

Tortious Liability and its different dimensions

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To be a tort, the civil wrong should have three essentials :

The duty is primarily fixed by law.

The legal duty is towards persons generally

Unliquidated Damages

Torts Distinct From Breach of Contract

Torts

- 1. In tort, there is an infliction of an injury without the consent of the plaintiff. Consent negatives liability under "Volenti non fit injuria", subject to certain exceptions. **Eg. Rescue cases (Haynes V, Harwood).**
- 2. There is no privity between parties. **Eg: Donoghue Vs. Stevenson**
- 3. In the law of torts, there is a specific violation of a right in rem (right against all the persons in the world).

Breach of Contract

- 1. Consent is the basis of all contractual obligations. In fact, if there is no consent, there is no contract at all.
- 2. There is privity of contract between the parties called the contracting parties.
- 3. In case of a contract, the breach is due to the violation of a right in personam

Torts Distinct From Crime:

Torts

1. In tort, there is an infringement of a civil right or a private right of the party. Hence, a tort is a private wrong.
2. In torts, the wrong-doer (tortfeasor) should pay compensation to the Plaintiff according to the decision of the court.
3. In tort, the affected or injured party may sue.
4. The right to sue or to *be* sued survives to the successor. The leading case is **Rose V. Ford**.

Crime

1. In crime, there is an infringement of a public right affecting the whole community. Hence, a crime is public wrong.
2. **In crime, the criminal is punished by the state in the** interests of the society, punishment may be death, imprisonment or fine as the case may be.
3. In crime, the state is under a duty to institute criminal proceedings against the accused.
4. The legal action dies with the person in crimes subject to certain exceptions. The maxim is 'Actio personalis moritur cum persona', (personal action dies with the person).

Reasonable Man Explained:

The reasonable man has a reference to the "Standard of care" fixed by law in negligence or in other tortious obligations. A reasonable man is a person who exhibits a reasonable conduct which is the behaviour of an ordinary prudent man in a given set of circumstances. This is an abstract standard.

In **Daly V. Liverpool Corporation**

- it was held that in deciding whether a 70 year old woman was negligent in crossing a road, the standard was that of an ordinary prudent women of her age in the circumstances, and not a hypothetical pedestrian.

Reasonable Man Explained

The standard of conduct is almost settled since the case of **Vaughan V. Manlove**.

The defendant D's hay stock caught fire and caused damage to p's cottages. D was held liable as he had not acted like a prudent man:

In the **Wagon Mound case** (No 1) the test of "**reasonable foresight**" was applied and the defendants were held not liable.

In fine, a reasonable man is only a legal standard invented by the courts.

Thank You



Tort Law

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Every case that is heard in a civil court, with the exception of contractual disputes.