

# Law of torts civil wrongs philosophy essay



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“Torts are civil wrongs for which the injured party may seek legal redressal for.” The injured party in case of torts is entitled to claim ‘unliquidated damages’, the judgment of which is given by the judge of a court based on the facts, circumstances and the amount of injury suffered which is actually suffered by the injured party. Tort law is largely based on common sense and the understanding prevalent between people in their everyday interactions with each other. The purpose of tort law is to ensure that people reasonably coexist with each other. In case of a tort case there are two parties involved in it i. e. plaintiff and defendant. Plaintiff is the person whose rights have been violated, the one who has been injured. He is the one who is the complainant, who comes to the court seeking remedy. On the other hand defendant is a person who has violated the rights of the other person and has injured the other person.

For the society to peacefully coexist, each member of the society has to fulfill some duties towards the other people of the society. Duties to respect people’s private spaces, not to do things that unfairly disturb others, be careful and diligent when we deal with fellow beings, etc. just as we have such duties, others have the right to expect us to do these duties. Similarly, others also have duties towards us, and we have the right to expect them to fulfill these duties. Thus all people are interlinked to each other for these rights and duties towards each other, creating a world of rights and duties. We have the right to things like private spaces, the right not to be unfairly disturbed etc. we have the duty of respecting the above rights of others. The law of torts deals with the violation of these rights by the people. These rights are not mentioned in the written laws generally, but these have

become the part of the legal system by common law and by the acceptance of the masses.

For explaining this I would like to demonstrate an example, a man was walking in a garden on a bright sunny day and started swinging the umbrella while walking in the park. Unfortunately, the umbrella ended up smashing the other pedestrian on his nose. The person injured was very upset with this act. So when the injured man took up this issue with the first man, first man replied that he has the right to walk in a public place in the manner which suits him. The second man replied to the first man saying that the first man's rights end where the rights of the second man begin.

Few examples of the torts or civil wrongs are: nuisance, negligence, trespass, defamation, etc. Now in the next section I would discuss some definitions which are used very commonly in the law of torts.

Civil wrongs mean those wrong actions that are not recognized by the state as being criminal wrongs. Criminal wrongs are more serious and are harmful for the whole society. On the other hand the civil wrongs are against private parties. Suppose a person walks in to the private property of other person then he commits a trespass. This act concerns only one person and does not concern the public so it is a case of tort. On the other hand, if a person murders someone, then such a person is danger to the whole society, because the whole society is concerned with the lives of community members. In this case the wrong is a criminal wrong as opposed to a civil wrong. Therefore, civil wrongs are usually defined in distinction to criminal wrongs and deal with private rights that arise by the virtue of being a

member of a community, rather than dealing with public rights that the public has as a whole against every individual.

Damages are compensation payable to the injured party for injuries sustained because of the wrong committed by the wrongdoer. It is usually the most common remedy of torts. This is so because in torts it is very rare, and almost impossible, to undo the damage done and reconstitute a person as they were before suffering the damage. The only way of soothing the injury is by awarding damages, which, though monetary in nature, are compensation, nevertheless. By this I mean that it is the most common remedy in torts.

Unliquidated damages are those damages, the amount or extent of which has not been predetermined or decided before the wrong has committed. In civil wrongs such as torts there are no agreements as the parties are mostly unlikely aware of the fact that something like this will happen, for example when a person trespasses into land of another by unknowingly or in case a person plays loud music which causes harm to someone else, so the damages are not predetermined and are therefore unliquidated.

## **Law of torts in India**

India has inherited the law of torts from the English legal system. Barring a few civil laws, there are no written laws that specifically and comprehensively deal with the law of torts. It is up to the Indian courts to apply an English tort principle if justice demands it in a certain situation, either entirely, or with appropriate modifications, as is the demand of the case or the facts. But it is of great importance to remember that it is upon

the court to decide that such principals are applicable or not. Very few tort claim cases comes to the courts, primarily people are not because people are not aware of their rights, and also because fighting a court case, in Indian scenario, is often not worth the time and effort. This is completely different from countries like America and United Kingdom where the tort claims are frequent as the people are aware of their rights.

Quasi-contract: “ When a person receives some benefit that was to be given to other, than the law says that the person is contractually bound to correct recipient to compensate him for misplaced benefit.”[2]There is no actual contract between wrong recipient and the right recipient, but law implies contract under which the wrong recipient has to pay back the compensation to the right person. This assumed contract is known as quasi-contract.

### **Difference between a tort and quasi-contract**

In case of tort duty is owed to all members of the public (though only one may be affected) whereas in a quasi-contract, a duty is implied as being owed to a specific person i. e., the rightful recipient. In tort the duty is present at all the times, whereas in case of a quasi-contract is formed because of a particular situation i. e., the wrongful recipient of the benefit etc. also in case of tort the damages are unliquidated, but in case of a quasi-contract the damages may be liquidated damages. Conditions which are necessary for a tort are:

There must be an act or an omission on the part of the defendant or the alleged wrongdoer. In order to be liable for a tort, a person must have done some act which he was not supposed to do.

The act or omission should result in a legal damage, which means that the act or omission must result in the violation of a legal right of the plaintiff or the complainant. The legal damage is called *injuria* which means 'legal injury'. One can be injured but he has to be legally injured.

Also there is no general rule in tort law that one must have intended to the wrongful act in order to be held liable. In some torts, such as assault, deceit and conspiracy, the mental condition is relevant, while in most of the other torts the mental condition of the wrongdoer is irrelevant. The reason for this is that tort law requires not just that people not attempt to hurt others, but also that people do their best not to allow their actions to accidentally hurt others. So basically tort law primarily wants to catch careless people in order to avoid future misfortunes.

There are two terms which are used to determine whether a party has a valid claim in tort law, i. e. whether the other person could be held liable in a court of law or not. They are:

*Injuria sine damno*: this means the violation of the legal right without the cause of actual damage. This is a valid claim in a court of law. For example, if someone trespasses upon the property, he can be held responsible, even if the trespass did not cause any actual damage to the person. The person has a right to non-violation of the bounds of his property and it is this right which has given rise to a tort claim.

*Damnum sine injuria*: this means causing of death without the violation of legal right. Such a case will not be valid in the court of law. For example, the fact that a man is injured by another man's act is not sufficient cause; this

might be even if the injury-causing act is intentional or deliberate. A violation of legal right is necessary in order for a valid cause of legal action to exist.

Now I would like to clear the meaning of three words, these are:

Damage: actual harm suffered by the plaintiff

Injury: the violation of a legally-recognized and protected right

Damages: it means the compensation payable to the plaintiff for the harm caused

## **General defenses to tort claims**

If someone sues one person claiming that the other person has violated the rights of his and has committed a tort, then certain defenses could be taken.

The extent to which they apply against different torts, may, however, differ.

Some of the defenses which can be used in torts are:

Volenti Non Fit Injuria: this means 'voluntary taking of a risk'. It's when a person chooses to be in the situation that causes the injury. For example, suppose you are a spectator at a cricket match, the batsman hits a six, and the ball lands on your head, then you cannot claim for compensation either from the stadium authorities or the batsman because when you took a seat in the stadium, you accepted the risks while sitting in the stadium. Therefore if the defendant can prove that the plaintiff voluntarily put himself in that situation, he can escape liability. The most important thing to remember is that the action must be voluntary i. e. with the informed consent of the relevant person. There must not be any cheating or use of any type of force and so the person must put himself in the situation by his own choice. There

are two things which should be established in order to use this defense. (a) That the plaintiff knew or could have expected the risks involved in such a situation. (b) That the person agreed by a statement or conduct, to suffer the consequence of the risk without force or compulsion or threat.

By this I want to say that it is not enough to defend by saying that the plaintiff knew the risk; it is also necessary to show that the plaintiff voluntarily agreed to suffer the harm which might be possible in the risky situation. But in case of a master servant relation there might be some sought of pressure on the servant. I would like to give an example, a master orders his servant to go and work in a mine, if one shaft is not in a proper condition, this cannot be assumed that the servant and so in case if there is an accident than the master cannot claim that the servant knew and went voluntarily as there is pressure from the master.

Plaintiff is the wrongdoer: the most important thing in this case would be that the plaintiff did something wrong which caused him the injury. Since he plaintiff did something wrong so he cannot claim damages from someone else for the injury caused to him. For example, if a person walks into someone's house and if it is written on the gate that 'beware of dog', the dog bites him then the plaintiff entered the house after knowing the risk, as a result he cannot ask for compensation, also he was the wrongdoer.

Inevitable accident: When an injury is caused to a person by an event that could not be foreseen and avoided despite reasonable care on the part of the defendant, the defense of inevitable accident can be used. For instance, by 'inevitable' it is not meant that the accident was bound to happen, but rather,



that the accident could not have been avoided despite reasonable care. After all, how can a person be blamed for something that he had no control whatsoever over or could not prevent? For example, a situation where the defense could not be used is that of a person who, while trying to separate two people fighting, hits another person accidentally. Here the injury is negligence and no negligence is involved.

Act of God: This defense is similar to the defense of inevitable accident according to me. The only difference is that in the defense of Act of God the accident happens to occur because of unforeseen natural event. The requirements which are to be satisfied are (a) the injury must be caused by the effect of natural forces, (b) the natural forces must be unforeseen, or the effects must be unavoidable. So even if a natural event like a storm is taking place, if one can take precautions and avoid the damage, the defense cannot be used.

Private defense: If one injures someone, or something that belongs to someone else, while defending self or own property, then one can be excused if the force used to protect self was reasonable. For instance, if someone punches you on stomach and you shoot him that would be an excessive use of force which is not necessary for defending yourself. The following must be satisfied in order to claim this defense: (a) the defendant must be under threat or under attack, (b) the defense must be for self-defense and not for revenge, (c) the response must be proportional to the attack or threat. The principle for this is that the law will not hold you responsible for an action that you performed in order to save or protect

yourself. If, however, it was not necessary to use force for protection, the law will not protect, and you can't use this defense.

Mistake: Mistake is not usually a defense in tort law. It's not good enough to say that you didn't know you were doing something wrong. This defense can be used in case of malicious prosecution. In malicious prosecution it must be shown that the prosecution was acting with malice.

Necessity: In necessity, you have to show that the act you did was necessary in the circumstances. For instance, if one enters someone's private land in order to collect water from his well to put out a fire in his house, that the person was prompted by necessity and the defense could be used in tort claim and it could be used against trespass of property. The level of necessity should be very high. Basically the wrong done should be smaller while comparing it to the importance of right done.

Act under Statutory Authority: If the act done was under the authority of some statute that is a valid defense. For example, if there is a railway line near your house and the noises of the train passing disturbs then you have no remedy because the construction and the use of the railway is authorized under a statute. However, this does not give the authorities the license to do what they want unnecessarily; they must act in a reasonable manner. I have an example for this from my own life, there was a telephone exchange in my locality and the generators which were used were of very high frequency which was permitted in a residential area, the court asked the exchange to be removed from that place.

Every person has a right to sue another person and every person can be sued by another person. In India a minor can sue just like an adult, the only difference is that the tort action will have to be put forth and proceeded with, in court, by an adult acting on behalf of a minor. In case a minor is sued than, his parents or guardian will have to pay damages to the plaintiff, also the minor could be held liable. Also companies can be sued for the actions of its employees committed when acting as employees of the company i. e. on duty. The judicial authority cannot be sued if they are acting with their capacity. Also the government cannot be sued for any tort claim arising while it is acting within its governmental or sovereign capacity.

**Vicarious liability:** This deals where a person is liable for the acts of others. This happens where the person who committed the act did it on behalf of someone else. In this case of vicarious liability, both, the person at whose behest the act is done as well as the person who does the act is liable.

Vicarious liability can arise from the following relationships:

#### Master- Servant Relationship

If a servant does a wrongful act in the course of his employment, than both the servant and the master can be held liable for such an act. Since the servant acts under the authority of the master, the latter should also be held liable. An act is considered to be in the course of employment if the act has been directly authorized by the master or even if the act comes within the group of acts that the master impliedly requires the servant to perform. But a master cannot be held liable for a contract.

#### Principal-Agent Relationship

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An agent is someone who is authorized to do an act by another person (principal) also the acts on his behalf. Both the principal and the servant are held liable. The difference between the master servant relation and principal agent relation is that in case of the latter the agent does not pass the direction and control test.

### Partners

In a partnership, the partners are responsible for each other's during the course of employment i. e. during the conduct of the business. The partners can be held responsible jointly and severally for each other's actions. By the term jointly I mean 'together' and by the term severally I mean 'separately'. This means that the partners can be separately or all together for the actions of one partner.

### Nuisance

"In tort law, causing 'nuisance' means 'unreasonably interfering' with a person's right over, and in connection, with his property or his land." [3] Nuisance may be caused in various ways, such as the causing of unnecessary noise, heat, smoke, smell and other such disturbing activities. For example, your neighbor unnecessarily is in the habit of setting on fire the morning piles of the dead leaves. He burns these in his garden, but the smoke from this fire blows into your house, and this is a type of general disturbance for you. Such behavior would constitute nuisance and since you are denied the right to live in your property and enjoy their safely, so you could complain about this nuisance, even a tenant could complain in a fixed

time frame. There are two types of nuisances, public nuisance and private nuisance.

**Public Nuisance:** This type of nuisance occurs when the right of the general public is interfered with. For instance, if a person deliberately blocks a road with his vehicle, then he interferes with the right of the public in general, and that would be a public nuisance. This is because the road is a public property, and by blocking it, the person interferes with the public exercise or enjoyment of that property.

Public nuisance is a sort of crime and it is not merely a civil wrong committed against the rights of a person, and commission of a public nuisance results in punishment by the state, which may impose a fine or even put behind bars i. e. punishment. The damages cannot be sought through a civil suit.

**Private Nuisance:** This is the kind of nuisance that is ground for a tort action for nuisance by a private party. The damages could be sought through a civil suit. There are certain requirements which need to be met for this, these include unreasonable interference by the defendant, also the interference must be with the use or enjoyment of the plaintiff's property, the plaintiff should have suffered some damage as a result.

## **Negligence**

It is one of the most important in case of torts. This is because it is frequently committed and also there is some type of negligence in most of the tort cases according to me. Tort is negligently committed, i. e. negligently causing nuisance, negligently trespassing on someone's land, etc. in order to establish the tort of negligence, it must be proved that:

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The defendant owed a duty of care to the plaintiff

The defendant breached that duty, either totally or partially.

The plaintiff suffered damage as a result of this breach of duty.

Duty of care: for showing an act of negligence, the plaintiff must show that the defendant owed the plaintiff a legal duty of care. A legal duty is different from moral, social or religious duty. In case of *Donoghue vs. Stevenson*, the plaintiff filed an action for negligence against the manufacturer claiming that she had been seriously injured by the contents of the drink. The defendant claimed in his defense that he had no duty as she did not buy the bottle. But the court held that the manufacture owed a duty of care to the plaintiff and to all its consumers. The court also held that the manufacturer had breached the duty and caused damage, and was therefore negligent. I would like to also state that the duty is only there where the injury is foreseeable.

Breach of duty: After having established that the defendant owes the plaintiff a duty of care it must then be proven that the duty was breached. For seeing whether due care was taken, one must what was the standard of care required in that situation. If the care taken is less than standard care than there is a breach of duty.

Damage as a result of Breach of Duty: in order to succeed in a legal action based on negligence, it is necessary to show that the plaintiff suffered some damage. The plaintiff has to show the incident happened and it caused injury

to him. Also the defendant was in control of or responsible for whatever caused the incident.

## **The Tort of Trespass**

Trespass means illegally entering in someone else's property. There are two kinds of trespass, Trespass to a person and Trespass to land.

Trespass to person: This category of torts deals with the threat of, or actual use of unlawful force against a person. There are three types of torts in this category: Battery, Assault, False Imprisonment.

Battery: It basically deals with actual use of unlawful force against a person. In order for a person to prove a tort of battery, one needs to show the following things: one needs to show that there was a use of force. The force need not have to be great. For example throwing water or spitting on a person is a battery. Also it must be proven that the use of force was without any legal justification and the use of force was intentional. By this I mean that an accident will not constitute battery as long as there was no negligence involved.

Assault: the tort of assault occurs when the defendant does something that causes a reasonable fear of battery in the mind of the plaintiff. By this I mean that assault occurs when something scares the plaintiff that he is going to be subjected to use of force. Also the defendant should have the ability to harm the plaintiff. . for example if a person in a hospital having fractures in his body and is plastered and he says you ' I will bash you', it is not an assault. Also assault comes before battery takes place.

False Imprisonment: This is tort that constitutes trespass against a person. This takes place when a person is deprived his liberty or he totally restrained from it. False imprisonment occurs when a person is locked in a lock up i. e. in a jail or even in a room. The restraint must be imposed without any lawful justification, then only he can be said to be falsely imprisoned.

## **Trespass to Land**

There are different signboards which could be seen at different places stating “ NO TRESSPASSING”. In law of torts, trespass to land means to interfere with someone’s possession of land without any lawful justification. Trespass can be committed by the trespasser himself entering the land, or by the trespasser doing it by using some object. An example of this would be a person throwing stones in the property of another person while remaining physically out of the property. Trespass can be committed intentionally, negligently or even accidentally. Tort of trespass does not require any actual damage.

## **Strict Liability**

The rule was laid down in the famous Ryland vs. Fletcher (1868) case. In this case, the defendant constructed a reservoir on his land to provide water to his mill. The defendant did not know that there were some disused mineshafts just next to his reservoir. The water burst through the reservoir into the disused mineshafts, and flooded coal mines in the adjoining land. The defendant did not know of the shafts, and there was no negligence on his part though there was negligence on the part of the contractors he had hired to build the reservoir. Yet the court held him liable. The court said the principal governing such a situation is one of “ strict liability”, because if a

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person brings a potentially dangerous thing on his land and if such a thing escapes and does damage, then such person should be held responsible, even if he were not negligent. Here the reservoir was said to be the potentially dangerous thing. The criterion for strict liability is that, a dangerous thing must have been brought by the person on his land; such a thing must have escaped the land. Also the thing must have been intended to be used for some non-natural purpose.

The defenses for escaping strict liability are: if the plaintiff himself did something which resulted in damage to him by the defendant's property, then that is a defense. If there is an act of god than it is also defense. Also in case if there is an act of third party i. e. some stranger, than that is a defense. Also in case a government keeps dangerous thing under a statute, then there is no question of strict liability.

### **Absolute Liability**

This is similar to strict liability, except for the fact that there is no defense to it. In effect, there are no excuses for the harm caused. The rule of absolute liability evolved in the famous Indian case M. C. Mehta vs. Union of India (1987). In this case the court said that there are no defenses as were there in the case of Ryland vs. Fletcher. The court came out with a logic that a person a person who carries on a dangerous activity for profit is responsible for any harm that may flow from such activity. The rule of absolute liability was followed in Bhopal Gas Leak case and is also used in environmental pollution cases.

## **Conclusion**

After reading articles on the law of torts and discussing this topic with my friends I feel that the law of torts is not much developed in India. But the tort law has provided physical security to the people. " Tort law evolved through the common law. Historically, basic common law principles were applied to solve legal problems. In the nineteenth century, there was a movement towards systematizing tort law."[4]