

# MOTIVE AND MALICE

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# What is motive and Malice in the context of tort.

## Motive:

- The general rule is that motive is irrelevant in torts. Motive denotes the reason for the conduct of an individual. Thus, if the act is unlawful then mere good motive will not exonerate it. If the conduct is lawful then a bad motive will not make him liable.

## Allen V. Flood

- In this case, P was appointed by A to make repairs to the ship and this was terminable at will. D, belonging to an union objected to the appointment and threatened to go on strike if P was not removed. A dismissed P. P sued D. Held, the motive of D may be bad but not unlawful and hence not liable. This shows that if the act is lawful, mere bad motive will not make the act tortious.
- **Mayor of Broad Ford Corporation V. Pickles.( Motive is irrelevant) .**

## What is motive and Malice in the context of tort.

### **Malice:**

- It means (1) evil motive and (2) a willful act done without just cause or excuse. The rule is that if lawful, evil motive will not make the act tortious. Further, if the act is good, still the defendant becomes liable if the act injures and damages the rights of the plaintiff.

### **Bradford Corporation V. Pickles**

- the court observed; 'If the act gives rise to damage without legal injury, then motive however reprehensible it may be, will not make the act tortious'.

# Exception to the rule that motive is irrelevant

- **Ubi jus ibi remedium**

- "Where there is a right, there is a remedy"

According to some jurists, the law of torts had developed from this maxim. "Jus" means the "legal right", to do something, "Remedium" is the right to take action (ie. remedy according to law). Hence, a person who has a legal right also has the means to vindicate his rights. It is difficult to imagine a legal right without a legal remedy.

## **Injuria Sine Damno and Damnum Sine Injuria Explained:**

'Damnum' is damage in the substantial sense of the term, involving economic loss or loss of comfort, service, health, or the like. 'Injuria' is legal injury and hence tortious.

# Injuria sine Damno:

Injuria Sine Damno means "legal injury, without damage". There is an infringement of a legal right, but no substantial damage or loss, The plaintiff has a cause of action under section 42 of specific Relief, 1877

## Ashby V. White:

- The defendant, a returning officer, without proper reason refused to register P's vote duly tendered. Held that the plaintiff had a legal right to vote and that there was a legal injury to him. Defendant was held liable. The Court observed "every injury imports a damage, though it may not cost a farthing to the party".

## Merzette V. William (Bank Case):

- In this case without any excuse the Banker refused to honour the cheque presented by a customer. Held: that the Banker was liable to the drawer. Compensation was paid by the Bank.

## Damnum Sine injuria:

Damnum sine Injuria means actual and substantial loss without the infringement of the legal right. The actual loss sustained by the plaintiff may be substantial enough, but as no legal injury has been done to him, no compensation can be recovered.

### **Chasemore V. Richards case :**

- The defendant D dug a well on his own soil. In consequence, the adjoining owner P's stream of water dried up and his mill was closed down. P sustained heavy economic loss. Held: No compensation. There was no legal injury to P but only economic loss.

### **Gloucester Grammar School case :**

- A teacher who was illegally terminated by Gloucester school opened a school opposite to it. The pupils, who loved the teacher joined his school in large numbers. Thereupon the Gloucester school was closed. Held; No compensation. Reason: Business competition, and teacher has not infringed any legal right of the Gloucester School.

### **Moghul Steamship Co., V. McGregor:**

- A B C and D four ship owners joined together and offered special terms to the consignors to book cargo. In consequence, P a' prosperous steamship company suffered substantial loss, for which it sued ABC and D for compensation. Held: Not liable. (Business competition and no legal injury to P).

## Misfeasance; Nonfeasance and Malfeasance :

### Misfeasance

means doing a lawful act in an improper manner. (Cases in master and servant).

### Nonfeasance

means not performing or omitting to do that which must be legally done (cases of negligence).

### Malfeasance

means doing an unlawful act e.g. trespass.

# Thank You

## Nuisance



## Trespass

