Non Fit Injuria

This defence means 'voluntary taking of a risk'. *Volenti non fit injuria* is a common law doctrine which states that if someone willingly places themselves in a position where harm might result, knowing that some degree of harm might result, they are not able to bring a claim against the other party in tort or delict. Volenti only applies to the risk which a reasonable person would consider them as having assumed by their actions; thus a boxer consents to being hit, and to the injuries that might be expected from being hit, but does not consent to (for example) his opponent striking him with an iron bar, or punching him outside the usual terms of boxing. *Volenti is also known as a "voluntary assumption of risk."*

Therefore, if spectator watching a cricket match is hit by a ball, he will not be able to claim damages as he had consented to the danger.

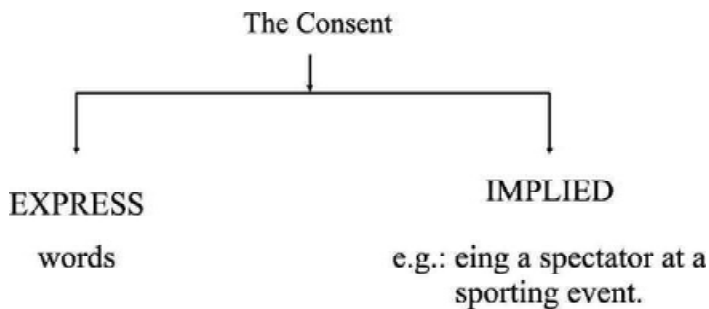
To this defence, there is also a defence and that is in cases of RESCUE. There are

certain conditions in rescue cases which are:

- a. He was acting to rescue persons or property endangered by the defendant’s negligence;
- b. He was acting under a compelling legal, social or moral duty; and
- c. His conduct in all circumstances was reasonable and a natural consequence of the defendant’s negligence.

Essential ingredients:-

- (i) There must be a volenti of the party. i.e. the consent.

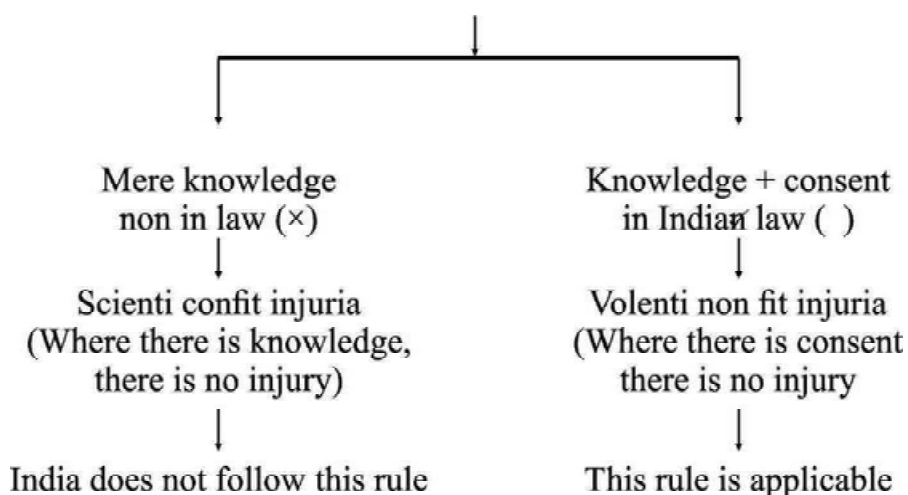


- (ii) The consent must be given freely and voluntarily. The consent is obtained by force, fraud, undue influence, misrepresentation e.t.c., then it is not consent in the eye of law.

Example:- Where a music teacher has sexual intercourse with a girl, with the girl’s consent on the pretext of sexual intercourse being an operation to improve has voice quality, the court held the man to the guilty of rape as the consent of the girl was obtained of fraud.

- Where the drives is compelled to drive a defected car under the fear of losing his job, there is no volenti.
- This defence is not available when there is knowledge of risk. The defence is available only when a person not only knew about the risk but also when he consented to the risk.

- (iii) For this defence to apply, it was necessary that not only the person knew about the risk but also with that knowledge. He agreed to the risk.



- (iv) For this defence to apply it is essential that the act must not exceed the limit of that to which consent has been given. e.g.: A person allowed to sit in room can become guilty of trespass if he enters the bedroom without permission.

Exceptions to volenti non fit injuria:

- i. **Negligence:**-Consent is given presuming that a person will be careful. However, if a person negligently causes any harm to other person now he will be liable. In case of negligence, the defence of volenti cannot be claimed.

Example:- A surgeon who negligently performs a surgery w/o following standard precautions causing complications in a patient. Where the lock of ride in a amusement park opens mid air and results in fall of rider.

- ii. **Deliberate injury:** - In volenti non fit injuria, consent is given to the acts of fair play and not to the acts of foul play. Hence, if a person deliberately injures another with malice intention, now he will be guilty. **For Example:** - A boxer who hits another player in a spinal cord.

- iii. **Illegal Acts:** - Where the act itself is illegal, the defence will not apply because there cannot be consent to such acts to which the law doesn't consent. The consent of the parties cannot overwrite the principles of law.

- iv. **Rescue Cases:-** Where a person finds another person in a situation of danger and he takes a step forward to save that person risking his own safety, this person deserves to be applauded, encourage and rewarded. He cannot be slapped with the defence of volenti and hence to keep the spirit of rescue alive, rescue cases are exceptions to volenti non fit injuria.

Act of God

Act of God (Vis Major) means accident occurs because of an unforeseen natural event. In law, then, the essence of an Act of God is not so much a phenomenon which is sometimes attributed to a positive intervention of the forces of nature but a process of nature not due to the act of Man and it is this negative side which deserves emphasis.

The criterion is not whether or not the event could reasonably be anticipated, but whether or not human foresight and prudence could reasonably recognize the possibility of such an event. For example, loss due to earthquake, storm, heavy rainfalls etc.

➤ **Related Maxims:-**

- Vis major God
- Force majeure – force of major

➤ **Essential Ingredients:**

- (1) The event must be due to the working of natural forces i.e. the event must be tracable only an inclusively to God.

For Example:- floods, Isunamis, earthquakes, volcanic eruptions, etc.

- (2) The event must be extra ordinary.

- (3) There must not be any human intervention at all.

Private Defence:

The right of private defence entitles the plaintiff to go to any extent in order to protect his life or property. An important thing to note in this is that the force used in private defence should

What is not allowed	What is allowed
1. Keeping a ferocious dog without warning. 2. Electrocutation of house. 3. Fixing of spring guns.	1. Keeping a dog with warning. 2. Fencing of house with wires. 3. Firing of broken glass pieces

be **reasonable and used as defence, not as offence**. Also, the danger must be imminent. For instance, a person warns a person that in evening, he will bring a gun and shot the plaintiff and plaintiff waits for that person and when he evening he comes to attack the plaintiff, the plaintiff will not have the right of private defence because he had the time to inform police about the matter. Take another example, if someone punches you on stomach and you shoot him that would be an excessive use of force which is not necessary for defending yourself.

The following must be satisfied in order to claim this defense:

- (a) the defendant must be under threat or under attack,
- (b) the defense must be for self-defense and not for revenge,
- (c) the response must be proportional to the attack or threat.

The principle for this is that the law will not hold you responsible for an action that you performed in order to save or protect yourself. If, however, it was not necessary to use force for protection, the law will not protect, and you can't use this defense.

To claim Private Defence, the following 2 conditions must be satisfied:-

- (1) Right can be used only for protecting oneself against immediate harms. Any revengeful exercise of right after danger is over will not be permissible.
- (2) Only reasonable measures can be used in PD, excessive harm cannot be caused.

Mistake:

Mistake is not usually a defence in tort law. It's not good enough to say that you were not aware that what you were doing was wrong. Mistake is generally of two types:

- a) **Mistake of Law** – Mistake of law or the ignorance of law is no excuse. Ignorantia Juris Non Excusat explains the same that ignorance of law is no defence.
- b) **Mistake of fact** – Mistake of fact is a defence but cannot be used in every case. It is a defence used in malicious prosecution.

Necessity

In tort law, the defense of necessity gives the state or an individual a privilege to take or use the property of another. A defendant typically invokes the defense of necessity only against the intentional torts of trespass to goods, trespass to land, or conversion. The Latin phrase from common law is *necessitas inducit privilegium quod jura privata* ("Necessity induces a privilege because of a private right"). A court will grant this privilege to a trespasser when the risk of harm to an individual or society is apparently and reasonably greater than the harm to the property. In Necessity, one has to show that the act done was necessary in the circumstances.

Private necessity is the use of another’s property for private reasons. Well established doctrines in common law prevent a property owner from using force against an individual in a situation where the privilege of necessity would apply.

Public necessity is the use of private property by a public official for a public reason. The potential harm to society necessitates the destruction or use of private property for the greater good. The injured, private individual does not always recover for the damage caused by the necessity.

Statutory Authority:

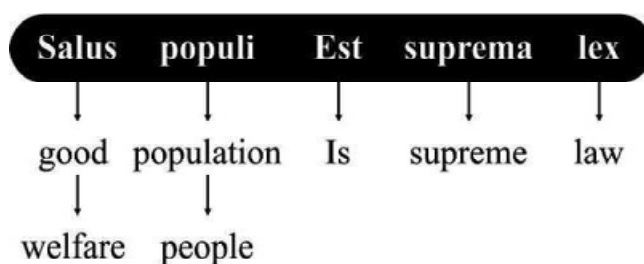
If the act was done under authority of a statute, that is a valid defence. For instance, if there is a railway line near your house and due to the noises of the trains passing by disturbs you have no remedy because railway line was constructed under the authority of a statute. Though, there is a responsibility for the authorities to be reasonable in respect of conducting the work.

Example:- Construction of travel as well as generation of revenue. But at the same time these projects might be detrimental to the interest of a small section of people. Residence of houses near railway line. That land is acquired for construction of railway line. In such cases

Absolute authority	Conditional authority
<p>It means the complete authority to do an act even if it is detrimental to the interest of some other person.</p> <p>e.g.: To control (prevent) the outbreak of dengue the health dept. is (ordered) allowed to setup a hospital anywhere on an urgent basis-even residential area</p>	<p>It means partial authority to do an act subject to the condo that care must be taken of rights of others.</p> <p>e.g.: As a general prevention health measure, the health dept is allowed to set up a dengue hospital anywhere except residential area.</p> <p>If in this case hospital is erected in the residential area, the defence will not be available to the health dept.</p>

of conflict between larger public interest and narrow private interest, the public interest gets preference over individual interests and the govt. can take up the defence of statutory authority.

➤ **Related Maxim:-**



Welfare of the people is the supreme law.

➤ **Essential ingredients:-**

(1) The defence of statutory authority covers.

- Types of Statutory Authority:

Plaintiff being the wrongdoer

The essential part of this defence is that the plaintiff did something which caused him the injury. Since the plaintiff did something wrong, he cannot claim any damages from the defendant for the injury caused to him. **For instance**, if someone who tries to illegally enter the house of defendant and is bitten by the dog of defendant will not be able to claim damages from defendant.

Inevitable Accident

Inevitable-accident doctrine is a principle of Tort law that says that a person cannot be liable for an accident that was not foreseeable and that could not have been prevented by the exercise of reasonable care. Highest degree of caution is not required. It is enough that it is reasonable under the circumstances. However, the courts rarely use this doctrine at present and rely instead on the basic concepts of duty, negligence, and proximate cause.

According to the authorities, once the plaintiff establishes a prima facie case of negligence, the onus will shift to the defendant to prove inevitable accident. In so doing, the defendant is required to show how the accident took place and that the loss of control of the vehicle could not have been avoided by the exercise of the greatest care and skill.



Malicious prosecution is the malicious institution of unsuccessful criminal or bankruptcy or liquidation proceedings against another without reasonable or probable cause. This tort balances competing principles, namely freedom that every person should have in bringing criminals to justice and the need for restraining false accusations against innocent persons. Malicious prosecution is an abuse of the process of the court by wrongfully setting the law in motion on a criminal charge. The foundation lies in the triangular abuse of the court process of the court by wrongfully setting the law in motion and it is designed to encourage the perversion of the machinery of justice for a proper cause the tort of malicious position provides redress for those who are prosecuted without cause and with malice. In order to succeed, the plaintiff must prove that there was a prosecution without reasonable and just cause, initiated by malice and the case was resolved in the plaintiff's favour. It is necessary to prove that damage was suffered as a result of the prosecution. **In an action against defendant, the plaintiff will have to show that:**

1. **That he was prosecuted by the defendant** - There must have been a prosecution initiated by the defendant. The word 'prosecution' means a proceeding in a court of law charging a person with a crime. To prosecute is to set the law in motion and the law is set in motion only by an appeal to some person clothed. The person to be sued is the person who was 'actively instrumental in putting the law in force'
2. **That the proceeding complained was terminated in favour of the present plaintiff** - The plaintiff must prove that the prosecution ended in his favour. He has no right to sue before it is terminated and while it is pending. The termination may be by an acquittal on the merits and a finding of his innocence or by a dismissal of the complaint for technical defects or for non-prosecution. If however his is convicted he has no right to sue and will not be allowed to show that he was innocent and wrongly convicted.
3. **That the prosecution was instituted against without any just or reasonable cause-** Reasonable and probable cause' is an honest belief in the guilt of the accused based on a full conviction founded upon reasonable grounds, of the existence of a circumstances, which assuming them to be true, would reasonably lead any ordinary prudent man and cautious man placed in the position of the accuser to the conclusion that the person charged was probably guilty of the crime imputed
4. **Malice-** That the prosecution was instituted with a malicious intention, that is, not with the mere intention of getting the law into effect, but with an intention, which was wrongful in fact. Malice for the purposes of malicious prosecution means having any other motive apart from that of bringing an offender to justice. Spite and ill-will are sufficient but not necessary conditions of malice. Malice means the presence of some other and improper motive that is to say the legal process in question for some other than its legally appointed and appropriate purpose. Anger and revenge may be proper motives if channeled into the criminal justice system.