

MAIN TOPIC-TORTS

SUB TOPIC- General defences and defamation

RESEARCH PAPER WORK

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Abstract

A tort is a civil wrong that causes harm to another person by violating a protected right. A civil wrong is an act or omission that is intentional, accidental, or negligent, other than a breach of contract. The specific rights protected give rise to the unique “elements” of each tort.” Tort remedies are also possible, including restitution or injunctions. A tort may arise from intentional acts, from negligent acts (frequently an omission of action societal or state standard. One who commits a tort is a tortfeasor; the requires the presence of four elements

that are the essential facts required to prove a civil wrong. Courts impose liability for torts to compensate an injured party for an act or an omission that causes harm. One is never “guilty” of a tort, as that is a term from the criminal law that implies a violation of some tortfeasor is “liable,” rather than guilty. Tort liability is meant to monetarily reimburse the tort victim for the harm caused by the tortfeasor. Other when there was a duty to act), or from the violation of a statute. The basis of tort law is that people are liable for the consequences of their actions. Under be physical. Torts may include causing emotional distress or a violation of personal rights (e.g., the “right to privacy”). There are different types of torts based on the rights violated. Some acts like gross negligence that may endanger the lives of others may be both a tort and a crime.

SYNOPSIS

Torts and How They Are Different From Crimes

In general, a tort occurs when someone either intentionally or negligently causes injury to another person or his property. It is a civil wrong, which comes to the court as a private lawsuit, as opposed to a criminal matter, which is prosecuted by the government on behalf of the citizenry as a whole. If a plaintiff proves that a defendant has committed a tort and that the plaintiff has suffered damages as a result of it, then the court can order the defendant to compensate the plaintiff for her losses. In a criminal case, by contrast, the defendant who is convicted pays a fine to the government, serves jail time or is placed on probation as punishment for the crime.

Most crimes against another person or his property are also torts against that person. But many torts are not crimes, because a person cannot be fined or imprisoned for committing them.

The Common Law

Tort law is also distinguished from criminal law in that torts are largely found in the common law, rather than in the statutes. Common law is handed down from generation to generation and continues to change as judges write legal opinions on the cases they hear. Many of the basic principles of tort law are centuries old. Although some of the terms used to define torts – such as assault and battery – are also used in criminal statutes, they are civil wrongs when a victim files suit and asks the court to award money damages.

The Burden of Proof

There are other differences between civil and criminal cases. A prosecutor in a criminal case must prove the guilt of the defendant beyond a reasonable doubt. A plaintiff in a civil lawsuit for damages must prove by only a preponderance of the evidence that the defendant committed a tort and that the plaintiff suffered some loss for which she can be compensated. Preponderance of the evidence means the greater weight of the evidence, or that something is more likely true than not true. Medical expenses, loss of income, repair costs, personal injury, and/or pain and suffering are examples of compensable losses.

The Significance of Intent

Another important difference between civil and criminal cases is that to convict a defendant in most criminal cases (with some exceptions) the prosecutor must prove beyond a reasonable doubt that the defendant not only did the criminal act, but that she intended to do it. By contrast, a defendant may be liable for damages in a tort case for an injury that he causes, even if it was an accident.

INTRODUCTION

tort may be defined as “a civil wrong that is redressible by an action for unliquidated damages. Additionally, tort covers a civil wrong which is other than a mere breach of contract or breach of trust.” Thus, it may be observed that:

- 1. A tort is a civil wrong;*
- 2. Such civil wrong is other than a mere breach of contract or breach of trust;*
- 3. Such wrong is redressible by an action for unliquidated damages.*

- ***A Tort is a Civil Wrong***

A fundamental characteristic of tort is that it is a civil wrong. Tortious liability does not cover criminal wrongs. However, a particular wrong may be covered by both civil and criminal laws.

The very basic nature of criminal and civil wrong is distinct from each other. In the case of a civil wrong, it is the injured party that institutes civil proceedings against the wrongdoer. While on the other hand, the criminal proceedings against the accused are brought by the State. Moreover, in a criminal wrong, the victim of the crime is not compensated monetarily. Justice is administered by punishing the wrongdoer in the form of incarceration.

- ***A Tort is a Civil Wrong Other Than a Mere Breach of Contract or a Breach of Trust***

- *Further, a tort is a civil wrong which is not exclusively any other kind of civil wrong. If a wrong is covered under any other kind of civil wrong, say a breach of contract or breach of trust, then it would not be considered to be a tort.*
- *The best way to go about finding whether a wrong is a tort or not is through the process of elimination. First, we have to see whether the wrong is civil or criminal; if it is a civil wrong, it has to be further seen if it exclusively belongs to another recognized category of civil wrongs, like a breach of contract or breach of trust. I*

However, it may be noted that there is a possibility that the same act may amount to two or more civil wrongs, one of which may be a tort. For example

if A delivers his luxurious car to B for safe custody for a week and B allows the car to be used by

other people who were obviously not authorised by A in the first place, B's act amounts to two wrongs— the breach of contract of bailment and the commission of tort of negligence.

Since both the wrongs are civil wrongs and damages are the main remedy for any kind of civil wrong, the plaintiff can claim damages either under the law of torts for negligence or for the breach of contract of bailment. But he cannot claim damages twice.

- **A Tort is Redressible by an Action for Unliquidated Damages**

The affected party under the law of tort can claim unliquidated damages. It is this point of unliquidated damages that helps in distinguishing a tort from a breach of contract or trust, where the damages may be liquidated.

- *f it is found that it is neither a mere breach of contract nor any other civil wrong, then we can say that the wrong is a "tort".*
- Footnotes
- *Ranchhoddas, Ratanlal, Dhirajlal , Law of torts*
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EVOLUTION OF LAW OF TORTS IN INDIA

In India tort has been presence since pre independence period. The Sanskrit word jimha which implies slanting was utilized as apart of old hindu law message in the sense of tortuous of fraudulent conduct. Tort had not so significant inception under the Hindu law or Muslim law like English law. The discipline of torts in this frameworks possessed a more conspicuous place than pay for wrongs The law of torts of India is of the most part is of the English law of torts which itself depends on the standards of the customary law of England.

However the Indian courts before applying the English law that whether its suitable in Indian culture and tradition. The use of English Law in India in this way a specific application. In the case of mc Mehta versus union of India ,justice Bhagwati observed that we have to adopt new principles and norms which will deal with the new problems which arise in a highly industrialized economy. We cannot allow our judicial thinking to be constructed with the reference of the law as it prevails in England, amid British control courts in India were ordered by the parliaments in U.K and by the Indian establishment to act as per equity, justice,and conscience if there was no particular need of instituted law pertinent to a debate in a suit.

Concerning for the harm of tort law , the courts took into the English customary law by seeing that it was consonant with equity, justice and conscience.

An English statute managing tort law is not by its own constraint pertinent to India but rather might be taken after here unless it is not acknowledged for the reason mentioned.

The jurisdiction of C.r.p.c that deals with all kinds of crimes of civil nature also includes the tortious liabilities and cases. It is perceptible that we cannot stand to disregard any office which can manage a singular lead in similarities with the requirement of peace and satisfaction which are essential elements on which our arrangements of our national headway can rest. It is not really important to include that embracing English Standards and speculations , we need to make adjustments and adaptations. These are demands of conditions in India , as observed by different Indian judges who further more noted the immense changes in this kind of law that are occurring somewhere else. The law of torts in India is a body of law that addresses and provides remedies for non-contractual acts of civil wrongdoings. A person suffering legal damage may be able to use tort law to receive compensation for those injuries from someone who is legally responsible or liable. The law of Torts in India is a relatively new common law development supplemented by codifying statutes including statutes governing damages. While India generally follows the UK approach, there are certain differences which may indicate judicial activism, hence creating controversy.

Under the Hindu law and the Muslim law tort had a much narrower conception than the tort of the English law. The punishment of crimes in these systems occupied a more prominent place than compensation for wrongs. The law of torts in India is mainly the English law of torts which itself is based on the principles of the common law of England. This was made suitable to the Indian conditions appealing to the principles of justice, equity and good conscience and as amended by the Acts of the legislature. Its origin is linked with the establishment of British courts in India.

In *M.C. Mehta v. Union of India*, Justice Bhagwati said, “we have to evolve new principles and lay down new norms which will adequately deal with new problems which arise in a highly industrialized economy. We cannot allow our judicial thinking to be constructed by reference to the law as it prevails in England or for

the matter of that in any foreign country. We are certainly prepared to receive light from whatever source it comes but we have to build our own jurisprudence”.

It has also been held that section 9 of The Code of Civil Procedure, which enables the civil court to try all suits of a civil nature, impliedly confers jurisdiction to apply the Law of Torts as principles of justice, equity and good conscience. Thus the court can draw upon its inherent powers under section 9 for developing this field of liability.

In a more recent judgement of Jay Laxmi Salt Works (p) Ltd. v. State of Gujarat, Sahai, J., observed: “truly speaking the entire law of torts is founded and structured on morality. Therefore, it would be primitive to close strictly or close finally the ever expanding and growing horizon of tortious liability. Even for social development, orderly growth of the society and cultural refinements the liberal approach to tortious liability by court would be conducive”.

Origin of Law of Torts

Prior to the French William the Conqueror’s 1066 Norman conquest of England, the legal system was somewhat haphazard, conducted on a more-or-less case-by-case basis. After 1066, eminent judges were delegated to travel about a given region in order to absorb those village laws which had developed over two centuries. Benefiting by this information, these judges noted and implemented precepts they deemed most fair-minded into their own court findings. In time, when referred to often enough, these cases became what are now called legal precedents. Sessions during which these judges conducted trials were dubbed "assizes", or in modern terms, “sittings”. Even now, the place from which a judge renders verdicts and sentences is called “the bench”. Once established, these precedents were meant to be applied equally to every member of society, from a lord to a

serf, bringing about the term common law. After the Norman Conquest, fines were paid only to courts or the king, and quickly became a revenue source. A wrong became known as a tort or trespass, and there arose a division between civil pleas and pleas of the crown.

The law of Torts in India came through England. After the Norman Conquest, French became the spoken language in England's judiciary and thus many of the English law's technical terms owe their origin to French and tort is one of them. The term 'tort' is based on the concept that there are certain rights for everyone in society. The purpose of this tort law was to enforce rights and duties.

REFERENCES- Law of torts by R.k Bangia

2- 1987 AIR 1086

Meaning of general defences

When a plaintiff brings an action against the defendant for a tort committed by him, he will be held liable for it, if there exists all the essential ingredients which are required for that wrong. But there are some defences available to him using which he can absolve himself from the liability arising out of the wrong committed. These are known as 'General defences' in the law of tort.

The defences available are given as follows:

- *Volenti non fit injuria or the defense of 'Consent'*
- *The wrongdoer is the plaintiff*
- *Inevitable accident*
- *Act of god*

- *Private defense*
- *Mistake*
- *Necessity*
- *Statutory authority.*

KINDS OF GENERAL DEFENSES

- *Volenti non fit injuria-* *It means that if the injury is caused by the consent of the plaintiff himself , and if he was having the knowledge of te injury then the defendant will not be liable for any kind of damage as if the plaintiff is invoved in his infringement of right then there is no remedy and he cannot sue the defendant.*
- *Fo example-* *A and B are friends they went for a drive , suddenly a asked b to drive faster and due to which they both met with an*
- *accident , A met with an severe accident and sued B for the damages but in this case B is not liable because A has given his consent and he was aware of the damages that rash driving can lead to accident.*
- *Exceptions for volenti non fit injuria*
- *Consent must be free-* *for the defense to be useful the consent of the plaintiff must be free, consent must not be given in fraud coercion, or fraud .*
- *Case law*
- *in the case of **R v. Williams (193)** the defendant was a singing coach and he had convinced a 16-year-old student to have sexual intercourse with him by telling her that it will help her in improving her voice and singing. The defendant was held liable by the Court because the consent was obtained by fraud.*
- *Negligence of the defendant*
- *If the damage is caused due to the negligence of the defendant then in this case the defendant cannot take the defense of the volenti non fit injuria and he will be held liable for his damages.*

- CASE LAW
- *In the case of Slater v Clay Cross Co. Ltd. , the plaintiff was hit by a train in the tunnel of the defendant railway company. The railway company had given instructions to all the drivers of its trains that they have to blow the whistle at the entrance of the tunnel and they should also slow the speed of the train but the driver did not follow these instructions and negligently drove it inside the tunnel, as a result, the plaintiff was*
- *injured. The defendant had taken the defence of volenti non fit injuria but the Court held that this defence could not be applied because even though the plaintiff took the risk of walking inside the tunnel, this risk was enhanced by the negligence of the driver. Thus, when a plaintiff gives his consent to take some risk, there is a presumption that the defendant has not been negligent.*
- Rescue cases
- *If the plaintiff suffers the damage in rescue cases and the damage was caused due to the negligence of the defendant then this defense will not be available to the defendant and he cannot escape his liability.*
- *In the case of Haynes v. Harwood (1935), 1 KB 146, the servant of the defendant brought two horses in the town near a police station and left them to do some other work. The horses were upset by the children and they broke free, seeing them in rage the plaintiff who was a police officer went to stop the horses and in doing so he got injured and brought a case against the owner for damages. The court held the defendant liable because the defence of volenti non-fit injuria did not apply in a rescue case.*

Illegal acts *If the consent is given for an act which is not allowed by law then, even on the fulfilment of all the essential conditions of this defence, the liability cannot be escaped and thus in such cases, this defence becomes inoperative.*

Footnotes- Law of Torts by R.K Bangia

Example-*If A and B decide to do a fight with sharp swords, when such an act is prohibited by law, and A suffers a big cut due to which he suffers serious injuries, then in such case B cannot take the defense of having A's consent in doing this act because it was prohibited by law and thus B will be liable.*

ACT OF GOD- *This is one of the most effective defense which can be actually helpful for the defendant. It includes all the natural calamities which includes earthquake, flood and if any accident occurs due to natural calamities then and if it leads to any kind of damage to the plaintiff apart from all the necessary precautions by the defendant. then the defendant will not be liable as these are the calamities which are unforeseen and cannot be stopped.*

Case law

Nicholas versus Marshland- *In this case the defendant built a reservoir by collecting waters from various lakes and ponds but the other day , heavily rainfall took place due which was the heaviest in the history at that time and due to which the water flowed out of the embankments and due to which the bridges of the plaintiff fell down , the plaintiff sued the defendant for the loss and claimed compensation but the court held that the defendant is not liable because the accident was the result of the act of god and it couldn't be stopped.*

REFERENCE- LAW OF TORT BY RK BANGIA

Essentials of the act of GOD

- There must be natural calamity- *For this defense to be useful there must be occurrence of natural forces and if its not there then it cannot be called as act of God and also defendant cannot escape his liability.*

Occurrence must be extra ordinary- It means that the natural forces must be disasterous and it must be unstoppable apart from all the necessary precautions taken by the defendant. Working of natural forces

In Ramalinga Nadar v. Naravan Reddiar the unruly mob robbed all the goods transported in the defendant's lorry. It cannot be considered to be an Act of God and the defendant, as a common carrier, will be compensated for all the loss suffered by him.

In Nichols v. marshlands , the defendant created an artificial lake on his land by collecting water from natural streams. Once there was an extraordinary rainfall, heaviest in human memory. The embankments of the lake got destroyed and washed away all the four bridges belonging to the plaintiff. The court held that the defendants were not liable as the same was due to the Act of God.

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- Case law
- *In Kallu Lal v. Hemchand the wall of a building collapsed due to normal rainfall of about 2.66 inches. The incident resulted in the death of the respondent's children. The court held that the defense of Act of God cannot be pleaded by the appellants in this case as that much rainfall was normal and something extraordinary is required to plead this defense. The appellant was held liable.*

- Inevitable Accidents- These are the accidents which are unforeseeable which cannot be predicted by the defendant and thus the defendant will not be liable for any kind of mishappenings .

FOOTNOTES-

- CASE LAW-

In STANLEY VERSUS POWELL [20], the defendant and the plaintiff went to a pheasant shooting. The defendant fired at a pheasant but the bullet after getting reflected by an oak tree hit the plaintiff and he

suffered serious injuries. The incident was considered an inevitable accident and the defendant was not liable in this case.

Plaintiff the wrong doer- In this kind of defense if plaintiff is also involved any kind of illegal act and if any damage is suffered by him then the defendant will not be liable for the damages as the plaintiff was also responsible for the damages .

Case law

In Pitts versus Hunt, there was a rider who was 18 years of age. He encouraged his friend who was 16 years old to drive fast under drunken conditions. But their motorcycle met with an accident, the driver died on the spot. The pillion rider suffered serious injuries and filed a suit for claiming compensation from the relatives of the deceased person. This plea was rejected as he himself was the wrongdoer in this case.

Private defense- In this kind of defense if the defendant caused the damages due to any kind of danger and it was necessary for his defense then in this case the defendant will not be liable for

the damages for example if A wants to kill B then B in his defense hit him with a rod which resulted in blood loss and due to which A sued him but in this case B was not liable as he did so in his defense so he is not liable for the injury.

REFERNCES- LAW OF TORTS BY R,K BANGIA, SCC ONLINE

EXCEPTIONS

- The force must be reasonable- *It means that the force applied by the defendant must be reasonable and justifiable by law else it will not be useful for the defendant to escape his liability.*
- There must be imminent threat to plaintiff- *The threat must be imminent and sudden and if its not the defendant will be responsible for the damages.*
- Case law
- *For example, fixing of broken glass pieces on a wall, keeping a fierce dog, etc. is all justified in the eyes of law.*

- *In Bird V. Hollbrook the defendant fixed up spring guns in his garden without displaying any notice regarding the same and the plaintiff who was a trespasser suffered injuries due to its automatic discharge. The court held that this act of the defendant is not justified and the plaintiff is entitled to get compensation for the injuries suffered by him.*

- *Similarly, in Ramanuja Mudaliv. M Ganaan[33], a landowner i.e. the defendant had laid a network of live wires on his land. The plaintiff in order to reach his own land tried to cross his land at 10 p.m. He received a shock and sustained some serious injuries due to the live wire and there was no notice regarding it. The defendant was held liable in this case and the use of live wires is not justified in*

REFERNCES- LAW OF TORT BY RK BANGIA , SCC ONLINE

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Mistake

The mistake is of two types:

- *Mistake of law*
- *REFERNCES- LAW OF TORT BY RK BANGIA , SCC ONLINE*
- *Mistake of fact*

In both conditions, no defence is available to the defendant.

When a defendant acts under a mistaken belief in some situations then he may use the defence of mistake to avoid his liability under the law of torts.

In Morrisson V. Ritchie and Co. the defendant by mistake published a statement that the plaintiff had given birth to twins in good faith. The reality of the matter was that the plaintiff got married just two months before. The defendant was held liable for the offence of defamation and the element of good faith is immaterial in such cases.

REFERNCES- LAW OF TORTS BY R.K BANGIA, SSC ONLINE

Necessity

If an act is done to prevent greater harm, even though the act was done intentionally, is not actionable and serves as a good defence.

It should be distinguished with private defence and an inevitable accident.

The following points should be considered:

- *In necessity, the infliction of harm is upon an innocent whereas in case of private defence the plaintiff is himself a wrongdoer.*
- *In necessity, the harm is done intentionally whereas in case of an inevitable accident the harm is caused in spite of making all the efforts to avoid it.*

For example, performing an operation of an unconscious patient just to save his life is justified.

In Leigh v. Gladstone it was held that the forcible feeding of a person who was hunger-striking in a prison served as a good defence for the tort of battery.

In Cope v. Sharpe the defendant entered the plaintiff's premises to stop the spread of fire in the adjoining land where the defendant's master had the shooting rights. Since the defendant's act was to prevent greater harm so he was held not liable for trespass.

SOURCES- SCC ONLINE

DEFAMATION

It is a civil wrong through which a person spoils another persons name, with malice intention and it can either be through words by speaking or by written statement either through publication in newspaper or by giving a false statement about another person in order to defame him its not necessary that the intention could be malice it may happen due to lack of knowledge , or due to mistake of fact , for example- A announces that B is suffering from TB and thus he may die but the actual fact was that he having normal cough this cannot be termed as defamation rather it s mere a mistake of fact ,

TYPES OF DEFAMATION

There are two kinds of defamation and they are as follows:-

- Libel- *In this kind of defamation the false statement is published in written form mostly fake news related to influential people , or big enterprises in order to harm their reputation and some people also do it to gain cheap publicity, or some do it for the sake of revenge. This kind of defamation is in permanent form as its usually in printed form'*

- *Slander- This kind of defamation is usually done by speaking , which includes making false statements either through speech delivery , in news channels, or through other means through which other people can hear the defamatory statement. It can either be direct or indirect.*
- *The basic difference between slander and libel is that libel is in permanent form but slander is not permanent as libel is mostly in written form while slander is done by speaking false statements.*
- *Slander is a civil wrong as it needs to be proved by the plaintiff and then it will be actionable by law but in the case of libel its actionable as if proved that the published statement is false then it can be used as an evidence against the defendant, Slander is actionable in following circumstances and they are as follows:-*

1. *Imputation of criminal offence to the plaintiff*
2. *Imputation of a contagious or infectious disease to the plaintiff.*
3. *Imputation of incompetency, dishonesty or unfitness in regard to the office profession.*
4. *Imputation of adultery to a woman.*

ESSENTIALS OF DEFAMATION

1. *The statement, which must be about another person, must be false.*
2. *The statement must be 'published' to a third party, who cannot also be the person who is being defamed. Publishing in this context does not mean that it must be printed, but purely that the statement has to be 'made available' to someone other than the person about whom the statement was made.*
3. *If the nature of the statement is 'of public concern' the person who has published it must be at least liable in negligence.*

4. *The person about whom the defamatory statement is made must be 'damaged' by the statement. In some states, it is sufficient to establish that the plaintiff suffered 'mental anguish' as opposed to 'damage.'*

footnotes

[Restatement of torts 2nd]

Gertz v. Robert Welch INC

CONCLUSION

This research paper task is something very new for me as it was my first internship and each one of us were assigned with different topics of our choice and my topic was "Torts" it is a very broad topic and even rarely recognized in India because people are not aware about tort law , what it is and how useful it is there are many reasons behind and they are illiteracy due to which people are not aware about their rights, political inconsistency, poverty are the reasons behind its less popularity. While doing research I came to learn many things related to tort law, as it emerged from England and the tort word is derived from the latin word tortum which means twisted . Tort law can be used as an effective tool against the civil wrong , civil wrongs are the wrongs which not as serious as crime but they are also punishable by law, tortuous liability arises when there is infringement of right whether it is of an individual or public. It is based on the principle "UBI JURIS EBI REMEDIUM" which means that where there is a right there is remedy so if any of the right is available or provided by the law or recognized by law and if it is violated then the plaintiff will be compensated by the defendant if it is proved that the damage is caused directly by the conduct of the defendant.

In this research paper I have mentioned two most important part of tort law as the tort law 's main motive is to protect the right of the aggrieved party but it doesn't mean that the defendant 's rights will be ignored hence there are certain defenses available to defendant through which he can protect himself from being forcefully trapped in a case by plaintiff if he was not negligent and other topic is defamation.

THANKYOU

