

TORT - TOPIC – 1 : INTRODUCTION – Definition, Nature and Scope

A. INTRODUCTION:

1. The Tort is of French origin. The root is 'Tortum' in Latin which means 'twist'. It implies a conduct which is 'tortious', or, twisted.. The equivalent word in English is "Wrong". In Roman it is "delict" and in Sanskrit it is "Jimha" which means 'crooked'.

2. How did the French word 'Tort' come to India?.

- a) It came to India through England. In 1065 England was conquered by Normans who were the French speaking people of Normandy, a region of France. After Norman conquest, French became the spoken language in the Courts in England, and thus many technical terms in English law owe their origin to French, and 'Tort' is one of them.
- b) In British India, the first courts were established by the British in the Presidency towns of Madras, Bombay and Calcutta as Mayor's courts. The Charter that established these courts required them to adopt the English common law of torts in force at that time to their Indian jurisdiction. Thus, 'tort' was introduced into the Indian legal system.
- c) As for the other courts in India, which were established by local acts, there was no such express provision. However, these local acts contained a section that required them to act according to "justice, equity and good conscience" in cases where there were no specific law or usage. The expression "justice, equity and good conscience" has been interpreted by courts to mean English common law insofar as they are applicable to the situation, facts and circumstances of the case before the courts.

3. Meaning of Tort:

At a general level, tort is concerned with allocation of responsibility for losses, which are bound to occur in society.

Tort is a branch of law governing actions for damages for injuries to private legal rights of a person, say, right to property, right to personal security, right to reputation, etc.,

B. DEFINITION OF TORT:

1. SALMOND's Definition:

Tort 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

2. WINFIELD's Definition:

'Tortious liability' arises from the breach of duty primarily fixed by law. This duty is towards persons generally and its breach is redressible by an action for unliquidated damages.

3. FRASER's Definition:

Tort is an infringement of a right *in rem* of a private individual giving a right of compensation at the suit of the injured party.

4. **POLLOCK's** Definition:

'Tort' is an act or omission (not merely the breach of a duty arising out of a personal relation, or undertaken by contract) which is related to a harm suffered by a determinate person, giving rise to a civil remedy which is not an action of contract.

'The law of tort's in civil wrongs is a collective name for the rules governing many species of liability which, although their subject matter is wide and varied have certain broad features in common, are enforced by the same kind of legal processes that are subject to similar exceptions.

5. **Clerk & Lindsell's** Definition:

A tort may be described as wrong independent of contract, for which the appropriate remedy is common law action

6. **Limitation Act 1963**

Sec 2 (m) of the Limitation Act 1963 defines "Tort means a civil wrong which is not exclusively a breach of contract or trust." This is quite similar to Salmond's definition.

C. ANALYSIS OF WINFIELD'S DEFINITION OF TORT:

1. **Duty primarily fixed by law:**

An essential principle of tortious liability is that the duty is always fixed by law itself and NOT by any agreement between parties. Therefore parties cannot create a tortious liability through a contract, nor, can they 'negate' a tortious liability through a contract. For Example I am under a legal duty not to trespass on my neighbour's property. This is a duty primarily fixed by law on me. Similarly, by the same principle my neighbour cannot trespass into my property. As per Winfield's definition, liability arises from the breach of such duties fixed by law. Any person who commits such a breach can be proceeded against in a court of law by the person whose rights are breached. There are in some cases, (called 'vicarious liability cases') though the breach is not committed by himself yet he could be held liable, if the breach is committed by his servant, or, agent, or partner.

Example: A who is the driver of B's car knocks down C through his rash and negligent driving. Though, A has breached the duty fixed by law, his master B will become liable in an action initiated by C in court under the law of tort.

2. **Duty is towards persons generally:**

Here, the word 'generally' implies that applies to all. For example I am duty bound not to trespass into my neighbours' land. Similarly he is also duty bound not to trespass into my land. Likewise, all our other neighbours and also others who are not our neighbours are bound by the same law not to trespass into each other's lands. In other words, it is common, or, not unusual for the parties in a 'tort action' to know each other. This character distinguishes tort from contract, bailment and quasi-contract.

3. **Action for unliquidated damages:**

In tort the damages are unknown and 'unquantified' till an action for damages arises in a court. Thereafter, the court decides the quantum of damages based on merits of the claim and circumstances of the case. Hence, these damages are by its nature, "unliquidated", unlike in a

contract where it is possible to calculate the damages (in the event of a breach) in advance where, this is known as 'liquidated damages'.

4. **Other Remedies:**

Besides un-liquidated damages, which are usually in the form of monetary compensation, there are also other remedies available in a case of tortious liability. These are: a) Injunction, b) Self –help, and c) Restitution of property.

5. **Criticism (shortcomings) of Winfield's definition:**

- a) In framing this definition, Winfield is not seeking to indicate what conduct is and what is not sufficient to involve a person in tortious liability, to distinguish from certain other branches of law
- b) The phrase 'duty towards persons generally' is vague and not adequate to include duties arising from special relationships like doctor and patient etc., and to exclude duties arising between guardian and ward or trustee and beneficiary etc. which fall outside the ambit of law of tort.
- c) The phrase 'liability arises from the breach of duty', may be true at an earlier stage of development of law of tort, but it is not applicable or appropriate to an important category of liability at the present day, for example, vicarious liability of a master for his servant's
- d) 'Unliquidated damages' is not the only remedy. There are other remedies such as self-help, injunction and specific restitution of property also available.

D. ANALYSIS OF SALMOND'S DEFINITION OF TORT

1. **Tort is a civil wrong.**

A 'Wrong' can be civil or criminal. Tort belongs to the category of civil wrongs. In the case of a civil wrong, the injured party institutes civil proceedings against the wrongdoer and the remedy is damages. The injured party is compensated by the defendant for the injury caused to him by another party. Whereas, in the case of a criminal wrong, the State brings criminal proceedings against the accused, and the remedy is not compensation. Punishment is provided to the wrongdoer. In a case where the act results in both civil as well as criminal wrong then both the civil and criminal remedies would concurrently be available

2 **Tort is other than Breach of Contract or Breach of Trust:**

In order to determine whether the wrong is tort or not, the following steps are to be followed,

- a) Whether the wrong is civil or criminal.
- b) If it is civil wrong, it has to be further seen that whether it belongs to another recognised category of the civil wrongs, such as breach of contract or breach of trust.
- c) It is only when the wrong does not belong to any other category of the wrong that is, breach of contract or trust, it is tort and if the wrong is breach of contract or trust, it is not a tort.

However, if the act involves two or more civil wrongs, one of which may be a tort, in such a case injured party can either claim damages under law of torts or under other breach of civil wrong for example, breach of contract, but cannot claim damages twice.

3 **Tort is redressible by action for unliquidated damages:**

Damages is the most important remedy for a tort. After the commission of the wrong, it is not possible to undo the harm which has already been caused but it is the monetary compensation which can be awarded to the injured party. for example, if there is attack on the reputation of

the person, there is nothing that can be done restore his lost reputation, but monetary compensation equivalent to harm can be paid to the injured. Unliquidated damages means when the compensation has not been determined previously or agreed by the parties but it is left to the direction of the court. These are the unliquidated damages which distinguish tort from breach of contract or breach of trust in which damages may be liquidated that is, previously determined or agreed to by the parties.

4. **Criticism of Salmond's definition:** The definition given by Salmond fails to underline the essential characteristics of tortious acts. According to this definition tort is a wrong but it does not explain what is wrong and what kinds of wrong explaining juristic features of tort. Moreover the expression "civil wrong" itself requires explanation. Besides, Salmond's definition also suffers from all the shortcomings of Winfield's definition. While this definition is more informative, this is still far from perfect.

E. CONSTITUENTS OF TORT

The three main essential constituents of tort are:

Wrongful act, Legal Damage and Legal remedy

1) WRONGFUL ACT:

- a) The first essential ingredient constituting a tort is that a person must have committed a wrongful act. This refers to an act of commission, 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. This is 'wrongful' because, there must have been a breach of duty which has been fixed by law itself.
- b) If a person does not observe that duty like a reasonable and prudent person, or, breaks it either intentionally, or, unintentionally, he is deemed to have committed a wrongful act. In tort, "intention" on the part of wrongdoer, usually has no role, except in cases like malicious prosecution.
- c) In order to make a person liable for a tort he must have done some legal wrong that violates the legal right of another person, for example, violation of right to property, right of bodily safety, right of good reputation etc., 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.
- d) More often than not, 'unintentional acts of wrong arise out of acts of 'negligence'. In the usual sense, 'negligence' denotes carelessness. But, in the legal sense, it denotes, "a legal duty owed and neglected". In other words, the test for 'wrongful act' is the breach of duty by a person and its consequences on another.
- e) The wrongful act or a wrongful omission must be the 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.
- f) In ***Municipal Corporation of Delhi v Subhagwanti [AIR 1966 SC 1750]*** where the Municipal Corporation, having ownership and control of a clock tower in the heart of the city, does not keep it in proper repairs and the failure to do of the same results in the death of number of persons, the Corporation would be liable for its omission to take care.

- g) Similarly, failure to provide safe system would, also amount to omission, [**General Cleaning Contractors v Christmas [(1953) A.C 180]**]

2) LEGAL DAMAGE:

- a) 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 by the defendant which through its breach of a legal duty led to 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.
- b) Legal Rights of a person denotes a capacity residing in one person of controlling the actions of others with the assent and assistance of the state to ensure a harmonious living as a member of the society. They are those rights conferred by the State on all its citizens. There are two types of Legal rights, viz, public rights and Private rights.
- c) Public rights are those which belong in common to all members of the state. Example: Public peace, Public safety etc.,
- d) Private rights are vested in persons in general by virtue of law. It can be further divided into two types, namely,.
- i. **Right in Personum** is a right which one person can enforce on another specific person. Example : Rights of parties to a Contract
 - ii. **Right in rem** is a private right that a person is entitled to against the society as a whole, and is not limited to against any specific person. Example: Right to property, Right to reputation, Right to etc.,
- e) Wherever, there is a legal right bestowed by the law on any person, there are corresponding legal duties mandated on others by the very same law not to violate the rights. In some specific circumstances, there may be exceptions permissible by law such as trespassing by a police officer on duty for justifiable reasons and so on.
- f) So wherever there is an infringement of a private legal right, there arises a possibility of a damage, which includes not only monetary loss, but also loss due to and arising from physical injury, health, nervous shock, loss of comfort, and loss to property.
- Case Law: **In Ashby v White (1703) 2 Ld. Raym. 938** a returning officer was held liable in damages for wrongfully refusing to take the plaintiff's vote at an election.
- g) So wherever there is an infringement of a private legal right, there arises a possibility of a damage. This is best explained by the latin maxim "**Ubi jus ibi remedium**", meaning - Where there is a damage, there must be a remedy..

3) LEGAL REMEDY:

- a) The third essential element is that the wrongful act that resulted in injury should give rise to a legal remedy.
- b) A tort is a civil injury arising from a wrongful act. All civil injuries are not torts. It is therefore necessary that the wrongful act must come under the category of wrongs for which the remedy is a civil action.
- c) The principal remedy for tort is damages. Usually the court awards monetary compensation. Since the damages are unknown at the time of the event of tortious act

of commission or omission, the damages are referred as unliquidated damages which are decided by the court based on facts and merits of a particular case.

d) The different kinds of damages that are awarded by courts are as under:

- i. **Contemptuous damages or derisory damages:** These damages are awarded when the plaintiff moves the court on a technical legal ground without moral justification. The courts express their disapproval of such conduct by awarding a very low damages, of say, Rs. 1/=, or, even in paise.
- ii. **Nominal Damages:** The damages awarded in cases where there is injury without a loss, say the act of trespassing. Here a token amount, or, nominal amount is awarded. In *Ashby v White* £5 was awarded as damages, which is nominal. Usually in all cases of *Injuria sine damnum* nominal damages are awarded.
- iii. **Ordinary damages or Compensatory damages:** When damages are awarded to the extent of losses suffered by plaintiff, as a monetary compensation, these are called ordinary, or, compensatory damages.

While arriving at the amount of compensation, courts will regard not only the pecuniary losses suffered, but also, the social disadvantage resulting from the wrong, mental pain and suffering, etc.,

- iv. **Aggravated Damages:** The court at its discretion, tends to increase the compensation when it finds the manner of commission of tort when it is intentional, and with malice. Such increased compensation is called aggravated damages. However, this is not to be confused with exemplary damages.
- v. **Exemplary damages or Punitive Damages:** Sometimes, the gravity of offence may be so severe, that the court may choose to set out an example to others as a warning. In such cases the damages awarded are disproportionately high. These are called exemplary damages, since, the aim here is not just to compensate the victim, but to create a 'deterrent' for future offenders.

In *Bhim Singh v State of J&K, AIR 1986 SC 494*, the Supreme Court awarded a damage of Rs 50,000/= as exemplary damages.

- e) Besides monetary compensation there are other remedies such as self-help, injunction and specific restitution are also available.
- f) **Self-help** is a remedy which the injured party himself can avail without going to a court of law. It does not apply to all cases, and can be of use in some specific cases such as trespass. If for example a person finds any undesirable stranger in his premises he is entitled to drive him outside his boundary without resorting to undue or disproportionate force.
- g) **Injunction** is an order of the court restraining a) the commission, or, continuance of a wrongful act, or, b) continuance of a wrongful omission. Typical examples are those associated with nuisance.
- h) **Specific Restitution of property** are considered by the court as an alternate remedy in cases where plaintiff is dispossessed of his land due to a wrongful act by the defendant.

F. LEGAL MAXIM - *Ubi Jus Ibi Remedium*:

1. The law of torts is said to be a development of the maxim *ubi jus ibi remedium* (which means “where there is a right there must be a remedy”).
2. *Jus* signifies the ‘legal authority to do or to demand something’; and *remedium* may be defined to be the right of action, or the means given by law, for the recovery or assertion of a right.
3. The maxim does not mean, as it is sometimes supposed, that there is a legal remedy for every moral or political wrong. The maxim means only that legal wrong and legal remedy are correlative terms; and it would be more intelligibly and correctly stated, if it were reversed, so as to stand, “where there is no legal remedy, there is no legal wrong.” Again, speaking generally, there is in law no right without a remedy; and, if all remedies for enforcing a right are gone, the right has from practical point of view ceased to exist. The correct principle is that wherever a man has right the law should provide a remedy and the absence of a remedy is evidence but is not conclusive that no right exists.
4. **Caselaws:**
 - a) **Ashby v White, (1703) 2 Lord Raym 938.** In this leading case, the defendant, a returning officer, wrongfully refused to register a duly tendered vote of the plaintiff, a legally qualified voter, at a parliamentary election and the candidate for whom the vote was tendered was elected, and no loss was suffered by the rejection of the vote, nevertheless **Holt, C.J**, while **holding that action lay**, said “If a man has a right, he must of necessity have a means to vindicate and maintain it and a remedy if injured in the exercise or enjoyment of it; and indeed it is a vain thing to imagine a right without a remedy; want of right and want of remedy are reciprocal.”
In this case the returning officer has acted maliciously and was held liable.

G. FOUNDATIONS OF TORTIOUS LIABILITY – 2 Theories

1) Theory – 1 : ‘Wider and narrower’ theory, or, “Growing Tree” Theory

- a) This theory is supported by Winfield, Pollock and other eminent jurists.
- b) According to this theory, all injuries done to another person are torts unless there is justifications recognised by law. The underlying principle here is that all unjustifiable harms are torts. It may be assault, battery, deceit, slander, negligence, or, it may not even have a name at all. When a tort is specific, it is narrowed down to a particular wrong. But when it is not specific, and considered at a wider level that all harms without legal justifications are torts, then, it is in a wider sense. This approach allows the field of tort to expand to accommodate newer torts as the society develops. It is akin to a ‘growing tree’ with several branches, each representing an existing or known tort and at the same time with new branches in the process of growing which can represent a new tort under development.
- c) This analogy reflects that attitude of courts when they attempt to create new torts depending on the type of harm and need. Thus tort is like a ‘growing tree’

2) Theory – 2: “Pigeon Hole Theory

- a) This theory is supported by Salmond, Glanville Williams and others.

- b) According to Pigeon Hole Theory, there are definite number of Torts , outside which liability in Tort does not arise.
- c) Here, the law of Torts consist of a 'net-set' of pigeon holes, each containing a specific tort such as assault, battery, deceit, slander, negligence, etc., If the defendant's wrong does not fit in any of these pigeon holes, then he has committed 'no tort'.
- d) Critics argue that this is a restrictive theory. But Glanville William says that pigeon holes can be copious as well as multipliable / expandable.

3) Conclusion:

- a) Both the above theories are correct in the sense that they are from different points of view While one seems to be a broader perspective the other signifies a narrower approach. After all, tort has grown over the years giving rise to new areas of torts such as strict liability, absolute liability and so on. In the last few decades, new branches of laws like consumer protection laws, defamation laws and the like, are in place. Whether these can be seen as new branches of a growing tree, or new array of pigeon holes, both approaches can be accommodated as valid points of view.
- b) In *Jai Laxmi Salt Works (P) Ltd. v. State of Gujarat, (1994) 4 SCC 1*, Justice Sahai., 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 tortuous liability. Even for social development, orderly growth of the society and cultural refineness, the liberal approach to tortious liability by court would be conducive.
- c) In *Lala Punnalal v Kasthurichand Ramaji*, it was pointed out that there is nothing like an exhaustive classification of torts beyond which courts should not proceed, that new invasion of rights devised by human ingenuity might give rise to new classes of torts.

H. Tort versus Crime: A comparative analysis:

- 1) Historically, crime and tort originated from the same root. Later on, they separated on the account that a crime does not only affect the victim but also to the society as a whole to a great extent. Thus, the branch of law that deals with criminal conduct evolved a lot faster than the branch of law that deals with torts.
- 2) The nature of tort can be understood by distinguishing it from crime and contractual civil liabilities. It can be said that tort is the residual of wrongful acts that are not crime and that do not fall under contractual liabilities. Thus, if a wrongful act is neither crime nor a violation of a contract, it may fall under tort. The damages are unliquidated and are decided only by the common sense of the courts. The details are as follows:

3) Distinction between Tort and Crime

Tort	Crime
Tort occurs when the right available to all the persons in general (right in rem) is violated.	Crime occurs when the right available to all the persons in general (right in rem) is violated and it also seriously affects the

	society.
Act is comparatively less serious and affects only the person.	Act is comparatively more serious and affects the person as well as the society.
Intention is usually irrelevant. In most torts, However there are a few exceptions such as Malicious prosecution, defamation etc., where motive plays a part and are called intentional torts.	Intention is the most important element in establishing criminal liability. A crime cannot happen without Mens Rea.
It is a private wrong.	It is a public wrong.
Since it is a private wrong, the wronged individual himself must file a suit for damages.	Since it is a public wrong, the suit is filed by the state.
The suit is for damages.	The suit is for punishment.
Compromise is possible between the parties. For example, a person who has been defamed, can compromise with the defamer for a certain sum of money.	There is no compromise for the punishment. For example, if a person is guilty of murder, he cannot pay money and reduce his sentence.
Compounding is possible.	Compounding is generally not possible.
Justice is met by compensating the victim for his injury and exemplary damages may also be awarded to the victim. In Bhim Singh vs State of J K AIR 1986 SC 494 - the plaintiff was awarded exemplary damages for violation of his rights given by art 21.	Justice is met by punishing the aggressor by prison or fine. In some specific cases as given in IPC compensation may be given to the victim.
Law of Torts is not codified. Tortious acts (with a few exceptions) are usually not criminal acts.	Law of crime is codified. Several criminal acts such as assault and battery are also grounds for tortious suit.

I. Tort versus Contracts: A comparative analysis:

- 1) The nature of a tort is that it is a civil wrong. However, not all civil wrongs are torts. For example, breach of contract and breach of trust are civil wrongs but are not torts because their remedies exist in the contract itself. To determine if a particular act is a tort or not, we must first make sure that it is a civil wrong. We should then make sure that it is NOT a breach of contract or breach of trust.

2) Distinction between Tort and Breach of Contract

Tort	Breach of Contract
Tort occurs when the right available to all the persons in general (right in rem) is violated without the existence of any contract.	A breach of contract occurs due to a breach of a duty (right in persona) agreed upon by the parties themselves.
Victim is compensated for unliquidated damages as per the judgment of the judges. Thus, damages are always unliquidated.	Victim is compensated as per the terms of the contract and damages are usually liquidated.
Duty is fixed by the law of the land and is towards all the persons.	Duty towards each other is affixed by the contract agreed to by the parties.
Doctrine of privity of contract does not apply because there is no contract between the parties. This was held in the case of Donoghue vs Stevenson 1932 .	Only the parties within the ambit of 'privity of contract' can initiate the suit.
Tort applies even in cases where a contract is void. For example, a minor may be liable in Tort.	When a contract is void, there is no question of compensation. For example, a contract with a minor is void ab initio and so a minor cannot be

	held liable for anything.
In some torts like malicious prosecution , motive is relevant.	Motive is immaterial in contracts.
Justice is met by compensating the victim for his injury and exemplary damages may also be awarded to the victim. In Bhim Singh vs State of J K AIR 1986 - the plaintiff was awarded exemplary damages for violation of his rights given by art 21.	Justice is met only by compensating the victim for actual loss.

J. Tort versus Breach of Trust

Tort	Breach of Trust
Tort occurs when the right available to all the persons in general (right in rem) is violated without the existence of any contract.	A breach of trust occurs due to a breach of a duty (right in persona) agreed upon by a trustee.
Victim is compensated for unliquidated damages as per the judgment of the judges. Thus, damages are always unliquidated.	Beneficiary is compensated as per the terms of the trust deed and damages are usually liquidated.
Duty is fixed by the law of the land and is towards all the persons.	Duty towards each other is affixed by the trust deed / agreed to by the parties.
.A tort can occur between strangers. There need not be any relationship between parties.	In case of Trust, the parties are in a fiduciary relationship

K. Tort versus Quasi – Contract

Quasi contract cover those situations where a person is held liable to another without any agreement, for money or benefit received by him to which the other person is better entitled. The judicial basis for the obligation under a quasi contract is the existence of a hypothetical contract which is implied by law, the purpose being prevention of “unjust enrichment”.

Tort	Quasi - Contract
Duty is fixed by the law	No Duty owed to persons for duty to repay money, or, benefit received.
Victim is compensated for unliquidated damages as per the judgment of the judges.	In quasi – Contracts, the damages recoverable are usually liquidated damages.
.A tort can occur between strangers. There need not be any relationship between parties.	In case of quasi-contract the parties are not usually strangers.

L. LEGAL MAXIM - *Injuria sine Damnum*

1. The latin word ‘injuria’ refers to not just a physical injury, but an infringement, or, a violation of a legal right, or invasion of individual interests. The latin word ‘damnum’ refers to losses.
2. In cases of injuria sine damno, i.e., the infringement of an absolute private right without any actual loss or damage, the person whose right is infringed has a cause of action. Every person has an absolute right to his property, to the immunity of his person, and to his liberty, and an infringement of this right is actionable *per se*. In India, the same principles have been followed.

3. The Privy Council has observed that “there may be, where a right is interfered with, *injuria sine damno* sufficient to found an action: but no action can be maintained where there is neither *damnum* nor *injuria*.”
4. In the leading case of ***Ashby v. White*, (1703) 2 Lord Raym 938**, the defendant, a returning officer, wrongfully refused to register a duly tendered vote of the plaintiff, a legally qualified voter, at a parliamentary election and the candidate for whom the vote was tendered was elected, and no loss was suffered by the rejection of the vote, nevertheless it was held that an action lay. In this case the returning officer has acted maliciously.
5. ***Bhim Singh vs State of J K*, AIR 1986 SCC 494** - Plaintiff was an MLA and was wrongfully arrested while going to assembly session. He was not produced before a magistrate within the requisite period. It was held that this was the violation of his fundamental rights. Even though he was released later, he was awarded Rs. 50,000/= as exemplary damages by Supreme Court.
6. ***Municipal Board of Agra v Ashrafi Lal* (1921) 44 ALL 202**. The defendant’s name was wrongly omitted from the electoral roll and he was deprived of his right to vote. The lower court ruled in favour of defendant which was affirmed by High Court holding that the act of omission / refusal of returning officer is an infringement of defendant’s legal right to vote for which action lies against the person depriving him his right.

M. LEGAL MAXIM - *Damnum sine Injuria*

- 1) In cases of *damnum sine injuria*, i.e., actual and substantial loss without infringement of any legal right, no action lies. Mere loss in money or money’s worth does not of itself constitute a tort. The most terrible harm may be inflicted by one man on another without legal redress being obtainable. There are many acts which, though harmful, are wrongful and give no right of action. “*Damnum*” may be *absque injuria*.
- 2) In ***Gloucester v Grammar School* [1441 YB11 Henry IV, 47]**, defendant set up a rival school to that of plaintiff with the result, the plaintiff was forced to reduce tuition fees substantially as the boys were moving out. Plaintiff filed to claim damages.
HELD that plaintiff had no cause of action on the ground that “*bona fide*” competition can afford no ground for action. This is a case of ‘*damnum sine injuria*’.
- 3) In ***Quinn v. Leatham*, [1901] AC 495**, defendant set up a rival school next door to the plaintiff’s and boys from the plaintiff’s school flocked to defendant’s school. In this case, it was held that no action could be maintained. Competition is no ground of action whatever damage it may cause, provided nobody’s legal rights are infringed.
- 4) In ***Mayor of Bradford v Pickles* (1895) AC 597**, When Bradford Corporation refused to buy his land, the defendant got annoyed and sank a shaft in his own land. This diminished and discoloured the underground water flowing into plaintiff’s land, who then sued the defendant on the ground that his conduct was unlawful and dictated by malice.
HELD that the defendant was within his legal rights, and the act though malicious, done in his own land was not actionable.

- 5) In ***Mogul Steamship Co. v McGregor, Gow & Co. (1889) 28 ABD 598***. A,B,C & D all ship owners combined together to drive F, a rival ship owner out of trade, by offering special concessions to customers who would deal with them to the exclusion of F. The plaintiff(F) suffered loss and sued A,B, C and D on the ground of conspiracy.

HELD That the defendants had done nothing unlawful, by combining for the purpose of trade and competition. They acted with lawful purpose of expanding trade and increase profits to themselves, though the intention was to cause the plaintiff to lose trade.

- 6) In ***P.Seetharamayya v Mahalakshmiamma AIR(1958) AP 103***, the defendants dug a trench and put up a bund in their own lands. As a result, rainwater flowed into plaintiff's land and caused damage. Plaintiff filed a suit for damages as well as injunction.

HELD Owner of a land has a right to build a fence upon his land to protect damage by overflow of river, eventhough as a consequence of that act, the overflowing water entered plaintiff's land and caused damage. This is a case of "***Damnum sine Injuria***" and the defendants are not liable.

- 7) In ***Town Area Committee v Prabhudayal AIR(1975) ALL 132***, the plaintiff constructed some shops without giving notice to municipal body and without obtaining prior sanction The defendants demolished these shops. Plaintiff claimed damages which was denied.

HELD by Allahabad High court, on appeal, "that if a person constructs a building illegally, the demolition of such building by the municipal authorities, though motivated by malice, would not amount to causing 'injuria' to the owner of the property".

N. MALICE, MOTIVE, INTENTION and FAULT ETC., Some Terminologies in Law of Torts

1. **Motive**: Refers to an inner drive that signifies the reason for a person's conduct.
2. **Intention**: Motive leads to formation of intention, which is the subsequent cause. Intention signifies full advertence in the mind of a person to his conduct, which is in question, and to its consequences together with desire for those consequences.
3. **Malice**: When an act is done with bad intention, it is called 'malice'.
 - a) **Malice – in - Fact**: Refers to performance of an act which may be legal, but with ill-will, or hatred, or bad intention. Malice in Fact is generally relevant in some specific torts such as Defamation, malicious prosecution, deceit and conspiracy.

For example, in an action of defamation, if the defendant pleads qualified privilege, the plaintiff can defeat him by proving malice – in - fact
 - b) **Malice – in - Law**: Refers to a wrongful act done intentionally, without just cause or legal excuse.
4. **Malfeasance**: ***Commission of illegal / wrongful act***:

Example:- trespass, - which are actionable per se and do not require proof of intention or motive. It amounts to doing an act that is ought not to be done.
5. **Misfeasance**: Refers to ***improper performance of a lawful act***.

Example: – Negligence. Here neither intention, nor, motive is material.

6. **Non-feasance**: Refers to Failure to an act which one is legally obliged to do. In other words it denotes an ***act of Omission***.
7. **Fault**: Refers to a mistake, or negligence that leads to injury to someone, who has a right of action in a court of law against the tort-feaser.

Normally tort arises due to a fault. But there are situations where there is no fault - wherein, an injury happens even when the person has acted without negligence, and or mistake. These are cases involving strict liability, absolute liability and vicarious liability. In all such cases too, he will become liable.

Case Law :

Rylands v Fletcher, 1868 LR 3 (HL) 330 - Strict liability

M.C. Mehta v Union of India AIR 1987 SC 1086 - Absolute liability

State of Rajasthan v Vidyawati, AIR 1962 SC 933 - Vicarious liability