

The historical development of tort law in england



THE HISTORICAL DEVELOPMENT OF LAW OF TORTS IN ENGLAND

INTRODUCTION

Tort law is a body of law that addresses and provides remedies for civil wrongdoings not arising out of contractual obligations. A person who suffers legal damage may be able to use tort law to receive compensation from someone who is legally responsible, or liable, for those injuries. Generally speaking, tort law defines what constitutes a legal injury and establishes the circumstances under which one person may be held liable for another's injury. Tort law spans intentional and negligent acts. Tort law has three purposes. The first is to compensate the victim, the second is to punish the wrongdoer, and the third is to deter harmful activities.

CATEGORIES OF TORTS

The two basic categories of torts are

- **Intentional Torts:** An intentional tort is a category of torts that describes a civil wrong resulting from an intentional act on the part of the tortfeasor.
- **Negligent Torts:** Negligence is a failure to exercise the care that a reasonably prudent person would exercise in like circumstances · The area of tort law known as *negligence* involves harm caused by *carelessness* , not intentional harm.

WRONGS

Wrongs are of two types

- Public wrong – These are acts that are tried in Criminal Courts and are punishable under the Penal Law and are called crimes
- Private wrong – These are acts against an individual person or a person within a community and are tried in Civil Courts and are called torts.

DIFFERENCE BETWEEN A TORT AND A CRIME

TORT

Tort is tried in Civil Courts

A person who commits Tort is a ‘
tortfeasor’

The remedy of tort is unliquidated
damages or other equitable relief to the
injured

Tort litigation is compoundable

CRIME

Crimes are tried in Criminal Courts

A person who commits Crime is a ‘
Criminal
Offender’

The remedy is to punish the offender

Criminal cases are not compoundable except
in a few
case of exceptions as per Section 320 Cr.

CHARACTERISTICS, TYPES AND ESSENTIAL ELEMENTS FOR A TORT

CHARACTERISTICS

- 1. Tort, is a private wrong, which infringes the legal right of an individual or specific group of individuals.**
- 2. The person, who commits tort is called “ tort-feasor” or “ Wrong doer”**
- 3. The place of trial is Civil Court.**
- 4. Tort litigation is compoundable i. e. the plaintiff can withdraw the suit filed by him.**
- 5. Tort is a specie of civil wrong.**
- 6. Tort is other than a breach of contract**
- 7. The remedy in tort is unliquidated damages or other equitable relief to the injured.**

TYPES OF TORTS

Torts are of three types:

- Intentional Torts

Against the Person: Assault, Battery, Infliction of mental distress, False imprisonment

Against the Property

- Negligence
- Strict Liability

ESSENTIAL ELEMENTS TO PROVE A TORT

- Existence of legal duty from defendant to plaintiff
- Breach of duty
- Damage as proximate result.

TYPES OF TORTS

Maritime Tort: a phrase that represents a civil wrong that is committed at sea.

Personal Tort: the term applied to the wrong that is perpetrated against another person.

Property Tort: the term that is used when one person interferes with a person who is enjoying his own property

Quasi Tort: is a legal term that is sometimes used to describe unusual tort actions, on the basis of a legal doctrine that some legal duty exists which cannot be classified strictly as negligence in a personal duty resulting in a tort nor as a contractual duty resulting in a breach of contract, but rather some other kind of duty recognizable by the law.

Willful Tort: an intentional wrong that is committed with the wish to harm another person.

HISTORICAL DEVELOPMENT OF TORT IN ENGLAND

It is essentially a civil liability at the present day and is a means by which a person wronged recovers compensation from the wrongdoer. The remedy for tort is a “ debt of justice,” the royal courts are being bound to redress wrongs done by one subject to another. The initiative is always taken by the person aggrieved, who may also decide to abandon his claim if he wishes. No royal pardon could excuse tort liability, though it could excuse criminal responsibility so far as this prerogative is not cut down by Act of Parliament.

The courts have a wide power to decide whether a wrong is to be treated as a tort or to be left unredressed. Many torts are also crimes but the two aspects are quite distinct, e. g., causing death by careless driving. Under the English system, torts and crimes are tried centrally by different courts, but both are tried at assizes.

Many legal systems clearly distinguish between crimes and civil wrongs (our “torts”) though both are tried by the same courts. In some systems all crimes are automatically also torts when private damage results. Apart from early confusion between the subject matter of tort and crime the subject of tort has been confounded by its unsystematic growth. The various wrongs which have received a remedy have developed haphazardly through diverse forms of action. It is only in recent years that certain underlying characteristics appear to be established and it is too early yet really to describe them as principles applicable to torts generally. In particular, torts are now classified by reference to the degree of intention or negligence necessary to support an action. This is modern and displays a converse movement from that in crime, where the element of mens rea in modern crimes tends to reach a vanishing point.

The law was administered in the communal courts it remained formless, and no doubt the wrongs were of a comparatively simple type. The manorial courts also had what might be called a law of torts, and here the range was fairly wide. Many cases were admitted there which could not for a long time be heard in the common law courts; for example, defamation was not an uncommon plea. But it is not easy to say what notion, if any, was behind these wrongs other than that of keeping peace and good order on the

manor. This apparent failure to recognize a mental element in the law wrongdoing should not cause surprise. Civilization was very of the modern position of general principles ' primitive, and much of the law depended upon custom belonging to pre-Christian times. Greek drama shows us how civilized pagans regarded liability without fault as tragic but inevitable. In order that a mental element may be an ingredient in law there must also be an adequate means for ascertaining its presence; this the archaic procedure of the middle Ages with its appeal to the supernatural hardly did, or was required to do. After all, the Divine intervention, implicit in their modes of proof, was of itself sufficient evidence of wrongdoing or of mitigating circumstances or innocence, depending on its result. In the second place the more primitive the people the more completely will their philosophical scheme be occupied solely with the recognition of external facts.

Law cannot represent the most advanced thinking of its age at any time, because it must be capable of some acceptance among those for whom it is promulgated, but customary law from its very nature will be even more conservative. Even with our highly developed judicial machinery and relatively advanced thought, external facts play far the greatest part in our legal system. For example, the adultery of the divorce division is the adultery of the Old and not the New Testament. Infidelity of heart or mind is no ground for divorce; there must be the outward visible sign of physical misconduct. It is true that negligence is recognized as a ground of liability, but it does not depend upon the carelessness of the particular individual. It is dependent upon a finding by a jury that the facts show the want of care of a reasonable and prudent man; whether or not the defendant exercised all the

care he could is not the issue. Even for proof of intention a litigant must rely upon external facts; today the mind of man may be triable; but the evidence is circumstantial.

Sir Percy Wirfield was of Opinion that at no time in Anglo-Saxon law was there any rule of " absolute liability," or that " a man acts at his peril." He says ? : " No doubt it [Anglo-Saxon law] had no means for an elaborate investigation of intent, but all the Anglo Sax law with which we are acquainted shows that the system had at least the capacity for taking account of what passed in a man's mind in facts of the commonest occurrence. No sane human being, ancient or modern, needs any mental education beyond that of general experience to say, ' A did not mean to do this,' and therefore to inflict a lighter penalty or Possibly none at all. Medieval man is at least that much removed a beast." But he divides Anglo Sax law for this purpose plans, one dealing with acts and the other with omissions. For acts of commission he cites a number of provisions in the Doms of the Anglo-Saxon kings which exonerate acts done in certain circumstances, such as by a man on behalf of his lord. The generally received Opinion that the Doms were innovating rather than codifying legislation is correct, it is submitted with deference that the introduction of these elementary exceptions to liability are some proof of the general rule. This may be particularly the case because the Doms were made under the influence of Christianity, which should have emphasized the mental element in wrongdoing.

The creation of exemptions for acts done out of certain laudable motives is also quite different from allowing negligence or accident as defenses; the <https://assignbuster.com/the-historical-development-of-tort-law-in-england/>

man who strikes in self-defense is acting quite deliberately. In dealing with liability for omission, Professor Winfield expresses the view that the law “ gropes its way along with no more than a subconscious grasp of the differences between ‘ intent’, ‘ negligence’ and ‘ unavoidable harm.’ “ It is significant that his examples are largely taken from the relatively modern compilation, the *Leges Henrici*, but, as he says, a distinction in the degrees of liability appears in earlier collections of *Dooms*, and “ here and elsewhere the Church’s influence is at work.” He further points out that omission was recognized in public law but scarcely in private law. Summing up the position in the light of Professor Winfield’s penetrating article, Anglo-Saxon law had by the time of the Conquest arrived at a perception, albeit Unconscious, that “ circumstances alter cases.”

These circumstances might cause a variation in liability for acts corresponding with their moral gravity, and in some cases might even exonerate the doer from legal blame. Ancient private law differed from modern systems because an act gave rise *prima facie* to liability, but an omission was disregarded. Yet even for his act a defendant might show that he was not liable by reason of the circumstance. Hence we should use Professor Winfield’s terminology, “ strict liability, rather than “ absolute liability.”

Tort is constituted of:

- Negligence
- Specific torts
- Vicarious liability

Negligence

Liability for negligence arises when one person breaches a duty of care owed to another. The landmark case of *Donoghue v Stevenson* is the starting point for defining the current scope of liability. In this case, Ms. Donoghue, the claimant, consumed part of a drink containing a decomposed snail, in a public house in Paisley, Scotland. The snail was not visible, as the bottle of ginger beer in which it was contained was opaque. Neither her friend, who purchased the drink for Ms. Donoghue, nor the shopkeeper, were aware of the snail's presence. Ms. Donoghue could not sue the shopkeeper for breach of contract or under consumer protection legislation as the drink was purchased by her friend, so she pursued Mr. Stevenson instead, the manufacturer of the drink.

The members of the House of Lords agreed that Mrs. Donoghue had a valid claim, but disagreed as to why such a claim should exist. Lord MacMillan, as above, thought this should be treated as a new product liability case. Lord Atkin argued that the law should recognise a unifying principle that we owe a duty of reasonable care to our neighbor.

The elements of negligence are:

- A duty of care[1]
- Breach of that duty[2]
- Breach causing harm in fact[3]
- The harm must be not too remote a consequence of the breach[4]

Negligence consists of:

- Duty of care
- Causation and remoteness
- Defences
- Psychiatric injury
- Pure economic loss
- Public bodies
- Omissions and third parties

Specific torts[5]

- Product liability
- Occupiers' Liability
- Other statutory torts
- Nuisance
- Rylands v Fletcher
- Trespass
- Defamation
- Intentional torts
- Economic torts and competition

Vicarious Liability[6]

Vicarious liability refers to the idea of an employer being liable for torts committed by their employees, generally for policy reasons, and to ensure that victims have a means of recovery. The word “ vicarious” derives from the Latin for ‘ change’ or ‘ alternation’ and the old Latin for the doctrine is respondent superior. To establish vicarious liability, the courts must find first that there exists a relationship of employee and employer. The torts of independent contractors generally do not impose vicarious liability on

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employers; however, *Honeywill and Stein Ltd v Larkin Brothers Ltd* demonstrates this principle does not apply where particularly hazardous activities are contracted for, or a non-delegable duty is owed. Secondly, the tort must have been committed 'in the course of employment'; or while an employee is going about the business of their employer. A preferred test of the courts for connecting torts to the course of employment was formulated by John William Salmond, which states that an employer will be held liable for either a wrongful act they have authorized, or a wrongful and unauthorised mode of an act that was authorized. Where in *Limpus v London General Omnibus Company* an omnibus driver chose to disobey strict instructions from his employer, to obstruct a rival company, they were still liable, as he was merely engaging in his duties in an unauthorised way. However, in the contrasting case of *Beard v London General Omnibus Company*, there was no liability where a conductor drove an omnibus negligently, as it was no part of his duties. Under the test, employers were generally not held liable for intentional torts of their employees. *Lister v Hesley Hall Ltd* established a newer test, stating that employers would be liable for torts which were closely connected to the duties of an employee.

CONCLUSION

Scholars and lawyers have identified conflicting aims for the law of tort, to some extent reflected in the different types of damages awarded by the courts: compensatory, aggravated and punitive or exemplary. In *The Aims of the Law of Tort* (1951), Glanville Williams saw four possible bases on which different torts rested: appeasement, justice, deterrence and compensation.

From the late 1950s a group of legally oriented economists and economically oriented lawyers emphasised incentives and deterrence, and identified the aim of tort as being the efficient distribution of risk. They are often described as the law and economics movement. Ronald Coase, one of the movement's principal proponents, submitted, in his article *The Problem of Social Cost* (1960), that the aim of tort should be to reflect as closely as possible liability where transaction costs should be minimised.

Calls for reform of tort law come from diverse standpoints reflecting diverse theories of the objectives of the law. Some calls for reform stress the difficulties encountered by potential claimants. Because of all people who have accidents, only some can find solvent defendants from which to recover damages in the courts, P. S. Atiyah has called the situation a “damages lottery”. Consequently, in New Zealand, the government in the 1960s established a “no-fault” system of state compensation for accidents. Similar proposals have been the subject of Command Papers in the UK and much academic debate.

There is some overlap between crime and tort, since tort, a private action, used to be used more than criminal laws in centuries gone. For example, an assault is both a crime and a tort (a form of trespass to the person). A tort allows a person, usually the victim, to obtain a remedy that serves their own purposes (for example by the payment of damages to a person injured in a car accident, or the obtaining of injunctive relief to stop a person interfering with their business). Criminal actions on the other hand are pursued not to obtain remedies to assist a person — although often criminal courts do have power to grant such remedies — but to remove their liberty on the state's

behalf. That explains why incarceration is usually available as a penalty for serious crimes, but not usually for torts.

RELATED CASES

- Code Ga. 1882, 2951 (Civ. Code 1910, 4403)
- Hayes v. Insurance Co., 125 Ill. 626, 18 N. E. 322, 1 L. R. A. 303
- Railway Co. v. Hennegan, 33 Tex. Civ. App. 314, 76 S. W. 453
- Churchill v. Howe, 186 Mich. 107, 152 N. W. 989, 991
- Strachan Shipping Co. v. Hazlip-Hood Cotton Co., 35 Ga. App. 94, 132 S. E. 454, 459
- Keiper v. Anderson, 138 Minn. 392, 165 N. W. 237, 239, 1. 4. R. A. 1918C, 299. A
- Mitchell v. Health Culture Co., 349 Mo. 475, 162 S. W. 2d 233, 237: A violation of a right in rem which plaintiff has as against all persons with whom he comes in contact or the violation of a right which is created by law and not by any act of parties.
- Henriques vs. Dutch West Indian Company (1728) 2 Ld. Raym 1532; Newby vs. Colts Patent Firearms Co., (1872) LR 7 QB 293; A Foreign Corporation (i. e. a Corporation established by the law of a foreign country) may sue and be sued for a tort, just like any other corporation
- Raja Pramada Nath Roy vs. Shebait Purna Chandra Roy, (1908) 7 CLJ 514: The liability of estate of an idol for wrongs committed by its Shebait (person in charge of idol) is analogous to the liability of a corporation.

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[2]Nettleship v Weston, http://en.wikipedia.org/wiki/Nettleship_v_Weston

[3]Smith v Leech Brain & Co., http://en.wikipedia.org/wiki/Smith_v_Leech_Brain_&_Co.

[4]The Wagon Mound (No. 2), [http://en.wikipedia.org/wiki/The_Wagon_Mound_\(No._2\)](http://en.wikipedia.org/wiki/The_Wagon_Mound_(No._2))

[5]http://en.wikipedia.org/wiki/English_tort_law#Specific_torts

[6]http://en.wikipedia.org/wiki/Vicarious_liability_in_English_law,
http://en.wikipedia.org/wiki/Vicarious_liability

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