



MOHANLAL SUKHDIA UNIVERSITY, UDAIPUR

FACULTY OF LAW

FIRST YEAR BACHELOR OF LAWS

(Effective from Session 2019-20)

PAPER – IV (PAPER CODE - 6003)

(PAPER NAME – LAW OF TORTS INCLUDING CONSUMER PROTECTION AND M. V. ACCIDENT LAWS)

Max. Marks: 100

Min. Marks: 36

Note: A. In order to ensure that students do not leave out important portions of the syllabus, examiners shall be free to repeat the questions set in the previous examination.
B. Leading cases prescribed under this paper may be read whenever they are relevant.

1. Definition, Nature, Scope, Objects and elements of Tort, Maxims, Extinction or discharge of tortious Liability,
2. General defences of Tortious Liability.
3. Vicarious Liability, Doctrine of Common Employment, State Liability,
4. Remedies, Kinds and Measures of damages - Remoteness of damages.
5. **Torts to person-**. Assault, Battery, False Imprisonment, Nervous shock, malicious prosecution, defamation.

Torts in relation to property- Negligence, Nuisance, Interference with contract or business, intimidation, conspiracy, deceit or fraud, Trespass by humans or cattle

6. **Liability -**
 - (A) Strict Liability and its exceptions
 - (B) Absolute Liability in India
 - (C) Public Liability Insurance Act 1991 – Objects and silent features of Act and procedure for claims.

7. **The Consumer Protection Laws** - Latest Consumer Protection Act, Definitions, Concept, Authorities, Jurisdiction, Powers, Consumer Rights
8. **Motor Vehicles Laws** - M.V. Accident Protection Law; Liability without fault in certain cases (Chapter 10)• Insurance of Motor Vehicles against third party risk (Chapter 11)• Claim Tribunals (Chapter 12)•

LEADING CASES FOR EXAMINATION:

1. Ashby v. White, (1703) 2 Lord Raym 938
2. State of Rajasthan v. Ms. Vidhyawati, A.I.R., 1962 S.C. 983
3. Rylands v. Fletcher, 1868, L.R. 3, H.L. 330
4. Donoghue v. Stevenson (1932), A.C. 562
5. National Insurance v. Swaran Singh & Ors., 2004 3 SCC 297

CASES FOR READING:

1. Wagon Mound's Case (1961), W.L.R. 121
2. Smith v. Charles Baker and Sons, (1891) AC 325 (HL)
3. M. C. Mehta v. Union of India, AIR 1987 SC 1086 (Absolute Liability)
4. King v. Phillips, (1953) 1 QB 429

SUGGESTED READINGS:

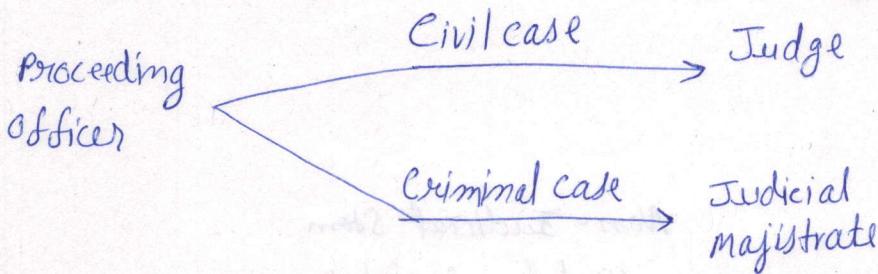
1. Ratan Lal : The Law of Torts.
2. R. K. Bangia : Law of Torts
3. Winfield and Jolowicz: Tort
4. Ramaswami Iyer : Law of Torts
5. Salmond : Law of Torts
6. Street : Law of Torts
7. G.S. Karkara : Contributory Negligence
8. Gurbax Singh : Law of Consumer Protection
9. P. Leelakrishnan : Consumer Protection and Legal Control
10. Avtar Singh : Law of Consumer Protection
11. जय नारायण पांडे : अपकृत्य विधि
12. एम. एन. शुक्ल अपकृत्य विधि

Law of Torts

Complaint: A written statement given for a victim in front of magistrate. Present by self or with the help of Adv.

Report: (FIR) A statement given in police station. It can be either in written or verbal form.

Suit (वाद) (claim)
(प्रतीकात्मक)



प्रदर्शन कार्य
(प्रतीकात्मक कार्यालय
का वाद)
order of suit

Court Hierarchy:

PCM → ACJM → CJM → ADJ → DJ → HC → SC

Munshif Court → Civil court

निष्ठा प्रमाण
प्रमाण प्रक्रिया

Suit :-

- A suit can't be file without paying the suit fee.
- The suit is given on a stamp-paper.
- Suit will be file in different courts based on conditions
if suit value $\leq 200,000$:

civil court / Gramin court

else if suit value $> 200,000 & < 500k$:

senior division court

else :

District court

Suit valuation & Stamp Act

Maliyat → valuation

State Motor vehicle
is the owner of the govt. vehicle

S.A.T. → Judgment & Act
(Civil suit original)
(फैसला एटी)

Term → A period of time

दस्तीकरण
(दस्तावेज की सूची)
List of document

Suit format:

Court name

Title

Subject

particular

Body.

- Facts
- cause of action
- Jurisdiction
- valuation & court fee
- Relief.

- Parties - All parties should come.

कानूनी प्रक्रिया
भारतीय विवादों का विवरण

2 Types of stamp:

Judicial Stamp

- used to print suit
- used to ~~pay~~ pay judicial fee

Non-Judicial Stamp

- used for registry
e.g. transfer of property.
- only used to pay registration fee.

We can go to SC through writ

Breach of duty is tort.

Two types of work:- a) Legal (जुर्य) b) wrongful act (जुर्य का काम)
1) Duty & self willing to do.

The work should not harm/disturb any other body.

Decree is a Urdu word.

Order 21 → Decree.

जमाने का काम
पर्याप्त चलाका की काम
सही काम की काम
दूसरे का काम नहीं

- In tort the fee will be very minimal (Symbolic) or no fee.
- In Civil case the fee will be 6.5% of the case value.
- Any case related to contract is a civil case.

Tort

(2)

Definition: Acc. to Salmond — Tort is a civil wrong, for which the remedy is common law action for unliquidated damages and which is not exclusively the breach of contract, or breach of trust or merely equitable obligation.

⇒ Analysis of Definition:

- 1) Civil wrong
- 2) Remedy - unliquidated damages
- 3) breach of contract
- 4) breach of trust
- 5) Equitable obligation. (समिक्षक कानून का नहीं होता)

e.g. A doctor denied a patient to see/check. ^{in a certain situation} & patient died.

Acc. to Dr Winfield — Torts liability arises from the breach of a duty primarily fixed by law, this duty is towards persons generally and its breach is retrivable by an action for unliquidated damages.

⇒ Analysis of definition:

- 1) Breach of duties fixed by law.
- 2) duty towards persons generally
- 3) breach is retrivable by an action (Remedy)

- Tort is law of compensation.
- Crime has punishment.

[Jai Lakshmi Salt Vats vs State of Guj 1994 SC]

- SC ordered govt to make statutes for tortious liability.
- Bareact was made with ref. of England's ^{statute} & Salmond's & Winfield's definition.
- Imp. The motive/intention doesn't matter; it's only we're to see Civil wrong (work) & duties, as per SC.

Theory of Pegeon
help

Compensation

To bring a person in some situation (economically) where he was suppose to stand before the damage happen.

Unliquidated

(अनियमित)
पूँजी नहीं देता
रुपये नहीं देता

Pure Civil

Partnership, contract,
trust etc.

Q Difference b/w

Salmond's definition
& Winfield's definition.

Q Diff b/w Tort &
Contract?

A Explain Tort is a
civil wrong as well
Criminal wrong (offence)?

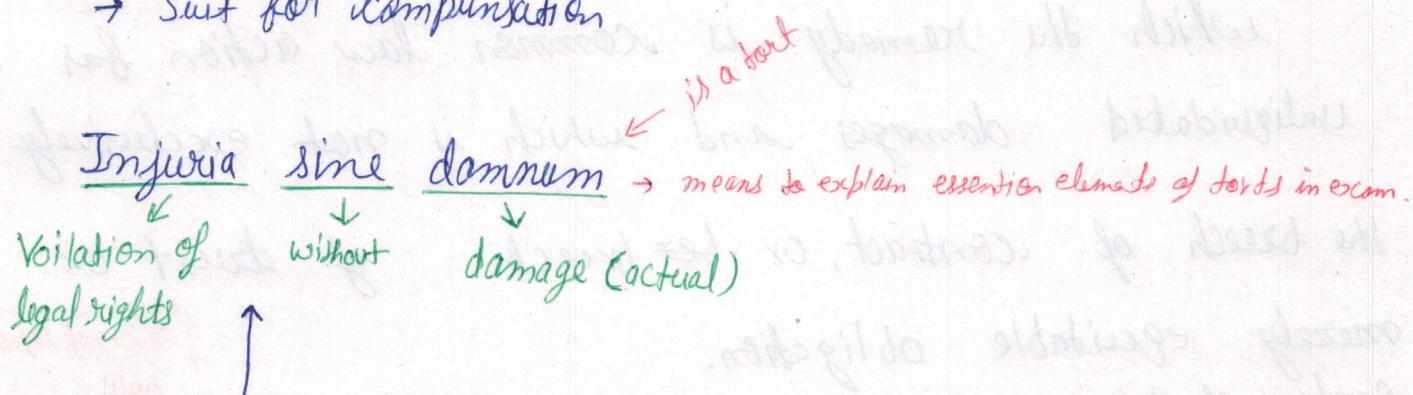
Essential elements of Torts : [Elements]

13/3/2021

→ Wrongful act

→ Omission

→ Suit for compensation



[Ashbee v/s White]

- legal right to vote
- Poll officer denied.

[Margetee v/s Willium]

- M issue a check (has enough money in a/c)
- Bank denied the cheque by saying there is no enough money.
- Bank was liable at this point.

Damnum sine Injuria ← not a tort

Actual damage without legal damage

[Glasgow Grammar School Case]

- This organisation fire a employee
- The employee opens a new school with less fee
- This org. brings the suit of actual damage
- Court denied the suit by saying that it is a right of employee to do a business.

Means in this case we can't file a suit

[Chasmar v/s Richards]

- Chasmar was using rain water from last 60 years.
- Richards came & start using the water.
- Chasmar objected but court denied.

18 / March / 2021

Defense :V. imp [short note]

Volenti Non fit Injuria "वैदेष से उतारे हाते हानि नहीं मानी जाती"

(1) Willingness

Injury

Tortious Act

OR

Breach of legal Pt. Right

Willingness does not make injury

e.g. (a) we're going to watch car race and some injury happen to us by ~~a~~ a car accident.

e.g. (b) while watching cricket match in cricket ground and ~~a~~ ball hit us.

In both of ~~the~~ above example we can't claim compensation or file a suit.

[Hawl v/s Brookland] ← e.g (a) case.

- No one is liable for the injury caused by willingness.

→ Indirectly you know about the risk factor & accident happens then it is Implied / ^{Individual} concern about the facts & risk

- Free consent
- Legal right damage
- Knowledge about the facts & ~~with~~ info.

[Concern is with lawful act then only legal right damages, then only tortious act.]

(2) 19 / March / 2021

Plaintiff the wrong ~~doer~~ doer;

This is based on principle:

"EX TURPI CAUSA NON ORITUR ACTIO"

(No action arise from an immoral cause)

[Bird v/s Halbrook]

- Planted a spring gun to protect the field.
- A ~~thief~~ ^{thief} come & steals into the field.
- Thief shot by spring gun.
- Court decided the liable to the owner.

e.g. Bridge case has notice & for the carrying the ^{most} limit of load.

③ Act of God

④ Inevitable Accident

[Stanli v/s Pawel (1991)]

वादी

प्रतिवादी

- intention
- Uncontrollable
- Unforeseen

[Brown v/s Candle (1875)]

[Nitro Glycerine (1872)]

- Inevitable accident defence

[Padmarati v/s Dugga Naika (1975)]

- intention
- ~~Uncontrollable~~ Uncontrollable

Ferndal v/s Harcourt (1832)

homes v/s Metha (1875)

- Reasonable case
- Unavoidable
- Unforeseen

Types of Torts

Related to body

Related to Property

Tort Related to body:

Assault and Battery:

(दम्भ)

(संतान)

Assault: Assault is an act of the defendant which causes to the plaintiff reasonable apprehension of the infliction of a battery upon him by defendant.

Acc. to Dr. Winfield



ज्ञात पूर्वानुमान
→ (Reasonable Apprehension)
→ Intention must be there

Tuberville v/s ~~Savage~~ Savage

- Army
- At the time of drill
- Officer said) if its not a drill stone, I'll remove your head.
- Its not a assault.

Stiven Mayers Case

- Church chairman
- The person stand & said I'll throw you from chair.
- It is tort.

Birbal Caliphah v/s Somrat

- ~~not~~ Habitual offender (Somrat)
- Somrat denied to sign the warrant.
- as a penalty Birbal decided to removed Somrat's earring.
- ~~to~~ Somrat's Lee & present given by his friend.
- Somrat said anyone who come near to me I'll beat him.
- It is not considered as tort because he didn't mention anyone specific.

Preparation of Assault: (उत्तेजना की तैयारी)

- He should be in situation of imminent Battery.
- Failed attempt of Battery is assault.
- Only Threaten is not assault
- Any preparation which ~~is~~ Threaten ^(उत्तेजना) or makes power (विकास) is assault.
- The intention should be there in preparation.

Battery [बैटरी] :

Not for use

stop & hold

good obstacles

speed at level & not

speed at level & not

over one third of the way through the
and you'll be absolutely, dead set off at
threshold & will easily get to p

threshold at which

your gear will start

threshold

velocity control is lost but this is not

threshold

start bottom line

bottom line

and only way to get back to the

back to

travel at max. line

(travel) start bottom line

bottom line

and return to the bottom line

bottom of each hole & then it takes

about two or three more turns before the

bottom line, after which the gear starts to work again

(from top to R3) : Please to start a

pattern different to normal as it looks like ←

threshold is getting to bottom line ←

threshold is in about 30s ←

threshold (the top) may have to start a little earlier for a

threshold and with all blocks collected in a

Tort :

Meaning of tort :

- The term 'tort' is the French equivalent of the English word 'Wrong' and of the Roman Law term 'delict'.
- It is introduced into the English law by Norman jurists.
- The word 'tort' is derived from Latin term 'tortum', twisted, and implies conduct which is twisted or tortious.
- It means a breach of some duty independent of contract between citizens giving rise to a civil cause of action and for which compensation is recoverable.
- Public nuisance is an instance of a civil injury for which ~~an~~ an action for damages in tort will not lie except when it becomes a private nuisance as far as the person suffering special damage is concerned.

Definition :

A tort, in common law jurisdiction, is a civil wrong that causes a claimant to suffer loss or harm, resulting in legal liability for the person who commits the tortious act. It can include intentional infliction of emotional distress, negligence, financial losses, injuries, invasion of privacy and many other things.

Definitions by various thinkers:

According to John Salmon, Tort is a civil wrong, for which the remedy is common law action for unliquidated damages and which is not exclusively the breach of contract, or breach of trust or merely fair and equitable (impartial) obligation.

Analysis of Definition:

- (i) Civil Wrong
- (ii) Remedy → unliquidated damages
- (iii) Breach of contract
- (iv) Breach of trust
- (v) Equitable obligation [सामाजिक कर्तव्यों का भंग होना]

According to Richard Dien Winfield, Torts liability emerges from the breach of a duty primarily fixed by the law, this duty is towards the other people generally and its breach is redressible by an action for unliquidated damages.

Analysis of Definition:

- (i) breach of a duty (fixed by law)
- (ii) duty towards persons
- (iii) redressible by an action for unliquidated damages.

General Defences

5) Private defence

Self defence : When there is a attack on us.

Essential Element :

- Action immediate

- Force of action should be the same. (Reasonable force)

IPC has private defense.

In criminal law private defense treat as self help.

1) Law permit use of reasonable force to protect one person or his property.

2) In case of imminent threat to life or property, use of force as a defense of the same is justified.

(i) ^{Essential Elements} There should be imminent threat to personal or safety property.

(ii) The force used should not be excessive.

Scott v/s Shepherd

- A firecracker thrown by someone in a shop.
- The shopkeeper in a quick action he throws again.
- The cracker ~~feels~~ hits a person.
- Court says it was a self-defence act in private defense.

Morit v/s Newgent (1836)

- In this case the court say it was not a self defense.
- He killed the dog when he was not doing anything.
- He didn't used the reasonable force.

Cusbell v/s Sail (1948)

- A dog trespasses to a property and start injuring the pets (goat).
- In this the defendant used reasonable force and dog dies.
- Court says it was done in private defense

Bird v/s Hallbrew

- Used a gun to secure a property from trespasser.
- No sign board & of a warning of a spring gun.
- the force was not reasonable.

6) Necessity.

With regard to the first point, I would like to say that the term "necessity" is often used in a very broad sense, and it is difficult to define precisely what it means. In general, necessity refers to a situation where there is no other way to achieve a particular goal or objective. This can be due to various factors such as time constraints, resource limitations, or legal requirements. In some cases, necessity may also refer to a moral or ethical obligation, such as the duty to protect innocent lives or to prevent harm from occurring. It is important to note that necessity does not always imply that a particular course of action is the best or most appropriate one, but rather that it is the only feasible option available under the circumstances.

With regard to the second point, I would like to say that the concept of "necessity" is closely related to the concept of "proportionality". Proportionality refers to the idea that the means used to achieve a particular end should be proportional to the ends themselves. In other words, the amount of force or resources used should be commensurate with the goals being pursued. This is an important consideration in many areas of law and ethics, particularly in situations where there is a conflict between different values or principles.