

TOPICAL COMPENDIUM 1

FOUNDATIONAL PRINCIPLES OF THE LAW OF TORT

1. It is the business of the law of torts to determine when the law will and will not grant redress for damage suffered or threatened.
2. The essential aim of the law of torts is to compensate persons harmed by the wrongful conducts of others and the substantive law of torts consists of the rules and principles which have been developed to determine when the law will and will not grant redress for injury suffered. It accomplishes this through rules of liability such as negligence, nuisance, the Rule in Ryland and Fletcher, Trespass etc.
3. According to Kodinlinye and Aluko: "A tort may be defined broadly as a civil wrong involving a breach of duty fixed by law, such duty being owed to persons generally and its breach being redressible primarily by an action for damages."
4. Tyas defines law of torts as an unlawful act that arises primarily from the operation of law the typical remedy for which is unliquidated damages.
 - a. From Tyas definition liability in torts arise from operation of law and not agreement of the parties. If liability arise from agreement between the parties it is a breach of **CONTRACT** or a breach of **TRUST**.
 - b. Students should highlight 3 similarities and 4 differences between Torts and breach of Contracts.
 - c. Students should highlight 2 similarities and 2 differences between torts and breach of trusts.
 - d. If an unlawful act gives rise exclusively to punishment by the state, it will not be a tort but a crime only.

- e. Students should highlight 3 similarities and 4 distinctions between Tort and Crime.
 - f. The same action can be a tort and a contract. Student should provide illustration.
 - g. The same action can be a tort and a crime. Student should provide illustration.
5. The Rule in SMITH V. SELWYN, provides that if a wrongful act is a felony, no action would in tort would lie against the defendant until he has been prosecuted for the felony or a reasonable excuse has been shown for his not having been so prosecuted. This was the rule in England for many years.
 6. Students should familiarize themselves with the facts of SMITH V. SELWYN [1914] 3 K.B. 98
 7. In ROSE V. FORD, the court in England refused to follow this rule describing it as anachronistic and archaic.
 8. In Tika Tore Press Ltd V. Umar the court in Nigeria rejected the rule in SMITH V. SELWIN.
 9. The rule in SMITH V. SELWYN is inapplicable in Nigeria by virtue of section 6(6)(b), 17(2)(e), 46(1) and 315(3) of the Constitution.
 10. Student should examine the court's decision on the applicability of the rule in SMITH V. SELWYN in Nigeria in the following cases:
 - a. Adediran V. Interland Transport Ltd (1991) 9 NWLR pt 214 p. 155
 - b. Veritas Insurance Co Ltd V. Citi Trust Investment Ltd (1993) 3 NWLR Pt 281, p349
 11. Student should think of a situation where the same act is a contract, a tort and a crime.

12. The Civil and Criminal Remedies are not alternatives but concurrent rights existing side by side. Each remedy is separate and independent of the other remedy. Therefore both can be pursued concurrently by an aggrieved party against a wrong doer. The rule against Double Jeopardy and the principle of Res Judicata is in this situation inapplicable to prevent an aggrieved party from concurrently and consecutively pursuing criminal and civil remedies against the wrong doer. Therefore even after a criminal conviction or an acquittal, the civil action in tort can still be brought.

13. A person who commits a tort is called a TORTFEASOR.

14. Not all injuries or harms are actionable under the law of tort. An injury or harm must fall under a tort such as Assault, Negligence, Nuisance etc., to be actionable. An injury or harm that is actionable under the law of torts is said to be "TORTIOUS," and the liability it creates is described as "TORTIOUS LIABILITY."

15. Wrongful acts which are not Tortious are described as Damnum Sine Injuria meaning damage or harm without legal injury.

16. Typical remedy for a tort is an action for unliquidated damages. Damages are unliquidated when they consist of such sum of money as the court, in its discretion, to a successful plaintiff, so as to restore him as nearly as possible to his original position and not a fixed or liquidated sum named by the plaintiff.

17. The law of torts is part of the British colonial legacy to Nigeria. Student should understand how the law of torts was received into Nigerian law.

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court may in addition to monetary damages grant an injunction as a remedy for Tort. The Court may also award an order for Specific Restitution.

19. In practice the court would usually grant Special and General Damages.

Special Damages are monetary compensation for injuries suffered that are monetarily quantifiable such as loss of income from January to December, damage to car, loss of property etc. General Damages are monetary damages for injuries suffered that are not monetarily quantifiable such as emotional stress, loss of sleep, loss of reputation etc.

20. For a cause of action to exist in torts there must be both legal injury and damage. This can be expressed in the arithmetic equation:

$$\text{Legal Injury} + \text{Damage} = \text{Tortious Liability}$$

- a. If as a bakery owner, Bola Chicago accidentally uses expired flour to bake bread and Joy Nyanga eats the bread. Bola Chicago has caused Joy Nyanga a legal Injury called Negligence. But this does not automatically create a Tortious Liability against Bola Chicago. Joy Nyanga must in addition show that she suffered damage such as sickness from eating the bread with expired flour. It is only at this stage. That Tortious Liability is created against Bola Chicago.
- b. Damage in this case does not mean unliquidated or monetary damage but it means harm.
- c. This is true of most torts including Nuisance, negligence etc.

21. There are torts that the mere existence of legal injury results in Tortious liability. These torts are expressed by the arithmetic equation:

$$\text{Legal Injury} = \text{Tortious Liability.}$$

- a. These torts are described by the Latin maxim: Injuria Sine Damno meaning Legal Injury without damage.
 - b. If Joy Nyanga publishes in the Newspaper that Bola Chicago is a fraudulent lecturer who takes sorting and engages in "marks for love" in South – South University. The Publication constitutes Legal Injury of Libel.
 - c. Bola Chicago needs not prove that he suffered damage or harm such as sack by South- South University. The very act of publication creates tortious liability.
22. When the very act of the Tort causing legal injury without damage creates Tortious Liability, the Tort is said to be ACTIONABLE PER SE. Example of this kind of Tort is Libel, Trespass to Person, Trespass to Land, Trespass to Chattel.
23. When the legal injury of the tort needs proof of damage to cause injury, the tort is said to be NOTACTIONABLE PER SE. Example of this kind of tort is Negligence and Nuisance.
24. The mental element of a tort is very important. The mental element means the state of mind of the defendant at the time of committing the tort. The two major mental elements of torts are that the defendant did the tortious act intentionally or he did it negligently. Most torts ranging from Nuisance to Defamation operate on the basis of the mental element that the defendant did the tortious act intentionally.
25. Intentions are difficult to determine. However in R. V. Harvey it was held that a party must be considered to intend the necessary or natural consequences of what he does. In some cases, where a tort is based on the intentional act of the defendant it is said to be based on FAULT.

26. The tort of Negligence operates on the mental element of negligence. This means carelessness. In most torts it must be shown that the tortious act was either intentional (or Fault Based) or

27. it was negligent.

28. However, there are torts that a defendant would be held liable even if his tortious act was neither as a result of his intentional act (or fault based) or his negligence. If Bola Chicago owns a Tiger. And he chains the Tiger with 2 chains. But one day the Tiger cuts both chains escapes and attacks Joy Nyanga and injures her severely. Bola Chicago would be liable in tort even though Joy Nyanga's injury was neither as a result of Bola Chicago's intentional act or his negligence. This kind of tort is called a **STRICT LIABILITY TORT.**

29. Another example of strict liability tort is the Rule in Ryland V. Fletcher.

30. There is another situation in which a defendant would be liable in the law of torts without fault or Negligence. This is under the EGG SHELL RULE or the THIN SKULL RULE. This rule states that you take your victim as you find him. It is no defense that such an act would not have harmed a normal person. A defendant cannot plead the medical condition of the victim as the reason for the nature of harm suffered by the victim.

31. In SMITH V. LEECH BRAINE AND CO and employee of the defendant suffered a minor accident at work which resulted in molten zinc burning his lips. Because he was already in the first stage of cancer the lips became cancerous and he died. The Court held that the defendant company was liable and that the fact that he was already in the first stage of cancer was no defense.

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32. Every Tort has a defense. A defense means an explanation by the defendant about the conduct of the plaintiff or the circumstances that resulted in the commission of the Tort that exempts the defendant from liability or mitigates his liability.
33. Examples of defenses include Act of God, Volenti Non Fit Injuria, Self Defense, Plaintiff's Contribution etc.
34. The Law of Torts depends on several tests to measure the acts of the defendant. These tests are the Foreseeable Test, the Reasonable Man's Test etc.
35. Under the Foreseeable Test, a tortfeasor is only liable for harms to the defendant that are reasonably foreseeable. Under the Reasonable man's test, simply addresses the question how would a reasonable man in the shoes of the defendant act?