

# Law of Torts

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## ➤ Introduction

The term Tort is found in common law system for civilly actionable harm or wrong and for the branch of law dealing with liability for such wrongs. Analytically the law of tort is a branch of the law of obligation where the law obligates to refrain from harm to another and if harm is done, to repair it or compensate for it, are imposed not by agreements, but independently of agreement by force of general law.

## ➤ Meaning of Tort

The word Tort has been derived from the Latin term "Tortum" which means "to twist." Thus, tort means "a conduct which is not straight or lawful but on the other hand twisted, crooked or unlawful."

It is equivalent to the English term 'wrong'. The law of torts consist of various of torts or wrongful acts where by the wrongdoer to violate some right in another person. The law imposes a duty to respect the legal rights vested in the members of the society and the person making a breach of the duty is said to have done the wrongful act.

As crime is a wrongful act, which results from the breach of a duty recognised by criminal law. A breach of contract is the non performance of a duty undertaken by a party to a contract. Similarly, is a breach of duty recognise under the law of torts.

For example, violation of duty not to injure the reputation of someone else results in the tort of defamation, violation of duty not to interfere with the position of land of another person, results in the tort of trespass to land and the violation of a duty not to defraud another results in the torts of deceit.

## ➤ Definition of Tort :

*According to Section 2(m) of The Limitation Act, 1963*

*“Tort means a civil wrong which is not exclusively a breach of contract or breach of trust.”*

*According to Salmond*

*“It is a civil wrong for which the remedy is a common law action for unliquidated damages and which is not exclusively the breach of contract or the the breach of a trust or other merely equitable obligation .”*

*According to Winfield*

*Tortious liability arises from the breach of duty primarily fixed by the law : this duty is towards persons generally and its breach is redressible by an action for unliquidated damages.”*

*According to Fraser*

*“It is an infringement of a right in Rem of a private individual giving a right of compensation at the suit of the injured party.”*

## ➤ Nature of Tort

- I) Tort is a civil wrong.
- II) Tort is other than a mere breach of contract or a breach of trust.
- III) This wrong is redressible by an action for unliquidated damages.

Let us discuss the above nature in detail.

### **i) Tort is a civil wrong:**

Tort belongs to a category of civil wrongs. The basic nature of a civil wrong is different from a criminal wrong. In the case of a civil wrong, the injured party, i.e., the plaintiff, institutes civil proceedings against the wrongdoer i.e., the defendant. In such a case, the main remedy is damages. The plaintiff is compensated by the defendant for the injury caused to him by the defendant. In the case criminal wrong, on the other hand, the criminal proceedings against the accused are brought by the state.

### **ii) Tort is other than a mere breach of contract or breach of trust :**

Tort is that civil wrong which is not exclusively any other kind of civil wrong. If we find that the only wrong is a mere breach of contract or breach of trust, then obviously it would not be considered to be a tort. Thus, if a person agrees to purchase a radio set and thereafter does not fulfill his obligation, the wrong will be a mere breach of contract.

For example, if A delivers his horse to B for safe custody for a week and B allows the horse to die of Starvation, B's act amounts to two wrong-- breach of contract of bailment and commission of tort of negligence.

### **iii) Tort is redressible by an action for unliquidated damages**

Damages is the most important remedy for a tort. After the wrong has been committed generally it is the money compensation which may satisfy the injured party. After the commission of the wrong it is generally not possible to undo the harm which has already been caused. If for example the reputation of a person has been injured, the original position cannot be restored back the only thing which can be done in such a case is to see what is the money equivalent to the harm by way of defamation and the sum so arrived at is asked to be paid by the defendant to the plaintiff.

## **➤ Essentials of tort**

1. Act or omission
2. Legal damages

### **■ Wrongful act or omission**

The first essential ingredient in constituting a tort is that a person must have committed a wrongful act or omission that is, he must have done some act which he was not expected to do,

or, he must have omitted to do something which he was supposed to do. The wrongful act or a wrongful omission must be one recognized by law. If there is a mere moral or social wrong, there cannot be a liability for the same. For example, if somebody fails to help a starving man or save a drowning child. But, where legal duty to perform is involved and the same is not performed it would amount to wrongful act.

#### ■ Legal Damage

The second important ingredient in constituting a tort is legal damage. In order to prove an action for tort, the plaintiff has to prove that there was a wrongful act, an act or omission which caused breach of a legal duty or the violation of a legal right vested in the plaintiff.

This is expressed by the maxim, "Injuria sine damnum 'Injuria' refers to infringement of a legal right and the term 'damnum' means substantial harm, loss or damage.

#### ✓ Injuria Sine Damno

This maxim means infringement or violation of a legal private right of a person even if there is no actual loss or damage. In such a case the person whose right is infringed has a good cause of action. It is not necessary for him to prove any special damage. The infringement of private right is actionable per se.

In *Ashby v. White*, the plaintiff was a qualified voter at a Parliamentary election, but defendant, a returning officer, wrongfully refused to take plaintiff's vote. No loss was suffered by such refusal because the candidate for whom he wanted to vote won the election. Plaintiff succeeded in his action. Lord Holt, C.J., observed as follows, "If the plaintiff has a right he must of necessity have a means to vindicate and maintain it, and a remedy if he is injured in the exercise or enjoyment of it, and indeed it is a vain thing to imagine a right without a remedy, for want of right and want of remedy are reciprocal". "Every injury imports a damage, though it does not cost a party one penny and it is impossible to prove the contrary, for the damage is not merely pecuniary, but an injury imports a damage, when a man is thereby hindered of his right. As in an action for slanderous words, though a man does not lose a penny by reason of the speaking of them, yet he shall have an action. So, if a man gives another a cuff on his ear, though it costs him nothing, not so much as a little diachylon (plaster), yet he shall have his action. So, a man shall have an action against another for riding over his ground, though it does him no damage, for it is an invasion of the property and the other has no right to come there."

#### ✓ Damnum sine injuria

*Damnum sine injuria* means an actual and substantial loss without infringement of any legal right. In such a case no action lies. There are many harms of which loss takes no account and mere loss of money's worth does not by itself constitute a legal damage.

*Gloucester Grammar School Case*, Held. The defendant, a schoolmaster, set up a rival school to that of the plaintiff. Because of the competition, the plaintiff had to reduce their fees. Held, the plaintiff had no remedy for the loss suffered by them. Hanker J. said "*Damnum* may be absque *injuria* as if I have a mill and my neighbour builds another mill whereby the profits of my mill is diminished... but if a miller disturbs the water from going to my mill, or does any nuisance of the like sort, I shall have such action as the law gives."

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