**LAW OF TORT**

***Definition of terms***

***Tort****:* This is a civil offence whose prescribed remedy is unliquidated damages ie (not measurable) and

which is not a breach of contract

***Plaintiff***: The Complainant

***Defendant/Tortfeasor****:* The Accused

***Elements of tort***

1. Wrongful act or omission done by the defendant
2. The legal right of the plaintiff must have been violated
3. The wrongful act must give rise to an action of damages

***Difference between tort and crime***

|  |  |
| --- | --- |
| TORT | CRIME |
| Infringement of private right | Infringement of public right |
| Tortfeasor compensates the victim | The wrong doer is punished for the public interest |
| Proof is not necessary | Proof must be provided beyond reasonable doubt |
| Parties are plaintiff and defendant | The parties are accused and the prosecutor |
| Penalty is unliquidated damages | Penalty is a fine imprisonment or corporal punishment |

***Difference between contract and tort***

|  |  |
| --- | --- |
| CONTRACT | TORT |
| Duties are fixed by the parties | Duties are fixed by the law |
| Duties are specific | Duties are general |
| Has got privity | There is no privity |
| Duties are owed to a particular person | Duties are owed to the community at large |
| Damages are liquidated | Damages are unliquidated |

**Concepts of tort**

*Injuria Sin Damnum:* A tort is an infringement of al legal right without any actual physical loss being

Sustained.

*Damnum sin injuria:* Actual loss without an infringement of a legal right. E.g. ordinary trade competition

**TYPES OF TORT**

1. **MALICE**

***Def:*** A wrongful act done purposefully or a legal act done with a wrong intention.

***Exceptions***

1. A police officer cannot be charged with malice for arresting an offender/suspect
2. A person cannot be charged with malice where his or her professional certificates are forged
3. Where a defendant is under statutory duties
4. In a situation of conspiracy to trade.
5. **NUISANCE**

***Def:*** A wrongful disturbance in the enjoyment and use of one’s property/land without a legal

justification.

**Types of Nuisance**

* ***Private Nuisance:*** Occurs when a person’s private life is interfered/ disturbed with.
* ***Public Nuisance:*** This occurs when the convenience and comfort of a group of people is

interfered with without legal justification.

***Defenses to Nuisance.***

1. Triviality; something minor.
2. Reasonable use of one’s property.
3. A right of prescription.
4. If the nuisance is for public benefit.
5. Acting within your statutory authority.
6. Acting with the consent of the plaintiff.

***Remedies to Nuisance.***

1. Abetment: Legally removing a source of nuisance after notifying a tortfeasor.
2. Injunction: Restraining an individual from carrying out a particular act in future.
3. Damages: Financial compensation to a victim.
4. **NEGLIGENCE**

***Def:*** This is the omission to do something which a reasonable person in a reasonable

circumstance would do. (Reasonableness in this circumstance meaning qualification either

academic or through experience)

***Elements of Negligence***

1. An individual has a duty not to injure their neighbor.
2. There must be a breach of duty
3. There must be injury caused to the plaintiff.

***NB:*** *It’s upon the plaintiff**to prove that what happened should not have happened in the*

*prevailing circumstances.ie The thing speaks for itself “Reispar Loqitur”*

**This rule only applies where**:

* *The object inflicting injury must be under the control of the defender or someone the defender could control.*
* *The event could have been avoided without negligence.*
* *There must be an explanation as to why or how the event occurred*

1. **TRESSPASS**

***Def:*** This is an act of interfering with an individual’s access or enjoyment of his private

property/person without legal justification.

**Types of Trespass**

1. ***Trespass to Land***
2. ***Trespass to Persons***
3. ***Trespass to Goods***

**A. TRESPASS TO LAND**

This is the interfering with an individual’s enjoyment of his land on any property there on without

legal justification.

This constitutes acts such as:

* *Entering the land of another without permission*
* *Throwing objects into another person’s land*
* *Remaining on another person’s land after the right of entry has ceased.*
* *Using the right of entry for other purposes other than for which it was intended.*
* *Contravening the rights of parties processing the land.*

**TYPES OF TESSPASS TO LAND**

1. ***Continuing Trespass:*** This is a type of trespass that brings fresh action each day it occurs. A person throws a dead cat into another’s compound the owner continues to sue each day until object is removed.
2. ***Trespass by Domestic animals:*** Occurs when animals belonging to another person enters another person’s land. The owner will be liable for the loss caused by the animals.
3. ***Trespass Ad-initio:*** This is where by an individual enters another’s land before completion of the transfer of possession. Procession begins from the time the agreement is sealed even before completion of the process.

***Remedies of Trespass to Land***

1. Damages: Refers to monetary compensation.
2. Injunction: An order given by the court restraining someone from doing an act.
3. Distress Damage Feasant: Money retained as compensation for an infringement.

***Defenses of Trespass to Land***

1. Right to prescription i.e. right of way
2. Acting within powers given by law. (Statutory Authority)
3. Act of Necessity
4. Involuntary Trespass i.e. not done intentionally

**B. TRESPASS TO PERSONS**

***Def:*** this is a direct interference with a person without any legal justification.

**TYPES OF TRESPASS TO PERSONS**

1. ***Battery***: Un warranted striking of another person or mere touching in a rude manner. its immaterial weather the force was applied directly or indirectly*.*
2. ***Assault****:* A conduct or threat to do violence to another which makes the other feel like they are in real danger.
3. ***False imprisonment****:* Confinement of a person in a prison, private house, public street, etc. without any legal justification.

***Remedies of Trespass to Persons.***

1. Damages: Refers to monetary compensation.
2. Injunction: An order given by the court restraining someone from doing an act.
3. Apology

***Defenses of Trespass to Persons.***

1. When one engages voluntarily in an act that can cause injury. “***Volenti Non-Fit Injuria”***
2. Acting within powers given by law. (Statutory Authority)
3. Act of Necessity
4. Private/ Self Defense
5. Legitimate Disciplinary Action

**C. TRESPASS TO GOODS.**

***Def:*** This is an act that interferes with an individual’s ownership of private goods which may include direct/indirect injury to the aforesaid goods. I.e. the possession has been wrongfully interfered with.

**TYPES OF TRESPASS ON GOODS.**

1. ***Conversion:*** Dealing in a manner that is inconsistent with the right of possession of another person’s goods.
2. ***Detinue:*** This is a wrongful withholding of goods entitled to another person’s possession.
3. ***Trespass on Chattels:*** This is the wrongful interference with a person’s ownership of private goods /property.

***Remedies of Trespass on Goods.***

1. Damages: Refers to monetary compensation.
2. Specific Restitution
3. Return of Goods

***Defenses of Trespass on Goods.***

1. Acting within powers given by law. (Statutory Authority)
2. Act of Necessity
3. Right of Prescription

1. **DEFERMATION.**

***Def:*** this is the publication of a false statement without justification which tends to lower a person’s reputation in the eyes of right-thinking members of the society or injure a person’s trade or profession and causing him/ her to be shunned/ avoided.

***Elements of defamation***

1. The statement must be false.
2. The statement must be defamatory
3. The statement must refer to the plaintiff in whatsoever way.
4. The statement must be published.

**TYPES OF DEFERMATION**.

1. ***Slander:*** This is a type of defamatory statement that’s not permanent in nature. Proof of damage is equally required to sustain an action.
2. ***Libel:*** this is a defamatory statement that’s permanent in nature it constitutes a fresh legal action each day. However, proof is not necessary and must have been published.

***Remedies to Defamation.***

1. Damages: Refers to monetary compensation.
2. Injunction
3. Apology

***Defenses of Trespass on Goods.***

1. Justification of the statement
2. Fair comment i.e. a statement that involves a group of people.
3. Absolute privilege i.e. comments made in parliament or a public sitting
4. Qualified Privilege i.e. comments made by doctors, lawyers pastors or other professionals in their area of technicality.
5. Apology

**NOTES SUMMARY**

**TYPES OF TORT**

1. Malice
2. Nuisance
3. Negligence
4. Trespass
5. Defamation

**GENERAL DEFENSES**

1. Volenti Non-Fit Injuria
2. Mistake
3. Legitimate Disciplinary Action
4. Prescription
5. Disclaimer/Exemption Clause
6. Inevitable Accident
7. Act of God
8. Self Defense
9. Act of Necessity
10. Statutory Authority

**GENERAL REMEDIES**

1. Damages
2. Abatement
3. Injunction
4. Forceful Removal
5. Passing Off
6. Returning of Profits/Gain