

DAMAGE AND LIABILITY IN TORT

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Rules For Determining Damage and Liability

For a defendant to be held liable for a tort, the plaintiff must have suffered injury that results from the acts of the defendant. The rule of reasonable foreseeability would be applied in order to determine the extent of compensation to which a claimant is entitled.

However, it is not in all situations in which the defendant would be liable due to injury suffered by the plaintiff. Thus, there are three rules that are used to determine damage and liability in the law of torts:

Damage without Legal Wrong (*Damnum Sine Injuria*):

This occurs in a situation in which there is damage done to the plaintiff but he has no legal remedy because the damage that happened to him happened lawfully. It is encapsulated in the maxim *damnum sine injuria* which means damage without injury. Examples of when this rule would be applied include:

1. **Trade Competition:** A claimant would have no right of legal action if he suffers loss as a result of competition in the cause of trade. For example, if there are two sellers in a location and one reduces the price of his commodity in order to attract customers. This act would harm the trade of the other seller and he could lose his means of livelihood. However, he would not have a right of legal action against the other seller even though he suffered loss.

For example, in the case of *Mogul Steamship Co vs McGregor Gow and Co (1892) AC 25*, the plaintiff and the defendants were competitors in the same trade. The defendants formed an association to the exclusion of the plaintiff. The association persuaded tea merchants in China to cease dealing with the plaintiff. Thus, the plaintiff brought the action alleging that the defendants had a civil conspiracy to injure his trade.

The House of Lords held that although the action by the defendants would result in loss to the plaintiff, the actions were not done by an unlawful means and thus, no action could lie against the defendants.

2. **Defamation on a Privileged Occasion:** This is a situation in which regardless of the fact that the defendant defamed the claimant, the defendant won't be liable due to the circumstances in which the statement was made. For example, statements made in judicial proceedings and on the legislative floor are privileged. This means that they are immune from lawsuits for defamation.

3. **Lawful Use of Property or Lawful Conduct:** A person would not be liable in torts if by lawful use of his property, injury is caused to others. It would only lead to liability if the use of the property leads to nuisance or other breaches of the law. In the case of *Bradford Corporation vs Pickles (1895) AC 587 HL*, the parties were adjoining landowners. The plaintiff company was statutorily empowered to collect water from certain springs. In order to do this, part of the channels flowed through the defendant's land.

The defendant, in order to induce the plaintiff corporation into buying his land at a higher price, obstructed the flow of water on his land. The corporation thus brought an action against him. The court held that the defendant had every right to collect water on his own land notwithstanding the fact that the act was done with malice.

4. **Perjury:** Perjury occurs when a person gives a false statement under oath usually in a court of law. It is an offence punishable under the criminal law. However, a person cannot bring an action under perjury but he can appeal on other points of law in the proceedings in which the perjury was committed.

In the case of *Hargreaves vs Bretherton (1958) 1 QB 45*, the plaintiff brought an action against the defendant on the ground that the plaintiff was imprisoned due to perjury committed by the defendant. The court held that the action would fail because it was based on perjury and there was nothing like the tort of perjury. See also: *Roy vs Prior (1971) AC 470*, *Evans vs London Hospital Medical College (1981) 1 WLR 184*.

The rationale behind this immunity from liability in a civil action for perjury is based on the idea that witnesses should always feel free to come and give evidence before the court. However, by the provision of the **English Criminal Justice Act 1988**, prisoners whose convictions are quashed due to perjury are entitled to compensation from the government.

Legal Wrong Without Damage(*Injuria sine damnum*)

This occurs in a situation in which a person would be held liable for an act even though the defendant did not suffer any injury. It is encapsulated in the maxim *injuria sine damnum* which means injury without damage. In this kind of situation, the claimant is entitled, if he doesn't prove actual damages suffered, to nominal damages.

In the case of *Newstead vs London Express Newspaper (1940) 1 KB 377*, the defendant Newspaper made a publication that a *Harold Newstead*, a 30 year old man from Camberwell, was imprisoned for bigamy. Although the newspaper wasn't talking about him, the description they used fit the plaintiff. He thus sued for defamation and the court ruled in his favour. See also: *Basely vs Clarkson (1681) 83 ER 565*.

The torts in which this rule applies are torts which are actionable per se. This means that in order to establish liability

the claimant only needs to prove that the act was committed. However, if he suffers other damages, he can go on to prove these damages. This would entitle him to more than nominal damages. Examples of torts that are actionable per se include:

1.Â Defamation: The tort of defamation comprises libel and slander. Libel is when a false statement about a person is published in a permanent format. Slander, on the other hand is when a false statement injurious to the claimant is spoken by the defendant. Libel is actionable per se on the mere proof of itâ€™s occurrence.

Slander, on the other hand is only actionable per se when:

- It implies that a person has committed a crime.
- It alleges that a person has an infectious disease.
- It accuses a woman or girl of unchastity.
- It implies that a person is incompetent in her profession, business or office.

2. Trespass to Land: The mere trespass of a personâ€™s land would be actionable in court. It is of no significance that the claimant didnâ€™t suffer any damage to himself. Once there is proof of trespass, the defendant is liable.

The rule of legal wrong without damage buttresses the general rule that where there is a wrong, there is always a remedy. This is encapsulated in the latin maxim â€œubi jus, ubi remedium.â€

In the case of *Ashby vs White (1703) 1 ER 417*, the defendant prevented the claimant from casting his vote at an election. Thus, the claimant sued and the court ruled in his favour. This was regardless of the fact that the candidate that the claimant wanted to vote in finally won the elections. See also: *Bello vs AG Oyo (1986) 5 NWLR pt 4 p828 SC*.

It should however be noted that in situations in which no damage was done to the claimant, the court would only grant nominal damages to the claimant.

Damage With Injury

This is a situation in which there is actual damage suffered by the plaintiff and he also has a legal remedy in place for him. It covers all normal scenarios of tortious liability.

SOURCES

1. Lecture on Law of Torts by Professor R.A Salman
2. [National Open University](#)
3. English Criminal Justice Act 1988