

Llb - unit 3 tort 1



**ASSIGN
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Concept of Damnum and Injuria in relation to tortious liability: Introduction:

The law of torts is developed to protect interest of persons from tortuous act or civil injury. Legal rights are derived from protected interest. Such legal rights are classified into absolute and qualified rights. To establish a tort or civil injury three elements that to be proved are a) Wrongful act¹ committed by a person; b) the wrongful act must give rise to legal damage or actual damage² and c) The wrongful act must further give rise to legal remedy in the form of damages³. When absolute right of a person is violated the law conclusively presumes damage, whether there is any pecuniary loss or not and such damage is known as legal damage. Violation of absolute right does not require the damage to be proved and it actionable per se, *Ashby v. White*⁴.

The concept of Damnum⁵ and Injuria⁶ in relation to tortious liability explains the real significance of legal damages. Damnum and Injuria are interrelated and determines act actionable or not actionable. These two factors have close relationship with tortious liability. The relationship between these two terms is explained in the two maxims i) *Injuria sine damno* and ii) *damnum sine (or obsque) injuria*.

Injuria sine damno: There are two torts one is actionable per se⁷ and the other is actionable only on proof of damage. Every person has an absolute right to immunity of his person, to his property, and to his liberty.

Infringement of this right is actionable per se. In case of *injuria sine damno* a person whose rights are infringed has cause of action even though there is no actual loss or damage.

*Ashby v. White*⁴ In this case a legally qualified vote of a person was refused maliciously causing injuria, but the person for whom voted was elected,

causing no loss, held it is actionable applying the maxim *injuria sine damno*.
Tozer v. Child 8 (1857, 7 El & Bl 377. In this case refusal of vote was in exercise of his judgment, honestly without any malice or any improper motive, held no action lies.

Damnum sine injuria: In *damnum sine injuria*, where there is an actual and substantial loss (Damnum) without infringement of legal right (Injuria) no action lies. In a suit for damages based on a tort the plaintiff cannot succeed merely on the ground of damage unless he shows that the damage was caused by violation of his legal right. The following are the instances of *Damnum sine injuria*:

Acts done by way of self-defenses against a common enemy, such as the erection of banks to prevent the inroads of the sea, *Gerrard v. Crowe*⁹

Interception of percolating water:- A landowner and mill owner who had for about six years enjoyed the use of a stream, which was chiefly supplied by percolating underground water, lost the use of the stream after an adjoining owner dug on his own ground an extensive well for the purpose of supplying water to the inhabitants of the district. In an action brought by the landowner it was held that he had no right of action. *Chasemore v. Richards*¹⁰

The rule as to the right of landowner to appropriate percolating underground water applies equally to brine, *The Salt Union Ltd. V. Brunner, Mand & Co*¹¹
Landowner in exercise of his right obstructs subterranean water flowing in undefined channels under his land regardless of consequences, of either physical or pecuniary, to his neighbours whether he anticipated damage or not it is not actionable, *Stephens v Anglian Water Authority*¹²

Damage caused by lawful working of mine. A land owner in carrying on mining operations on his land in the usual manner drained away the water from the land of another owner through which water flowed in a subterranean course to his well, held that the latter had no right to maintain an action, *Acton v. Blundell*¹³

Obstruction to view Shop:- The defendant in exercise of statutory power erected gasometer causing obstruction to the plaintiff's shop. Held not actionable. *Butt v. Imperial Gas Co*¹⁴.

Conclusion: Damnum and injuria are the two prime factors in tort law. The tortious liability largely depends on these two factors. The above decided cases signify that the relationship between Damnum and Injuria is of two fold. Where there is injuria even though without damnum it is actionable and the plaintiff gets relief, and where there is damnum if there is no injuria it is not actionable and no relief available to the plaintiff.

Foot Notes:

1. Wrongful act means an act done with malice or improper motive
2. Damage means loss or harm suffered or presumed to be suffered by a person as a result of some wrongful act.
3. Damages in law of torts means the sum of money awarded by the court to compensate the damage caused by violation of protected interest of a person or due to the tort or civil injury.
4. *Ashby v. White*,
5. Damnum means damage in the form loss of money, comfort, service, health, etc

6. Injuria means a tortious act.

7. Actionable per se means actionable without proof of damage. The law presumes the damage

8. Tozer v. Child (1857) 7 El. & Bl. 377: 119 E. R. 1286

9. Gerrard v. Crowe [1921]1 AC 395)

10. Chasemore v. Richards, (1859) 7 HLC 349)

11. The Salt Union Ltd. V. Brunner, Mand & Co, (1906) 2 KB 822.

12. Stephens v Anglian Waer Authority, (1987) 3 All ER 379 (CA)

13. Acton v. Blundell¹⁴ , 1843)12 M & W 324)

14. Butt v. Iperial Gas Co., (1866)LR2 Ch App 158

Bibliography:

1. Peter Cane, Anatomy of Tort Law (1997)

2. David G. Owen, Philosophical Foundations of Tort Law

Online Source:

1. http://www.chrt-tcdp.gc.ca/search/view_html (Foot Note 4)

2. <http://www.lexisnexis.com.au> (Foot Note 9, 10, 11, 12, 13, 14)

3. www.lawlink.nsw.gov.au/lrc.nsf/pages/DP27CHP2 - 26k (Foot Note. 10)

4. <http://www.duhaime.org/Real-estate/ca-re11.aspx> (Foot Note12)