

COMPARISON BETWEEN TORTS AND OTHER ASPECTS OF LAW

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Introduction

There is a very thin line between torts and other aspects of law. For better understanding of the law of torts, it would be best if a comparison is made between it and the other aspects of law.

Torts and Crime

The foremost purpose of criminal law is to punish wrongdoers for their harmful action towards the society. This punishment can either be in the form of imprisonment, death sentence or fine. Torts on the other hand is not concerned with punishing the wrongdoer. Its aim is to compensate the affected party for the wrong done against him by the tortfeasor.

Another point of divergence between Torts and Criminal law is that Criminal law is modified into statutes like the Criminal Code Act and the Penal Code Act. The law of torts on the other hand is made up of judicial decisions which are occasionally modified by statutes.

There are some torts that constitute a tort and a crime. For example assault (**S.252 CC**), false imprisonment (**S.365 CC**) and defamation (**S.373-381 CC**) are torts as well as crimes. In situations like this, a person can be on trial for both the criminal aspect and the civil aspect at the same time. Thus, the remedies are concurrent; while the tortfeasor might be imprisoned, he could at the same time pay damages for the tort committed.

Finally, another difference between a tort and a crime is the standard of proof. For a crime, the prosecution must prove its case beyond reasonable doubt. Whereas, in torts, the standard of proof to be used is the balance of probability.

However, where a tort is also a crime, the criminal standard of proof is also what is required in the civil case. See: ***Okuarume vs Obaboko (1966) NMLR 47***.

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The Rule in Smith vs Selwyn

The common law rule in the case of ***Smith vs Selwyn (1914) 3 KB 98*** provides that where a civil wrong is also a crime, a civil action cannot be brought before the court until the criminal action is concluded or a cogent reason for default of criminal action is provided. This means that any civil suit brought to court without following the above rule was bound to fail in court.

An exception was however provided in the Nigerian case of ***Nwankwa vs Ajaegbu (1978) 2 LRN 230***. In this case, the plaintiff reported an assault but it wasn't prosecuted by the police. He then went on to bring civil proceedings against the defendant. The defendant contended that since no criminal action has been concluded in respect of the case, no civil action could be sustained.

The court rejected this argument and stated that inasmuch as the case has been reported to the police, whether they prosecute it or not, a civil action can be brought before the court.

Abolition of the Rule in Smith vs Selwyn in Nigeria

The rule in ***Smith vs Selwyn*** has long been abolished in England by the provision of **Criminal Justice Act 1967**. The act put to rest the distinction between a felony and misdemeanour. The rule is also not applicable in Nigeria as it violates the **Constitution, Criminal Code Act and the Interpretation Act**.

The rule breaches the provisions of **SS.6(6)(b), 17(2)(e), 46(1) and 315(3)** of the **1999 Constitution**. For example, **S.6(6)(b)** provides that the judicial powers of the courts extend to matters between all persons, the government and any authority in order to determine issues in relation to their civil rights. This gives the courts wide jurisdiction to entertain matters brought before it. The other provisions are provisions to make access to the courts easier.

Also, in the case of ***Veritas Insurance Co. Ltd vs Citi Trust Investment Ltd (1993) 3 NWLR pt 281***, the court ruled that the rule in ***Smith vs Selwyn*** could not apply because it was in contradiction to **S.5 of the Criminal Code** and **S.8 of the Interpretation Act**.

By the provision of **S.5 of the Criminal Code**, the Act would not affect the right of action which a person would have against another person if the Criminal Code had not been passed.

By the provision of **S.8 (2) of the Interpretation Act**, an enactment cannot prevent the recovery of damages in respect of injury suffered by an act just because it has already provided a punishment for that act.

Torts and Contract

A fundamental difference between the law of torts and the law of contract is that in the law of torts, the breach is of duty imposed by the law while in the law of contract, the breach is of agreement reached upon by both parties. However, in the law of contract, there are some underlying principles that parties are bound to keep due to the provision of the law.

There are also some situations in which a tort can be varied due to agreement between the parties. For example, the duty owed by an occupier of a premises to his visitors. Also, torts can be excluded altogether by consent. An example is in the case of the latin maxim: *Violenti non fit injuria*.

In the case of ***Kelly vs Metropolitan Railway Co (1895) 1 Q.B 944***, the plaintiff sued the company for injury sustained due to the negligence of members of its staff during the journey. The court held that in this scenario, it was a tort even though there was contract between both parties.

Also, in the case of ***Jackson vs Mayfair Window Cleaning Co Ltd (1952) 1 All ER 215***, the plaintiff contracted with the defendant to clean his house. In the course of cleaning, a chandelier fell down and was destroyed. The plaintiff sued for damages based on negligence. The action was based on tort and not a breach of contract.

However, if the damage was one that invalidates the whole contract, it would not be a tort but a breach of contract. This was affirmed by the Supreme Court in the case of ***Quo Vadis Hotel Ltd vs Nigeria Marine Services Ltd (1992) 6 NWLR pt 250***.

In some situations, a wrongful act can also constitute a tort and a breach of contract. For example if A contracted with B to transport his goods but due to B's negligence the goods are either lost or destroyed. In this case, there is the tort of negligence and the breach of the contract for transporting the goods. See also: ***Nigerian Bottling Co.Ltd vs Ngonadi (1985) 1 NWLR pt 4, Amid vs Essien (1994) 7 NWLR pt 354***.

Thus, there are many areas in which torts and contract overlap. A person who suffers misrepresentation can sue for the tort of deceit. The concepts of remoteness of damage and agency are also present in torts and contract. Also, the aim in most proceedings for contract and torts is to remedy the affected party through the award of damages.

Torts and Trust

The law of trust deals with the ownership of property by one person or entity for the benefit of another person or entity. The main distinction between the law of Torts and Trust is in their origin. The law of torts has its origin entrenched in the common law. The law of trust on the other hand originated from equity in the court of chancery.

Consequently, the law of trust, tort, crime and contract are not exclusive of each other. An act may constitute a breach of all of them. For example, the stealing of trust funds by a trustee would make him liable under the law of trust. He could be held liable for conversion under the law of torts, he could be prosecuted for breach of trust under criminal law, and if the trust was a written agreement, he could be liable for a breach of the contract of trust.

In this kind of situation in which an act raises liability in different areas, the best thing to do is for the plaintiff to sue under the aspect of law that offers the most remedy. See: ***Chessworth vs Farar (1967) 1 QB 407 @ 110 or (1966) 2 All ER 107***.

SOURCES

1. [National Open University](#)
2. The 1999 Constitution of the Federal Republic of Nigeria
3. The Nigerian Criminal Code Act
4. The Nigerian Interpretation Act
5. The English Criminal Justice Act (1967)