*DAMAGE AS CONSTITUENT OF LAW OF TORTS*

INTRODUCTION

Numerous events have been made to define ‘tort’ but the legal world has not come across a single definition that gives justice to the true essence of tort. On the basis of origin, the word, ‘tort’ can be traced to the Latin word *tortus* meaning, ‘twisted’ or ‘crooked’. In the most basic terms, tort can be defined as a civil wrong against which law provides remedy.

Explaining the basis of tort law- “In the great majority of tort actions coming before the courts, the plaintiff is seeking monetary compensation (damages) for the injury he has suffered and this fact strongly emphasises the function of tort in allocating or redistributing loss”[[1]](#footnote-1)

On the basis of its elements, tort can be described as an act or omission that gives rise to injury or harm to another and amounts to a civil wrong for which the courts impose liability. Injury means interference with an individual’s legal rights, whereas, harm refers to the negative consequences on the plaintiff. For example, if ‘A’ parks her car in front of B’s house which obstructs him to move outside his gate, A is interfering with B’s legal right of enjoying free passage in front of his house, thereby causing him harm. Conclusively, A has committed a tort against B.

The primary aim of tort law is to deliver relief to the injured party in the form of damages, as well as, impose punishment on the wrongdoers to set an example for the society so as to deter others to commit such wrongs. Common torts include- battery, assault, infliction of emotional and physical distress, trespass to property and individual etc.

This area of law is concerned with liability, rather than punishment. Liability in torts is primarily imposed with compensation or in some cases, injunction.

RESEARCH OBJECTIVES

1. To understand the significance of legal damage as an element of torts
2. To research about the types of damages with various illustrations

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Law of torts has two essential elements-

(A). Act or Omission

(B). Legal damage

EXPLAINING ACT OR OMISSION-

A wrongful act or omission must be committed in order to claim damages in case of torts. This act or omission can either be morally wrong or legally wrong. A legally wrong act is one that violates the legal rights of an individual.

EXPLAINING LEGAL DAMAGE-

Damage means a harm or loss suffered by a person as a result of some wrongful act or omission by another person. The court has a duty of compensating this damage. The sum of money awarded by the court is called “damages”. With the advent of urbanisation and technology, particularly with the use of motor vehicles, the instances of tort damages have been on the rise.

On the nature of harm suffered by the plaintiff, damage is of two types: (i) absolute and (ii) qualified.

In case of damage of an absolute right, the law conjectures damage although there is no monetary loss.

CASE LAWS TO ELABORATE THE CONCEPT OF ABSOLUTE RIGHTS

Ashby v. White (1703) 2 Lord Rayam 938

FACTS:

The plaintiff’s legal right of voting in a parliamentary election was violated by the defendant.

HELD:

The defendant was held liable even though there was no pecuniary loss to the plaintiff. This is because the absolute right (right to vote) of the plaintiff was surpassed. Justice Holt ruled: "Every injury imports a damage, though it does not cost the party one farthing, and it is impossible to prove the contrary for a damage is not merely pecuniary, but an injury imports a damage, when a man is thereby hindered of his right”[[2]](#footnote-2)

While talking about qualified rights, there is no presumption of legal right and the interference of a qualified right is only actionable after the consequent damage or injury to the plaintiff is proven.

The following are the essential ingredients of the legal damages:

1. There must be interference with a legal right (absolute or qualified)
2. It must have resulted in a damage or injury in the eye of law
3. The damages caused should be proved in case it’s a tort committed against an absolute right and not a qualified right

Qualified rights include two well-known maxims- injuria sine damno and damnum sine injuria. These are actionable only after proving a certain degree of damage caused. Both the maxims can be broken down into the following parts-

1. Damno/Damnum means harm or loss in respect to property, health, money, possessions etc
2. Injuria means an infringement to the legal rights an individual possesses
3. Sine means without

INJURIA SINE DAMNO

This maxim literally means legal injury without any damage or harm. There is an infringement to the legal rights of a person without any substantial harm or loss caused to them. The law guarantees all individuals the right to their property, liberty, life, immunity and the violation to these rights is actionable per se, i.e, to claim damages against the violation of these rights, harm or damage does not have to be proven. Moreover, the law also provides a liberty to the plaintiff to act upon a mere threat of infringement of legal rights even without the injury being completed under the provisions of Special Relief Act.

CASE LAW TO ILLUSTRATE INJURIA SINE DAMNO

Bhim Singh vs. State of J. & K [2]

FACT:

In the case of Bhim Singh vs. State of J. & K [2], the plaintiff was an MLA of Jammu and Kashmir, on the way to the assembly session and the police wrongfully detained him. He was also not presented before a magistrate[[3]](#footnote-3).

HELD:

Since his fundamental right[[4]](#footnote-4) was infringed with, the law awarded him compensation of Rs. 50,000 on the basis of injuria sine damnum.

DAMNUM SINE INJURIA

Damnum sine injuria means damage or harm without legal injury. In this, there is a damage caused to the plaintiff without interference with the individual’s legal rights. Since there is no violation of the rights vested by the law, no action can be taken in respect to damnum sine injuria. Damages can be in the form of loss suffered in terms of money, property, health etc.

CASE LAW TO ILLUSTRATE INJURIA SINE DAMNUM

Gloucester Grammar School’s Case (1410) YB 11 Hen IV, fo. pl. 201, 23

FACTS:

In the case of Gloucester Grammar School (1410), a schoolmaster sets up a rival school to that of the complainant. Because of this, the plaintiff had to reduce fees and suffered a significant monetary loss.

HELD:

The court ruled that since no legal right was infringed with, no liability can be imposed on the defendant and no compensation will be awarded to the plaintiff.

MORAL WRONGS

Damnum sine injuria comes under moral wrongs. It is a wide-accepted principle that there are no remedies in case of moral wrongs. This is subject to the condition that no legal rights have been bypassed.

CASE LAW TO ILLUSTRATE MORAL WRONG

Mayor & Co. of Bradford vs. Pickles (1895)

FACTS:

As in the case of Mayor & Co. of Bradford vs. Pickles (1895), the corporation of Bradford filed a suit against Mayor & Co. alleging that the defendant had dug a well in the adjoining land owned by the plaintiff which has cut the underground supply of water to the corporation, causing them huge monetary losses due to inadequate water supply for citizens living in their jurisdiction.

HELD:

It was ruled that the defendant is not liable since they had not violated any legal rights.

CONCLUSION

It can be concluded that legal damage refers to an infringement of rights granted to individuals by the law. It can refer to damage to property or body. Taking the example of trespass, if A enters the property of B without causing harm to the property, it is an actionable per se crime since the legal right [[5]](#footnote-5) of the plaintiff has been violated.

The law of torts is also based on the maxim ubi jus ibi remedium which means- where there’s a right, there’s a remedy. This right to remedy is a universally hailed right, accepted by majority of the legal systems. The law hence provides remedies to all sorts of wrongs that are committed.

Injury can be caused either by negligent or malicious action. The main difference between the two is of intention. In a negligence-caused injury, the tort-feasor unintentionally harms the plaintiff. For example, while having an argument with a friend, if they smash a cup on the floor and a shard strikes your eye, the friend has committed a tort but it is an act of negligence since it was unintentional. Meanwhile, if while having an argument, the friend throws a cup at you, injuring you, intentionally, a tort has been committed of battery.

There are two types of injuries encapsulated in two maxims, as discussed, injuria sine damno and damnum sine injuria. From these two, injuria sine damno is actionable per se since it violates the legal rights of an individual.

1. Winfield and Jolowicz, Tort (11th ed. By W.V.H. Rogers) 3 (1979) [↑](#footnote-ref-1)
2. Holt, C.J, Ashby v. White (1703) 2 Lord Rayam 938 [↑](#footnote-ref-2)
3. The Constitution of India, Art 22(2) [↑](#footnote-ref-3)
4. The Constitution of India, Art 21 [↑](#footnote-ref-4)
5. Constitution of India, Art 21 [↑](#footnote-ref-5)