

Engineer in Society

Assignment 3

E/19/210

Kumarasiri R.P.J.R.

1. What is Tort?

A tort is a legal term for a civil wrong or harm caused by one party to another. Tort law allows individuals to seek compensation for injuries or damages resulting from negligence, intentional wrongdoing, or strict liability.

2. Tort is a civil wrong but all civil wrongs are not torts. Explain.

The statement "Tort is a civil wrong but all civil wrongs are not torts" highlights that torts are a subset of civil wrongs within the broader field of civil law. A tort is a specific type of civil wrong where one party's actions lead to harm or injury to another party, typically due to negligence, intentional misconduct, or strict liability. To establish a tort claim, specific legal elements like duty of care, breach of duty, causation, and damages must be proven. In contrast, not all civil wrongs fit the criteria of torts. For instance, breaches of contract, which involve violations of contractual agreements, are considered civil wrongs but fall under contract law, governed by distinct legal principles. Similarly, family law matters like divorce or child custody disputes are civil wrongs but are governed by family law principles, separate from tort law. Therefore, while torts are civil wrongs, they are set apart by their unique legal requirements, distinguishing them from other civil wrongs.

3. What are the four elements of a tort?

Duty of Care: The defendant must have had a legal obligation to act reasonably.

Breach of Duty: The defendant must have failed to meet that duty of care.

Causation: The defendant's breach of duty must have directly caused harm to the plaintiff.

Damages: The plaintiff must have suffered measurable harm or losses as a result.

4. What is the time limit to take legal action in tort?

Six years

5. Explain the following in Tort case.

- a. Plaintiff - The plaintiff is the party who brings the lawsuit, claiming harm or injury.
 - b. Defendant - The defendant is the party being sued, accused of causing the harm or injury.
6. What is Contributory negligence? Cite decided cases.

Contributory negligence is a legal concept in tort law where if a plaintiff's own negligence contributed to their injury or damages, they may be barred from recovering any compensation from the defendant. This doctrine is less commonly used today, as many jurisdictions have adopted comparative negligence systems that allow for partial recovery even if the plaintiff shares some blame.

- The case of Davies vs Mann
The Plaintiff, Davies (Plaintiff), had his ass illegally tethered along a public highway. The Defendant, Mann (Defendant), came along the path at a quick pace and ran down the ass, killing it. The judge instructed the jury that if the proximate cause of the injury was due to the lack of proper conduct of the Defendant, an action is maintainable.

7. What is vicarious liability? Cite decided cases.

Vicarious liability is a legal doctrine that holds one party (typically an employer) responsible for the wrongful actions or negligence of another

party (usually an employee) while the latter is acting within the scope of their employment. It allows a plaintiff to seek damages from the employer for the actions of its employee, even if the employer was not directly involved in the wrongdoing.

- The case of *Broom vs Morgan* (1953)

Ms. Broom was employed as the helper of a beer and wine house, of which her husband, Mr. Broom, was employed as the manager. Ms. Broom fell through a trap that her husband was responsible for keeping closed, sustaining injuries as a result. Ms. Broom sued for injuries due to the negligence of her husband, but the courts held that, under statute, a husband cannot be held liable in tort against his wife. She then sued the employer as vicariously responsible for the negligence of her husband.

8. What is a defective product?

A defective product is one that has a flaw or issue, making it unsafe or unfit for its intended use. These defects can arise during design, manufacturing, or due to inadequate warnings or instructions. Injuries caused by defective products may lead to legal actions under product liability laws.

9. What are three types of defects in Torts?

- Design Defects
- Manufacturing Defects
- Marketing Defects

10. Law of Tort largely developed through Judicial decisions. Explain.

The Law of Torts has largely developed through judicial decisions. The common law system, the creation of precedents, the interpretation of statutes, and the evolution of the law have all contributed to the development of this area of law. The law of torts is based on the principles of common law, which is mainly the English law of torts. The law of torts has its origin in England but it is followed and adopted in the United States, Dominions of British Commonwealth of Nations, and India.

The common law system is a legal system that relies on judicial decisions and precedents rather than codified statutes or legislation. In this system, judges play a crucial role in shaping and developing the law through their decisions in individual cases. Over time, these judicial decisions have established legal principles and rules that form the basis of the law of torts.

The development of the law of torts through judicial decisions allows for flexibility and adaptability to changing social, economic, and technological circumstances. As new situations arise, courts can apply existing legal principles to novel fact patterns or create new legal doctrines to address emerging issues. This evolutionary process ensures that the law remains relevant and responsive to societal needs.

In summary, the Law of Torts has largely developed through judicial decisions, which have shaped and refined the legal principles governing civil wrongs. The common law system, with its emphasis on precedents and judicial interpretation, has been instrumental in this development.

11. What is the Neighbor principle? (Love your Neighbor/Not injure)

The Neighbor principle is a principle of English law that requires a person to take reasonable care to avoid harming others. It was established in the case of *Donoghue v Stephenson* (1932), where a woman sued a manufacturer after finding a snail in her ginger beer. The principle is based on the idea that individuals should not cause harm to others who could reasonably be affected by their actions or omissions. It allows injured parties to make claims in negligence by identifying the class of people to whom a duty may be owed. According to Lord Atkin, a person's neighbor includes those who are so closely and directly affected by their acts that they should reasonably have them in contemplation when directing their mind to the acts or omissions in question.

In summary, the Neighbor principle requires individuals to take reasonable care to avoid acts or omissions that could foreseeably cause injury to others. It provides a basis for determining the boundaries of the duty of care in

negligence cases and emphasizes the importance of considering the interests of those who may be directly affected by one's actions.

12. What is Nervous shock/ cite decided case.

Nervous shock refers to the onset of a psychiatric illness caused by witnessing the negligent action or its consequences by another person¹. It is important to note that for the purposes of succeeding in a legal suit, the psychiatric illness must be diagnosed as more than grief or sorrow, i.e., an actual psychiatric illness¹.

- The case of *Byrne v Southern and Western Railway Co.*

The *Byrne v Southern and Western Railway Co.* case is a significant case that paved the way for the recognition and evaluation of nervous shock as a genuine psychiatric condition worthy of compensation. In this case, which took place in Ireland, a superintendent of the telegraph office at Limerick Junction railway station (plaintiff) sued the Great Southern & Western Railway Company after a train broke through the wall of the telegraph office. Compensation for nervous shock was awarded.

13. What is the purpose of tort law?

The purpose of tort law is to provide relief to injured parties for harms caused by others, to impose liability on parties responsible for the harm, and to deter others from committing harmful acts. Tort law also aims to promote social welfare by encouraging individuals and businesses to act in a socially responsible manner.

In summary, the purpose of tort law is to provide relief to injured parties, impose liability on parties responsible for harm, deter harmful acts, compensate victims for their losses and injuries, and promote social welfare.

14. What is the Decision of *Priyani de Soyza Vs. Arza Kularatna* case?

The decision of Priyani de Soyza vs. Arza Kularatna case was that the Supreme Court dismissed the special leave to appeal application of the defendant, Priyani de Soyza, and upheld the judgment of the Court of Appeal and the District Court, which found her liable for medical negligence and awarded damages to the plaintiff, Arza Kularatna. The Supreme Court ruled that the defendant had failed to exercise reasonable care and skill in diagnosing and treating the plaintiff's daughter, who had a brain stem glioma, a fatal condition that was misdiagnosed as rheumatic chorea. The Supreme Court also rejected the preliminary objections raised by both parties regarding the compliance with the Supreme Court Rules, 1990, and exercised its discretion to hear the merits of the case.

15. Who is the expert witness?

An expert witness is an individual who possesses specialized knowledge, skills, experience, or education in a particular field beyond that of an average person. They are called upon to provide their expert opinion or testimony in legal proceedings to assist the court or jury in understanding complex or technical matters.

16. What is the decision of Stella Liback Vs. McDonalds case?

The decision of Stella Liebeck vs. McDonalds case was that the jury awarded Liebeck \$2.86 million in damages, which included \$160,000 in compensatory damages and \$2.7 million in punitive damages. The judge later reduced the punitive damages to \$480,000, making the total award \$640,000.

17. What is the decision of Heenbanda Vs. Navasivayam?

The decision of Heenbanda vs. Navasivayam case was that the Court of Appeal affirmed the judgment of the District Court, which found Heenbanda, the owner of a non-mischievous animal, liable for the damage caused by his animal to Navasivayam's property. The Court of Appeal held that Heenbanda had failed to prove that he had taken all reasonable precautions to prevent his animal from straying or that the damage was due

to the fault of Navasivayam. The Court of Appeal also rejected Heenbanda's argument that the District Court had erred in awarding excessive damages to Navasivayam.

18. What is the decision of Chinta devi Vs. Glacio Ltd.?

The decision of Chinta Devi vs. Glacio Ltd. case was that the Court of Appeal upheld the judgment of the District Court, which awarded Chinta Devi a sum of Rs. 250,000 as damages for the injuries she suffered due to the explosion of a refrigerator manufactured by Glacio Ltd. The Court of Appeal found that Glacio Ltd. was negligent in the design and manufacture of the refrigerator, which had an unsuitable and unsafe burner for a kerosene refrigerator.

19. What is the decision of Donoghue Vs. stevenson?

The decision of Donoghue v Stevenson was that the manufacturer of the ginger beer, Mr Stevenson, owed a duty of care to Mrs Donoghue, the consumer, and that he breached that duty by failing to ensure the product's safety. The House of Lords held that a duty of care could arise even in the absence of a contractual relationship, as long as it was reasonably foreseeable that negligence could cause harm to someone in the position of the plaintiff.

20. What is the decision of Grant Vs. Australian Knitting Ltd.?

The decision of Grant v Australian Knitting Mills was that the manufacturer of the woollen underwear, Australian Knitting Mills, and the retailer, John Martin & Co, were both liable to Dr Grant for the dermatitis he suffered as a result of wearing the underwear. The Privy Council held that there was a breach of duty by both defendants, as they failed to take reasonable care to ensure that the product was free from excess sulphite, which was a latent defect that could not be detected by the consumer. The Privy Council also held that the mere possibility of tampering by a third party did not negate the duty of care, as there was sufficient evidence that the underwear reached Dr Grant in the same condition as when it left the manufacturer.