

Tort: Scope & Defences

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Abstract

Law is any rule of human conduct accepted by the society and enforced by the state for the betterment of human life. Tort law, in its most rudimentary form, is a law based on the premise that an individual who causes harm to another person should have to provide compensation for that harm. Tort law is concerned with civil wrongs. Undoubtedly the largest area of law within tort is the law of negligence. In general terms, a tort may be defined as a civil wrong independent of contract for which the appropriate remedy is an action for unliquidated damages. The development of Constitutional tort which began in the early eighties and was stick together into judicial precedent in Nilabati Behera has profoundly influenced the direction tort law has taken in the past decade.

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INTRODUCTION

The term “tort” is derived from the word “tortum” which is a Latin word meaning “twisted or unlawful”. It has a similar meaning to the English word “wrong”. Therefore, this is a branch of law that deals with certain wrongful acts that causes violation of the legal right of a person by the wrong doer.

According to the Limitation Act 1963, “Tort means a civil wrong which is not exclusively a breach of contract and breach of trust [1-2]. According to Salmond, “Tort 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 breach of trust, or, other merely equitable obligation”.

Tort is different from breach of contract and trust. Tort is when the act of one party causes some harm to the other party due to negligence, carelessness on the part of another party. The one who sues is known as ‘plaintiff’ and the one who is sued is known as ‘defendant’.

Tort allows people to hold the other person accountable for the injuries suffered by them. Even if the harm which is caused was not intentional but due to carelessness or negligence, then also the other party can be sue.

Development of Law of Torts in India

Under the Hindu law [3] and the Muslim law tort had a much narrower conception than the tort of the English law. The punishment of crimes in these systems occupied a more prominent place than compensation for wrongs. The law of torts in India is mainly the English law of torts which itself is based on the principles of the common law of England.

Justice Bhagwati in *M.C Mehta v. Union of India* [4] observed that:

“We have to evolve new principles and lay down new norms which will adequately deal with new problems which arise in a highly industrialised economy. We cannot allow our judicial thinking to be constructed by reference to the law as it prevails in England or for the matter that in any foreign country. We are certainly prepared to receive light from whatever source it comes but we have to build our own jurisprudence”.

Tort is a Civil Wrong and not a Crime per se

One striking aspect of these definitions of tort is that it is considered to be a civil wrong and not a crime. A tort is a private wrong, whereas a crime is a public wrong. A tort is an infringement or privation of the civil rights which belongs to individual, while crime is a

public wrong. Crime is a breach and violation of the public rights and duties due to the whole community, in its social aggregate capacity.

Can an Offence be both a Tort and a Crime?

An offence, which is punishable as a crime, may also be treated as tort. This unique situation occurs when it is shown that it has caused special injury to an individual, and gives rise to a civil action, if the aggrieved individual proves that the injury suffered by him is distinct from that suffered by the general public. Thus, the real distinction between a tort and a crime lies in the method in which the remedy for the wrong is pursued. Tort differs from crime both in principle and procedure.

Definition

According to Prof. Winfield, Tortious Liability arises from breach of a duty primarily fixed by law; this duty towards persons generally and its breach is redressable by an action for unliquidated damages.

Sir John Salmond defined Tort as a civil wrong for which the remedy is common law action for unliquidated damages, and which is not exclusively the breach of contract or the breach of trust or other merely equitable obligation.

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 is a specie of civil wrong.
- 5 Tort is other than a breach of contract.

Essentials Elements to Prove a Tort

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

Defence against Tortious Liability

The word "defence" refers only to arguments offered by the defendant, which if accepted would permit the defendant to escape from

liability even if all the elements of tort in which the claimant sue are present. General defences are rules of immunity which limits the rule of liability in tort. These general defences are discussed below:

- 1 Volenti non fit injuria
- 2 Plaintiff, The Wrongdoer
- 3 Inevitable Accident
- 4 Act of God
- 5 Public Necessity and Private Necessity
- 6 Private Defence
- 7 Mistake
- 8 Necessity
- 9 Statutory Authority

Volenti non-Fit Injuria

This defence is also known as the defence for Consent. This Latin maxim in summarized term may be known as Voluntarily Suffered. It is a well settled principle in law that no man can sue for a tort to which he had consented, either expressly or impliedly. According to Salmond- 'No man can enforce a right which he has voluntarily waived or abandoned'.

Hall v. Brooklands Auto Racing Club [5] and **R. v. Williams [6]** are some of the landmark case laws.

Plaintiff, the Wrongdoer

The law excuses the defendant when the act done by plaintiff itself was illegal or wrong. According to Sir Frederick Pollock, when the plaintiff himself is a wrongdoer, he is not disabled from recovering in tort "unless some unlawful act or conduct on his own part is connected with the harm suffered by him as part of same transaction".

Bird v. Holbrook [7] and **Holman v. Johnson [8]** are some of the landmark case laws.

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 defence of inevitable accident can be used. Accident means an unexpected injury and if the same could not have been foreseen and avoided, in spite of reasonable care on the part of the defendant, it is an inevitable accident.

Stanley v. Powell [9] and **Assam State Coop., etc. Federation Ltd. V. Smt. Anubha Sinha [10]** are some of the landmark case laws.

Act of God

The rule of strict liability i.e., the rule in **Rylands v. Fletcher** also recognizes this to be a valid defence. It is a kind of inevitable accident with the difference of having the involvement of natural forces.

Essentials

- A) There must be a working natural force.
- B) The occurrence must be extraordinary and not one which could be anticipated and reasonably guarded against.

Nichols v. Marsland [11] and **Kallulal v. Hemchand [12]** are some of the landmark judgements of tort related to Act of God.

Public Necessity and Private Necessity

“Salus populi suprema lex”, the welfare of the people is the supreme law, a maxim founded on the implied consent on the part of every member of society, that his own individual welfare shall, in case of necessity, yield to that of the community and that his property, liberty and life, shall under certain circumstances be laced in jeopardy or even scarified for the public good.

Olga Tellis v. BMC [13] and **Municipal Corporation Delhi v. Gurnam Kaur [14]** are some of the landmark judgments.

Private Defence

The law permits use of reasonable force to protect one’s person or property. If defendant uses force which is necessary for self-defence, he will not liable for the harm cause thereby. The use of force should be justified only for the purpose of defence. There should be imminent threat to the personal safety or property.

Bird v. Holbrook [15] and **Ramanaju Mudali v. M. Gangan [16]** are some of the case laws:

Mistake

Mistake, whether of fact or of law, is generally no defence to an action tort. When a person willfully interferes with the rights of another

person, it is no defence to say that he had honestly believed that there was some justification for the same, when, in fact not justification existed.

Consolidated Co. v. Curtis & Sons [17] is one of the important case laws.

Necessity

An act causing damage, if done under the necessity to prevent a greater evil is not actionable even though the harm was caused intentionally. Necessity should be distinguished from private defence. In necessity, there is an infliction of harm on innocent person whereas, in private defence harm is caused to the plaintiff who himself is the wrongdoer. It is also different from inevitable accident because in necessity, the harm is an intended one, whereas in inevitable accident, the harm is caused despite the due care taken to avoid it.

Cope v. Sharpe [18] and **Kirk v. Gregory [19]** are some of the important case laws.

Statutory Authority

The damage resulting from an act authorized by the legislature to be done is not actionable even if it would otherwise be a tort. When an act is done under an authority of an Act, it is a complete defence and the injured party has no remedy except for claiming such compensation as may be provided in the particular statute. Immunity under the Statutory Authority is not only for harms obvious but also from the harms are incidental.

Hammer Smith Rail Co. v. Brand [20] and **Smith v. London and South Western railway Co. [21]** are some of the landmark judgments related to the defence of statutory Authority.

CONCLUSION

Law of torts is a branch of law which resembles most of the other branches in certain aspects but is essentially different from them in other respects. Although there are differences in opinion among the different jurists regarding the liability in torts, the laws have been developed and has made form roots in the legal showground. There are well

defined elements and conditions of liability in tort law. It enables the citizens of the state to claim redressal for the minor or major damage caused to them. Thus, the law has gained much confidence among the laymen.

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