

# Damage in tort law assignment

Law



**ASSIGN  
BUSTER**

While some torts are also crimes punishable with imprisonment, the primary aim of tort law is to provide relief for the damages incurred. A tort has been described in the Common Law Procedure Act, 1852 as “ a wrong independent of contract”. This is a good general definition according to James 1 . However it is not possible to give a perfect definition for the law of torts due to the common law aspect of it not being codified. This in turn leads onto the debate of whether it is ‘ law of torts or ‘ law of torts’ as per the theories of Winfield and Salmond respectively.

II. Constituents of a Tort In order to further understand what a tort is, we have to understand how and when an act becomes a tort. The basic principle is that a protected interest gives rise to a legal right, which in turn gives rise to a corresponding legal duty. An act, which infringes a legal right, is wrongful act but not every wrongful act is a tort. To constitute a tort or civil injury therefore: 1 There must be a wrongful act or omission. 2. The wrongful act or omission must give rise to legal damage or actual damage. 3.

The wrongful act must be of such a nature as to give rise to a legal remedy in the form of an action for damages. 1. P. S. James, General Principles of the Law of Torts (2nd Edn. 1964) Ch. 1. Therefore the constituents can be summed up as: Wrongful act + Legal damage + Legal remedy = Tort 1 II.

Damage As per the English language, damage means any physical harm that impairs the value, usefulness, or normal function of something. However, the damage mentioned in the second constituent of a tort, does not refer particularly to its literal meaning. The damage here refers to legal damage.

Legal damage means an invasion or infringement of private legal right. It is up to the plaintiff to prove that he has been subjected to legal damage due to a wrongful act committed by the defendant. This does not mean that the plaintiff has to have suffered any loss or personal injury or any such shortcomings; he only has to prove that his legal right has been violated. To further gain clarity, let us first understand the concept of Legal right. Ordinarily a right is that which one may properly demand or claim as just, moral, or legal, that to which one is entitled.

It may be general or special, natural or artificial<sup>12</sup>. A right may appear before us in different forms, each according to occasion, having a different connotation and a special form<sup>3</sup>. The two types of rights to be discussed in this context are ‘Right in Rem’ and ‘Right in Personum’. Right in Rem corresponds to a general duty imposed upon all persons of the world in general. It is available against the world at large. It is addressable to an open class of people, which means that the number of people involved is indefinite.

Conversely, Right in Personum corresponds to a general duty imposed upon a single determinate individual. It is available against a particular person or persons. Therefore there is a definite number of people involved. Having perceived what legal rights are, we can now foray into Legal damage. If a person has a legal right, then by law, others in society have a legal duty towards him so as to not violate his legal right. Rights and Duty are therefore correlative. So, when a person’s legal right has been infringed or violated without lawful excuse, then legal damage comes into play.

For example, every human being has the right to life. Subsequently every other person has a duty of not infringing upon or violating my right to life. If a random person walking on the road comes and laps me, then this amounts to legal damage to me because that random person has absolutely no lawful justification to come and slap me. Therefore this would amount to a tort. 1. s. P Singh, Law of Tort (6th Edn, 2012) Ch. 1 at p. 9. 2. B. M. Gandhi, Law of Torts (4th Edn, 2010) Ch. 1 at p. 7. 3. James C. Fernald, Funk and Wagnalls Standard Handbook of Synonyms, Antonyms and Prepositions at p. 74

However assuming the fact that there was some lawful justification for a person to come slap me, like a police officer during the course of his duty, and then even though my right has been infringed, there happens to be a lawful justification for it and therefore no legal damage arises. Consequently there would be no tort in this case. Such is the importance of the component of legal damage in tort law. In the case of MCD v. Sushila Devil, the plaintiff was injured by the falling of a dried tree branch and died. The defendants were the corporation. The court held that it was a tort and the defendants were held liable.

This is because all three constituents of a tort were present. The plaintiff had the right to life. The defendants had a duty of ensuring that they cut all dry trees and branches which they did not fulfil. When the branch fell on the plaintiff, his legal right to life was violated and gave rise to a legal damage. Therefore as there was no lawful justification on the defendants side, they were held liable and made to pay Rs. 1, 44, 000 as damages. IV. Difference between Damage and damages Damage is defined as a loss or harm resulting from injury to a person, property or reputation.

Damages, on the other hand, refer to compensation, such as a monetary judgment, provided to a person who has suffered a loss or harm due to the unlawful act or omission of another. The person at fault, the one who caused the loss or harm – must compensate (or pay) the injured party for his or her losses, i. e. he must pay his damages for the damage he caused. Damages attempt to measure in financial terms the extent of harm a plaintiff has suffered because of a defendant's actions. Damages are distinguishable from costs, which are the expenses incurred as a result of bringing a lawsuit and which the court may order the losing party to pay.

Damages also differ from the verdict, which is the final decision issued by a jury. The purpose of damages is to restore an injured party to the position the party was in before being harmed. Take for example the case of *Byrne v. Boadle*<sup>2</sup>, a barrel of flour fell from the window of the defendant's flour shop onto the plaintiff who was walking on the street below, causing him injury. This was the damage suffered by the plaintiff as his legal right of safety to life was infringed by the defendant's lack of duty in ensuring that barrels of flour do not fall off from his window.

The court ruled in favour of the plaintiff and the defendant was asked to pay a monetary compensation as remedy. This is known as the damages. 1. *MCD v. Sushila Devi*, (1999)4 SCC 31 7: AIR 1999 SC 1929 . *Byrne v. Boadle*, 2 H. & C. 722, 159 Eng. Rep. 299 (Exch. 1863) When the plaintiff in an action sues for a predetermined and inelastic sum of money, he is claiming liquidated damages. This occurs in the case of contracts. But where he seeks to recover such an amount as the court, in its discretion, is at liberty to

award, he is claiming unliquidated damages and this so even more where he has specified particular sum of money in pleading.

This OCCURs in torts wherein the plaintiff appeals to the court to grant him the appropriate unliquidated damages. V. Legal Maxims The real significance of legal damage is illustrated by two maxims namely: *Injuria sine damno* and *Damnum sine injuria*. *Damnum* is meant damage in the substantial sense of money, loss of comfort, service, health or the like. By *injuria* is meant a tortuous act 1 *INJURIA SINE DAMNO*: This means an infringement of a legal private right without any actual loss or damage. In such a case the person whose right has been infringed has a good cause of action.

It is not necessary for him to prove any special damage because every injury imports a damage when a man is hindered of his right. Every person has an absolute right to property, to the immunity of his person, and to his liberty, and an infringement of this right is actionable *per se*. actual perceptible damage is not, therefore, essential as the foundation of an action. It is sufficient to show the violation of a right in which case the law will presume damage. Thus in cases of assault, battery, false imprisonment, libel, trespass on land, etc?? the mere wrongful act is actionable without proof of special damage.

The court is bound to award to the plaintiff at least nominal damages if no actual damage is proved. This principle was firmly established by the election case of *Ashby v. White*<sup>2</sup>, in which the plaintiff was wrongfully prevented from exercising his vote by the defendants, returning officers in parliamentary election. The candidate from whom the plaintiff wanted to

give his vote had come out successful in the election. Still the plaintiff brought an action claiming damages against the defendants for maliciously preventing him from exercising his statutory right of voting in that election.

The plaintiff was allowed damages by Lord Holt saying that there was the infringement of a legal right vested in the plaintiff. . Mohit Gupta, Damage as a constituent of Tort Law,(Jan 25, 2013), [http:// www. scribd. com/doc /122160715](http://www.scribd.com/doc/122160715), (Aug 29, 2014). 2. Ashby v. White, (1703) 92 ER 126, 137-139 and (1703) 2 Ld Raym 938, 953-958 DAMNUM SINE INJURIA: There are many acts which though harmful are not wrongful and give no right of action to him who suffers from their effects. Damage so done and suffered is called Damnum Sine Injuria or damage without injury.

Damage without breach of a legal right will not constitute a tort. They are instances of damage suffered from justifiable acts. An act or omission committed with lawful justification or excuse will not be a cause of action though it results in harm to another as a combination in furtherance Of trade interest or lawful user Of one's own premises from justifiable acts. In Gloucester Grammar School Master Case, it had been held that the plaintiff school master had no right to complain of the opening of a new school.

The damage suffered was mere damnum sine injuria or damage without injury. In Acton Blundell 2, in which a mill owner drained off underground water running into the plaintiffs well, fully illustrate that no action lies from mere damage, however substantial, caused without the violation of some right. In the case of Mogul Steamship Co. v. Me-Gregory<sup>3</sup>, certain ship

owners combined together. In order to drive a ship-owner out of trade by offering cheap freight charges to customers who would deal with them.

The plaintiff who was driven out of business sued the ship-owner, for loss caused to him by their act. The court held that a trader who is ruined by legitimate competition of his rivals could not get damages in tort. There are moral wrongs for which the law gives no remedy, though they cause great loss or detriment. Loss or detriment is not a good ground of action unless it is the result of a species of wrong of which the law takes no cognizance. VI.

Conclusion The Law of Torts is not as well developed in India as in countries like the United States of America and the United Kingdom. Hence applicability of its various aspects is also limited in the country. Damage forms a very integral part of Tort Law. The Legislature should come up with sufficient and practical rules and theories for computation of quantum of damages. This will lead to a decrease in ambiguities that we come across in various cases regarding the calculation of compensation.

Through this article we have learnt the importance that damage plays in tort law, where in unless our right has been violated, no damage occurs. Thus damage personifies why law as a whole exists, for if there was no way to discriminate whether an unlawful act occurred or not, then there would be no point in formulating laws in the first place.