

**LAW OF TORTS  
INCLUDING MOTOR  
VEHICLE**

**Unit-I Evolution of Law of Torts**

- 1 England.- Forms of action, specific remedies from case to case
- 2 India - principles of justice equity and good conscience-unmodified character- advantages and disadvantages

**Definition, Nature, Scope and Objects of Tort**

1. A wrongful act- violation of duty imposed by law, duty which is owed to people generally (in rem) - damnum sine injuria and injuria sine damnum doctrine and applicability.
2. Tort distinguished from crime and breach of contract and trusts.
3. The contract of unliquidated damages
4. Changing scope of law of torts : expanding character of duties owed to people generally due to complexities of modern society
5. Objects-prescribing standards of human conduct, redressal of wrongs by payment of compensation, proscribing unlawful conduct by injunction.

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**Torts English perspective**

English tort law concerns civil wrongs, as distinguished from criminal wrongs, in the law of England and Wales. Some wrongs are the concern of the state, and so the police can enforce the law on the wrongdoers in court – in a criminal case. A tort is not enforced by the police, and it is a civil action taken by one citizen against another, and tried in a court in front of a judge (only rarely, in certain cases of defamation, with a jury). Tort derives from middle English for "injury", from Anglo-French, from Medieval Latin *tortum*, from Latin, neuter of *tortus* "twisted", from past participle of *torquere*.

Following Roman law, the English system has long been based on a closed system of nominate torts, such as trespass, battery and conversion. This is in contrast to continental legal systems, which have since adopted more open systems of tortious liability. There are various categories of tort, which lead back to the system of separate causes of action. The tort of negligence is however increasing in importance over other types of tort, providing a wide scope of protection, especially since *Donoghue v Stevenson*. For liability under negligence a duty of care must be established owed to a group of persons to which the victim belongs, a nebulous concept into which many other categories are being pulled.

**Torts Indian perspective**

Tort law 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. Tort is breach of some duty independent of contract which has caused damage to the plaintiff giving rise to civil cause of action and for which remedy is available. If there is no remedy it cannot be called a tort because the essence of tort is to give remedy to the person who has suffered injury.

Tort law in India, like her common law counterparts, stems from both statute and common law.

#### **Statutes**

Similar to other common law countries, aspects of tort law have been codified. Furthermore, the Indian Penal Code criminalises certain areas of tort law.

#### **Common law**

As tort law is a relatively young area of law in India, apart from referring to local judicial precedents, courts have readily referred to case law from other common law jurisdictions, such as UK, Australia, and Canada.

#### **Relevant local customs and practices**

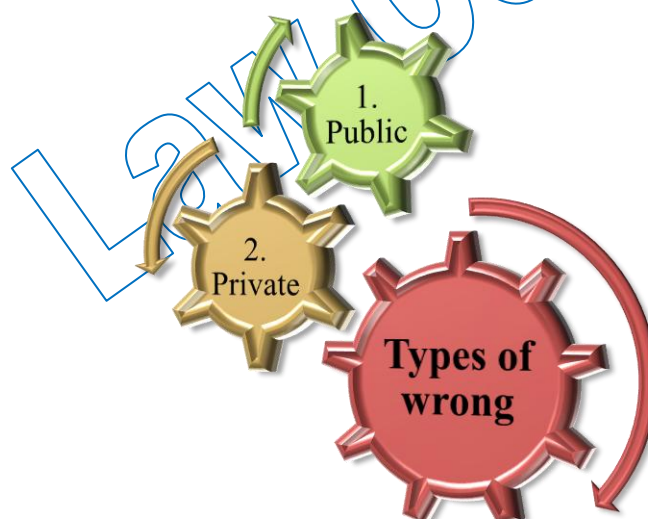
However, attention is given to local socio-cultural practices and conditions in applying foreign legal principles. The legislature have also created statutes to provide for certain social conditions; for example, due to the nature of Indian families, a statute was passed to simplify determination of damages in the event of family members

### Meaning of Tort

Tort is a Civil / Legal Wrong. Tort Law is one of the important branches of Civil Law.

The word Tort is derived from a Latin word 'Tortus' which means 'twisted' or 'cooked act'. In English it means, 'wrong'. The Expression 'Tort' is of French Origin.

The term 'Tort' means a wrongful act committed by a person, causing injury or damage to another, thereby the injured institutes (files) an action in Civil Court for a remedy viz., unliquidated damages or injunction or restitution of property or other available relief. Unliquidated damages mean the amount of damages to be fixed or determined by the Court. The 'Law of Torts' owes its origin to the Common Law of England. It is well developed in the UK, USA and other advanced Countries. In India, Law of Torts is non codified, like other branches of law eg: Indian Contract Act, 1872 and Indian Penal Code, 1860. It is still in the process of development. A tort can take place either by commission of an act or by omission of an act.



#### **Wrong**

- **Public wrong** - Crime is a Public Wrong. These are acts that are tried in Criminal Courts and are punishable under the Penal Law (such as the Indian Penal Code, 1860 in India)
- **Private wrong** - Tort is a Private Wrong. These are acts against an individual person or a person within a community and are tried in Civil Courts.

### Definition

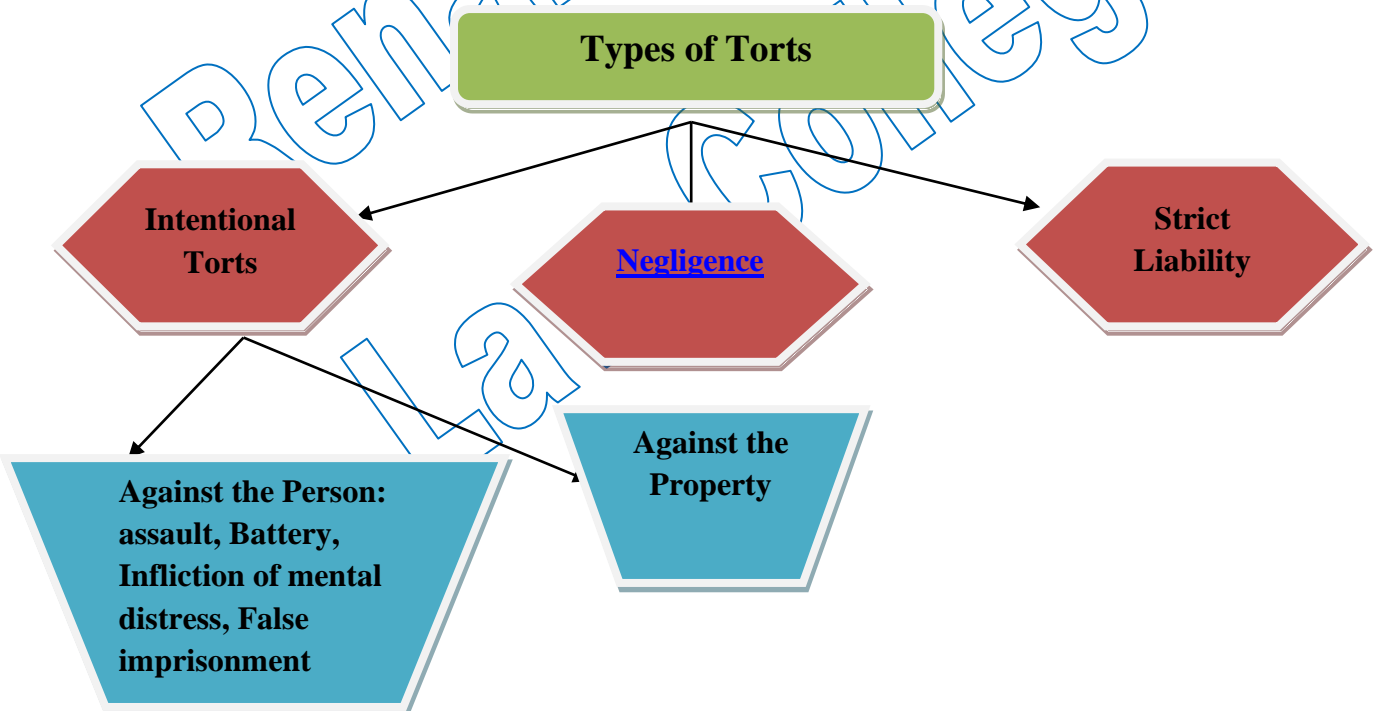
According to Prof. Winfield, Tortious Liability arises from breach of a duty primarily fixed by law; this duty is towards persons generally and its breach is redressable by an action for unliquidated damages.

Sir John Salmond defined Tort as a civil wrong for which the remedy is common law action for unliquidated damages and which is not exclusively the breach of contract or the breach of trust or other merely equitable obligation.

- The person who commits or is guilty of a tort is called a "**tortfeasor**".
- The person who suffered injury or damage by a tortfeasor is called **injured** or aggrieved.
- Tort is a common law term and its equivalent in Civil Law is "**Delict**".
- In general, the victim of a tortious act is the plaintiff in a tort case.
- As a general rule, all persons have the capacity to sue and be sued in a tort.
- **Liquidated damages** (also referred to as liquidated and ascertained damages) are damages whose amount the parties designate during the formation of a contract for the injured party to collect as compensation upon a specific breach (e.g., late performance).
- **Unliquidated damages** (uncountable) (law) An amount owed to a plaintiff in a lawsuit by the defendant that cannot be determined by operation of law, such as the value of pain and suffering in a tort case.
- **Malice**- A condition of mind which prompts a person to do a wrongful act wilfully, that is, on purpose, to the injury of another, or to do intentionally a wrongful act toward another without justification or excuse.
  - In its legal sense it means a wrongful act done intentionally without just cause or excuse.
  - Malice is a wish to injure a party, rather than to vindicate the law. Malice of two types:
    - i) Malice in fact
    - ii) Malice in law
  - **Malice in fact** – Means an actual malicious intention on the part of the person who has done the wrongful act. It is also called express or actual malice.
  - **Malice in law** – It is not necessarily personal hate or ill will, but it is that state of mind which is reckless of law and of the legal rights of the citizen.
- **Motive** – Motive is that which incites or stimulates a person to do an act. It is the moving power which impels to action for a definite result.
- Motive is mainspring of human action. It is cause or reason. It is something which prompts a man to form an intention.
- **Intention** – A settled direction of the mind towards the doing of a certain act; that upon which the mind is set or which it wishes to express or achieve; the willingness to bring about something planned or foreseen.
- **Injury**- In legal parlance, 'injury' means any wrong or damage done to another, either in his person, rights, reputation or property.
- Meaning under Penal Code, 1860 (section 44) – the word injury denotes any harm whatever illegally caused to any person, in body, mind, reputation or property.

- **Hurt** – Whoever causes bodily pain, disease or infirmity to any person is said to cause hurt.
- **Malfeasance** – it is a wrongful act which the actor has no legal right to do, or any wrongful conduct which affects, interrupts, or interferes with performance of official duty, or an act for which there is no authority or warrant of law or which a person ought not to do at all, or has contracted not, to do.
- The word ‘malfeasance’ would apply to a case where an act prohibited by law is done by a person. (*Khairul Bahsar v. Thana Lal AIR 1957*)
- **Misfeasance** – Unlawful use of power; wrongful performance of a normally legal act; injurious exercise of lawful authority; official misconduct; breach of law.
- The word ‘misfeasance’ would apply to a case where a lawful act is done in an improper manner.
- **Nonfeasance** - Non performance of some act which ought to be performed, omission to perform a required duty at all, or total neglect of duty.
- Nonfeasance would apply to a case where a person omits to do some act prescribed by law.
- Distinction between ‘Misfeasance’, ‘nonfeasance’ and ‘malfeasance’ – Misfeasance is the improper doing of an act which a person may wilfully do. Nonfeasance means the omission of an act which a person ought to do. Malfeasance is the doing of an act which a person ought not to do at all.

Tort Law provides an avenue for an injured person of a remedy. It does not provide a guarantee of recovery.



### Against the Property

#### Intentional Torts

An intentional tort is when an individual or entity purposely engages in conduct that causes injury or damage to another. For instance, striking someone in a fight would be consider an intentional act that would fall under the tort of battery; whereas accidentally hitting another person would not qualify as



“intentional” because there was no intent to strike the individual (...however, this act may be considered negligent if the person hit was injured).

Although it may seem like an intentional tort can be categorized as a criminal case, there are important differences between the two. A crime can be defined as a wrongful act that injures or interferes with the interests of *society*. In comparison, intentional torts are wrongful acts that injure or interfere with an *individual's* well-being or property. While criminal charges are brought by the government and can result in a fine or jail sentence, tort charges are filed by a plaintiff seeking monetary compensation for damages that the defendant must pay if they lose. Sometimes a wrongful act may be both a criminal and tort case.

### **Negligence**

There is a specific code of conduct which every person is expected to follow and a legal duty of the public to act a certain way in order to reduce the risk of harm to others. Failure to adhere to these standards is known as negligence. Negligence is by far the most prevalent type of tort.

Unlike intentional torts, negligence cases do not involve deliberate actions, but instead are when an individual or entity is careless and fails to provide a duty owed to another person. The most common examples of negligence torts are cases of slip and fall, which occur when a property owner fails to act as a reasonable person would, thus resulting in harm to the visitor or customer.

### **Strict Liability**

Last are torts involving strict liability. Strict, or “absolute,” liability applies to cases where responsibility for an injury can be imposed on the wrongdoer without proof of negligence or direct fault. What matters is that an action occurred and resulted in the eventual injury of another person.

Defective product cases are prime examples of when liability is maintained despite intent. In lawsuits such as these, the injured consumer only has to establish that their injuries were directly caused by the product in question in order to have the law on their side. The fact that the company did not “intend” for the consumer to be injured is not a factor.

### **Characteristics**

1. Tort, is a private wrong, which infringes the legal right of an individual or specific group of individuals.
2. The person, who commits tort is called "tort-feasor" or "Wrong doer"
3. The place of trial is Civil Court.
4. Tort litigation is compoundable i.e. the plaintiff can withdraw the suit filed by him.
5. Tort is a species of civil wrong.
6. Tort is other than a breach of contract
7. The remedy in tort is unliquidated damages or other equitable relief to the injured.

### **Essential elements to prove a Tort**

- Existence of legal duty from defendant to plaintiff
- Breach of duty
- Damage as proximate result.

### Distinction between Tort and crime-

Tort	Crime
i) Less serious wrongs are considered as private wrongs and have been labelled as civil wrong.	i) More serious wrongs have been considered to be public wrongs and are known as crimes.
ii) The suit is filed by the injured person himself.	ii) The case is brought by the state.
iii) Compromise is always possible.	iii) Except in certain cases, compromise is not possible.
iv) the wrongdoers pays compensation to the injured party.	iv) The wrongdoer is punished.
V) A person who commits Tort is a 'tortfeasor'	V) A person who commits Crime is a 'Criminal' or 'Offender'
vi) The remedy of tort is unliquidated damages or other equitable relief to the injured	vi) The remedy is to punish the offender
vii) Tort litigation is compoundable	Criminal cases are not compoundable except in case of exceptions as per Section 320 Cr.PC of IPC

### Distinction between Tort and breach of contract-

Breach of contract	Tort
i) It results from breach of a duty undertaken by the parties themselves.	i) It occurs from the breach of such duties which are not undertaken by the parties but which are imposed by law.
ii) In contract, each party owes duty to the other.	ii) Duties imposed by law of torts are not towards any specific individual but towards the world at large.
iii) Damage of contract is liquidated.	iii) Damage of tort is unliquidated.
iv) It provides limited remedy	iv) It provides unlimited remedy.

### Distinction between Tort and Breach of trust-

Tort	Breach of Trust
i) Damage of tort is unliquidated.	i) Damage of breach of trust is liquidated.
ii) Law of tort was part of common law.	ii) Law of trust was part of Court of Chancery.
iii) Tort is partly related to the law of property.	iii) Trust is a branch of law of property.

### Remedies

Remedies are of two types-

1. judicial and
2. Extra-judicial.

1. Judicial remedy is of three types:

- (i) Damages,
- (ii) Injunction and
- (iii) Restitution of property

(i) **Types of damages** -

- **a) Exemplary or Vindictive damages** - are damages on an increased scale, awarded to the plaintiff over and above what will barely compensate him for his property loss, where the wrong done to him was aggravated by circumstances of violence, oppression, malice etc.
- **b) Ordinary or Real damages** - are compensation for general damage. General damages are those which the law implies in every breach of contract and in every violation of a legal right.
- **c) Nominal damages** - They are awarded for the vindication of a right where no real loss or injury can be proved.
- **d) Contemptuous damages** -

(ii) **Injunction**- A judicial process operating *in personam*, and requiring a person to whom it is directed to do or refrain from doing a particular thing. Law as to the injunction is contained in the Specific Relief Act 1963 and the CPC 1908.

**Types of injunction** -

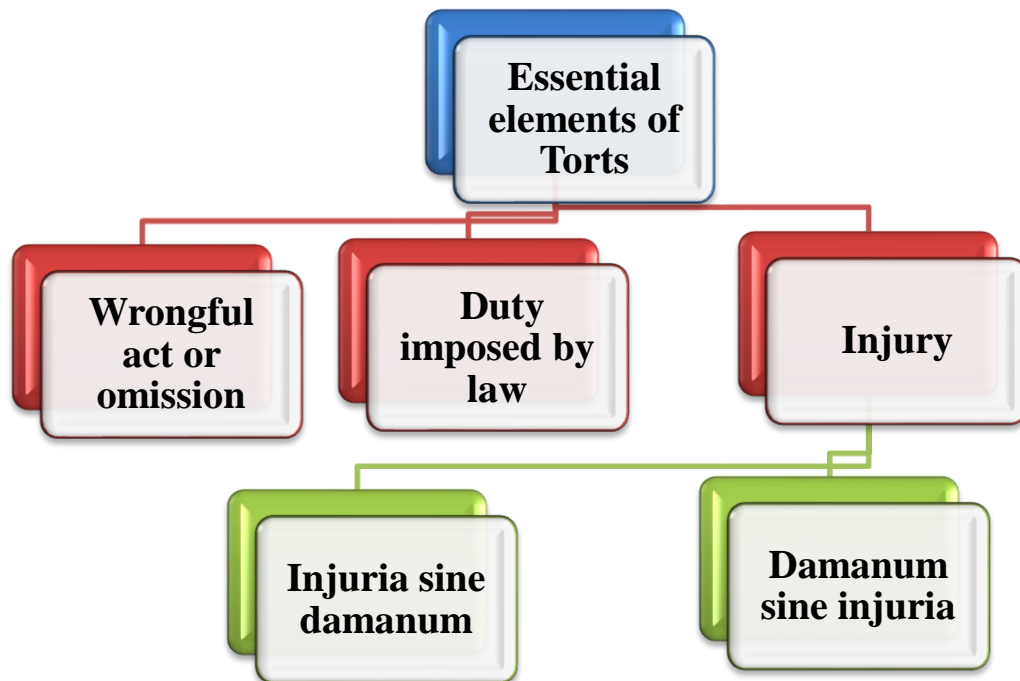
- **(i) Mandatory** - When, to prevent the breach of an obligation, it is necessary to compel the performance of certain acts, the Court may in its discretion grant an injunction to prevent the breach (s. 55 of the Specific Relief Act, 1877).
- **(ii) Permanent or perpetual** - By perpetual injunction a defendant is perpetually enjoined from the assertion of a right, or from the commission of an act, which would be contrary to the rights of the plaintiff (s. 53, the Specific Relief Act, 1877).
- **(iii) Temporary** - Temporary injunction is such as is to continue until a specified time, or until the further order of the Court. It is regulated by the CPC (s. 53, The Specific Relief Act, 1877; CPC Order XXXIX Rule 1).
- **(iv) Ad-interim** -

(ii) **Restitution of property** - Restitution means restoration of anything to its rightful owner.

2. **Extra-judicial remedies are-**

- i) Self defence** - The use of force to protect oneself, one's family, or one's property from a real or threatened attack.
- ii) Expulsion of trespassers** - Forcibly evicting the trespasser.
- iii) Reception of chattels** - Chattel means movable or transferable property; personal property.
- iv) Re-entry of land** -
- v) Abatement of nuisance** - Abatement is the act of eliminating or nullifying; the act of lessening or moderating.
- vi) Distress damage feasant** - the right to seize animals or inanimate chattels that are damaging or encumbering land and to keep them as security until the owner pays compensation.





1. **Wrongful act or omission** - There must be some act or omission of a duty on the part of the defendant. For a tort to happen, the person must have first either done something that he was not expected to do or omitted to do something that he was supposed to do. **Municipal Corp of Delhi vs Subhagvanti AIR 1966** - A clock tower was not in good repairs. It fell and killed several people. MCD was held liable for its omission.

2. **Duty imposed by law** - The act or omission of an action must be required by law or the duty must be imposed by law. This means that if an act that is prohibited by law causes harm, it is liable under tort. Similarly, if the omission of an act that is required by law causes harm, then it is liable under tort. For example, law requires that the driver of a vehicle must drive carefully and if driving without care, a pedestrian is hit, the omission of the act of driving carefully is liable under tort. However, if the worshipers stop going to a temple and thereby because the priest to lose money, this action is not liable under tort because going to temple is not an act that is required by law. Such duties that are required by law are usually towards all the people in general.

**Donaghue vs Stevenson 1932** - Held that the manufacturer of a drink has a legal duty towards the consumers to ensure that noxious substances are not included in the drink.

3. **Injury** - The act or the omission must result in legal damage or injury i.e. violation of a legal right vested in the plaintiff. This means that the act or omission must cause a damage that is recognized by law as wrongful.

### **Injuria Sine Damno**

A person has a legal right to enjoy his property and if someone throws trash in it, this is a violation of his legal right and is liable under tort. However, it is possible that a legal right is violated without causing any physical or real damage.

**Ashby vs White 1703** - The defendant wrongfully prevented the plaintiff from voting. Even though there was no damage, the defendant was held liable.

**Bhim Singh vs State of J K AIR 1986** - 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 50,000RS as exemplary damages by SC.

### **Damnum Sine Injuria –**

On the other hand, it is possible that a person suffers a huge loss or damage but none of his legal rights are violated. This is called Damnum sine Injuria. In such cases, there is no tortious act.

**Glaoucester Grammar School's case 1410** - Defendant opened a rival grammar school in front of an existing one thereby causing the fees of the existing one to be reduced from 40pence to 12 pence. He was not held liable as he did not violate any legal right of the plaintiff.

**Ushaben vs BhagyaLaxmi Chitra Mandir AIR 1978** - Plaintiff sought a permanent injunction against the cinema house to restrain them from showing the movie Jai Santoshi Maa. It was contended that the movie depicts the goddesses Laxmi, Saraswati, and Parvati in bad light, which is offensive to the plaintiff. It was held that hurt to religious sentiments is not recognized as a legal wrong. Since there was no violation of a legal right, an injunction was not granted.

**Chesmore vs Richards 1879** - Plaintiff had been drawing water from underground for past 60 yrs. The defendant sunk a bore well on his land and drew huge quantity of water which diminished the water supply of the plaintiff. It was held that the defendant was not liable because he was only exercising his right and did not violate any right of the plaintiff.

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**Torts that are not actionable / General Defences for Torts**

Even when a plaintiff provides proof for the existence of all the essential elements of a tort, it is possible in some cases for the defendant to take certain defences which can remove his liability. These defences are nothing but specific situations or circumstances in which a defendant is given a waiver for his tortious action. These are as follows –

**1. Volenti Non fit Injuria**

When a person consents for infliction of harm upon himself, he has no remedy for that in Tort. That means, if a person has consented to do something or has given permission to another to do certain thing, and if he is injured because of that, he cannot claim damages. For example, A purchases tickets for a Car race and while watching the race, an collision of cars happens and the person is injured. Here, by agreeing to watch the race, which is a risky sport, it is assumed that he voluntarily took on the risk of being hurt in an accident. Thus, he cannot claim compensation for the injury.

Such consent may be implied or express. For example, a person practicing the sport of Fencing with another, impliedly consents to the injury that might happen while playing.

In **Woolridge vs Sumner 1963**, the plaintiff a photographer was taking photographs at a horse show, during which one horse rounded the bend too fast. As the horse galloped furiously, the plaintiff was frightened and he fell in the course. He was seriously injured. It was held that the defendants had taken proper care in closing the course and the plaintiff, by being in the show, agreed to take the risk of such an accident. The defendants were not held liable.

However, the action causing harm must not go beyond the limit of what has been consented. For example, in a sport of fencing, a person consents to an injury that happens while playing by the rules. If he is injured due to an action that violates the rules, he can claim compensation because he never consented to an injury while playing without rules.

In **Laxmi Rajan vs Malar Hospital 1998**, a woman consented for a surgery to remove a lump from her breast. But the hospital removed her uterus as well without any genuine reason. It was held that removing of her uterus exceed beyond what she had consented for.

Also, the consent must be free. It must not be because of any compulsion. Thus, if a servant was compelled by the master to do a certain task despite his protests, and if he is injured while doing it, the master cannot take the defence of *volenti non fit injuria* because the consent was not free

**Exceptions** - In the following conditions, this defence cannot be taken even if the plaintiff has consented -  
**Rescue Conditions** - When the plaintiff suffers injury while saving someone. For example, A's horse is out of control and is galloping towards a busy street. B realizes that if the horse reaches the street it will hurt many people and so he bravely goes and controls the horse. He is injured in doing so and sues A. Here A cannot take the defence that B did that act upon his own consent. It is considered as a just action in public interest and the society should reward it instead of preventing him from getting compensation.

**Unfair Contract Terms** - Where the terms of a contract are unfair, the defendant cannot take this defence. For example, even if a laundry, by contract, absolves itself of all liability for damage to clothes, a person can claim compensation because the contract is unfair to the consumers.

## 2. Plaintiff the wrongdoer

A person cannot take advantage of his own wrong. This principle has been in use since a long time as it is just and equitable. For example, a person trespassing on another's property is injured due to darkness. He cannot claim compensation because he was injured due to an action which was wrong on his part. However, this defence exists only if the injury happens because of a wrongful act of the plaintiff. It does not exist if the injury happens because of a wrongful act of the defendant even if the plaintiff was doing a wrongful but unrelated act. For example, in **Bird vs Holbrook 1828**, the plaintiff was trespassing on the defendant's property and he was hurt due to a spring gun. The defendant had put spring guns without any notice and was thus held liable.

## 3. Inevitable Accident

Accident means an unexpected occurrence of something that could not have been predicted or prevented. In such a case, the defendants will not be liable if they had no intention to cause it and if the plaintiff is injured because of it. For example, in **Stanley vs Powell 1891**, the plaintiff and the defendant were members of a shooting party. The defendant shot a bird but the bullet ricocheted off a tree and hit the plaintiff. The defendant was not held liable because it was an accident and the defendant did not intend it and could neither have prevented it.

However, the defence of Inevitable Accident is not a license to negligence. For example, A has hired B's car. While driving, one of the tires bursts and causes an accident injuring A. Here, if the tires were worn out and were in bad condition, it would be negligence of B and he would be held liable for A's injuries.

## 4. Act of God

An act of God in a legal sense is an extraordinary occurrence of circumstance which could not have been predicted or prevented and happens because of natural causes. Nobody can predict, prevent, or protect from a natural disaster such as an earthquake or flood. Thus, it is unreasonable to expect a person to be liable for damages caused by such acts of God.

There are two essential conditions for this defence –

- the event must be due to a natural cause and
- it must be extraordinary or something that could not have been anticipated or expected.

For example, heavy rains in the monsoon are expected and if a wall falls and injures someone, it cannot be termed an act of God because protection for such expected conditions should have been taken. But if a building falls due to a massive earthquake and injures and kills people, this defence can be used.

In **Ramalinga Nadar vs Narayan Reddiar AIR 1971**, it was held that criminal activities of an unruly mob are not an act of God.

### 5. Private Defence

As per section 96 of IPC, nothing is an offence that is done in exercise of the right of private defence. Thus, law permits the use of reasonable and necessary force in preventing harm to human body or property and injuries caused by the use of such force are not actionable. However, the force must be reasonable and not excessive. In **Bird vs Hollbrook 1892**, the defendant used spring guns in his property without notice. It was held that he used excessive force and so was liable for plaintiff's injury even though the plaintiff was trespassing on his property.

### 6. Mistake

Generally, mistake is not a valid defence against an action of tort. Thus, hurting a person under the mistaken belief that he is trespassing on your property, will not be defensible. However, in certain cases, it could be a valid defence. For example, in the case of malicious prosecution, it is necessary to prove that the defendant acted maliciously and without a reasonable cause. If the prosecution was done only by mistake, it is not actionable.

Further, honest belief in the truth of a statement is a defence against an action for deceit.

### 7. Necessity

If the act causing damage is done to prevent a greater harm, it is excusable. For example, a Ship ran over a small boat hurting 2 people in order to prevent collision with another ship which would have hurt hundreds of people is excusable. Thus, in **Leigh vs Gladstone 1909**, force feeding of a hunger striking prisoner to save her was held to be a good defence to an action for battery.

### 8. Statutory Authority

An act that is approved by the legislature or is done upon the direction of the legislature is excused from tortious liability even though in normal circumstances, it would have been a tort. When an act is done under the authority of an Act, it is a complete defence and the injured party has no remedy except that is prescribed by the statute.

In **Vaughan vs Taff Valde Rail Co 1860**, sparks from an engine caused fire in appellant's woods that existed in his land adjoining the railway track. It was held that since the company was authorized to run the railway and since the company had taken proper care in running the railway, it was not liable for the damage.

**9. Judicial or Quasi-Judicial Acts** No action lies for acts done, or words spoken, by a judge in exercise of his judicial office, although they may be malicious. It is founded on the principle of public benefit that Judges should be at liberty to exercise their function independently and without fear of consequences.

Judicial Officers' Protection Act, 1850 grants protection to a judicial officer for any act done or ordered to be done by him in the discharge of his judicial duty. He is protected even though he exceeds his jurisdiction provided that at that time he honestly believed that he had jurisdiction to do or order the act complained of. Section 1 of the Act reads as follows: "No Judge, Magistrate, Justice of the Peace, Collector or other person acting judicially shall be liable to be sued in any civil court for any act done or ordered to be done by him in the discharge of his judicial duty whether or not within the limits of his jurisdiction: Provided that he at the time in good faith, believed himself to have jurisdiction to do or order the act complained of; and no officer of any court or other person, bound to execute the lawful warrants or orders of acting judicially shall be liable to be sued in any civil court, for the execution of any warrant or order which he would be bound to execute, if within the jurisdiction of the person issuing the same."

Limits of such protection:-

1. No such protection is granted if a magistrate is acting mala fide and outside his jurisdiction. **Sailajanand Pandey v Suresh Chandra Gupta, AIR 1969 Pat. 194** The magistrate acting mala fide, illegally and outside his jurisdiction, ordered the arrest of the plaintiff. The Patna High Court held that he was not entitled to the protection given by the Judicial Officer's Protection Act, 1850 and was, therefore, liable for the wrong of false imprisonment.



2. The protection of judicial privilege applies only to judicial proceedings as contrasted with administrative or ministerial proceedings and where, a judge acts both judicially and ministerial or administratively, the protection is not afforded to the act done in the later capacity.

**State of U.P. v. Tulsi Ram, AIR 1971 All. 162** Five persons were prosecuted for certain offences. One of them was acquitted by the Sessions Court and another by the High Court. The High Court upheld the conviction of only three of the five persons and authorised the issue of warrants against these three convicted persons. The judicial magistrate acting negligently signed an order for the arrest of all the five persons. As a result of this order, the plaintiffs, even though they had been acquitted by the High Court, were arrested by the police.

They filed a suit claiming compensation of Rs. 2,000 from the judicial officer and the State of U.P. stating that their arrest before their relations and friends on the day of Holi festival had caused much humiliation, disgrace, physical discomfort and mental suffering to them.

The lower appellate court held that the judicial officer was protected by the Judicial Officer's Protection Act, 1850 but the State of U.P. was vicariously liable and passed a decree of Rs. 500 against the state of U.P. The Allahabad High Court, on an appeal made by the State of U.P. held that the State was not liable because the act done by its servant was in the discharge of his duties imposed by law. Further, it held that the judicial officer was liable for the wrongful arrest of the plaintiff-respondents as the judicial officer was not exercising any judicial function but only an executive function while issuing warrants and therefore, the protection under the Judicial Officers' Protection Act, 1850 could not be available in this case.

**10. Parental or Quasi Parental Authority** Parents and persons in loco parentis have a right to administer punishment on a child for the purpose of correction, chastisement or training. However one must remember that such an authority warrants the use of reasonable and moderate punishment only and therefore, if there is an excessive use of force, the defendant may be liable for assault, battery or false imprisonment, as the case may be.

In England, as per Section 1(7), Children and Young Persons Act, 1933, a parent, teacher, or other person having lawful control or charge of a child or young person is allowed to administer punishment on him.

In **Fitzgerald v. Northcote, (1865) 4 F & F 656**, Cockburn C.J. observed: The authority of a schoolmaster is while it exists, the same as that of parent. A parent, when he places his child with a schoolmaster, delegates to him all his authority, so far as it is necessary for the welfare of the child "

The authority of a teacher to correct his students is: not limited only to the wrongs which the student may commit upon the school premises but may also extend to the wrongs done by him outside the school because there is not much opportunity for boy to exhibit his moral conduct while in school under the eye of the master the opportunity is while he is at play or outside the school.

**R. v. Newport (Salop) Justices, (1929) 2 K.B. 416** It has been held that if the school rules prohibited smoking, both in the school and in the public, the school master was justified in caning a student whom he had found smoking cigarette in a public street.

Reasonable professional behaviour, rather than perfection, is the **norm Eisel v. Board of Education, (1991)** The Maryland High Court ruled that school counsellors were negligent in not revealing their knowledge of a student's threatened suicide to the child's parents. The counsellors' negligence was not for failure to physically prevent the student's suicide, but rather for not communicating information regarding the child's intent.

**Unit-III Doctrine of sovereign immunity and its relevance in India**

1. Vicarious Liability
2. Torts against persons and personal relations
3. Defamation
4. Parental relations, master and servant relation
5. Malicious prosecution, wrongful confinement
6. Wrongs affecting property
7. Trespass to land
8. Constitutional torts and Public liability for victim's compensation.

**Vicarious Liability**

*Respondeat superior*, which literally means "let the master answer," is a doctrine that holds one party liable for another's actions based on their relationship. While commonly applied to hold employers responsible for certain types of their employees' actions, this doctrine can also be relevant in principal/agent relationships. Simple negligence claims (e.g., *negligent hiring*, *negligent entrustment of an automobile*) may also apply in these relationships.

**1. Employee/employer relationships:** An employer is vicariously liable for the acts of an employee as long as the employee's acts are in the scope of employment. Thus, when an employee acts to further the employer's business, the employer will be vicariously liable (*even for intentional torts*). However, if the employee commits an intentional tort for purely personal reasons unrelated to the employment, most jurisdictions will not hold an employer vicariously liable.

Employers are vicariously liable, under the *respondeat superior* doctrine, for negligent acts or omissions by their employees in the course of employment (sometimes referred to as 'scope of employment'). For an act to be considered within the course of employment, it must either be authorized or be so connected with an authorized act that it can be considered a mode, though an improper mode, of performing it.

Courts sometimes distinguish between an employee's "detour" vs. "frolic". For instance, an employer will be held liable if it is shown that the employee had gone on a mere detour in carrying out their duties, whereas an employee acting in his or her own right rather than on the employer's business is undertaking a "frolic" and will not subject the employer to liability. Employer will be held liable if an employer does an authorized act in an unauthorized way

Generally, an employer will not be held liable for assault or battery committed by employees, unless the use of force was part of their employment (such as a police officer), or they were in a field likely to create friction with persons they encountered (such as car re-possessors). However, the employer of an independent contractor is not held vicariously liable for the tortious acts of the contractor, unless the contractor injures someone to whom the employer owes a non-delegable duty of care, as when the employer is a school authority and the injured party a pupil.

Employers are also liable under the common law principle represented in the Latin phrase, "*qui facit per alium facit per se*" (one who acts through another acts in one's own interests). That is a parallel concept to vicarious liability and strict liability, in which one person is held liable in criminal law or tort for the acts or omissions of another.

2. **Independent contractor/employer relationships:** Generally, employers are not vicariously liable for acts committed by independent contractors. However, when inherently dangerous activities or non-delegable duties (e.g., *duty of railroad to maintain safe crossings*, *duty of storekeeper to make the premises reasonably safe for customers*) are involved, an employer can be held vicariously liable.

3. **Automobile driver/owner relationships:** In many jurisdictions, the owner is only vicariously liable if the driver is on an errand for the owner. However, in some jurisdictions, an owner is vicariously liable for drivers that are members of the owner's household as long as the car is intended for family use. In other jurisdictions, as long as the driver has the owner's permission to operate the vehicle, the owner is vicariously liable.

#### **Principals' liability**

The owner of an automobile can be held vicariously liable for negligence committed by a person to whom the car has been loaned, as if the owner was a principal and the driver his or her agent, if the driver is using the car primarily for the purpose of performing a task for the owner. Courts have been reluctant to extend this liability to the owners of other kinds of chattel. For example, the owner of a plane will not be vicariously liable for the actions of a pilot to whom he or she has lent it to perform the owner's purpose. In the United States, vicarious liability for automobiles has since been outlawed with respect to car leasing and rental in all 50 states.

One example is in the case of a bank, finance company or other lien holder performing a repossession of an automobile from the registered owner for non-payment, the lien holder has a non-delegatable duty not to cause a breach of the peace in performing the repossession, or it will be liable for damages even if the repossession is performed by an agent. This requirement means that whether repossession is performed by the lien holder or by an agent, the repossession must not cause a breach of the peace or the lien holder will be held responsible.

This requirement not to breach the peace is held upon the lien holder even if the breach is caused by, say, the debtor objecting to the repossession or resists the repossession. In the court case of ***MBank El Paso v. Sanchez*, 836 S.W.2d 151**, where a hired repossessioner towed away a car even after the registered owner locked herself in it, the court decided that this was an unlawful breach of the peace and declared the repossession invalid. The debtor was also awarded \$1,200,000 in damages from the bank.

#### **4. Parental liability**

In the United States, the question of parental responsibility generally and the issue of parental vicarious liability for the torts of their children is evolving. What is clear is that parents can be held liable for their own negligent acts, such as failure to supervise a child, or failure to keep a dangerous instrument such as a handgun outside the reach of their children.

#### **5. The liability of corporations in tort**

In English law, a corporation can only act through its employees and agents so it is necessary to decide in which circumstances the law of agency or vicarious liability will apply to hold the corporation liable in tort for the frauds of its directors or senior officers.

If liability for the particular tort requires a state of mind, then to be liable, the director or senior officer must have that state of mind and it must be attributed to the company. In ***Meridian Global Funds Management Asia Limited v. Securities Commission* [1995] 2 AC 500**, two employees of the company, acting within the scope of their authority but unknown to the directors, used company funds to acquire

some shares. The question was whether the company knew, or ought to have known that it had acquired those shares.

The Privy Council held that it did. Whether by virtue of their actual or ostensible authority as agents acting within their authority (see *Lloyd v Grace, Smith & Co.* [1912] AC 716) or as employees acting in the course of their employment (see *Armagas Limited v Mundogas S.A.* [1986] 1 AC 717), their acts and omissions and their knowledge could be attributed to the company, and this could give rise to liability as joint tortfeasors where the directors have assumed responsibility on their own behalf and not just on behalf of the company.

So if a director or officer is expressly authorized to make representations of a particular class on behalf of the company, and fraudulently makes a representation of that class to a Third Party causing loss, the company will be liable even though the particular representation was an improper way of doing what he was authorized to do. The extent of authority is a question of fact and is significantly more than the fact of an employment which gave the employee the opportunity to carry out the fraud.

In *Panorama Developments (Guildford) Limited v Fidelis Furnishing Fabrics Limited* [1971] 2 QB 711, a company secretary fraudulently hired cars for his own use without the knowledge of the managing director. A company secretary routinely enters into contracts in the company's name and has administrative responsibilities that would give apparent authority to hire cars. Hence, the company was liable.

#### **Employees' Continued Liability and Indemnity**

A common misconception involves the liability of the employee for tortious acts committed within the scope and authority of their employment. Although the employer is liable under respondeat superior for the employee's conduct, the employee, too, remains jointly liable for the harm caused. As the American Law Institute's Restatement of the Law, Third, Agency § 7.01 states,

An agent is subject to liability to a third party harmed by the agent's tortious conduct. Unless an applicable statute provides otherwise, an actor remains subject to liability although the actor acts as an agent or an employee, with actual or apparent authority, or within the scope of employment.

#### **6. State Liability :**

Under the English Common Law the maxim was "The King can do no wrong" and therefore, the King was not liable for the wrongs of its servants. But, in England the position of old Common law maxim has been changed by the Crown Proceedings Act, 1947. Earlier, the King could not be sued in tort either for wrong actually authorised by it or committed by its servants, in the course of their employment. With the increasing functions of State, the Crown Proceedings Act had been passed, now the Crown is liable for a tort committed by its servants just like a private individual. Similarly, in America, the Federal Torts Claims Act, 1946 provides the principles, which substantially decides the question of liability of State.

In ancient India, under the Hindu jurisprudence, it was an undisputed principle that no one is exempted from the operation of law. This liability to equal punishment extended even to the king, relative of the king, a judge or an ordinary citizen. The rule of law was considered supreme and binding on everyone alike. The important functions of the king were concerned with protection of people, punishment of crimes and maintenance of dharma or social order.

In the medieval Indian history the personal liability of officers for their wrongs was more vogues with evidences showing equality between the ruler and the ruled subject. Only when the king considered it proper to undertake the burden of public officer, it was then the state treasury used to pay the compensation. Dharma was considered the administrative law binding the king as well as the subjects. Both in Hindu law and Muslim law, the rulers themselves administered justice as far as possible and the rest was done by the exceptionally learned and honest judges. The most significant recent trend has been an assertion on the part of the court that it has a power to grant compensation. The principle of personal liability of public servants for wrongs done to citizens is already a part of Indian law based on English case laws.



Presently State liability in India is defined by the Article 300(1) of the Constitution that originated from Section 176 of the Government of India Act, 1935. This could be traced back from the Section 32 of the Government of India Act, 1915, the genesis of which can be found in Section 65 of the Government of India Act, 1858. It will thus be seen that by the chain of enactment beginning with the Act of 1858, the Government of India and Government of each State are in line of succession of the East India Company. In other words, the liability of the Government is the same as that of the East India Company before, 1858.

### **7. Sovereign Functions:**

Sovereign functions are those actions of the state for which it is not answerable in any court of law. For instance, acts such as defence of the country, raising and maintaining armed forces, making peace or war, foreign affairs, acquiring and retaining territory, are functions which are indicative of external sovereignty and are political in nature. Therefore, they are not amenable to jurisdiction of ordinary civil court. The State is immune from being sued, as the jurisdiction of the courts in such matters is impliedly barred.

The distinction between sovereign and non-sovereign functions was considered at some length in **N. Nagendra Rao v. State of AP**. All the earlier Indian decisions on the subject were referred to. The court enunciated the following legal principles, in its judgment:

In the modern sense, the distinction between sovereign or non-sovereign power thus does not exist. It all depends on the nature of the power and manner of its exercise. Legislative supremacy under the Constitution arises out of constitutional provisions. The legislature is free to legislate on topics and subjects carved out for it. Similarly, the executive is free to implement and administer the law. A law made by a legislature may be bad or may be ultra vires, but, since it is an exercise of legislative power, a person affected by it may challenge its validity but he cannot approach a court of law for negligence in making the law. Nor can the Government, in exercise of its executive action, be sued for its decision on political or policy matters. It is in public interest that for acts performed by the State, either in its legislative or executive capacity, it should not be answerable in torts. That would be illogical and impractical. It would be in conflict with even modern notions of sovereignty.

### **Pre-Constitution Judicial Decisions:**

#### **1. Peninsular & Oriental Steam Navigation Company v Secretary :**

A consideration of the pre-Constitution cases of the Government's liability in tort begins with the judgment of the Supreme Court of Calcutta in the case. **P. & O. Steam Navigation Co. v. Secretary of State**.

The principle of this case holds that if any act was done in the exercise of sovereign functions, the East India Company or the State would not be liable. It drew quite a clear distinction between the sovereign and non-sovereign functions of the state.

As the facts of the case go, a servant of the plaintiff-company was proceeding on a highway in Calcutta, driving a carriage which was drawn by a pair of horses belonging to the plaintiff. He met with an accident, caused by negligence of the servants of the Government. For the loss caused by the accident, the plaintiff claimed damages against the Secretary of State for India.

The Supreme Court observed that the doctrine that the 'King can do no wrong', was applicable to the East India Company. The company would have been liable in such cases and the Secretary of State was thereafter also liable. This arose out of the section 65, Government of India Act, 1858, which equated the liability of the Secretary of State for India with that of the East India Company. Distinguishing between sovereign and non-sovereign functions it was held that if a tort were committed by a public servant in the discharge of sovereign functions, no action would lie against the Government – e.g. if the tort was committed while carrying on hostilities or seizing enemy property as prize.

This doctrine of immunity, for acts done in the exercise of sovereign functions, was applied by the Calcutta High Court in **Nobin Chander Dey v. Secretary of State**. The plaintiff in this case contended that the Government had made a contract with him for the issue of a licence for the sale of ganja and had committed



breach of the contract. The High Court held that upon the evidence, no breach of contract had been proved. Secondly even if there was a contract, the act had been done in exercise of sovereign power and was thus not actionable.

**Secretary of State v. Hari Bhanji**, In this case, the Madras High Court held that State immunity was confined to acts of State. In the P & O Case, the ruling did not go beyond acts of State, while giving illustrations of situations where the immunity was available.

It was defined that Acts of State, are acts done in the exercise of sovereign power, where the act complained of is professedly done under the sanction of municipal law, and in exercise of powers conferred by law. The mere fact that it is done by the sovereign powers and is not an act which could possibly be done by a private individual does not oust the jurisdiction of the civil court.

The Madras judgment in Hari Bhanji holds that the Government may not be liable for acts connected with public safety, even though they are not acts of State. This view was re-iterated in Ross v. Secretary of State. The Allahabad High Court took a similar view in Kishanchand v. Secretary of State.

However, in Secretary of State v. Cockraff, making or repairing a military road was held to be a sovereign function and the Government was held not liable, for the negligence of its servants in the stacking of gravel on a road resulting in a carriage accident that injured the plaintiff.

### **Post Constitution Judicial Decisions**

**State of Haryana v. Santra**, the ratio of this case was on the principles of state liability for negligence. Here it was clearly established that the doctor while performing the operation was acting as a government servant and acting in the course of employment of the government. Hence when there was negligence, it amounted to acting in bad faith, and so the defence of sovereign immunity could not be used by the state. Moreover it was also held that such negligence which could have been perceived by a professional who had a duty to do so should take into consideration these matters and cannot escape liability by claiming defence of consent by the petitioner.

The respondent in the above case was a poor lady who went under a sterilization operation at the General Hospital, Gurgaon, as she already had seven children and wanted to take advantage of the family planning scheme launched by the State Government of Haryana. Smt. Santra was informed that she would not conceive in future. Smt. Santra approached the Chief Medical Officer, Gurgaon, for her sterilization in 1988. But she gave birth to a female child. This led her to file a suit claiming Rs. 2 lakhs as damages for medical negligence due to “failed sterilization” which was decreed for a sum of Rs. 54,000/- with interest at the rate of 12 per cent per annum from the date of institution of the suit till the payment of the decretal amount. Two appeals were filed against this decree in the court of District Judge, Gurgaon, which were disposed of by Addl. District Judge, Gurgaon, by a common judgment dated 10.5.1999. Both the appeals - one filed by the State of Haryana and the other by Smt. Santra were dismissed. The second appeal filed by the State of Haryana was summarily dismissed by the Punjab & Haryana High Court on 3.8.1999.

There are two major issues involved in the case. One is that there was negligence on the part of the doctor who operated on her as the operation was a failure. Moreover as the operation took place in a Government Hospital, the state should be vicariously liable for the negligent act of its servant in the course of employment. This law also deals with the Hindu Adoptions and Maintenance act, 1956, Ss.20 and 23. the principle involved for the above claim is the vicarious liability of the state for the negligence of its doctors.

In reply to the claim of compensation of Rs. 2 lakhs by the respondent, the officers defending the state argued that during the time of the operation only the right Fallopian tube was operated on and the left tube was left untouched. The appellants also argued that the negligence on the part of the doctors would not make the state vicariously liable and that the damages paid to her for the maintenance of the child could not be decreed as there was no element of tort involved. It was further pleaded that Smt. Santra had herself put her thumb impression on a paper containing a recital that in case the operation was not successful, she

would not claim any damages. It was pleaded that she was estopped from raising the plea of negligence or from claiming damages for an unsuccessful sterilization operation from the State.

After the District Court dismissed the matter giving a compensation of Rs 54,000 and an interest rate of 12% per annum, the State filed a suit in the Supreme Court challenging the decision. Due to the failure of the operation and the conceivment of the child, the respondent had filed a suit claiming for damages worth Rs. 2 lakhs for the maintenance of the child and herself as she already as seven children. The respondent claimed that if she had offered herself for complete sterilization operation, both the Fallopian tubes should have been operated upon. The doctor who performed the operation acted in the most negligent manner.

Moreover she also stated that as the operation was carried out in a government hospital and the doctor being a government servant, the state was vicariously liable for the act of the doctor as a servant of the State.

**Judgment:**

The explanation given by the appellants for absence of state liability was rejected by the trial court which the suit for a sum of Rs. 54,000 with pendate lite and future interest at 12% per annum. The decision was confirmed by the Appellant Court and State High Court. The trial court as also the lower appellate court both recorded concurrent findings of fact that the sterilisation operation performed upon Smt. Santra was not 'complete' as in that operation only the right Fallopian Tube was operated upon while the left Tube was left untouched. The courts were of the opinion that this exhibited negligence on the part of the Medical Officer who performed the operation. Smt. Santra, in spite of the unsuccessful operation, was informed that sterilisation operation was successful and that she would not conceive any child in future. The plea of estoppel raised by the defendants was also rejected. The amount of Rs. 54,000/- which has been decreed by the courts below represents the amount of expenses which Smt. Santra would have to incur at the rate of Rs. 2,000/- per annum in bringing up the child up to the age of puberty.

Having regard to the above facts the court said that Smt. Santra was entitled to full compensation from the State Government and appeal was dismissed but without any order as to cost.

**Absolute liability & strict liability**

## STRICT LIABILITY

- Strict liability means
- liability without fault

i.e., without intention or negligence.

(the defendant is held liable without fault.)

Also known as “**NO fault liability**” which was evolved in **Rylands vs. Fletcher case**.

## ABSOLUTE LIABILITY

- It is the application of Strict Liability but without the exceptions
  - Absolute liability is a standard of legal liability found in tort and criminal law of various legal jurisdictions
- Evolved in the famous case  
“**M.C. Metha vs. Union of India**” in 1987

In certain situations, a person is held liable for the damages caused by his actions even when the actions are done without any ill intention or negligence on account of equity and justice. For example, if a person keeps a lion as a pet and despite of all the precautions the lion escapes the cage and kills someone. In this case, the owner of the lion will be liable even though he had no ill intention to cause death and had taken all the precautions to keep the lion in the cage. This seems just because the damage happened only because he brought a dangerous thing on his property. He was also aware of the consequences if the lion escapes the cage and so he should be made liable if it escapes and causes damage.

This principle of holding a person liable for his actions without any kind of wrong doing on his part is called the principle of absolute liability or no fault liability. This principle was first upheld in the case of **Ryland vs Fletcher** by the Privy Council in 1868. However, later on some exceptions to this were also established due to which "strict liability" is considered a more appropriate name for this principle. In this case, the defendant hired contractors to build a reservoir over his land for providing water to his mill. While digging, the contractors failed to observe some old disused shafts under the site of the reservoir that lead to plaintiff's mine on the adjoining land. When water was filled in the reservoir, the water flooded the mine through the shafts. The plaintiff sued the defendant. The defendant pleaded that there was no intention and since he did not know about the shafts, he was not negligent even though the contractors were. Even so, he

was held liable. J Blackburn observed that when a person, for his own purposes, brings to his property anything that is likely to cause a mischief if it escapes, must keep it at his peril and if it escapes and causes damage, he must be held liable. He can take the defence that the thing escaped due to an act of the plaintiff or due to vis major (act of God) but since nothing of that sort happened here, then it is unnecessary to inquire what excuse would be sufficient.

To this rule promulgated by J Blackburn, another requirement was added by the Court of Exchequer Chamber, that the use must be a non-natural use of land as was the case in Ryland vs Fletcher itself. For example, growing of regular trees is a natural use but growing poisonous trees is not. Keeping dogs as pet is a natural use but keeping wild beasts is not. Thus, the conditions when this rule will apply are –

- **The thing kept must be dangerous** - The thing kept on the land must be as such as is likely to cause mischief if it escapes. For example, storing gas or explosives or wild beasts are all likely to cause damage if they escape.
- **The thing must escape** - If the thing is within the boundary of the defendant's land, he is not liable. The thing must escape out of his land for him to be liable. In **Crowhurst vs Amersham Burial Board 1878**, branches of a poisonous tree were hanging outside the land of the defendant. Plaintiff's cattle ate them and died. Defendant was held liable because protrusion of branches outside his property were considered as escaping from his property. However, in **Ponting vs Noakes 1994**, when the plaintiff's horse intruded over his boundary and ate poisonous leaves of the defendant's tree, he was not held liable because there was no escape.
- **The thing must be a non natural use of land** - The use must not be an ordinary use of the land. There must be a special purpose because of which it brings additional danger to other. In **Noble vs Harrison 1926**, a branch of a tree growing on defendant's land broke and fell on plaintiff's vehicle. It was held that growing regular trees is not a non natural use of land and the branch fell because of an inherent problem and not because of any negligence of the defendant and so he was not liable.

As mentioned before the following are exceptions or defenses against this rule –

- **Plaintiff's own default** - If the thing escapes due to plaintiff's fault the defendant cannot be held liable. In **Eastern and South African Telegraph Co. Ltd. v Capetown Tramway Co 1902**. The plaintiff's submarine cable transmissions were disturbed by escape of electric current from defendant's tramway. It was held that since the current was not causing any problem to regular users and it was causing problem to the cables only because they were too sensitive and so the defendant cannot be held liable. One cannot increase his neighbor's liabilities by putting his land to special uses.
- **Act of God** - In circumstances where no human has control over, no one can be held liable. In **Nichols vs Marsland 1876**, the defendant created artificial lakes to store rainwater. In that particular year, there were exceptionally heavy rains, which caused the embankments to break causing floods, which broke defendant's bridges. It was held that since there was no negligence on the part of the defendant and the flood happened only because of rains so heavy that nobody could imagine, the defendant was not liable.
- **Consent of the plaintiff** - If the plaintiff has consented for the accumulation of the dangerous thing, he cannot hold the defendant liable. This is also the case when an activity is done for mutual benefit. For example, A lives on the ground floor and the defendant lives on the floor above A's. Now, a water tank is built by the defendant to supply water for both of them. The defendant will not be held liable for leakage of water from the tank.



- **Act of third party** - When a third party, who is not an employee or a servant or a contractor of the defendant is responsible for causing the dangerous thing to escape, the defendant will not be held liable for the damage. In **Box vs Jubb 1879**, the overflow from the defendant's reservoir was caused by the blocking of a drain by some strangers. The defendant was held not liable. However, if such act can be foreseen, this defence cannot be pleaded because the defendant must take precautions to prevent such an act. In **M.P. Electricity Board vs Shail Kumar AIR 2002**, a person was killed by a live electric wire lying on the road. SC applied the rule of strict liability and held that the defence of act of stranger is not applicable because snapping of wire can be anticipated and the Electricity Board should have cut off the current as soon as the wire snapped.
- **Statutory Authority** - When an act is approved by the legislature or is done on the direction of the legislature, it is a valid defence for an action of tort even when the rules of Ryland vs Fletcher apply. However, it is not application when there is negligence.

### Position in India

The principle of strict liability is applicable in India as well. For example, Motor Vehicles Act 1938, recognizes no fault liability. Similarly, the liability of a public carrier such as railways has also been increased from that of a bailee to an insurer. However, there has been a deviation in the scope of this rule. Depending on the situation, its scope has been increased as well as decreased by the courts. For example, in **Madras Railway Co. vs Zamindar 1974**, the water collected in a pond for agricultural purposes escaped and caused damage to the railway track and bridges. Here, the application of this rule was restricted because the collection of water in such a way is a necessity in Indian conditions and so it is a natural use of the land. This mechanism to store rainwater is used throughout the country and since ages. Therefore, the defendant was not held liable.

A landmark case in this respect was the case of **M C Mehta vs Union of India AIR 1987**. In this case, oleum gas from a fertilizer plant of Shriram Foods and Fertilizers leaked and caused damage to several people and even killed one advocate. In this case, the rule of **Ryland vs Fletcher** was applied. However, the company pleaded sabotage as a defence. SC went one step further and promulgated the rule of Absolute Liability. It observed that the rule of **Ryland vs Fletcher** was a century old and was not sufficient to decide cases as science has advanced a lot in this year. If British laws haven't progressed, Indian courts are not bound to follow their law and can evolve the laws as per the requirements of the society. It held that an enterprise that engages in dangerous substances has an absolute responsibility to ensure the safety of the common public. It is only the company that can know the consequences of its activities and so it must take all the steps to prevent any accident. If, even after all precautions, accident happens, the company still should be made absolutely liable for the damages. The reason being that the company has a social obligation to compensate the people who suffered from its activity. SC also laid down that the measure of compensation should depend on the magnitude and capacity of the enterprise so that it can have a deterrent effect.

## Defamation

### Elements of Defamation

Defamation occurs when the defendant makes a defamatory statement of and concerning the plaintiff with publication to a third party. In matters of public concern, there are additional requirements of fault and falsity. Damages only need to be proven in certain types of slander cases; otherwise, damages are presumed.

1. **Slander (Defamatory statement)**: A statement that will adversely affect the plaintiff's reputation. The statement must be either alleging factual information or stating an opinion that is likely to be



interpreted as having a factual basis (e.g., *merely calling someone mean and nasty would not generally be considered a defamatory statement*).

2. **Libel(Publication):** For publication to occur, someone other than the plaintiff (a third party) must hear or read the defamatory statements. Intent is not a factor; publication can occur through the defendant's negligence.

**Matters of public concern:** Can either involve defamatory statements made about public figures and officials (e.g., *famous actors or politicians*) or private figures regarding events that are a public concern (e.g., *a private citizen involved in a public demonstration*). In addition to the normal requirements for a defamation claim, matters of public concern have:

- **Fault:** The plaintiff must prove that the defendant acted with a certain level of fault. For public figures and officials, the standard is reckless disregard for the truth. For private figures regarding events that are a public concern, a simple negligence standard applies.
- **Falsity:** The plaintiff must prove that the defamatory statements are false.

**Damages requirements for slander vs. libel:**

**Slander** is spoken defamation whereas **libel** is defamation in a more permanent format (usually written). Slander per se is a special category of slander where there is no obligation for the plaintiff to prove damages. **Slander per se** is based on common law and includes statements that are about a plaintiff's profession, impute unchastity to a woman, imply that the plaintiff has a loathsome disease, or accuse the plaintiff of a crime of moral turpitude. In all other slander claims, the plaintiff must prove damages, specifically economic harm. Libel claims do not require proof of damages.

**Defences to Defamation**

There are five major defenses to defamation.

1. **Truth:** Always a defense in matters of private concern. For matters of public concern, the plaintiff has the burden to prove falsity as an element of the claim.
2. **Consent:** A defense in all defamation matters. If the defendant has permission to make the defamatory statements, the plaintiff cannot support a valid claim.
3. **Humor:** There is a first amendment defense related to humor if the defendant can prove that the audience believed the statements were made in jest.
4. **Absolute privilege:** Applies in very limited circumstances. In general, absolute privilege exempts persons from liability for potentially defamatory statements made:
  - during judicial proceedings
  - by high government officials
  - by legislators during legislative debates
  - during political broadcasts or speeches, and
  - in between spouses.
5. **Qualified privilege:** Other types of communications are subject to what is called a qualified privilege, meaning that the person making the allegedly defamatory statement may have had some right to make that statement.

If a qualified privilege applies to a statement, it means that the person suing for defamation must prove that the person who made the defamatory statement acted intentionally, recklessly, or with malice, hatred, spite, ill will or resentment, depending on your state's law.

Just some of the statements for which a qualified privilege applies are:-

- statements made in governmental reports of official proceedings
- statements made by lower government officials such members of town or local boards
- citizen testimony during legislative proceedings
- statements made in self-defense or to warn others about a harm or danger
- certain types of statements made by a former employer to a potential employer regarding the employee, and
- published book or film reviews that constitute fair criticism.

The employer review qualified privilege is particularly noteworthy. In order to avoid defamation claims, some employers these days refuse to confirm any details about former employees other than their dates of employment. But certain types of negative statements might fit in under the qualified privilege category, If, for example, the employer fired the employee for theft, a statement about that to a potential employer might qualify as a statement made to warn others about a harm or danger (i.e., the danger of hiring someone who might steal from you).

### **Malicious prosecution**

Malicious prosecution is a common law intentional tort, while like the tort of abuse of process, its elements include:-

- (1) intentionally (and maliciously) instituting and pursuing (or causing to be instituted or pursued) a legal action (civil or criminal) that is
- (2) brought without probable cause and
- (3) dismissed in favour of the victim of the malicious prosecution.

In some jurisdictions, the term "malicious prosecution" denotes the wrongful initiation of criminal proceedings, while the term "malicious use of process" denotes the wrongful initiation of civil proceedings.

Criminal prosecuting attorneys and judges are protected from tort liability for malicious prosecution by doctrines of prosecutorial immunity and judicial immunity. Moreover, the mere filing of a complaint cannot constitute an abuse of process. The parties who have abused or misused the process, have gone beyond merely filing a lawsuit. The taking of an appeal, even a frivolous one, is not enough to constitute an abuse of process. The mere filing or maintenance of a lawsuit, even for an improper purpose, is not a proper basis for an abuse of process action.

Declining to expand the tort of malicious prosecution, a unanimous California Supreme Court in the case of *Sheldon Appel Co. v. Albert & Olier*, 47 Cal. 3d 863, 873 (1989) observed: "While the filing of frivolous lawsuits is certainly improper and cannot in any way be condoned, in our view the better means of addressing the problem of unjustified litigation is through the adoption of measures facilitating the speedy resolution of the initial lawsuit and authorizing the imposition of sanctions for frivolous or delaying conduct within that first action itself, rather than through an expansion of the opportunities for initiating one or more additional rounds of malicious prosecution litigation after the first action has been concluded."

### **Wrongful restraint and wrongful confinement**

#### **Definition of wrongful restraint:-**

The offence of wrongful restraint is defined by section 339 of the Indian Penal Code. According to this section whoever voluntarily obstructs any person so as to prevent that person from proceeding in any direction in which that person has a right to proceed, is said wrongfully to restrain that person.

But there is one exception to this offence. The obstruction of a private way over land or water which a person in good faith believes himself to have a lawful right to obstruct, is not an offence within the meaning of this section.

To constitute the offence of wrongful restraint there must have the following three ingredients:-

- i) The offender obstructed the victim voluntarily;
- ii) The obstruction prevented the victim from proceeding in any particular direction;
- iii) The victim had every right to proceed to that particular direction.

**Definition of wrongful confinement:-**

The offence of wrongful confinement has been defined by section 340 of the Indian Penal Code. According to this section whoever wrongfully restrains any person in such manner as to prevent that person from proceeding beyond certain circumscribing limits, is said wrongfully to confine that person.

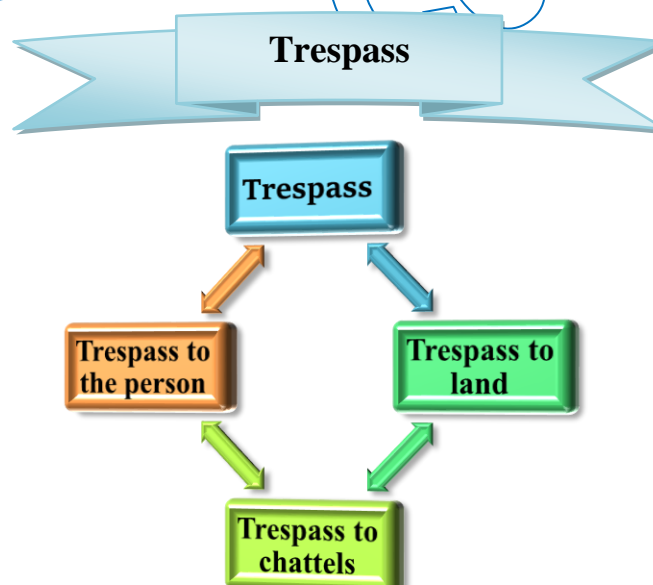
The essential ingredients of the offence of wrongful confinement are as follows:-

- i) The offender wrongfully restrains a person;
- ii) The victim was prevented from proceeding beyond certain circumscribing limits due to such restraint;
- iii) The victim had every right to proceed beyond that circumscribing limit.

**Distinction between wrongful restraint and wrongful confinement;**

The offence of wrongful restraint differs from the offence of wrongful confinement in the following manners:-

- i) Offence of wrongful restraint is the genus, whereas the offence of wrongful confinement is a species. Wrongful confinement is severe form of wrongful restraint.
- ii) In the offence of wrongful restraint, the offender obstructs the victim from proceeding to any particular direction towards which he had right to proceed. But in the offence of wrongful confinement, the offender obstructs the victim from proceeding beyond certain circumscribing limits towards which he had right to proceed.
- iii) In the offence of wrongful restraint, the restraint is partial; the victim could proceed towards any other direction than towards the direction he was restrained. But in the offence of wrongful confinement, the restraint is total the victim could not proceed towards any direction.
- iv) Wrongful confinement is a more serious offence than wrongful restraint.



**1. Trespass to the person**

There are three types of trespass, the first of which is trespass to the person. Whether intent is a necessary element of trespass to the person varies by jurisdiction. Under English decision, **Letang v Cooper**, intent is required to sustain a trespass to the person cause of action; in the absence of intent, negligence is the appropriate tort. In other jurisdictions, gross negligence is sufficient to sustain a trespass to the person,

such as when a defendant negligently operates an automobile and strikes the plaintiff with great force. "Intent is to be presumed from the act itself." Generally, trespass to the person consists of three torts: assault, battery, and false imprisonment.

**a. Assault**

Under the statutes of various common law jurisdictions, assault is both a crime and a tort. Generally, a person commits criminal assault if he purposely, knowingly, or recklessly inflicts bodily injury upon another; if he negligently inflicts bodily injury upon another by means of dangerous weapon; or if through physical menace, he places another in fear of imminent serious bodily injury. A person commits tortious assault when he engages in "any act of such a nature as to excite an apprehension of battery [bodily injury]". In some jurisdictions, there is no requirement that actual physical violence result—simply the "threat of unwanted touching of the victim" suffices to sustain an assault claim. Consequently, in *R v Constanza*, the court found a stalker's threats could constitute assault. Similarly, silence, given certain conditions, may constitute an assault as well. However, in other jurisdictions, simple threats are insufficient; they must be accompanied by an action or condition to trigger a cause of action.

Incongruity of a defendant's language and action or of a plaintiff's perception and reality may vitiate an assault claim. In *Tuberville v Savage*, the defendant reached for his sword and told the plaintiff that "if it were not assize-time, I would not take such language from you". In its American counterpart, *Commonwealth v. Eyre*, the defendant shouted "if it were not for your gray hairs, I would tear your heart out". In both cases, the courts held that despite a threatening gesture, the plaintiffs were not in immediate danger. The actions must give the plaintiff a reasonable expectation that the defendant is going to use violence; a fist raised before the plaintiff may suffice; the same fist raised behind the window of a police cruiser will not.

**b. Battery**

Battery is "any intentional and unpermitted contact with the plaintiff's person or anything attached to it and practically identified with it". The elements of battery common law vary by jurisdiction. A general rule to determine liability for battery:

An act which, directly or indirectly, is the legal cause of a harmful contact with another's person makes the actor liable to the other, if:

- (a) the act is done with the intention of bringing about a harmful or offensive contact or an apprehension thereof to the other or a third person, and
- (b) contact is not consented to by the other or the other's consent thereto is procured by fraud or duress, and
- (c) the contact is not otherwise privileged.

Battery torts under Commonwealth precedent are subjected to a four point test to determine liability:

1. *Directness*. Is the sequence of events connecting initial conduct and the harmful contact an unbroken series?
2. *Intentional Act*. Was the harmful contact the conscious object of the defendant? Did the defendant intend to cause the resulting harm? Though the necessity of intent remains an integral part of Commonwealth battery, some Commonwealth jurisdictions have moved toward the American jurisprudence of "substantial certainty". If a reasonable person in the defendant's position would apprehend the substantial certainty of the consequences of his actions, whether the defendant intended to inflict the injuries is immaterial.
3. *Bodily Contact*. Was there active (as opposed to passive) contact between the bodies of the plaintiff and the defendant?
4. *Consent*. Did the plaintiff consent to the harmful contact? The onus is on the defendant to establish sufficient and effective consent.

**c. False imprisonment**

False imprisonment is defined as "unlawful obstruction or deprivation of freedom from restraint of movement". In some jurisdictions, false imprisonment is a tort of strict liability: no intention on the behalf of the defendant is needed, but others require an intent to cause the confinement. Physical force, however,

is not a necessary element, and confinement need not be lengthy; the restraint must be complete, though the defendant needn't resist.

A tort distills false imprisonment liability analysis into a four-prong test:

1. The defendant intends to confine the plaintiff. (This is not necessary in Commonwealth jurisdictions.)
2. The plaintiff is conscious of the confinement. (Prosser rejects this requirement.)
3. The plaintiff does not consent to the confinement.
4. The confinement was not otherwise privileged.

### Defences

#### a. Child correction

Depending on the jurisdiction, corporal punishment of children by parents or instructors may be a defense to trespass to the person, so long as the punishment was "reasonably necessary under the circumstances to discipline a child who has misbehaved" and the defendant "exercised prudence and restraint". Unreasonable punishments, such as violently grabbing a student's arm and hair, have no defense.

#### b. Consent

Denning, LJ: "In an ordinary fight with fists there is no cause of action to either of [the combatants] for any injury suffered."

Perhaps the most common defense for the torts of trespass to the person is that of *volenti non fit injuria*, literally, "to a willing person, no injury is done", but shortened to "consensual privilege" or "consent". If a plaintiff participates in a sporting activity in which physical contact is ordinary conduct, such as rugby, they are considered to have consented. This is not the case if the physical contact went beyond what could be expected, such as the use of hand gun during a fistfight, as in **Andrepoint v. Naquin**, or where the injuries were suffered not from the plaintiff's participation in the sport but inadequate safety measures taken, as in **Watson v British Boxing Board of Control Ltd**. Where the plaintiff and defendant voluntarily agree to participate in a fight, some jurisdictions will deny relief in civil action, so long as the injuries caused are proportionate: "in an ordinary fight with fists there is no cause of action to either of [the combatants] for any injury suffered". Other jurisdictions refuse to recognize consent as a defense to mutual combat and instead provide relief under the doctrine of comparative negligence.

Medical care gives rise to many claims of trespass to the person. A physician, "treating a mentally competent adult under non-emergency circumstances, cannot properly undertake to perform surgery or administer other therapy without the prior consent of his patient". Should he do so, he commits a trespass to the person and is liable to damages. However, if the plaintiff is informed by a doctor of the broad risks of a medical procedure, there will be no claim under trespass against the person for resulting harm caused; the plaintiff's agreement constitutes "informed consent". In those cases where the patient does not possess sufficient mental capacity to consent, doctors must exercise extreme caution. In **F v West Berkshire Health Authority**, the House of Lords instructed British physicians that, to justify operating upon such an individual, there :-

- (1) must be a necessity to act when it is not practicable to communicate with the assisted person, and
- (2) the action taken must be such as a reasonable person would in all the circumstances take, acting in the best interests of the assisted person".

#### c. Self-defence / defence of others / defence of property

Self-defense, or non-consensual privilege, is a valid defense to trespasses against the person, assuming that it constituted the use of "reasonable force which they honestly and reasonably believe is necessary to protect themselves or someone else, or property". The force used must be proportionate to the threat, as ruled in **Cockcroft v Smith**.

#### 2. Trespass to chattels

Trespass to chattels, also known as trespass to goods or trespass to personal property, is defined as "an intentional interference with the possession of personal property proximately causing injury". While originally a remedy for the aspiration of personal property, the tort grew to incorporate any interference with the personal property of another. In some jurisdictions, such as the United Kingdom, trespass to



chattels has been codified to clearly define the scope of the remedy; in most jurisdictions, trespass to chattel remains a purely common law remedy, the scope of which varies by jurisdiction.

Generally, trespass to chattels possesses three elements:

1. *Lack of consent.* The interference with the property must be non-consensual. A claim does not lie if, in acquiring the property, the purchaser consents contractually to certain access by the seller. "Any use exceeding the consent" authorized by the contract, should it cause harm, gives rise to a cause for action.
2. *Actual harm.* The interference with the property must result in actual harm. The threshold for actual harm varies by jurisdiction. In California, for instance, an electronic message may constitute a trespass if the message interferes with the functioning of the computer hardware, but the plaintiff must prove that this interference caused actual hardware damage or actual impaired functioning.
3. *Intentionality.* The interference must be intentional. What constitutes intention varies by jurisdiction, however, the Restatement (Second) of Torts indicates that "intention is present when an act is done for the purpose of using or otherwise intermeddling with a chattel or with knowledge that such an intermeddling will, to a substantial certainty, result from the act", and continues: "it is not necessary that the actor should know or have reason to know that such intermeddling is a violation of the possessory rights of another".

Remedies for trespass to chattel include damages, liability for conversion, and injunction, depending on the nature of the interference.

### Traditional applications

Trespass to chattels typically applies to tangible property and allows owners of such property to seek relief when a third party intentionally interferes or intermeddles in the owner's possession of his personal property. "Interference" is often interpreted as the "taking" or "destroying" of goods, but can be as minor as "touching" or "moving" them in the right circumstances. In *Kirk v Gregory*, the defendant moved jewelry from one room to another, where it was stolen. The deceased owner's executor successfully sued her for trespass to chattel. Furthermore, personal property, as traditionally construed, includes living objects, except where property interests are restricted by law. Thus animals are personal property, but organs are not.

### 3. Trespass to land

Trespass to land involves the "wrongful interference with one's possessory rights in real property." It is not necessary to prove that harm was suffered to bring a claim, and is instead actionable *per se*. While most trespasses to land are intentional, British courts have held liability holds for trespass committed negligently. Similarly, some American courts will find liability for unintentional intrusions only where such intrusions arise under circumstances evincing negligence or involve a highly dangerous activity. Exceptions exist for entering land adjoining a road unintentionally (such as in a car accident), as in *River Wear Commissioners v Adamson*. In some jurisdictions trespass while in possession of a firearm, which may include a low-power air weapon without ammunition, constitutes a more grave crime of armed trespass.

### Defences

There are several defenses to trespass to land; license, justification by law, necessity and *jus tertii*. License is express or implied permission, given by the possessor of land, to be on that land. These licenses are irrevocable unless there is a flaw in the agreement or it is given by a contract. Once revoked, a license-holder becomes a trespasser if they remain on the land. Justification by law refers to those situations in which there is statutory authority permitting a person to go onto land, such as the England and Wales' Police and Criminal Evidence Act 1984, which allows the police to enter land for the purposes of carrying out an arrest, or the California state constitution, which permits protests on grocery stores and strip malls, despite their presenting a general nuisance to store owners and patrons. *Jus tertii* is where the defendant can prove that the land is not possessed by the plaintiff, but by a third party, as in *Doe d Carter v Barnard*. This defense is unavailable if the plaintiff is a tenant and the defendant a landlord who had no right to give the plaintiff his lease (e.g. an illegal apartment rental, an unauthorized sublet, etc.). Necessity is the situation in which it is vital to commit the trespass; in *Esso Petroleum Co v Southport Corporation*, the captain of a ship committed trespass by allowing oil to flood a shoreline. This was necessary to protect his ship and crew, however, and the defense of necessity was accepted. Necessity does not, however, permit a defendant to enter another's property when alternative, though less attractive, courses of action exist.

**Unit-IV Negligence**

1. Basic concepts
- 2 Theories of negligence
3. Contributory negligence
4. Special situations of negligence – Hazardous Substance and Machinery product liability, liability towards ultimate transferee.

**Nuisance**

1. Definition essentials and types
- 2 Acts of obstructions (view and formation of queues)
3. Absolute and Strict liability
4. Legal remedies
5. Award of damages
6. Injunction
7. Extra-legal remedies

**Negligence**

In everyday usage, the word 'negligence' denotes mere carelessness. In legal sense it signifies failure to exercise standard of care which the doer as a reasonable man should have exercised in the circumstances. In general, there is a legal duty to take care when it was reasonably foreseeable that failure to do so was likely to cause injury. Negligence is a mode in which many kinds of harms may be caused by not taking such adequate precautions.

According to Winfield and Jolowicz- Negligence is the breach of a legal duty to take care which results in damage, undesired by the defendant to the plaintiff.

In **Blyth v. Birmingham Water Works Co.**, (1856) LR 11 Exch. 781; Alderson, B. defined negligence as, negligence is the omission to do something which a reasonable man..... would do, or doing something which a prudent or reasonable man would not do.

In **Lochgelly Iron & Coal Co. v. Mc Mullan**, 1934 AC 1; Lord Wright said, negligence means more than headless or careless conduct, whether in commission or omission; it properly connotes the complex concept of duty, breach and damage thereby suffered by the person to whom the duty was owing.

**Essentials of negligence:**

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

1. **Duty to take care:** One of the essential conditions of liability for negligence is that the defendant owed a legal duty towards the plaintiff. The following case laws will throw some light upon this essential element.

In **Grant v. Australian Knitting Mills Ltd.**, 1935 AC 85; the plaintiff purchased two sets of woolen underwear from a retailer and contacted a skin disease by wearing underwear. The woolen underwear contained an excess of sulphates which the manufacturers negligently failed to remove while washing them. The manufacturers were held liable as they failed to perform their duty to take care.

2. **Duty to whom:** **Donoghue v. Stevenson**, 1932 AC 562 carried the idea further and expanded the scope of duty saying that the duty so raised extends to your neighbour. Explaining so as to who is my neighbour Lord Atkin said that the answer must be “the persons who are so closely and directly affected by my act that I ought reasonably to have them in contemplation as being so affected when I am directing my mind to the acts or omissions which are called in question”.

3. **Duty must be towards the plaintiff:** It is not sufficient that the defendant owed a duty to take care. It must also be established that the defendant owed a duty of care towards the plaintiff. In **Bourhill v. Young**, 1943 AC 92; the plaintiff, a fishwife, alighted from a tram car. While she was being helped in putting her basket on her back, a motor-cyclist after passing the tram collided with a motor car at the distance of 15 yards on the other side of the tram and died instantly. The plaintiff could see neither the deceased nor the accident as the tram was standing between her and the place of accident. She had simply heard about the collision and after the dead body had been removed she went to the place and saw blood left on the road. Consequently, she suffered a nervous shock and gave birth to a still-born child of 8 months. She sued the representatives of the deceased motor-cyclist. It was held that the deceased had no duty of care towards the plaintiff and hence she could not claim damages.

4. **Breach of duty to take care:** Yet another essential condition for the liability in negligence is that the plaintiff must prove that the defendant committed a breach of duty to take care or he failed to perform that duty.

In **Municipal Corporation of Delhi v. Subhagwanti**, AIR 1966 SC 1750; a clock-tower in the heart of the Chandni Chowk, Delhi collapsed causing the death of a number of persons. The structure was 80 years old whereas its normal life was 40-45 years. The Municipal Corporation of Delhi having the control of the structure failed to take care and was therefore, liable.

In **Municipal Corporation of Delhi v. Sushila Devi**, AIR 1999 SC 1929; a person passing by the road died because of fall of branch of a tree standing on the road, on his head. The Municipal Corporation was held liable.

5. **Consequent damage or consequential harm to the plaintiff:** The last essential requisite for the tort of negligence is that the damage caused to the plaintiff was the result of the breach of the duty. The harm may fall into following classes:-

- physical harm, i.e. harm to body;
- harm to reputation;
- harm to property, i.e. land and buildings and rights and interests pertaining thereto, and his goods;
- economic loss; and mental harm or nervous shock.

In **Achutrao Haribhau Khodwa v. State of Maharashtra** (1996) 2 SCC 634; a cotton mop was left inside the body by the negligence of the doctor. The doctor was held liable.

**Defences for negligence:** In an action for negligence following defences are available:-

1. **Contributory negligence:** It was the Common law rule that anyone who by his own negligence contributed to the injury of which he complains cannot maintain an action against another in respect of it. Because he will be considered in law to be author of his wrong.

**Butterfield v. Forrester**, (1809) 11 East 60; the defendant had put a pole across a public thoroughfare in Durby, which he had no right to do. The plaintiff was riding that way at 8'O clock in the evening in August, when dusk was coming on, but the obstruction was still visible from a distance of 100 yards, he was riding violently, came against the pole and fell with the horse. It was held that the plaintiff could not claim damages as he was also negligent.

2. **Act of god or vis major**: It is such a direct, violent, sudden and irresistible act of nature as could not, by any amount of human foresight have been foreseen or if foreseen, could not by any amount of human care and skill, have been resisted. Such as, storm, extraordinary fall of rain, extraordinary high tide, earth quake etc.

In **Nichols v. Marsland**, (1875) LR 10 Ex.255; the defendant had a series of artificial lakes on his land in the construction or maintenance of which there had been no negligence. Owing to an exceptional heavy rain, some of the reservoirs burst and carried away four country bridges. It was held that, the defendant was not liable as the water escaped by the act of God.

3. **Inevitable accident**: Inevitable accident also works as a defence of negligence. An inevitable accident is that which could not possibly, be prevented by the exercise of ordinary care, caution and skill. it means accident physically unavoidable.

In **Brown v. Kendal**, (1859) 6 Cussing 292; the plaintiff's and defendant's dogs were fighting, while the defendant was trying to separate them, he accidentally hit the plaintiff in his eye who was standing nearby. The injury to the plaintiff was held to be result of inevitable accident and the defendant was not liable.

In **Holmes v. Mather**, (1875) LR 10 Ex.261, 267; a pair of horses were being driven by the groom of the defendant on a public highway. On account of barking of a dog, the horses started running very fast. The groom made best possible efforts to control them but failed. The horses knocked down the plaintiff who was seriously injured, it was held to be an inevitable accident and the defendant was not liable.

In **Stanley v. Powell**, (1891) 1 QB 86; the plaintiff and the defendant, who were members of a shooting party, went for pheasant shooting. The defendant fired at a pheasant, but the shot from his gun glanced off an oak tree and injured the plaintiff. It was held that the accident was an inevitable accident and the defendant was not liable.

### **Res ipsa loquitur-**

It means 'the things itself speaks'. When the accident explains only one thing and that is that the accident could not ordinarily occur unless the defendant had been negligent, the law raises a presumption of negligence on the part of the defendant.

**Hambrook v. Stokes Bors.** – Soon after parted with her children in a narrow street, a lady saw a lorry violently running down the narrow street. When told by some bystander that a child answering the description of one of her children had been injured, she suffered a nervous shock which resulted in her death. The defendant was held liable.

### **Contributory negligence**

When the plaintiff by his own want of care contributes to the damage caused by the negligence or wrongful conduct of the defendant, he is considered to be guilty of contributory negligence. This is a defence in which the defendant has to prove that the plaintiff failed to take reasonable care of his own safety and that was a contributing factor to harm.

**Rural Transport Service v. Bezzum Bibi (1980)** – The conductor of an overcrowded bus invited passengers to travel on the roof of the bus. The driver ignored the fact that there were passengers on the roof and tried to overtake a cart. As a result, a passenger was hit by a branch of tree, fell down, received injury and died. It was held that both the driver and the conductor were negligent towards the passengers,

there was also contributory negligence on the part of the passengers including the deceased, who took the risk of travelling on the roof of the bus.

**Yoginder Paul Chowdhury v. Durgadas (1972)** – The Delhi High Court has held that a pedestrian who tries to cross a road all of a sudden and is hit by a moving vehicle, is guilty of contributory negligence.

### Doctrine of alternative danger -

There may be certain circumstances when the plaintiff is justified in taking some risk where some dangerous situation has been created by the defendant. The plaintiff might become nervous by a dangerous situation created by the defendant and to save his person or property, he may take an alternative risk. If in doing so, the plaintiff suffered any damage, he will be entitled to recover from the defendant.

**Jones v. Boyce (1816)** – The plaintiff was a passenger of defendant's coach. The coach was driven so negligently that the plaintiff jumped off the bus fearing an accident and broke his leg. It was held that the plaintiff would be entitled to recover.

**Shayam Sunder v. State of Rajasthan (1974)** – Due to the negligence on the part of the defendants, a truck belonging to them caught fire. One of the occupants, Navneetlal, jumped out to save himself from the fire, he struck against a stone lying by the roadside and died. The defendants were held liable.

### Negligence in our laws

The Penal Code, 1860 –

- **s. 284** – If anyone has custody of poisonous substance and fails to guard against probable danger is punishable with 6 month or 1000 taka or with both.
- **s. 285** – If anyone acts rashly or negligently to endanger human life with fire or combustible substance is punishable with 6 month or 1000 taka or with both.
- **s. 286** – If anyone acts rashly or negligently to endanger human life with explosive substance is punishable with 6 month or 1000 taka or with both.
- **s. 287** – If anyone acts rashly or negligently to endanger human life with any machinery is punishable with 6 month or 1000 taka or with both.
- **s. 288** – If anyone in pulling down or repairing any building knowingly or negligently omits to guard against probable danger to human life, he will be punishable with 6 months or 1000 taka or with both.
- **s. 289** – If anyone knowingly or negligently omits to take such order with any animal in his possession as is sufficient to guard against any probable danger to human life or any probable danger or grievous hurt from such animal, shall be punished with 6 months or 1000 taka or with both.



Nuisance claims deal with infringement of property rights. Generally, the remedy for a nuisance claim is damages; however, injunctive relief is available in cases where damages are considered inadequate (e.g., *toxic fumes are creating a serious health risk to the surrounding community*).

The two types of nuisance are private nuisance and public nuisance. A private nuisance is a civil wrong; it is the unreasonable, unwarranted, or unlawful use of one's property in a manner that substantially interferes with the enjoyment or use of another individual's property, without an actual Trespass or physical invasion to the land. A public nuisance is a criminal wrong; it is an act or omission that obstructs, damages, or inconveniences the rights of the community.

#### 1. Public Nuisance

The term *public nuisance* covers a wide variety of minor crimes that threaten the health, morals, safety, comfort, convenience, or welfare of a community. Violators may be punished by a criminal sentence, a fine, or both. A defendant may also be required to remove a nuisance or to pay the costs of removal. For example, a ma



manufacturer who has polluted a stream might be fined and might also be ordered to pay the cost of cleanup. Public nuisances may interfere with public health, such as in the keeping of diseased animals or a malarial pond. Public safety nuisances include shooting fireworks in the streets, storing explosives, practicing medicine without a license, or harboring a vicious dog. Houses of prostitution, illegal liquor establishments, Gaming houses, and unlicensed prize fights are examples of nuisances that interfere with public morals. Obstructing a highway or creating a condition to make travel unsafe or highly disagreeable is examples of nuisances threatening the public convenience.

A public nuisance interferes with the public as a class, not merely one person or a group of citizens. No civil remedy exists for a private citizen harmed by a public nuisance, even if his or her harm was greater than the harm suffered by others; a criminal prosecution is the exclusive remedy. However, if the individual suffers harm that is different from that suffered by the general public, the individual may maintain a tort action for damages. For example, if dynamiting has thrown a large boulder onto a public highway, those who use the highway cannot maintain a nuisance action for the inconvenience. However, a motorist who is injured from colliding with the boulder may bring a tort action for personal injuries.

Some nuisances can be both public and private in certain circumstances where the public nuisance substantially interferes with the use of an individual's adjoining land. For example, Pollution of a river might constitute both a public and a private nuisance. This is known as a mixed nuisance.

## 2. **Private Nuisance**

A private nuisance is an interference with a person's enjoyment and use of his land. The law recognizes that landowners, or those in rightful possession of land, have the right to the unimpaired condition of the property and to reasonable comfort and convenience in its occupation.

Examples of private nuisances abound. Nuisances that interfere with the physical condition of the land include vibration or blasting that damages a house; destruction of crops; raising of a water table; or the pollution of soil, a stream, or an underground water supply. Examples of nuisances interfering with the comfort, convenience, or health of an occupant are foul odors, noxious gases, smoke, dust, loud noises, excessive light, or high temperatures. Moreover, a nuisance may also disturb an occupant's mental tranquility, such as a neighbor who keeps a vicious dog, even though an injury is only threatened and has not actually occurred.

An attractive nuisance is a danger likely to lure children onto a person's land. For example, an individual who has a pool on his property has a legal obligation to take reasonable precautions, such as erecting a fence, to prevent foreseeable injury to children.

Trespass is sometimes confused with nuisance, but the two are distinct. A trespass action protects against an invasion of one's right to exclusive possession of land. If a landowner drops a tree across her neighbor's boundary line she has committed a trespass; if her dog barks all night keeping the neighbor awake, she may be liable for nuisance.

### **Legal Responsibility**

A private nuisance is a tort, that is, a civil wrong. To determine accountability for an alleged nuisance, a court will examine three factors: the defendant's fault, whether there has been a substantial interference with the plaintiff's interest, and the reasonableness of the defendant's conduct.

#### **Fault -**

Fault means that the defendant intentionally, negligently, or recklessly interfered with the plaintiff's use and enjoyment of the land or that the defendant continued her conduct after learning of actual harm or substantial risk of future harm to the plaintiff's interest. For example, a defendant who continues to spray chemicals into the air after learning that they are blowing onto the plaintiff's land is deemed to be intending that result. Where it is alleged that a defendant has violated a statute, proving the elements of the statute will establish fault.

#### **Substantial Interference-**

The law is not intended to remedy trifles or redress petty annoyances. To establish liability under a nuisance theory, interference with the plaintiff's interest must be substantial. Determining substantial interference in cases where the physical condition of the property is affected will often be fairly straightforward. More challenging are those cases predicated on personal inconvenience, discomfort, or annoyance. To determine whether an interference is substantial, courts apply the standard of

of an ordinary member of the community with normal sensitivity and temperament. A plaintiff cannot, by putting his or her land to an unusually sensitive use, make a nuisance out of the defendant's conduct that would otherwise be relatively harmless.

### **Reasonableness of Defendant's Conduct-**

If the interference with the plaintiff's interest is substantial, a determination must then be made that it is unreasonable for the plaintiff to bear it or to bear it without compensation. This is a Balancing process weighing the respective interests of both parties. The law recognizes that the activities of others must be accommodated to a certain extent, particularly in matters of industry, commerce, or trade. The nature and gravity of the harm is balanced against the burden of preventing the harm and the usefulness of the conduct.

The following are factors to be considered:

- Extent and duration of the disturbance;
- Nature of the harm;
- Social value of the plaintiff's use of his or her property or other interest;
- Burden to the plaintiff in preventing the harm;
- Value of the defendant's conduct, in general and to the particular community;
- Motivation of the defendant;
- Feasibility of the defendant's mitigating or preventing the harm;
- Locality and suitability of the uses of the land by both parties.

Zoning boards use these factors to enact restrictions of property uses in specific locations. In this way, zoning laws work to prohibit public nuisances and to maintain the quality of a neighborhood.

### **Defences**

In an attempt to escape liability, a defendant may argue that legislation (such as zoning laws or licenses) authorizes a particular activity. Legislative authority will not excuse a defendant from liability if the conduct is unreasonable.

A defendant may not escape liability by arguing that others are also contributing to the harm; damages will be apportioned according to a defendant's share of the blame. Moreover, a defendant is liable even where his or her actions without the actions of others would not have constituted a nuisance.

Defendants sometimes argue that a plaintiff "came to a nuisance" by moving onto land next to an already operating source of interference. A new owner is entitled to the reasonable use and enjoyment of his or her land the same as anyone else, but the argument may be considered in determining the reasonableness of the defendant's conduct. It may also have an impact in determining damages because the purchase price may have reflected the existence of the nuisance.

### **Remedies**

Redress for nuisance is commonly monetary damages. An Injunction or abatement may also be proper under certain circumstances. An injunction orders a defendant to stop, remove, restrain, or restrict a nuisance or to abandon plans for a threatened nuisance. In public nuisance cases, a fine or sentence may be imposed, in addition to abatement or injunctive relief.

Injunction is a drastic remedy, used only when damage or the threat of damage is irreparable and not satisfactorily compensable only by monetary damages. The court examines the economic hardships to the parties and the interest of the public in allowing the continuation of the enterprise.

A Self-Help remedy abatement by the plaintiff is available under limited circumstances. This privilege must be exercised within a reasonable time after learning of the nuisance and usually requires notice to the defendant and the defendant's failure to act. Reasonable force may be used to employ the abatement, and a plaintiff may be liable for unreasonable or unnecessary damages. For example, dead tree limbs extending dangerously over a neighbor's house may be removed by the neighbor in danger, after notifying the offending landowner of the nuisance. In cases where an immediate danger to health, property, or life exists, no notification is necessary.

**CONSUMER PROTECTION  
ACT 1986**

**SYNOPSIS**

**IMPORTANT DEFINATIONS**

- Section 2(d) -Consumer.
- Section 2(c) – Complaint.
- Section 2(a)-Appropriate Laboratory.
- Section 2(e)-Consumer Dispute.
- Section 2(f) Defect.
- Section 2(g) Deficiency.
- Section 2(h)-District Forum.
- Section 2(i)-Goods.
- Section 2(o)-Service.

**Consumer protection councils**

- The central consumer protection council-(section 4).
- Procedure for meeting of the central council-(section5).
- Object of the council – (section6).
- State consumer protection council-(section7).
- Objects of the state council-(section8).

**Consumer dispute redressal agencies**

- Establishment of consumer dispute redressal agencies- (section 9).
- Composition of district forum-(section 10). One in every district to be established by state.
- Jurisdiction of the district forum-(section 11). Within district below Rs.20, 0000.
- Manner in which complaint shall be filed-(section 12).
- Procedure on receipt of complaint-(section 13).
- Findings of the district forum-(section 14).
- Appeal-(section 15). Within 30 days to state commission.
- State commission-(section 16). One in every state.
- Jurisdiction of state commission-(section 17). Within state &above 20.0000& below 1 crore.
- Appeal-(section 19) within 30 days to National commission.
- Composition of national commission-(section 20).
- Jurisdiction of national commission-(section 21). Throughout India& Above Rs 1 Crore.
- Appeal-(section 23). Within 30 days to S.C.
- Finality of orders-(section 24). If no appeal is preferred the order passed becomes final and applicable on parties concerned.
- Limitation period- (section 24-a). From the date of cause of action 'consumer' may file a complaint before an appropriate consumer forum within a period of two years.

- Dismissal of frivolous complaints-(section 26} cost not exceeding Rs. 10,000 as may be specified in the order.
- Penalties-(section 27). Imprisonment 2 months to 3 years & fine from RS. 2,000 to 12,000 or both.

### Introduction

The Consumer Protection Act, 1986 has been enacted to provide for the establishment of consumer councils and other authorities for the settlement of consumers' disputes and for matters connected therewith. In fact, the basic motive of enacting this important Act is to provide cheaper and speedy remedies to the consumers who are in disadvantageous position in comparison with the traders who are well organized and rule the market.

The Consumer Protection Act, 1986' extends to the whole of India except the State of Jammu & Kashmir, and save as otherwise expressly provided by the Central Government, this Act shall apply to all goods and services irrespective of the sources it has come i.e. whether it is public, private, co-operative or Government [Section 1]. The Act has come into force on 15.4.1987\*

### Objects of the Act

The objects of the Act are as follows:

1. **Better protection of interests of consumers.** The Act seeks to provide for better protection of the interests of consumers. For that purpose, the Act makes provision for the establishment of Consumer Councils and other authorities for the settlement of consumer disputes and for matters connected therewith.
2. **Protection of rights of consumers.** The Act seeks, inter alia, to promote and protect the rights of consumers such as—
  - a) The right to be protected against marketing of goods or services which are hazardous to life and property ;
  - b) The right to be informed about the quality, quantity, potency, purity, standard and price of goods or services so as to protect the consumers against unfair trade practices ;
  - c) The right to be assured, wherever possible, access to goods and services at competitive prices ;
  - d) The right to be heard and to be assured that consumers' interest will receive due consideration at appropriate forums ;
  - e) The right to seek redressal against unfair trade practices or restrictive trade practices or unscrupulous exploitation of consumers ; and
  - f) Right to consumer education.
3. **Consumer Protection Councils.** The above objects are sought to be promoted and protected by the Consumer Protection Councils established at the Central and State levels.
4. **Quasi-Judicial machinery for speedy redressal of consumer disputes.** The Act seeks to provide speedy and simple redressal to consumer disputes. For this purpose, there has been set up a quasi-judicial machinery at the district, State and Central levels.

### Important Definitions

#### **COMPLAINANT Sec. 2(1) (13)**

"Complainant" means-

- (i) a consumer; or
- (ii) any voluntary consumer association registered under the Companies Act, 1956 (1 of 1956). Or under any other law for the time being in force; or
- (iii) the Central Government or any State Government, who or which makes a complaint;

- (iv) one or more consumers, where there are numerous consumers having the same interest
- (v) in case of death of a consumer, his legal heir or representative\*\*

#### **COMPLAINT Sec. 2(1) (C)**

“Complaint” means any allegation in writing made by a complaint that-

- (i) an unfair trade practice or a restrictive trade practice has been adopted by any trader; or **service provider\***
- (ii) the goods bought by him or agreed to be bought by him; suffer from one or more defect;
- (iii) the services hired or availed of or agreed to be hired or availed by him suffer from deficiency in any respect;
- (iv) a trader or the **service provider** has charged for the goods or for the service mentioned in the complaint a price in excess of the price (a) fixed by or under any law for the time being in force, (b) displayed on the goods or any package containing such goods, (c) displayed on the price list exhibited by him, (d) agreed between the parties.
- (v) Goods which will be hazardous to life and safety when used, are being offered for sale to the public in contravention of any law for the time being in force.
- (vi) service which are hazardous or likely to be hazardous to life and safety of the public when used\*\*

#### **CONSUMER Sec. 2(1) (D)**

‘Consumer’ means any person who:

- (i) Consumer of goods buys any goods for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any user of such goods other than the person who buys such goods for consideration paid or promised or partly paid or partly promised, or under any system of deferred payment when such use is made with the approval of such person, but does not include a person who obtains such goods for resale or for any commercial purpose; or
- (ii) Consumer of services hires or avails of any services for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any beneficiary of such services other than the person who hires or avails of the services for consideration paid or promised, or partly paid and partly promised, or under any system of deferred payment, when such services are availed of with the approval of the first mentioned person;”

#### **CONSUMER DISPUTE SECTION 2(1)(e)**

“Consumer dispute” means a dispute where the person against whom a complaint has been made, denies or disputes the allegations contained in the complaint;

#### **DEFECT SECTION 2(1) (f)**

“defect” means any fault, imperfection or shortcoming in the quality, quantity, potency, purity, or standard which is required to be maintained by or under any law for the time being for or under any contract, express or implied or as it claimed by the trader in any manner whatsoever in relation to any goods;”

“manufacturer” means a person who-

- (i) makes or manufactures any goods or parts thereof : or
- (ii) does not make or manufacture any goods but assembles parts thereof made or manufactured by other; or
- (iii) puts or causes to be put his own mark on any goods made or manufactured by any other manufacture.

#### **PERSON SECTION 2(1) (m)**

“person” includes-

- (i) a firm whether registered or not;
- (ii) a Hindu undivided family;



- (iii) a co-operative society
- (iv) every other association of persons whether registered under the Societies Registration Act.

**APPROPRIATE LABORATORY [Sec. 2(1) (a)]**

If means a laboratory or organization –

1. Recognized by central government
2. Recognized by state government, subject to guidelines as may be prescribed by central government.
3. Any laboratory or organization established by or under any law for the time being in force, which is maintained, financed or aided by the central government or state government.

**Ingredients of a consumer**

- **Transaction must be for a consideration**- The consumer must be a person who has purchased the goods, or hired or availed the services for a consideration. The consideration may be in terms of money or exchange of goods or services. The consideration may be paid or promised, or it may consist of a deferred payment such as hire purchase or a credit sale.
- **Deemed consumer**- The term 'consumer' shall include those who use the goods or avail the services as a beneficiary with the approval of a purchaser or hirer for a consideration.
- **Purchase must not be for resale and commercial purpose**- A person purchasing goods or hiring services for resale or for a commercial purpose shall be outside the purview of definition of a 'consumer'. Explanation to section 2(10) (d) has clarified that the term 'commercial purpose' does not include the use by a consumer of goods for consumption or private use, or exclusively for the purpose of earning his livelihood by means of self-employment. Whether the purchase is for a commercial purpose is a question of fact to be decided on the facts and circumstance of each case.
- **There must be the existence of a contract between the seller and the buyer, i.e. consumer u/s 2(1) (d) –** But under the comprehensive definition of 'consumer' even a member of the family may be treated as a consumer under the act, in the case of an action by a member of the family for any deficiency in service. In such a case, the concerned trader cannot claim the absence of privity of contract. On this basis, the national commission had awarded compensation to both the minor and her parents on the ground of a wrong diagnosis. {Spring Meadows Hospital and Another v/s Harjot Ahluwalia through K.S. Ahluwalia & Another civil Appeal 7868 of 1997 decided on 26-3-1998}.

**Instances of consumers**- Bank customers, telephone subscribers, consumers of electricity, a railway passenger, a patient in the hospital, a depositor, allottees of plots/house, nominees of insured, a purchaser of goods for private consumption, a person buying goods exclusively for earning livelihood by means of self-employment are all consumers.

**Persons who are not consumers-**

- A patient receiving medical treatment in a Government hospital.
- A client of an advocate.
- A student hiring services of a private tutor.
- A person who obtains goods for 'resale' or for 'commercial purpose' such as purchaser of taxi, purchase of generator by a company for its use for commercial production.
- A tenant.
- A purchaser of shares and debentures for resale.
- A Government servant.
- A person buying goods or services without consideration.
- A person who obtains services under a contract of personal services.

## Unfair Trade Practice

**Introduction:** - The object of the consumer protection Act, 1986 is to provide for better protection of the interests of consumers and for the settlement of consumers disputes and any matter connected therewith provisions have been also made in the Act to protect the interests of consumers from unfair trade practices relating to both purchase of goods as well as rendering of services.

According to Section 2(1) (r), the term 'Unfair Trade Practice' shall have the same meaning as in Section 36A of the Monopolies and Restrictive Trade Practices Act, 1969. It may occur in relation to both purchase of goods or rendering of services. It is said to occur when a trade adopts any unfair method or deceptive practice for the purpose of promoting the sale, supply or use of any goods or for the provision of any services. The following six categories of practices have been declared as unfair trade practices.

- **False Representation and Misleading Advertisements**- As to standards of goods or services. It consists of a written, oral or visible representation which falsely represents the goods to be of particular standards, quality, quantity, grade, composition or model etc.
- It may also consist of falsely representing any rebuilt, second-hand, renovated or reconditioned goods as new.
- Making false representation as to sponsorship, approval, etc. {Example- The fact about disaffiliation of the educational institution was not conveyed to the candidates seeking admission to a programme. "**Alexander Educational Foundation v/s Chandrasekaran (1995) 1 CPJ 141 Pondicherry**".
- Misleading representation concerning the need for usefulness, etc., of any goods or services- It may consist of giving the public any warranty or Guarantee of performance, etc. of any goods that is not based on adequate or proper test, or misleading promise to replace, maintain or repair an article, etc.
- Misrepresentation as to price.
- Disparagement of goods, services or trade of others.
- **False offer of Bargain price** – It means a price that is stated in any advertisement to be a bargain price by reference to an ordinary price or otherwise, or a price that a person who reads, hears or sees the advertisement, would reasonably understand to be a bargain price having regard to the prices at which like products are sold.
- **Offer of Gifts, prizes, etc.**
- **Withholding any scheme.**
- **Sale or supply of goods not complying with prescribed standard**- The prescribed standards may relate to performance, composition, contents, design, packaging, etc. as are necessary to prevent or reduce the risk of injury to the person using the goods.

## Consumer Protection councils

### CONSUMER PROTECTION COUNCILS

Consumer protection councils have been set up at national, state and district levels. Their object is to protect rights of consumers. Provisions with regard to **consumer protection councils are contained in the consumer protection act wide section 4 to 8.(Section 8-A as inserted by the consumer protection (Amendment) Act, 2002, which provides for District consumer council)**

#### II. The Central consumer protection Council–

1. Establishment of this council by a notification of the central government.
2. Central govt. nominates govt. and private members from different department and sectors.
3. At present there are 150 members in the council.
4. Chairman of the council is central government food & civil supplies minister.
5. 3 years term of office of council.
6. If any post of the council falls vacant, it shall be filled up by a same cadre member.
7. 3 meetings are compulsory in a year time and place is fixed by chairman.
8. Main object of council is to expand and protect the rights of consumers.
9. Protection against fatal advertisement of goods/for human life services.
10. Protection against improper trade transaction and service.
11. As far as possible, a right of satisfaction about the various qualities.
12. A right of belief and confidence on goods & services.
13. A right of compensation against mis-behaviour in restricted trade policies.
14. A right of consumer education.

III. **The State consumer protection council -**

1. Establishment of this council by notification of state government.
2. Chairman of the council is state minister of food and civil supplies.
3. State government nominated government or private member from different sectors.
4. There must be at least two meetings in a year or arrange according to convened any time.
5. Time and place of meetings shall be fixed by the chairman.
6. Object of council is to protect the interest and rights of consumer in state which is same central council.

IV. **The District consumer protection council -** (Section 8-A)

1. Establishment of this council in every district by a notification of state Government.
2. The collector of the district shall be its chairman and he will be assistate by such number of other officials and non- official members having such interest as may be prescribed by the state Government.
3. The District council shall meet as and when necessary but not less than two meetings shall be held every year.
4. It shall meet at such time and place within the district as decided by the chairman and shall observe such procedure as may be prescribed by the state Government.
5. The object of every district council shall be to promote and protect within the district the rights of the consumers as laid down in section 6 of the Act.(Section 8-B, inserted by 2002 amendment).

**Consumer Disputes Redressal Agencies  
Three-Tier Redressal System**

**Introduction**

The object of the Consumer Protection, 1986, is to provide better protection to consumers. To secure this object, the Act intends to provide simple, speedy and inexpensive redressal to the consumers' grievances. For this purpose, the Act provides for the establishment of three-tier quasi-judicial machinery at the District, State and National levels. **The three consumer disputes redressal agencies at the different levels are as under:**

1. Consumer Disputes Redressal Forum to be known as District Forum at the District level.
2. Consumer Disputes Redressal Commission to be known as State Commission at the State level.
3. National Consumer Disputes Redressal Commission to be known as National Commission at the National level.

### **ESTABLISHMENT OF AGENCIES**

#### **1 DISTRICT FORUM**

The 'District Forum' is the short name of the Consumer Disputes Redressal Forum established in the District under Section 9(a) of the Consumer Protection Act, It is the redressal agency to deal with the complaints of the consumers at the District level.

#### **Legal provision relating to District forum:**

##### **1. Composition of the district forum**

The District Forum is a body of three persons appointed by the State Government. The qualifications of the President and other members are as follow:

**(a) President:** A person who is, or has been or is qualified to be, a District Judge shall be the President of the District Forum.

**(b) Other Member:** A part from the President, the District Forum shall consist of two other members one of whom shall be a woman. The qualification for appointment of other members are:

- (i) He/She must not be less than 36 years of age.
- (ii) He/She must possess a bachelor's degree from a recognised university.
- (iii) He/She must be a person of ability, integrity and standing and have adequate knowledge and experience of at least 10 years in dealing with problems relating to economics, law, commerce, accountancy, industry, public affairs or administrations.

**2. Appointment of members of District Forum:** The appointment of the President and of the members shall be made by the State Government on the recommendation of the selection committee consisting of (a) the President of the State Commission, (b) Secretary, Law Department of the State, and (c) Secretary, in charge of the Department dealing with consumer affairs in the State.

##### **3. Disqualifications of members :**

- a) If he has been convicted and sentenced to imprisonment for an offence, which, in the opinion of the State Government, involves moral turpitude, or
- b) If he is an undischarged insolvent, or
- c) If he is of unsound mind and stands so declared by a competent court, or
- d) If he has been removed or dismissed from the services of the Government or a body corporate owned or controlled by the Government,

##### **4. Tenure of office of the members of the District Forum**

A person may act as a President or a member of the District Forum for 5 years or up to the age of 65 years, whichever is earlier. Thus, in any case, a person cannot hold the office of the President or that of the member beyond the age of 65 years.

##### **5. Vacancy in the office of the District Forum**

The officer of the President or of any member of the forum may become vacant on his attaining the age of sixty-five years.

##### **6. Jurisdiction of the District Forum**

The District Forum has the jurisdiction to entertain complaints where the value of the goods or services and the compensation, if any, claimed does not exceed rupees 20 lakhs.

The limit has been enhanced from Rs. 5 lakhs by the Consumer Protection (Amendment) Act 2002

### **PROCEDURE ON RECEIPT OF COMPLAINT SECTION-13**

The district forum has to observe the procedure mentioned in section. It may be summarized as follows-

- I. Reference of complaint to opposite party** – Whenever the district forum receives a complaint, relating to a goods, it should refer a copy of the complaint to the opposite party. It must be given within 30 days of receiving the complaint. However, it may be extended by a further period not exceeding 15 days.
- II. On refusal or dispute by opposite party** – When the opposite party, on receipt of a complaint, refusal/disputes the allegations contained in the complaint or fails to take any action within the time given by the district forum, the forum shall proceed to settle the consumer dispute in the following manner –
1. Reference of sample to laboratory
  2. Deposit of fees
  3. Forwarding of report to opposite party
  4. Objection by any of the parties.
  5. Reasonable opportunity to parties of being heard and issue order.

### **{Who can complain in the district forum}**



A complaint in relation to any goods sold or delivered or any service provided may be filed with a district forum by –

1. Consumer of goods/service
2. Any recognized consumer association.
3. Central or state government

For the purpose of this section “recognized consumer association” means any voluntary consumer association registered under the companies Act 1956 or any other law for the time being in force (Sec. 12)

### **Power of the District forum –**

The district forum shall have the same power as are vested in a civil court under the code of civil procedure, 1908 while trying a suit in respect of the following matter, namely-

1. The summoning and enforcing attendance of any defendant or witness and examining the witness on oath.
2. The discovery and production of any document or other material object producible as evidence.
3. The reception of evidence on affidavits
4. The requisitioning of the report of the concerned analysis or test from the appropriate laboratory or from any other relevant source.
5. Issuing of any commission for the examination of any witness and
6. Any other matter which may be prescribed.

Every proceeding before the district forum shall be deemed to be a judicial proceeding within the meaning of Sec. 193 and 228 of the Indian Penal code; 1860 and the District forum shall be deemed to be a civil court for the purposes of Sec. 195 and chapter XXVI of the code of criminal procedure 1973.

### **Findings of the District forum (Sec. 14)**

If the district forum is satisfied that the goods suffer from any of the defects specified in the complaint or that any of the allegations contained in the complaint about the services are proved, it shall issue an order to the opposite party directing him to take one or more of the following things namely-

- a) To remove the defect pointed out by the appropriate laboratory from the goods in question.
- b) To replace the goods with new goods of similar description which shall be free from any defect.
- c) To return to the complainant the price or as the case may be the charge paid by the complainant.



**Appeal (Sec. 15)** Any person aggrieved by an order made by the District Forum may prefer an appeal against such order to the state commission within a period of 30 days from the date of the order. The state commission may entertain an appeal after the expiry of this period of 30 days if it is satisfied that there was sufficient cause for not filing the appeal within that period. But no appeal by a person, who is required to pay any amount in term of an order of the District Forum, shall be entertained by the State commission unless the appellant has deposited in the prescribed manner 50 percent of that amount or Rs. 25,000, whichever is less.

### STATE COMMISSION

‘State Commission’ is the short name given to the Consumer Disputes Redressal Commission established in the State under Section 9(b) of the Consumer Protection Act, 1986 [Section] 2(1) (p). It is the redressal agency to deal with the complaints of the consumers at the State level.

#### Legal provision relating to District forum

#### Composition of the State Commission

Section 16(1) makes the following provisions regarding the qualifications of the President and other members:

- (a) **President:** A person who is or has been a judge of a High Court shall be the President of the State Commission.
- (b) **Other members:** Apart from the President, the State Commission shall consist of two other member one of whom shall be a woman. The qualifications for appointment of the other member are:
  - (i) He/She must not be less than 35 year of age.
  - (ii) He/She must possess a bachelor's degree from a recognized university.
  - (iii) He/She must be a person of ability, integrity and standing and have adequate knowledge or experience of at least 10 years in dealing with problems relating to economics, law, commerce, accountancy, industry, public affairs or administration.

#### 1. **Appointment of members of State Commission**

The appointment of the President shall be made by the State Government after consultation with the Chief Justice of the High Court of the State. And the appointment of the other members shall be made by the State Government on the recommendation of the selection committee consisting of (a) President of the State Commission, (b) Secretary of the Law Department of the State and (c) Secretary, in charge of Department dealing with consumer affairs in the State.

#### 2. **Disqualification of members**

These disqualifications are the same as already discussed the District Forum.

#### 3. **Tenure of office of the members of the State Commission**

The President or the member of the State Commission shall hold office for a term of 5 years or up to the age of 67 year, whichever is earlier. Thus, in any case, a person cannot hold the office of President or that of a member beyond the age of 67 years.

#### 4. **Jurisdiction of the State Commission**

(a) **Pecuniary jurisdiction:** The State Commission has the jurisdiction to entertain complaints where the value of the goods or services and compensation, if any, claimed exceeds rupees 20 lakhs but does not exceed rupees one crore.

(b) **Appellate jurisdiction:** Any person aggrieved by an order made by the District Forum may prefer an appeal to the State Commission with a period of 30 days from the date of the order.

5. **Appeal (Sec.19)** ) Any person aggrieved by an order made by the state commission may prefer an appeal against such order to the National commission within a period of 30 days from the date of the order. The National commission may entertain an appeal after the expiry of this period of 30 days if it is satisfied that there was sufficient cause for not filing the appeal within that period. But no appeal by a person, who is required to pay any amount in term of an order of the State commission, shall be entertained by the National commission unless the appellant has deposited in the prescribed manner 50 percent of that amount or Rs. 35,000, whichever is less.

**NATIONAL**

**NATIONAL COMMISSION**

The 'National Commission' is the short name given to the National Consumer Disputes Redressal Commission established in the country under Section 9(c) of the Consumer Protection Act, 1986.

**Legal provision relating to District forum**

1. **Composition of the National Commission**

The 'National Commission' is a body of minimum five persons appointed by the Central Government. Legally, the National Commission shall consist of a President and at least four other members.

- (a) **President:** A person who is or has been a judge of the Supreme Court shall be the President of the National Commission. Thus, only the sitting or retired judges of the Supreme Court are eligible for appointment as President.
- (b) **Other members:** A part from the President, the National Commission shall consist of at least four other members one of whom shall be a woman. The qualifications for appointment of other members are:
- (i) He/She must not be less than 35 year of age.
- (ii) He/She must possess a bachelor's degree from a recognised university.
- He/She must be a person of ability, integrity and standing and have adequate knowledge or experience of at least 10 years in dealing with problems relating to economics, law, commerce, accountancy, industry, public affairs or administration.

2. **Appointment of the members of the National Commission [Section 20(1) (a) (b):**

The appointment of the President shall be made by the Central Government after consultation with the Chief Justice of India. The appointment of the other four members shall be made by the Central Government on the recommendation of the selection committee consisting of (a) sitting judge of the Supreme Court, (b) Secretary in the Department of Legal Affairs, Government of India, (c) Secretary of the Department dealing with consumer affairs in the Government of India

3. **Disqualification of members**

These disqualifications are the same as already discussed in case of members of District Forum and of State Commission. Any other disqualification may also be prescribed the Central Government.

4. **Tenure of office of the members of the National Commission**

The President or the members of the National Commission shall hold the office for a term of 5 year or up to the age of 70 years, whichever is earlier. Thus, in any case, a person cannot hold the office of President or that of a member beyond the age of 70 years.

**5. Jurisdiction of the National Commission**

- (a) **Pecuniary jurisdiction:** The National Commission has the jurisdiction to entertain complaints where the value of the goods or services and compensation, if any claimed exceeds rupees 1 crore. Prior to the Consumer Protection (Amendment) Act, 2002, the National Commission had the jurisdiction where the value of this claim exceeded rupees twenty lakhs.
- (b) **Appellate jurisdiction:** The National Commission also has the appellate jurisdiction to entertain appeals against the order of any State Commission.

**Appeal (Sec.23)** Any person aggrieved by an order made by the National commission may prefer an appeal against such order to the Supreme court within a period of 30 days from the date of the order. The Supreme Court may entertain an appeal after the expiry of this period of 30 days if it is satisfied that there was sufficient cause for not filing the appeal within that period. But no appeal by a person, who is required to pay any amount in term of an order of the National commission, shall be entertained by the Supreme Court unless the appellant has deposited in the prescribed manner 50 percent of that amount or Rs. 50,000, whichever is less.

**Other provisions are as follows:-**

**Finality of orders (Sec. 24)** Every order of District Forum, the state commission, and the national commission shall, if no appeal has been preferred against such order under the provisions of this Act, be final.

**Dismissal of frivolous or vexatious complaints (Sec.26)** Where the complaint instituted before any of the three forum is found to be frivolous or vexatious, it shall dismiss the complaint and make an order that the complainant shall pay to the opposite party such cost, not exceeding Rs. 10,000 as may be specified in the order.

**Limitation of filing complaint**-Every consumer is entitled to file a complaint before an appropriate forum within a period of 2 years from the date of cause of action ( that is from the date of dispute).



**INTRODUCTION:**

The Motor vehicle Act, 1988, consolidated and rationalized various laws regulating road transport. The Act came into force with effect from 1<sup>st</sup> of July 1989.

After the coming into force of the M.V. Act, 1988, Government received a number of representations and suggestions from the state Governments, transport operators and members of public regarding the inconvenience faced by them because of the operation of some of the provisions of the present Act. A review committee was, therefore, constituted by the Government in March, 1990 to examine and review the 1988 Act.

The review committee in its recommendations also incorporated the suggestions given by the Supreme Court in its judgement in the case of "M.K. Kunhimohammed v/s P.A. Ahmed kutty (1987) 4 SCC, 284.

It pertains to raise the limit of compensation payable as a result of motor accidents in respect of death and permanent disablement in the event of there being no proof of fault on the part of the person involved in the accident and also in Hit and run motor accidents and to remove certain disparities in the liability of the insurer to pay compensation depending upon the class or type of vehicles involved in the accident.

Overall the whole objective of the Act is to provide adequate compensation in case of a motor vehicle accident arising in a public place causing death or disablement to the public. It provides for a special Tribunal dealing in all cases of M.V. accidents called M.V. Tribunal.

A right which was otherwise available under common law for damages against a tortfeasor was incorporated in motor vehicle act for speedy or expeditious outcome and remedy. (Surendra Kaur vs. Dharam Singh, AIR, 1985 Delhi 72).

In cases of death or injuries in a motor vehicle accidents compensation may also be claimed u/s 160 of the act. The act also applies even in cases of injuries not causing death and also to damage to property (**section 110 (1)**).

**The main object of the act is to provide a speedy remedy instead of a civil suit as is required under Fatal Accidents Act, 1855.** Fatal Accident act is narrower in this sense that it only provides for compensation only to certain dependents of the deceased and does not apply unless death is caused. The question of liability of the parties, which was governed by the "Law of Torts" is unaffected by the act. As to the principles of measures of damages under this act the amount is to be determined as appears to the tribunal to be just to canalize this wide discretion certain rules have been made, they are:

1. The amount of compensation must be reasonable and must be assumed with moderation.
2. Regards must be had to awards in comparable cases.
3. The sum awarded should, to a considerate extent, be moderate.

Case Law: Vinod Kumar Shrivastava vs. Mitra Vohra, AIR 1970, M.P., 172.

While fixing the amount of compensation/damages the tribunal should ascertain and determine under different heads pecuniary and non-pecuniary damages awarded. (The S.C. in Sheikhpura Transport Co. vs. N.I.T Insurance Co. AIR 1971, S.C. 1624 followed in "Babu Singh vs. Champa Devi AIR, 1974 All. 90)

Held that for fixing compensation **u/s 168** of the Motor Vehicle Act, 1988 and (**section 110 of M.V. Act, 193**) the general principle is that the balance of loss and gain to a dependent must be ascertained.

## Accident

The word accident is not defined in the M.V. Act. Therefore, the word 'accident' should be understood in the popular and ordinary sense as denoting an untoward event which is not expected or designed. The word accident has been defined under section 80 of the Indian penal code, 1860. According to it, nothing is an offence which is done by accident or misfortune, and without any criminal intention or knowledge in the doing of a lawful act in a lawful manner by lawful means and with proper care and caution.

The word accident is derived from the Latin word accidere signifying 'fall upon befall, happen, chance. In its etymological sense anything that happens may be said to be an accident. In this sense, the word has been defined as a befalling, a chance, a happening, an occurrence or an event.

Accident means an unexpected injury which could not have been avoided in spite of a reasonable care on the part of the defended.

## Types of accident

**Accident is of many types. Some of them are as follows-**

**Inevitable accidents**- An inevitable accident is that which could not possibly be prevented by the exercise of ordinary care, caution and skill. It means an accident physically unavoidable.

**According to Sir Frederick Pollock**- "Inevitable accident is an accident not avoidable by any such precaution as a reasonable man, doing such an act then and there could be expected to take".

In order to constitute inevitable accident it is essential that the accident should not have been capable of being avoided by ordinary skill and diligence. These are inevitable accidents. These can be of two classes, namely,



- (a) Those occasioned by the elementary forces of nature and unconnected with the agency of man or any other cause, and
- (b) Those which have their origin either in whole or in part in the agency of man or in any other cause independent of the agency of natural forces.
- (c) **Act of God**- This defence is a kind of inevitable accident. If there is working of natural forces and the event is one which could not have been reasonably anticipated and guarded against, the defence of act of god is available. Working of natural forces like rainfall, storm, tides, or volcanic eruption should be there.
- (d) **Fatal accident** – Fatal accidents are very serious accidents in which the measure of damage is pecuniary loss suffered and likely to be suffered by each dependent as a result of death. In these cases defendant who are deprived of care and affection that the deceased was devoting to their bringing up have to be compensated.

**Public place**

As per Section 2(34) 'Public place' means a road, street, way or other place, whether a thoroughfare or not, to which the public have a right of access, and includes any place or stand at which passengers are picked up or set down by a stage carriage.

**GENERAL PROVISIONS REGARDING COMPENSATION [SECTION 145-160]**

**Compulsory third party insurance:** Third party here means other than insurer (1<sup>st</sup> party) and insured (2<sup>nd</sup> party) and include government (section 145(g)).

**Section 146 makes the following provisions:**

1. As per the requirement of the act no person shall use (except as a passenger) or allow any other person to use, a motor vehicle in a public place, unless they have a policy of insurance valid in relation to the use of the vehicle used by them.
2. By way of an amendment way back in 1954, this proviso relating to vehicle carrying or meant to carry dangerous or hazardous goods must be insured under the Public Liability Insurance act 1991.
3. Provisions of **sub-clause(1) of section 146** relating to compulsory third party insurance shall not apply to the any vehicle owned by the central/state government and used for government purposes unconnected with any commercial enterprise.
4. The appropriate govt. may, by order, **exempt from the operation of sub-section 1 of section 146** to any vehicle owned by any of the following authorities, namely:
  - a. Central/state govt. if the vehicle is used for govt. purposes connected with any commercial authority.
  - b. Any local authority.
  - c. Or any state transport undertaking.
5. Provide no such order shall be made in relation to any such authorities unless a fund has been established and is maintained by that authority in accordance with that rules made n that behalf under this act for meeting any liability arising out of the use of any vehicle of that authority which that authority or any person in its employment may incur to third parties.
6. Driving an uninsured vehicle or allowing it to be driven is also a punishable offence u/s 196.

**Requirement of policy and extent of insurer's liability (u/s 147):**

For the purpose of M.V. Act policy must be issued by an authorized insurer and must insure person or class of persons specified in the policy to be covered in case of accident causing death or injury involving motor accident in a public place.

The policy must cover risk:

1. Against any liability which may be incurred by him in respect of the death or bodily injury to any person, including owner of the goods or his authorized representative carried in the vehicle or



damage to any property of the third party caused by or arising out of the motor vehicle in a public place.

2. Against the death of or bodily injury to any passenger of a public service vehicle in a public place.

**Extent of liability:** As to the extent of liability, in case of any accident:

1. In case of death or personal injury the liability of the insurer shall be for the whole amount of liability incurred but in case of damage to property liability is limited to Rs. 6000. The act prescribes the max. limited but this limit can be increased by agreement between the owner of the vehicle and the insurer, if any risk of any other nature to be covered extra premium to be paid and same has to be inserted in the policy.

Example - a private carrier which is registered with the RTO cannot be used for carrying any passenger or goods for hire or reward, no liability of the insurer.

**To whom insurer is liable:** liability of the insurer is to the owner of the vehicle only in whose name a M.V. stands registered. The owner is defined in **section 2(30) of the act** and it is as follows;

“owner means person in whose name a motor vehicle stands registered and where such person is minor, the guardian of such minor and in relation to a motor vehicle which the subject matter of a hire purchase agreement or an agreement of lease or an agreement of hypothecation the person in possession of the vehicle in that agreement.”

**Effect of the transfer of the vehicle on the liability of the insurer**

**U/s 103 A of the M.V. Act, 1939 and u/s 157-** deeming provisions of transfer of policy in the name of the person in whose favor the motor vehicle is transferred w.e.f. the date of its transfer.(within 15 days of submitting application for transfer of the policy). Transferee to apply within 14 days from the date of application for transfer to the insurer for making valid changes in the certificate of the insurance and policy in his favor.

**Driver having no valid license:** When driver causing accidents had no valid license New India assurance co. ltd v/s. Kamala A.I.R 2001, SC, 1419 the SC has already held that the insurance co. is liable to compensate first and then recover the compensation from the owner of the vehicle. This decision of the SC has been followed in the National Insurance co. v/s. Kanti Devi A.I.R 2005, SC, 2850.

**Vehicle must be in use:** the act provides for the liability for damage caused by use of a vehicle in public place. It must therefore be in use at the time of causing damage, it includes cases even when the vehicle is parked or its battery has been taken out.

**Use of vehicle in public place:**It is an essential condition of insurer’s liability that the damage must be caused by the use of vehicle in public place.

**According to section 2(34) of the act public place means:** A road, street, way or other place whether a thorough fare or not to which the public have a right of access and includes any place or stand at which passengers are picked up or sat down by a stage carriage. [Right of access by public means- as a matter of right without hindrance or being required to take permission]

**Overloaded vehicle:** Auto rickshaw registered for carrying passenger as a taxi, insurance co. cannot escape liability, on the ground that it was overloaded. “T.R. Purikutty v/s Kerala State Road Transport Corp. A.I.R 2005 NOC Kerala 202.

**Classes of person entitled to compensation:****Section 147 of the act** mentions classes of persons to whom the insurer is liable. Insurer is liable to pay in respect of death, bodily injury to any person including the

owner of the goods or his authorized representative carried in the vehicle or damage to property of a third party.(w.e.f 14/11/94)

**Liability of gratuitous passenger:** An insurance policy covering third party risk is not required to exclude gratuitous passenger in a vehicle of any type or class.

**Liability without fault**

1. **Liability u/s 140:** With the increase in number of accidents and insurance facilities there has been recent trends toward liability without fault so that an innocent victim should not be left without remedy because every person has a right to safety and security of his person irrespective of fault or negligence or carelessness or efficient functioning of the motor vehicle.

**Section 140 of the Motor Vehicle Act, 1988** provides that where death or permanent disablement of any person results from an accident arising of the use of a motor vehicle or motor vehicles, the owner or owners shall jointly or severally be liable to pay compensation in respect of such death or disablement. The amount of compensation has been fixed at Rs. 50,000 in case of death w.e.f. 1994 and Rs. 25,000 in case of disablement.

**Section 140** does not create any new right or liability. It is a beneficial provision in the nature of interim relief and part of liability created by the general provisions of the act. An insurer cannot be absolved of liability to satisfy award passed **u/s 140** if vehicle is insured.

In any claim of compensation **u/s 140** claimed shall not be revived to plead established that the death or disablement in respect of which the compensation has been claimed was due to any wrongful act, neglect or default of the owner of the vehicle or any other person or the person died or disabled or of a victim claim for the compensation under any other law shall not be defeated because of compensation revived **u/s 140** but amount of compensation under any other law shall be reduced from the amount payable **u/s 140 or u/s 163 of the act**.

**Section 141 where compensation is payable in both the sec 140 and 163 A**, person responsible must first pay **u/s 140** and if compensation **u/s 163** is more than what is payable **u/s 140** then he shall pay the remaining amount.

2. **Section 140 is dependent of section 166:It is independent of section 161(hit and run case), section 163A (compensation under structural formula) or section 166(fault liability).**

Special provisions for compensation in case of hit and run motor accidents, **section 161 to 163 of the M.V. Acts, 1988**, provides for compensation in cases of hit and run motor accidents, that is, cases in which identity of motor vehicle or vehicle causing accidents cannot be traced.

**Section 161** provides G.I.C of India and the insurance companies carrying on general insurance business in India shall provide for compensation in cases of death or grievous hurt resulting from hit and run motor accidents. **Death compensation amount fixed to a sum of Rs. 25,000 and amount fixed for grievous hurt is sum of Rs. 12,500.**

**U/ s 162:**provided that if compensation or other amount in liable of claim for compensation is paid under **any other section of Motor vehicle Act, 1988** or any other law. **The amount paid u/s 161shall be refunded to the insurer.**

**U/s 163:** provides or authorities central govt. to make a scheme specifying the manner in which the scheme shall be administered by G.I.C.

3. **Compensation on structured formula basis sec 163A (1994 amendment):**Section 163A (1) provides for the compensation in case of death or permanent disablement or indicated in the second schedule.  
**Section 163A(2) for any under sub sec (1) of this act:** the claim shall not be required to plead or establish that the death or permanent disablement was due to wrongful act or neglect or default of the owner of the vehicle or any other person. It is also liability without fault. **Sub-sec (3)** provides that keeping in view the cost of living the central govt. may from time to time award the schedule by notification in the official Gazette.  
The purpose of enacting this new provision was to give instant relief to the victim, because the fledged trial u/s 166 takes number of years which sometimes makes the life of the victim or the dependents miserable and makes the mockery of justice.
4. **Section 163B (Amendment act of 1994):** provides that where a person is entitled to claim compensation u/s 140 as well as u/s 163A, he shall file the claim under any one section and not under both.

**Distinguish between provisions of sec 140 and sec 163A**

1. Claim u/s 140 is available to all persons but u/s 163A only those citizens can claim whose annual income is Rs. 40,000 or less.
2. Compensation payable u/s 140 is of ad hoc or interim compensation but compensation u/s 163A is not interim but final.
3. A claim made u/s 140 is in addition to any claim which may be made under any law for the time being in force (sec 140(5)). Section 163A has no such provisions.
4. Compensation u/s 163A is determined according to structured formula provide in the second schedule but compensation u/s 140 is a fixed amount.
5. U/s 140 adjudication on several issues like age or income of the deceased or the victim is necessary in proceedings u/s 163A.
6. The amount of compensation awarded u/s 163A is not to be altered or varied in any other proceedings. It does not contain any provisions providing for set off against a higher compensation unlike u/s 140 and 141.

**Claim tribunals and award of compensation**

A new forum i.e.; Motor Accidents Claim Tribunal has been created by the M.V. Act for cheaper and speedier remedy to the victims of the accidents of the motor vehicles.

It excludes the jurisdiction of civil courts (**sec 175**) and unlike civil courts in this tribunal there is no necessity of payment of advelorem court fee.

It can follow summary procedure

**An appeal lies directly to high court against the decision of the tribunal(sec 173).**

It lays down self-contained code of procedure for adjudication of claims. It does not lay down any substantive law, and the claim tribunal has still to look to the substantive law of torts or acts like **Fatal Accident Act, 1855**.

It is the duty of the state govt. to establish or constitute one or more motor accidents claim tribunals by way of notification in the official Gazette, for such area as may be notified.

It shall consist of such number of members as the state govt. may think fit to appoint where there are two or more members one of them will act as chairman (who has been a judge of H.C. or D.S.).

**Matters of adjudications by the tribunals:** According to **sec 165**, the claim tribunals are constituted for the purpose of adjudicating upon claims for compensation:

1. In respect of accidents arising out of the use of motor vehicle and,
2. Involving: a. the death or bodily injury to the person.  
b. damage to any property of third party so arising, or

c. both.

The claim tribunal has jurisdiction to entertain claims for compensation when an accident arises out of the use of motor vehicle. The use of the vehicle may have been either in a public place or a private place [liability of insurer u/s 147 in public place].

**Application for compensation u/s 166:**

1. By the person who has sustained the injury,
2. By the owner of the property,
3. In case of death due to accident, by all or any of legal representative of the deceased, or
4. By any agent duly authorized by the person injured.

**Jurisdiction of claim tribunal at the option of claimant:** Every application for compensation shall be made at the option of the claimant to the claim tribunal having jurisdiction over the area in which the accident occurred or to the tribunal within whose jurisdiction claimant resides or carries on a business or defendant resides. (Sec 166(2)).

**Time limit for application:** Prior to 1994, time limit for application was 6 months from the date of accident but in 1994 the provision of the time limit has been omitted.

**Award of the claim tribunal:**

**U/s 168:** according to this section on receipt of an application for compensation made u/s 166, the claim tribunal shall after giving the parties an opportunity of being heard, hold an enquiry into the claims and may make an award, determining the amount of compensation, which appears it to be just.

In the award it has to be specified that the person or persons to whom compensation shall be paid.

It has also to specify the amount which shall be paid by the insurer or owner or driver of the vehicle involved in the accident or all or any of them, as the case may be.

**Determination of the amount for compensation:** the tribunal has to decide or determine just the amount for compensation to be awarded to the victim which must be proportionate to the injury caused.

It has been discussed in detail by S.C. in "Gobald Motor Service Ltd. v/s R.M.K Veluswani reported in 1962, S.C.", the S.C. referred to decision of the "house of lords" in Davis v/s Powell Duffryn Associates Ltd. (1942) A.C. 601.

**Award of interest:**Section 171- interest can be given from the date of claim application as per the discretion of the tribunal @ simple interest.