

# Law of Torts

## LAW OF TORTS

### DEFINITION OF TORTS

Tort is a word which is derived from the Latin term Tortum means to twist. It is the counterpart عكس to the English term wrong.

The law of torts is a branch of civil law that deals with wrongs committed against individuals or their property. Torts are civil wrongs that are committed by one person against another and that result in an injury or harm.

A tort is a civil wrong that occurs when one person harms another person or their property. Torts are different from criminal acts, which are wrongs committed against society as a whole and are punishable by the state. Torts are meant مراد to provide a remedy for individuals who have been harmed, and allow them to seek ڈھونڈھنا compensation معاوضہ for their injuries or damages.

Examples of torts include car accidents, slip and fall accidents, medical malpractice بے راہ روی, and defamation بتک عزت of character. In a tort case, the person who has been harmed (مدعا علیہ) must prove that the other person (the plaintiff مدعی) caused the harm through their actions or failure to act, and that the defendant had a legal duty to act or refrain باز رہو from acting in a certain way. If the plaintiff is successful, they may be awarded damages to compensate them for their injuries or losses.

#### Essential Elements of Tort:

The essentials of a tort, also known as the elements of a tort, are the factors that must be present in order for a tort to have occurred. These elements vary depending on the specific type of tort being asserted, but in general, the essentials of a tort include:

- i. **A duty of care:** The defendant must have owed a duty of care to the plaintiff. This means that the defendant was required to act in a certain way in order to prevent harm to the plaintiff.
- ii. **A breach of duty:** The defendant must have breached this duty of care by acting (or failing to act) in a way that was unreasonable under the circumstances.
- iii. **Causation:** The defendant's breach of duty must have caused the plaintiff's injuries or losses.
- iv. **Damages:** The plaintiff must have suffered some form of harm or injury as a result of the defendant's actions or inaction.

If all of these elements are present, the plaintiff may be able to assert a successful claim for damages against the defendant.

#### Tort Classifications

Torts can be classified into three main categories:

##### A) INTENTIONAL TORTS

which involve intentional actions that cause harm or injury;

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- **Battery:** Making unwanted, offensive, or harmful contact with another person.
- **Assault:** An attempt to cause harm or an action of a threatening دھمکی nature.
- **Fraud:** The act of lying or making misrepresentations غلط بیانی to another person.
- **Trespass:** The use of another person's property without their permission.
- **Infliction of emotional distress:** مصیبت: Intentionally frightening خوفناک another individual, causing severe emotional جذبائی or mental distress - شدید ہے۔

### B) NEGLIGENCE TORTS

which involve unintentional actions that cause harm or injury.

- **Car/Bicycle/Motorcycle Accidents:** If a driver (or rider) speeds and hits a pedestrian causing injuries, the driver can be found negligent. پیدل چلنے والے
- **Slip And Fall:** A slip and fall claim is common when an individual falls and injures themselves on the premises of another person's property.
- **Medical Malpractice:** Medical malpractice occurs when a medical professional does not provide a reasonable or competent degree of care, resulting in harm to the patient.

### C) STRICT LIABILITY TORTS

Which involve liability regardless of fault.

- **Product Liability:** Product liability deals with cases of harm or injury caused by defective products made available to the public by manufacturers, suppliers, or retailers.
- **Owning Wild Animals:** Owners of wild جنگلی animals will be held liable should any of the animals escape فرار and injure another individual.
- **Exceptionally Dangerous Activities:** غیر معمولی: For instance, a truck carrying volatile chemicals or hazardous خطرناک materials can be liable for any harm caused from a spill پھیلنا or explosion دھماکے.

### Definitions of The Law of Torts:

There are many different definitions of the law of torts. Here are a few definitions provided by different jurists:

#### Salmond:

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 a contract or the breach of a trust, or other merely equitable obligation."

#### Winfield:

Winfield defines torts as "Tortious liability arises from the breach of duty; primarily fixed by law; this duty is towards persons generally; and its breach is redress-able by an action of unliquidated damages."

#### Pollock:

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Pollock's definition is *"tort is an act or omission (not merely the breach of a duty arising out of personal relations, or undertaken by a contract which is related to harm suffered by a determinate person, giving rise to a civil remedy which is not an action of contract"*

### **Faesar:**

Faesar defines tort as *"Tort is an infringement of a right in rem of a private individual giving of compensation at the suit of the injured party"*.

### **Peter Bricks:**

Peter Bricks contribution in defining torts is *"The breach of a legal duty which affects the interests of an individual to a degree which the law regards as sufficient to allow that individual to complain on his or her own account rather than as a representative of society as a whole"*.

### **Burdick:**

Burdick defines the term of Torts as *"an act or omission which unlawfully violates a person's right created by law and for which the appropriate remedy is a common law action for damages by the injured person"*.

### **Keeton and Keeton:**

Keeton and Keeton in their book define torts as *"Tort law is a body of law concerned with granting or denying claims of individuals or impersonal legal entities against each other for the award of damages or other forms of legal reliefs"*.

### **Edward Kionka:**

American Jurist Edward Kionka writes *"Tort is an elusive concept (and) has defied attempts to formulate a useful definition. The one common element is that someone has sustained a loss or harm as the result of some act or failure to act by another. Tort is perhaps the least bastion of the common law. Tort law remains uncodified and in large part unaffected by the statute"*

A tort is not a crime. Although criminal law and tort law grew from the same roots, they are today quite distinct and different. Criminal law is designed to provide security for the citizen of the state. It attempts to define that conduct which society finds abhorrent مکروه and therefore necessary to control. Those who commit crimes are prosecuted مقدمہ چلایا گیا by the state and are subject to the punishment which reflects the state's or society's abhorrence for the particular crime.

## **Difference Between 'Law Of Tort' And 'Law Of Torts'**

In general terms, the law of tort is a branch of law that deals with civil wrongs and injuries that are not based on contractual obligations. It is a system of legal rules that provides a remedy for individuals who have been harmed by the actions of another person or entity. The law of tort is intended to provide compensation for individuals who have been harmed, as well as to deter others from engaging in similar harmful conduct in the future.

The difference between "law of tort" and "law of torts" is simply a matter of usage and preference. "Law of tort" is typically used in British English, while "law of torts" is more commonly used in American English. Both terms refer to the same body of law and have the same meaning.

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The law of torts is divided into three main categories: intentional torts, negligent torts, and strict liability torts. Intentional torts are those in which the defendant intentionally causes harm to the plaintiff, such as battery or defamation. Negligent torts are those in which the defendant's actions are not intentional, but they are careless or reckless and harm the plaintiff, such as a car accident caused by a driver who was texting while driving. Strict liability torts are those in which the defendant is held liable for harm caused by their actions, regardless of whether they were intentional or negligent, such as product liability cases.

In general, the law of torts is designed to protect individuals from harm caused by the actions of others, to provide compensation for harm suffered, and to deter others from engaging in harmful conduct. The law of torts is an essential part of the legal system and plays a critical role in protecting the rights and interests of individuals.



## CHARACTERISTICS OF TORT

A tort must have following characteristics:

1. A Tort Is A Civil Wrong
2. A Tort Is An Infringement **ورزی خلاف of Right in Rem**
3. Torts Deal With Cases Related To Legal Rights
4. Remedy **داد رسی یا علاج** in The Form of Compensation
5. Rights are To Be Fixed By Law
6. Law of Torts is Totally Based On Precedents
7. Torts Law is Uncodified

### 1. A Tort Is A Civil Wrong:

One must be aware that there are two types of wrongs: Civil and Criminal wrong. Tort comes under the purview of civil law and its wrong is known as a civil wrong. The distinction becomes important because unlike in criminal law there is no punishment in civil laws and matter is to be sued **دائر کیا** by a person himself and is not sued by the state further the compensation is granted in form of unliquidated damages which is not the case in criminal law.

### 2. A Tort Is An Infringement **ورزی خلاف of Right in Rem:**

There are two types of rights, *Right In Rem* and *Right In Persona*. While the right in rem is available against the whole world whereas right in persona is available against any particular individual.

Such as when a person contracts with another person and one of the parties has breached that contract, then the person of whose contract has been breached can only sue the person who has breached the contract. This is known as Right in persona i.e. one can sue to one whom he has contracted.

On the other side, every person has the right to the enjoyment of his own property and any person who has violated or infringed he will be sued and liable to pay the compensation in the form of unliquidated damages. This is known as *right in rem* which is available against the whole world. This way the tort law in *right in rem* and is available against the whole world. There is no need for any pre-existing relation, the only requirement is the existence of right and that right has been breached by a person.

### 3. Torts Deal With Cases Related To Legal Rights:

It is fair enough that tort deals with an only violation which is in relation to breach of a legal right. Though a person may economic or social loss but if it hadn't breached any legal person won't have any recourse in court under tort law. Covered under this characteristic there are two famous cases elaborating the topic.

The first of this is *Gloucester Grammar School case*, in this case the defendant has opened a school in front of already established school which resulted in a decrease in the revenue of already established school, but the already established school have no recourse under Law of

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torts though there has been economic loss to the established school but there is no violation of any legal right, hence cannot be held liable under torts law, the following case is adequate representation of Maxim:

### *Damnum Sine Injuria*

where there is damage to the party but no legal injury has been done which means no violation of any legal right, hence damage or loss without any legal loss. Thus, the court will not be able to take any action against it.

The exact opposite of the following Maxim is :

### *Injuria Sine Damno*

Where there is a legal injury to the party but no actual or physical harm to the party. This way the party will have recourse to court and seek damages even when they haven't caused any damages. The most case of the subject is *Ashby v. White*, in this case,

A person was stopped from voting despite باوجود his name on the voters list and proof of identity but the person whom he wants to win has won the election hence no loss caused to him but his legal right was violated, hence he was entitled to damages and compensation.

### **4. Remedy داد رسی یا علاج in The Form of Compensation:**

In torts Law, the remedy is awarded in the form of damages معاوضہ or as unliquidated damages which are calculated by the court on the basis of loss caused. The method is different from what is in the law of contracts where damages are already mentioned in the contract or can be easily calculated according to the agreed terms. Also, from what is in criminal law where punishment is given in the form of imprisonment.

These differences are owing to the nature of law and the objective that they fulfil in the society, such as criminal law wants to create deterrence روک تھام in the society so it recommends punishment so that it can be set as an example in the society and no one should think of doing it again. Similarly, in contracts law, the purpose is business fulfilment or shape a particular transaction, so they have damages in their requisite مطلوبہ forms such as special performance or pre-calculated damages. So is the case in torts law, the case is to restore the parties in their original position owing to this reason the remedy is given in the form of compensation so that the party can be restored to the original position.

### **5. Rights are To Be Fixed By Law:**

To claim a remedy for the violation of rights, the rights should be recognized by the government. These rights can't be self-declared rights for his own purpose, nor these can be based on the previous consent of the parties. The right should be acceptable by the government and these rights changes according to the needs of the society. The government should recognize there exist duty on the defendant which he has failed to do and caused breached and that breach was proximate قریب ترین for the loss caused otherwise the claim will fail to sustain برقرار رکھنا .

### **6. Law of Torts is Totally Based On Precedents:**

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Though precedents play an important role in the development in any law, but in the case, the law of torts is the only source of law. There is no a statute or act that specifically deals with the law of torts. Through this characteristic, the judgements of common law become an important and only source that recognizes these rights as a subject of law.

### **7. Torts Law is Uncodified:**

Codified laws are laws, which have written statutes and acts on that subject and changes take place by the process of amendment in the parliament , it can be distinguished from uncodified laws which don't have any written statutes or acts and have to rely on precedents and case laws and change can be possible without the intervention مداخلت of the government. Thus, the law of torts is totally based on precedent and developed through different case laws, it can be healthily said that law of tort law is uncodified unlike Criminal law and Contract law which are completely codified but in law of torts precedents play vital role.



### **Important Questions:**

**Q. WHAT IS LAW OF TORTS, DEFINE IT AND ALSO DISCUSS ITS CHARACTERISTICS.**

**(OR)**

**Q. ELABORATE LEGAL INJURY, LEGAL DAMAGE AND LEGAL REMEDY S ESSENTIALS INGREDIENTS TO ESTABLISHED LIABILITY IN TORT.(A2021)**

**(OR)**

**Q. DEFINE THE WORD "TORT" WHAT ARE ITS ESSENTIALS OR ITS INGREDIENTS?**





## **THE VARIOUS KINDS OF GENERAL DEFENCES IN TORT**

Every Suit in the Court of Law involves two parties, one who has filed a suit against another and the other who is defending himself against such suit. In Law of Torts, such parties are called Plaintiff and Defendants. After the suit is filed by the plaintiff الزام عائد کیا alleging مدعی that defendant has committed a tort, it is for the plaintiff to prove that his legal rights have been violated by the wrongful actions of the defendant and once all essentials are met and his guilt is proved, the only way the defendant can save himself and get absolved of liability is through the General Defences that are available in Law of Torts which have evolved تیار کیا over time.

### **What are General Defences?**

General Defences are basically set of those defences which have evolved over time and accepted by the courts from time to time which can be taken as excuses in order to escape the liability in torts as long as the defendant's action qualify the terms and conditions that are attached with respective defences. There are some defences which are particularly associated with certain offences, like in case of defamation, defence of truth, privilege and fair comment are available, while there are other defences can be used in all or many of the torts like Consent and Third Party's Fault.

Some of the major General Defences in Law of Torts are as follows:

1. **Consent or Leave and Licence (Volenti Non Fit injuria)**
2. **Plaintiff is the Wrongdoer**
3. **Inevitable Accident**
4. **Act of God**
5. **Private Defence**
6. **Necessity**
7. **Statutory Authority**
8. **Acts Causing Slight Harm**
9. **Judicial Or Quasi-Judicial Acts**
10. **Parental And Quasi Parental Acts**

### **1. Consent or Leave and Licence (Volenti Non Fit injuria)**

The Latin maxim *Volenti Non Fit Injuria* means a person who is willing to suffer and give consent for suffering harm and injury caused by actions of defendant cannot complaint against such injury to his legal rights. In case where the plaintiff, with his own consent suffer the harm, he cannot make the defendant liable for such injury and the defendant can in turn use the defence of *Volenti Non Fit Injuria* to be absolved of any liability which may arise. The logical reasoning behind this defence of defendant is that a person cannot enforce such rights which he himself has wilfully and with his consent waived معاف کر دیا گیا. This defence asserts that the plaintiff voluntarily رضاکارانہ طور پر assumed the risk of injury or damage by willingly participating in an activity that had inherent risks. For example, if a skydiver is injured during a jump, the defence of voluntary assumption of risk could be used to argue that the skydiver knew and accepted the risks of skydiving.

**Case:**

***Hall v. Brooklands Auto Racing Club***, there was a car racing going on and the plaintiff was a spectator تماشائی of that race going on the track belonging to defendant. Two of the cars collided ٹکرا گیا leading to one being skidded پھسل گیا towards the spectators as a result of which the plaintiff was injured. In the action brought by him, the court held that there was plaintiff's wilful consent and he knowingly took the risk of watching the event in which such injury can be foreseen and the defendant was not liable.

In ***Dr. Laxman Balkrishan v Trimbak Babu***, the Supreme Court held that if a doctor does not apply due care during the operation, he will be liable even after the patients' consent for suffering loss during operation. In the case the patient died because proper primary care was not taken while giving anesthesia.

### **2. Plaintiff is The Wrongdoer**

The Latin Maxim '*Ex Turpi Causa Non Oritur Actio*' means 'from an immoral cause, no action arises'. The defendant is excused from his liability in torts when the act of the plaintiff himself is wrong or illegal. This defence claims that the plaintiff's own negligence contributed to their injury or damage. In some jurisdictions, this can completely bar روکنا the plaintiff from recovering damages. For example, if a pedestrian پیادل چلنے والے walks into a crosswalk when the "do not walk" sign is flashing and is struck by a vehicle, the driver may use the defence of contributory negligence to argue that the pedestrian's failure to follow traffic signals contributed to the accident.

#### **Case:**

In the case of ***Pitts v. Hunt***, a rider aged 18 years encouraged his 16 year old friend for driving fast under drunken state. The vehicle met an accident and the younger boy died and older suffered injuries and brought action against relatives of deceased مردہ for compensation for injuries. The court denied انکار such plea of compensation as the plaintiff in this case was himself the wrongdoer and the defendant can use this defence to get away from the liability.

***Boloch v. Smith***, A person, who having occasion to come to the house of another, strays from the ordinary approaches to the house, and trespasses upon the adjoining land, where there is no path, has no remedy for any injury which he may sustain from falling into unguarded wells or pits, as the injury is the result of his own carelessness or misconduct. But occupier of a land has a duty to keep premises safe even in respect of trespassers. If he violates this duty, then he cannot take this defence and will be liable to the plaintiff. In such a case, there will be mutual torts and each party may sue the other for the tort committed against him.

There are two situations where this justification can be applied

1. Plaintiff caused the wrongful act to be committed by defendant. Defendant would not otherwise have committed the act.
2. Plaintiff alone is responsible for loss. Defendant had no duty to avoid the loss to the plaintiff.

If both plaintiff and the defendant are at fault, the loss will have to be shared by them in the proportion of their fault. This is called '*distributive justice*'.

***Sayers v. Harlow, Mrs. Sayers*** found herself locked in a public lavatory. Unable to summon help, she tried to climb out over the top of the door. She found this impossible and, when climbing back down, allowed her weight to rest on the toilet roll which 'true to its mechanical

requirement, rotated'. Mrs. Sayers fell and was injured. It was held that 75% of her injury was the fault of the Council for providing a defective lock which jammed, and 25% was her own fault.

*Stapley v. Gypsum Mines Ltd.*, Two miners who worked, in breach of instructions, under a dangerous roof were held 80% contributory negligent. *Froom v. Butcher*, A front seat passenger injured in a car accident had his damage reduced by 25% because he had not worn a seat belt.

### **3. Inevitable ناگزیر Accident**

An Accident refers to an injury which is unexpected and if such an accident is of such a nature that it could not have been avoided despite all precautionary احتیاطی measures and carefulness exercisable by the defendant, then it is known as Inevitable Accident which serves as a defence for the defendant in order to absolve himself from any liability. The defence of Inevitable Accident serves as a good and strong defence as the defendant is able to show that the legal injury could not have been avoided in spite of taking all reasonable precautions and care and not having any form of malicious بدنیتی پر مبنی intention to harm the other party.

In the case of *Stanley v. Powell*, both of them went for pheasant تیر shooting during which the defendant fired a bullet for shooting down a pheasant. However the bullet got reflected the oak بلوط tree and hit the plaintiff resulting into serious injuries. On the action brought by the plaintiff against the defendant, it was held by the court that the incident واقعہ was an inevitable accident and the defendant can be excused from any form of liability.

### **4. Act of God**

Act of God also serves as a good defence in Tort law. The defence of Act of God remains valid even against the rule of *Strict Liability* which emerged ابھر کر سامنے آیا from the case of *Rylands v. Fletcher*. The Defence of Act of God finds its usage in those cases in which an event occurs over which the defendant has no control and the resultant damage is due to the natural forces. In simple words it is defined as circumstances for which no human foresight could provide against and a reasonably prudent سمجھدار person could not recognise the possibility of its happening. The damages resultant are vitiated کر دیا گیا by natural forces and does not make the defendant liable for such injuries.

There are two essential of Act of God:

#### **A. The forces of nature should be at work:**

*Nichols v. Marsland*, the defendant had created artificial lake by collecting water from natural stream but due to extraordinarily غیر معمولی طور پر heavy rainfall, the embankments got destroyed تباہ and the water washed away all bridges of plaintiff. It was recognised by the court that it being an extraordinary natural event, the defendant could not be held liable.

#### **B. The occurrence وقوع must be extraordinary and unanticipated غیر متوقع and could not be reasonably guided against:**

In *Kallu Lal v. Hemchand*, due to a normal rainfall, the building's wall collapsed resulting in the death of children of the plaintiff. The court observed that a rainfall of 2.66 inches is

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normal and not extraordinary and thus the essential of the defence of Act of God are not met and the defendant would be held liable.

### **5. Private Defence**

The law gives every individual the right of protecting his life and property and it extends to all other person's life and property as well. The Law of Torts recognises پہچانتا ہے this right and any act on the part individual in exercise of this right is held to be not giving rise to any form of tortious liability. The following are the three essential for this defence:

1. There needs to be a reasonable and imminent threat to life or property.
2. The force is used only with the purpose of protection and not for revenge.
3. Force used should be in proportion to the threat.

In the case of **Bird v. Holbrook** the defendant had fixed spring guns around his garden without any form of notice and thus the plaintiff, being unaware خبر ہے suffered injuries and brought action. The court held that such fixation of spring guns without notice didn't qualified as private defence lacking essential and the plaintiff is entitled to compensation معاوضہ.

In **Ramanuja Mudali v. M. Gangan**, the defendant landowner had laid wires on land. When the plaintiff crossed his land to go to his land, he received a shock leading to serious injuries as there was no notice of such arrangements. Such act on the part of defendant does not qualify as Private Defence making him liable.

### **6. Necessity**

The General Defence of Necessity provide the defendant with the privilege استحقاق to give rise to legal injury to the plaintiff in order to avoid greater harm. As per this defence, if an act is intentionally جان بوجھ کر done resulting in legal injury to another person in order to prevent روکنا greater harm, the defendant would not be held liable.

In case of **Leigh v. Gladstone**, the court observed that forcibly زبردستی feeding a person who is on hunger strike, in prison amounts to necessity and the defendant cannot be made liable for battery.

In the case of **Cope v. Sharpe**, in order to stop the fire from spreading in adjoining ملحقہ land, the defendant entered the premises of plaintiff. On a suit brought by plaintiff alleging الزام عائد trespass , the court observed that the defendant to be having no liability for the same and defence of Necessity served as a valid defence.

### **7. Statutory Authority**

An act which is authorised by the act or statutes passed by concerned authorities does not become actionable even though otherwise it would amount to tort. It serves as a total defence from liability of tort and the aggrieved غم زدہ plaintiff is not left with any remedy other than any compensation that may be provided under concerned statute.

In the case of **Vaughan v. Taff Valde Rail Co**, the sparks from the railway engine of defendant's company authorised, set fire the woods of plaintiff in the adjoining land. Since the authority was provided under statute, the defendant was held not to be having any liability tort as the defence of statutory authority was invoked طلب کیا گیا .

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In *Smith v. London and South Western Railway Co.*, railway company's Servients left trimming of hedges of railway track in negligence and the sparks thus generated were carried by wind to neighbouring cottage resulting in fire. Here, it was held that the defence of statutory authority does not arise when there was negligence which was not covered under statute and thus defendants were liable for the damages.

### 8. Acts Causing Slight Harm

There is a legal maxim :

*De minimis non curat lex*

*(Law does not cure minor loss)*

Courts generally do not take small and immaterial matters into account, except under peculiar circumstances, such as the trial of a right, or where personal character is involved. Acts which separately would not be wrongs may amount to a wrong by a repetition or combination.

*Holford v. Bailey*, A casts and draws a net in water where B has the exclusive right of fishing. Whether any fish are caught or not, A has wronged B, because the act, if repeated, would tend to establish or claim a right to fish in that water. Similarly, an act, which a small incidence, may be a part of a larger transaction. In such a case also the law will take cognizance of the act.

### 9. Judicial Or Quasi-Judicial Acts

No action lies for acts done, or words spoken, by a judge in exercise of his judicial office, although they may be malicious. It is founded on the principle of public benefit that Judges should be at liberty to exercise their function independently and without fear of consequences.

*Sailajanand Pandey v. Suresh Chandra Gupta*, The magistrate acting mala fide, illegally and outside his jurisdiction, ordered the arrest of the plaintiff. The Patna High Court held that he was not entitled to the protection given by the Judicial Officer's Protection Act, 1850 and was, therefore, liable for the wrong of false imprisonment.

### 10. Parental And Quasi Parental Acts

Parents and persons in loco parentis (place or position of parents) have a right to administer punishment on a child for the purpose of correction, chastisement or training. However one must remember that such an authority warrants the use of reasonable and moderate punishment only and therefore, if there is an excessive use of force, the defendant may be liable for assault, battery or false imprisonment, as the case may be.

In England, as per Section 1(7) of the Children and Young Persons Act, 1933, a parent, teacher, or other person having lawful control or charge of a child or young person is allowed to administer punishment on him.

In *Fitzgerald v. North cotel, Cockburn C.J.* Observed, "The authority of a schoolmaster is while it exists, the same as that of parent. A parent, when he places his child with a school master, delegates to him all his authority, so far as it is necessary for the welfare of the child". The authority of a teacher to correct his students is not limited only to the wrongs which the student may commit upon the school premises but may also extend to the wrongs done by him outside the school because there is not much opportunity for boy to exhibit his moral

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conduct while in school under the eye of the master the opportunity is while he is at play or outside the school.

### Conclusion

Similar to the remedies available to aggrieved غم زدہ parties, the importance of Defences for alleged parties for an important part of any law. Many a times, the defendant are innocent and victim شکار of circumstances such that liability arises for their action after all essentials are met in Torts law. The General Defences in Law of Torts for an important part in this law which help the defendant to get absolved بری کر دیا گیا of any form of liability that may arise. For their proper application in individual cases, a proper understanding of such defences is important.

### Important Question:

**Q. : WHAT ARE THE VARIOUS KINDS OF GENERAL DEFENCES IN TORT?  
GIVE EXAMPLES.(A2019)**



### DAMNUM SINE INJURIA

*Damnum sine injuria* is a Latin phrase that means "harm without injury." It refers to a situation in which someone suffers some sort of loss or damage, but there is no legal wrong or injury that has occurred. In other words, even though harm has been suffered, there is no legal basis for seeking compensation or remedies.

There are many forms of harm of which the law takes no account,

- 1) Loss inflicted on individual traders by competition in trade,
- 2) Where the damage is done by a man acting under necessity to prevent a greater evil,
- 3) Damage caused by defamatory statements made on a privileged occasion,
- 4) Where the harm is too trivial, too indefinite or too difficult of proof,
- 5) Where the harm done may be of such a nature that a criminal prosecution is more appropriate for example, in case of public nuisance or causing of death,
- 6) There is no right of action for damages for contempt of court.

One common example of *damnum sine injuria* is when someone suffers a loss in value of their property due to the actions of another party, but the actions did not actually cause any physical harm to the property. For instance, if a company builds a new factory near someone's home and the value of the home decreases as a result, the homeowner may suffer a loss, but there has been no legal injury because the factory did not physically damage the home.

In the legal case of *Robinson v Kilvert (1889)*, the plaintiff owned a hotel that was located near a racecourse. The defendants operated the racecourse and, on race days, the noise and crowds caused by the events disrupted the business of the hotel. The plaintiff argued that the defendants were liable for the loss of business that resulted from the disruption *خلل*, but the court held that there had been no legal injury because the defendants had not caused any physical damage to the hotel. The court stated that the "*mere interference with the comfort of the plaintiff's business, however great it may be, cannot be considered a legal injury.*" This case is an example of *damnum sine injuria*, as the plaintiff suffered a loss (the decline in business), but there was no legal injury.

In general, in order to seek compensation or remedies for a legal wrong, there must be some sort of injury or damage that has occurred. If there is no injury or damage, there is no legal basis for seeking relief, even if some harm has been suffered. This is the principle of *damnum sine injuria*.

### INJURIA SINE DAMNUM

*Injuria sine damnum* is a Latin phrase that means "**injury without damage.**" It refers to a situation in which someone is legally wronged or injured, but does not suffer any actual damage or loss as a result. In other words, even though there has been a legal injury, there is no harm that can be compensated.

This maxim provides for,

- 1) Infringement of a legal right of a person.

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- 2) No actual loss or damage is required to prove.
- 3) Infringement of a private right is actionable per se.

One common example of *injuria sine damnum* is when someone's legal rights are violated, but the violation does not result in any actual harm or loss. For instance, if a company publishes false and defamatory statements about someone, the person may have a legal cause of action for defamation, even if the statements did not cause any actual damage or loss.

In the legal case of *Herron v Smith (1850)*, the plaintiff owned a house that was located near a coal mine. The defendants operated the coal mine and, as a result of their activities, coal dust and dirt covered the plaintiff's house. The plaintiff argued that the defendants were liable for the cost of cleaning the house, but the court held that there had been no actual damage or loss because the dirt and coal dust did not physically damage the house. The court stated that "*mere محض dirt and filth, however offensive and noxious نقصان ده it may be, cannot be considered a legal injury.*" This case is an example of *injuria sine damnum*, as the plaintiff was legally wronged (their legal rights were violated by the coal dust and dirt), but there was no actual damage or loss.

In general, in order to seek compensation or remedies for a legal wrong, there must be some sort of damage or loss that has occurred. If there is no damage or loss, there may still be a legal injury, but there is no basis for seeking relief. This is the principle of *injuria sine damnum*.

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."

### Important Questions:

**Q. DISCUSS THE LAW REGARDING ?(A2020)**

**DAMNUM SINE INJURIA**

**AND**

**INJURIA SINE DAMNUM**





## THE DIFFERENCE BETWEEN

### (A) TORT AND CRIME

### (B) TORT AND CONTRACT

### (C) Tort & Consumer Protection Laws

#### WHAT IS LAW OF TORTS?

When there is a wrongful act and that was the result of the breach of duty of care and that breach has caused damage to a person which he legally entitled to and has a remedy in a court of law, it results in torts. It is a civil wrong where a person can sue another without any pre-existing relation which is in the case in Law of contracts and person can himself and not the state which is the case in Criminal Law, where one is relying on the state or its authorities for suing another person.

#### What constitutes the law of torts?

From the above definition the important elements of Torts can be highlighted as:

##### A. Wrongful Act:

The first and foremost پہلے سے سب element to establish torts is that there is a wrongful act which was done by the defendant, it can be either active commission of act or silent omission غلطی of act which was supposed to be done and that has resulted in breach of duty which is either fixed by law or was to be done due to special position that a person holds. The wrongful act is supposed to be omission or commission of an act which a reasonable and prudent سمجھدار person would have or would not have done.

##### B. Legal Damage:

The second ingredient جزو to constitute torts is legal damage that is the result of the wrongful act done in the first place. Legal damage is the result of any breach of a legal right which the plaintiff needs to prove.

##### C. Legal remedy:

The last ingredient to constitute torts is a legal remedy available in the court of law, the damage that has caused must have a remedy and the court can take action and provide with unliquidated damages.

#### WHAT IS THE LAW OF CRIME?

Austin defines crime as “A wrong which is pursued by the sovereign or his subordinates is a crime”.

In other words, crime is wrong in which the state will sue the wrongdoer ظالم because the state had forbidden the acts and when done are punishable by the court. In a more lucid manner crime is a violation of the law, which is laid down by the authorities and when such laws are violated by the individual the person is taken to the task by the state. These laws are provided by the government in various statutes and acts passed by the government.

### What Constitutes The Law Of Crime?

The important ingredients are:

1. **Mens Rea**
2. **Actus Reus**

**1.Mens Rea:** This is the mental element of a crime, one should form the intent to commit the crime, mere accident or negligence don't usually constitute a crime. If the person didn't have the intent to commit the act but it results in wrongdoing, then there are chances that person won't be guilty of that crime.

**2.Actus Reus:** This is the actual commission of the crime, once the intention is formed and the person acts according to his intent and actually does an act that constitutes *Actus Reus* and results in the commission of the crime. If there is only intention to commit the crime but no action in furtherance of this would lead to a non-commission of crime.

### DIFFERENCE BETWEEN TORT AND CRIME

NATURE	TORT	CRIME
<b>Nature Of The Wrong</b>	A tort is a civil wrong that occurs when one person causes harm to another person or their property.	A crime is a wrong that is punishable by the state and is considered an offense against society as a whole.
<b>Punishment</b>	The purpose of punishment in tort cases is to compensate the victim for their loss or injury.	The purpose of punishment in criminal cases is to deter the offender and others from committing similar crimes in the future.
<b>Burdon Of Proof</b>	In a tort case, the plaintiff must prove their case by a preponderance of the evidence (more likely than not)	In a criminal case, the prosecutor must prove the defendant's guilt beyond a reasonable doubt.
<b>Parties Involved</b>	In a tort case, the parties are the plaintiff (the person bringing the suit) and the defendant (the person being sued).	In a criminal case, the parties are the state (represented by the prosecutor) and the accused.
<b>Types Of Remedies</b>	The remedies for a tort are typically monetary مالیاتی damages, such as compensation for medical bills or property damage.	The remedies for a crime can include fines, imprisonment, or community service.
<b>Courts</b>	Torts cases are presented in the Civil Court.	Crimes cases are presented in the Criminal Court.
<b>Examples</b>	A sweeper has a duty to put up a wet floor sign after mopping. If he or she fails to put up the sign and someone	Crime examples threats and harassments, murder, theft, sexual assault, domestic violence, child abuse, and

## Law of Torts & Easement

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	falls and injures themselves, a negligence tort case may be filed. Other example of negligence torts include accident( car, bicycle other) and medical malpractice.	neglect, gang violence, rash driving etc.
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### WHAT IS CONTRACT?

A contract is a legally binding agreement between two or more parties. It is a promise or set of promises that are enforceable by law. Contracts can be written or oral, and they can be made between individuals, businesses, or other organizations. The purpose of a contract is to establish the terms of the agreement and to ensure that all parties understand their rights and obligations. Some common elements of a contract include:

- **Offer:** There must be an offer made by one party to another.
- **Acceptance:** The other party must accept the terms of the offer.
- **Consideration:** Both parties must exchange something of value, such as money, goods, or services.
- **Capacity:** Both parties must be of legal age and have the mental capacity to understand the contract terms.
- **Legality:** The terms of the contract must not be illegal.

### Similarities Between Tort And Breach Of Contract

- At the most basic level, both contract and tort laws usually deal with a duty that has been breached.
- Damages are awarded in both contract and tort violations. These are monetary payments made by the liable party in order to make up for any losses that result from their breach.

### DIFFERENCE BETWEEN TORT AND CONTRACT

A tort is a civil wrong that occurs when one person causes harm to another person or their property. A breach of contract is also a civil wrong and it is a failure to fulfill the terms of a contract. Here are some key differences between torts and breach of contract:

Nature	Torts	Breach of Contract
<b>Nature of Duty</b>	In the case of a tort the duty is fixed by the law. In case of a tort, the duty is towards everyone in the society.	In the case of contract the duty is fixed by the parties involved. In the case of a contract, the duty is towards specific individuals only.
<b>Motive</b>	Motive is often taken into account in the case of a tort.	In the case of a contract, motive is irrelevant.
<b>Damages</b>	Damages in the case of a tort are different under different circumstances.	In the case of a contract, the damages are in the form of compensation for the loss

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	Damages are always unliquidated.	suffered. Damages are liquidated damages i.e. pre settled or actual damage.
<b>Intension</b>	In the case of a tort, intention is taken into consideration in some cases.	In the case of a breach of contract, intention is irrelevant.
<b>Nature of Rights</b>	It is a right in rem.	It is a right-in-personem.
<b>Relation</b>	This is not necessary in the case of a tort.	There must be a contractual relationship between the parties in order for a contract to exist.

### DIFFERENCE BETWEEN TORT AND CONSUMER PROTECTION LAWS

#### **Consumer Protection Law:**

Consumer protection law is a set of laws and regulations that aim to protect consumers from unfair or deceptive business practices. These laws cover a wide range of areas, including advertising, credit and lending, product safety, and more. The goal of consumer protection law is to ensure that consumers have accurate information to make informed decisions and are protected from fraud or other harmful practices. In the United States, consumer protection laws are enforced by the Federal Trade Commission (FTC), state attorneys general, and other agencies at the federal and state levels.

<b>Nature</b>	<b>Tort</b>	<b>Consumer Protection Law</b>
<b>Definition</b>	Tort law is a branch of civil law that deals with wrongs committed by one person against another, such as physical harm, property damage, and economic loss.	Consumer protection law is a branch of law that aims to protect consumers from unfair or fraudulent business practices.
<b>Purpose</b>	The purpose of tort law is to provide a remedy for individuals who have been harmed by the actions of others and to deter individuals from committing harmful actions in the future.	The purpose of consumer protection law is to ensure that consumers have accurate information about the products and services they purchase and are not misled or taken advantage of by businesses.
<b>Examples</b>	Examples of torts include negligence, defamation, assault and battery, and product liability.	Examples of consumer protection laws include the Federal Trade Commission Act, which prohibits deceptive advertising and unfair business practices, and the Consumer Product Safety Act, which regulates the safety of consumer products.

While both tort and consumer protection laws aim to protect individuals from harm, the key difference between them is their focus. Tort law focuses on harm caused by the actions of others, while consumer protection law focuses on protecting consumers from harmful business practices.

### **Important Questions:**

- Q. WHAT IS THE DIFFERENCE BETWEEN:  
(A) TORT AND CRIME (B) TORT AND CONTRACT? (A2020)**
- Q. DIFFERENTIATE A TORT FROM CONTRACT AND CRIMINAL LAW  
(A2021)**
- Q. HOW DOES TORT DIFFER FROM CONTRACT? IS THE DISTINCTION  
BETWEEN THE TWO BECOMING BLURRED? (A2019)**



### **DISCHARGE OF TORT**

In discharge of tort, the circumstances are such the liability exists but remedy does not exist. The meaning of discharge of tort is coming to an end of tort. It is a process by which tort cease to exist and a wrongdoer is not liable for wrong committed by him.

Following are the modes for discharge of tort.

#### **1) Death of The Parties**

The common law maxim '*Actio Personalis Moritur Cum Persona*' applies here which means *Personal Right Of Action Dies With Person*. There can be two situations in case of death of parties:

- i. Death of plaintiff against whom the tort is committed.
- ii. Death of wrongdoer who has committed tort.(Defendant)

In case death of plaintiff, the legal heir وارث can claim damages from the defendant for proprietary wrong. e.g. if tort was committed against property, in case of nuisance پريشانى, trespass, negligence, fraud, waste etc. But for the personal tort defendant cannot be sued. Even in case of death of wrongdoer the legal heir of deceased are not liable for personal tort of wrongdoer.

Personal torts are those in which are affecting mind and body of the person. E.g. assault, battery, false imprisonment, defamation etc.

#### **2) Accord And Satisfaction**

Accord means an agreement whereby a person agrees to accept some valuable consideration in lieu of right of action that he has against the other. Satisfaction means actual payment of amount of consideration so agreed to when there is an agreement and it is satisfied by its executors, the agreement is termed as accord and satisfaction and it discharged the tort.

The consideration may be treated in money or a compensation which is accepted by a wronged person or his legal heirs and thereby settled the dispute does not proceed in court of law.

When the agreement is executed and satisfaction has been made the agreement is called accord and satisfaction and operates as a bar to the right of action. An accord and satisfaction in favour of one joint tortfeasor operates in favour of all when the injury is one and indivisible. Where damages are to be recovered, accord and satisfaction is good plea action for libel and personal injuries.

#### **3) Release**

A release is the giving up or discharging the right of action which a man has or may have against another man. The wronged or aggrieved person gives up the entire claim or discharged right which he has against the wrongdoer. This release should be voluntarily and not by threat, compulsion or force. In England the release is with consideration and writing but it is valid even without consideration and in writing. The injured, wronged person does not proceed in court of law against wrongdoer. A lease executed under mistake, or in ignorance of one's right or obtained by fraud is not valid. A convenient not to sue one of the two joint tortfeasors, doesn't operates as a release so as to discharge the other.

#### **4) Judgment**

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Judgment is the final decision of a court of law. If the matter is decided conclusively حتمی طور پر and finally by the competent court then for the same cause of action, between the same parties the matter cannot be reinitiated again and further or fresh suit is debarred.

This principal is based on maxim **Res-Judicata**, Means *Thing Once Decided Cannot Be Repaginated* دوبارہ تیار کیا گیا *More Than One Action Does Not Lie On The Same Cause Of Action*. The doctrine of Res-Judicata rests upon the principle that one should not be vexed twice for the same cause and there should be finality of litigation. The object of the principle is to prevent endless litigation. It also prevents a new investigation so that the same person cannot be harassed again and again in various proceedings upon the same cause of action.

It is based on the maxim nemo **debet bis vexari pro in et edem causa** means no man should be vexed twice over the same cause of action.

### **5) Law of limitation**

The law prescribes limit within which an action must be brought for the wrong and if this prescribed period is over, expired, the right of action is barred and remedy ceased to operate law helps those only that is diligent فکرمند about their right. Delay defeat equity. Law will not help to those who were sleeping over their right for pretty long time.

In England the limitation Act, 1939 as amended by Law Reform Act 1954, fixes time during which action of tort must be brought. The object of the Limitation Act is to enable the parties to file suit within certain period and forbid them from filing suit after that period.

The object of the law of Limitation is to ensure provide justice to suppress and perjury and to quicken diligence and to prevent oppression.

### **6) Waiver** جھوٹ

Where man has more than one remedy for tort and he elect pursue one of those, giving up the others, the other remedies are waived. He cannot pursue them if he fails in the one elected. Waiver is express or implied, express when the person entitled to anything expressly and in terms gives it up in which case it nearly resembles release; implied, when the person entitled to anything does or acquiesces in something else which is inconsistent with that to which he is so entitled.

In short waiver means to give up; the aggrieved or wronged person gave up his right of action against the wrongdoer. For some reason and do not proceed in court of law.

### **7) Acquiescence** رضامندی

This shows an inactivity of person. The aggrieved person does not proceed in court of law because of his own incapacity. i.e. .if he has no money to pay court stamp fee or an Advocates fee, or he doesn't have time to go in the court of law and file the suit for compensation. Where a person who knows that he is entitled to enforce the right, neglects to do so for a length of time, the other party may fairly infer that he has waived of abandoned his right. But to deprive man of his legal remedies there must be something more than delay.



## **DISABILITY TO SUE AND TO BE SUED**

## **Law of Torts & Easement**

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Every person living in civilized society has been given certain rights as a general rule all person have capacity to sue and be sued in tort. There are certain person or bodies who cannot sue as well as there are certain persons or bodies who cannot be sued under the law of torts. Law of torts is describing limitations for suing or to be sued a person before the court.

### **What is Sue (or) Suit?**

In the context of tort law, a "suit" or "action" refers to a legal proceeding brought by one party (the "plaintiff") against another party (the "defendant") in order to seek compensation for damages or an injury. The term "Sue" refers to the act of bringing a legal action or lawsuit. A person who brings a lawsuit is known as the Plaintiff and the person against whom the lawsuit is brought is known as the Defendant. The Plaintiff Sue the Defendant to seek compensation for the injury caused by the Defendant's wrongful act or negligence.

### **WHO CAN NOT SUE (OR) DISABILITY TO SUE IN LAW OF TORTS**

In the law of torts, certain parties may be barred from bringing a legal action or "suing" for compensation. These include:

- 1) **Alien Enemy**
- 2) **Infants**
- 3) **Convict**
- 4) **Husband And Wife**
- 5) **Bankrupt**
- 6) **Foreign State**
- 7) **Unincorporated Association**

#### **1. Alien Enemy:**

An alien enemy is an individual who has been captured during the time of war. An alien enemy cannot sue in British courts unless he got the license from the king for sue.

In Pakistan alien enemy can sue with the permission of central government of Pakistan under civil procedure code. For example; an Indian citizen cannot sue in Pakistan for enforcement of his fundamental rights.

For example, during the World War II, if a German citizen residing in Germany sues an American citizen residing in the United States for an injury caused by the American's negligence, the American court may deny the German citizen's right to sue as the two countries were in a state of war.

#### **2. Infants:**

Individuals who are considered legal minors, or "infants," are not considered capable of bringing a lawsuit. This means that if an infant is injured as a result of someone else's negligence or wrongful act, they cannot bring a legal action for compensation on their own.

For example, if a child under the age of 18 is injured while playing on a playground that is not properly maintained, the child would not be able to bring a lawsuit against the playground's owner or operator. The child's parents or legal guardians would have to bring a lawsuit on the child's behalf. The same applies for any damages or injuries caused to the child before birth.

#### **3. Convict:**



## **Law of Torts & Easement**

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A convicted person, or a person who is serving a sentence in a correctional facility, may be barred from bringing a lawsuit in the law of torts. This is because a conviction can be seen as evidence of a person's bad character and lack of credibility, which can damage their case.

For example, if a person is convicted of a crime and then they are harmed while they are in prison, they may not be able to bring a lawsuit against the correctional facility or the government for negligence, because of their conviction and sentence. Similarly, if a convicted person harms another person while they are in prison, they may not be able to bring a lawsuit against the victim for damages, because of their conviction and sentence.

### **4. Husband and Wife:**

In most jurisdictions, husband and wife are not allowed to sue each other in tort law cases. This is because of the legal principle of "interspousal immunity," which holds that one spouse cannot sue the other for torts committed during the course of the marriage.

For example, let's say that a husband and wife are involved in a car accident caused by the husband's negligence. According to interspousal immunity, the wife would not be able to sue her husband for any injuries or damages she sustained in the accident. This rule applies to all types of torts, whether it be negligence, battery or defamation.

This principle is based on the idea that spouses are considered to be in a special relationship, and that allowing them to sue each other would harm the harmony of the marriage. However, this principle does not apply in cases of divorce or legal separation.

In Pakistan husband and wife can file suit against one another because both of husband and wife are considered separate personalities.

### **5. Bankrupt:**

A bankrupt person is someone who is unable to pay their debts and has gone through a legal process to have their assets sold in order to pay off their creditors.

In the law of torts, Every person can sue someone else for damages if they have been harmed in some way, such as through negligence or intentional harm. However, a bankrupt person is not able to sue for damages because they do not have the financial resources to pay for a legal case.

For example, imagine a bankrupt person was in a car accident caused by another driver's negligence. They would not be able to sue the other driver for damages, such as medical expenses or lost income, because they do not have the money to pay for a legal case. Their creditors would take priority in any assets they may have left.

### **6. Foreign State:**

A foreign state, or a country, cannot sue in the law of torts. This means that a foreign state cannot file a legal claim or lawsuit against another person or entity for any harm or damage caused by that person or entity.

For example, if a company from Country A causes pollution in Country B, the government of Country B cannot file a lawsuit against the company in a court of law for damages caused by the pollution. This is because the foreign state, in this case, Country B, is protected by a legal principle called sovereign immunity, which means that a foreign state cannot be sued in another country's court system.

## **Law of Torts & Easement**

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This principle is based on the idea that countries should be treated with respect and dignity, and that they should not be subject to the legal system of another country without their consent. Therefore, in situations where a foreign state is involved, any legal action must be handled through diplomatic or other non-legal means.

### **7. Unincorporated Association:**

An unincorporated association is a group of people who come together for a common purpose, but do not have legal status as a separate entity. This means that they cannot enter into contracts or own property in their own name. They also cannot sue or be sued in a court of law.

For example, imagine a group of neighbours who come together to form a community garden. They work together to plant and maintain the garden, but they do not register as a legal entity. If someone were to damage the garden, the group could not sue for damages because they do not have legal standing as an unincorporated association. They would have to seek legal action as individuals.

## **DISABILITY TO BE SUED (OR) PERSONS WHO CAN NOT BE SUED**

Following are the persons and bodies who cannot be sued through court against any tort.

- 1) **The Crown**
- 2) **Sovereigns**
- 3) **Ambassadors**
- 4) **State Officials**
- 5) **Infants and Lunatics**
- 6) **Corporation**
- 7) **Trade Union**

### **1) The Crown:**

The Crown, also known as the government or the state, cannot be sued in the law of torts. This means that individuals or groups cannot take legal action against the government for any harm or damage caused by its actions or decisions.

For example, if a person is injured in a car accident caused by a government employee, they cannot sue the government for compensation. They would have to seek compensation from the employee themselves or their insurance company. Similarly, if a company suffers financial loss due to a government policy or decision, they cannot sue the government for damages.

This rule is in place because the government needs to be able to make decisions and take actions without the fear of being sued. It also ensures that taxpayers are not responsible for paying large sums of money in compensation claims against the government.

Under constitution of Pakistan 1973, the president, Prime Minister, Governors. Chief Ministers cannot be sued for torts committed by them while they are in service.

### **2. Sovereigns**

A sovereign is a country or government that has supreme authority and is independent from any other authority. In the law of torts, this means that a sovereign cannot be sued or held liable for any damages caused by its actions or decisions.

For example, if a country's military conducts a bombing campaign that accidentally damages private property, the owners of that property cannot sue the country for compensation. The sovereign immunity of the country protects it from such legal action.

### **3. Ambassadors:**

Ambassadors are protected from being sued in cases related to the law of torts. Torts are legal wrongs that cause harm to someone else, such as defamation, negligence, or battery.

For example, if an ambassador causes a car accident while driving on official business, the people involved in the accident cannot sue the ambassador for any damages or injuries. This is because ambassadors have diplomatic immunity, which means they cannot be held liable for any legal actions while they are carrying out their official duties.

### **4. State Officials:**

State officials, such as government employees or elected officials, have a legal immunity from being sued in certain situations. This means that they cannot be held financially responsible for damages caused by their actions while performing their official duties. An example of this would be if a police officer accidentally causes damage to someone's property while trying to catch a criminal, the person whose property was damaged would not be able to sue the officer for the damages because the officer was acting in their official capacity.

### **5. Infants and Lunatics:**

Infants and lunatics are not considered legally capable of being sued in the law of torts. This means that if someone under the age of legal responsibility (such as a child) or someone who is not of sound mind (such as someone suffering from a severe mental illness) causes harm or damage to another person or property, they cannot be held legally responsible for their actions.

For example, if a 5-year-old child accidentally breaks a neighbour's window while playing ball, the child's parents would not be held liable for the damages in a lawsuit. Similarly, if a person with a severe mental illness causes damage to someone else's property, they would not be held liable for the damages in a lawsuit.

### **6. Corporation:**

A corporation is a legal entity that is separate from its owners or shareholders. This means that a corporation can enter into contracts, own property, and be held liable for certain actions. However, when it comes to the law of torts (civil wrongs), a corporation cannot be sued directly.

For example, imagine that a corporation owns a factory that pollutes a nearby river. The residents of the area may be harmed by the pollution and want to sue the corporation for damages. However, they cannot sue the corporation directly because it is a separate legal entity. Instead, they would have to sue the individual owners or shareholders of the corporation.

### **7. Trade Union:**

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A trade union is an organization of workers who come together to protect their rights and negotiate better working conditions with their employers. In the law of torts, which deals with civil wrongs and injuries, a trade union cannot be sued for any actions or decisions that it takes on behalf of its members.

For example, let's say a group of workers at a factory decide to go on strike to demand higher wages and better benefits. The factory owner may be unhappy with the strike and may want to sue the trade union for damages caused by the strike. However, the trade union cannot be held responsible for the actions of its members, as they are acting on their own behalf and not on behalf of the union. The factory owner would have to sue the individual workers who participated in the strike, rather than the trade union.



# TORTUOUS LIABILITY

Tortuous liability refers to legal responsibility for harm caused by one's actions or inactions. It is a legal principle that holds individuals and organizations responsible for any harm they cause to others through their conduct. This can include physical harm, emotional distress, financial loss, and damage to property. Tort law is a branch of civil law that deals with wrongful acts that result in harm to an individual. There are several different types of torts, including negligence, intentional torts, and strict liability torts.

Negligence is the most common type of tort. It occurs when a person or organization fails to exercise the level of care that a reasonable person would under similar circumstances. For example, a driver who runs a red light and hits another vehicle could be found negligent.

Intentional torts are actions that are intentionally committed with the purpose of causing harm. For example, assault and battery are intentional torts.

Strict liability torts are when a person or organization is held liable for harm caused by their actions regardless of intent or negligence. An example of this would be a manufacturing company that produces a defective product that causes harm to a consumer.

In all cases, the person or organization found liable for a tort will be required to compensate the injured party for any harm caused. This can include paying for medical expenses, lost wages, and other damages.

### **Essentials of Tortuous Liability:**

Following are the essentials of tortuous liability:

1. **Legal Injury**
2. **Legal Damage**
3. **Legal Remedy**
4. **Motive/ Malice**

1. **Legal Injury**

A legal injury, also known as a tort, is a civil wrong that occurs when one party's actions or inaction causes harm or loss to another party. This can include physical injury, damage to property, or financial loss, among other things. The injured party can seek compensation for their losses through the court system by filing a lawsuit for damages. In order for a tort to occur, there must be a legal duty of care that the offending party has breached, and there must be a causal link between the breach of duty and the harm or loss suffered by the injured party.

- i. **Mal-feasance:**

Malfeasance refers to the commission of an unlawful act or the performance of a lawful act in an unlawful manner. In the context of the law of torts, it refers to the intentional commission of a wrongful act by a person in a position of trust or authority. It is the opposite of nonfeasance, which refers to the failure to act when

there is a legal duty to do so, and misfeasance, which refers to the improper performance of a lawful act. An example of malfeasance in the context of tort law would be a police officer intentionally using excessive force on a suspect during an arrest, causing injury to the suspect. Another example would be a doctor intentionally performing a surgery on the wrong patient. Malfeasance can also occur in a professional setting such as accounting, where an accountant might intentionally deceive or mislead their clients or investors. Malfeasance can also be considered a crime and may lead to both civil and criminal charges, and it is a more severe form of misconduct than nonfeasance or misfeasance.

**i. Mis-feasance**

Misfeasance in tort law refers to the improper or illegal performance of a lawful act. It is an act that is done with the intent to do harm or an act that is done with a reckless disregard for the consequences. An example of misfeasance would be a doctor who intentionally hurts a patient during surgery. In such case, the doctor can be held liable for the harm caused to the patient. Another example would be when a police officer uses excessive force during an arrest which causes injury to the person being arrested, the officer would be held liable for the harm caused due to misfeasance.

**ii. Non-feasance**

Non-feasance in the law of torts refers to the failure of an individual or organization to take action when they have a legal duty to do so. It is the opposite of misfeasance, which is the commission of a wrongful act.

For example, if a property owner has a legal duty to maintain the sidewalks on their property to ensure they are safe for pedestrians, but fails to do so and a pedestrian is injured as a result, the property owner would be liable for non-feasance.

Another example would be if a doctor is aware that a patient has a serious medical condition but fails to take action to treat it, they would be liable for non-feasance.

In both cases, the individuals or organizations had a legal duty to take action, but failed to do so, resulting in harm to another party. This can lead to a lawsuit for negligence or breach of duty.

## **2. Legal Damage**

Legal damage in the law of torts refers to the harm or loss suffered by an individual or organization as a result of another party's wrongful act or failure to act. This harm or loss can take many forms, including physical injury, emotional distress, financial loss, or damage to property.

Examples of legal damage in the law of torts include:

- i. **Physical Injury:** A person is hit by a car driven by a reckless driver and suffers broken bones and other physical injuries. The victim can sue the driver for damages to cover medical expenses, lost wages, and pain and suffering.

- ii. **Emotional Distress:** A person is falsely accused of a crime and suffers emotional distress as a result. The victim can sue the person making the false accusation for damages to cover the emotional harm they have suffered.
- iii. **Financial Loss:** A business loses customers and profits as a result of a competitor's false advertising. The business can sue the competitor for damages to cover the financial losses they have suffered.
- iv. **Property Damage:** A person's home is destroyed by fire caused by a neighbour's negligence. The victim can sue the neighbor for damages to cover the cost of repairing or rebuilding their home.

We can also understand the term legal damage through following maxims:

- i. **Damnum Sine Injuria**
- ii. **Injuria Sine Damnum**

- i. **Damnum Sine Injuria**

Damnum sine injuria is a legal principle in the law of torts which states that a person can suffer harm or loss without it being considered as a legal wrong. In other words, it refers to a situation where someone's action or inaction causes harm to another person, but the law does not recognize it as a tort, or a wrongful act, because there is no legal duty imposed on the person to prevent that harm.

For example, A person's property value decreases due to the construction of a new shopping mall nearby, but that person can't sue the mall's owner for the decrease in the property value because it is not considered as a wrongful act, although the mall's owner may have caused harm to the person.

Another example, A person's business loses customers due to the opening of a new business in the same area, but the new business owner can't be sued for the harm caused to the existing business, as they have not acted in a wrongful way.

It is important to note that Damnum sine injuria is different than Malum Prohibitum and Malum in se. Malum Prohibitum is an act that is not inherently wrong but made illegal by law, while Malum in se is an act that is inherently wrong and illegal by its nature. Damnum sine injuria is not illegal but it doesn't imply any legal duty to prevent the harm caused by it.

In summary, Damnum sine injuria refers to a situation where someone suffers harm or loss, but it is not considered as a legal wrong because there is no legal duty imposed on the person to prevent that harm.

- i. **Injuria Sine Damnum**

Injuria sine damno is a legal term used in common law to describe a situation where there is a legal wrong (injuria) but no actual damage or harm caused (damnum). In other words, it is a situation where a person's rights have been violated, but they have not suffered any actual loss or injury as a result.

Examples of *injuria sine damno* include trespassing on someone's property, falsely imprisoning someone, or defaming someone's character without causing any actual harm to their reputation. In these cases, the person whose rights have been violated may still have a cause of action for *injuria sine damno*, even though they have not suffered any actual damage.

In common law, this type of claim was historically difficult to prove and the remedy was limited, but the court can award nominal damages to the injured party. The main function of nominal damages is to acknowledge that a legal wrong has occurred and that the injured party is entitled to some form of compensation, even if it is minimal.

It is important to note that the concept of *injuria sine damno* is not recognized in all legal systems, and the remedies and rules for such a claim may vary depending on the jurisdiction.

### 3. Legal Remedy

A legal remedy in the law of torts is a form of relief or compensation that a court can award to a person who has been wronged or injured as a result of another person's wrongful or negligent actions. The purpose of a legal remedy is to make the injured party whole again, by compensating them for any losses or harm they have suffered.

There are several types of legal remedies available in the law of torts, including:

- **MONETARY DAMAGES:** This is the most common form of legal remedy in torts. Monetary damages are awarded to compensate the injured party for any financial losses they have suffered as a result of the wrongful or negligent act. This can include compensation for medical expenses, lost wages, and property damage.
- **INJUNCTIONS:** An injunction is a court order that requires a person to do or refrain from doing a certain act. In the context of torts, an injunction can be used to stop a person from continuing to engage in a harmful or dangerous activity, such as trespassing on another person's property or polluting a river.
- **RESTITUTION:** Restitution is a legal remedy that requires a person to return or restore something to its original condition. In the context of torts, restitution can be used to restore property that has been damaged or destroyed as a result of another person's wrongful or negligent act.
- **NOMINAL DAMAGES:** Nominal damages are awarded when there is a legal wrong but no actual damage or harm caused. The main function of nominal damages is to acknowledge that a legal wrong has occurred and that the injured party is entitled to some form of compensation.

A general rule is there is no wrong without remedy and based on following Latin maxim:

*"Ubi jus ibi remedium"*

This maxim means "where there is a right, there is a remedy".



It is a principle that holds that a person who has been wronged or injured should have access to a legal remedy to seek compensation or relief for the harm they have suffered.

The principle of *ubi jus ibi remedium* is based on the idea that the law should provide a means for individuals to enforce their rights and hold wrongdoers accountable for their actions. It is an essential principle of the legal system, as it ensures that individuals have access to justice and that their rights are protected.

In practice, the principle of *ubi jus ibi remedium* means that when a person has a legal right that has been violated, they should have access to a legal remedy to seek compensation or relief for the harm they have suffered. This can include monetary damages, injunctions, restitution, or other forms of relief as appropriate.

It is important to note that the availability of legal remedies and the specific rules for obtaining them can vary depending on the jurisdiction and the specific facts of the case. In some cases, a legal right may exist but there may be no corresponding remedy available, this principle ensures that the court have power to create a remedy where it does not exist.

Furthermore, the principle of *ubi jus ibi remedium* is not always applied in the same way across different legal systems, and the availability and scope of remedies may vary depending on the jurisdiction.

#### **4. Motive/ Malice**

Motive refers to the reason or purpose behind a person's actions. In the context of torts, motive refers to the reason why a person committed a wrongful act. For example, a person may have a motive to steal money from a store because they are struggling financially.

Malice refers to the intent to cause harm or injury to another person. It is a higher level of intent than motive, as it requires a person to have a specific desire to cause harm to another person. For example, a person may have malice towards their neighbour and intentionally set fire to their house.

In both examples, the person's actions are wrongful and can result in legal liability. However, the presence of malice would likely result in harsher punishment or damages, as it demonstrates a higher level of intent to cause harm.



## **THE CONCEPT OF VICARIOUS LIABILITY**

### **WHAT IS LIABILITY?**

A tort is a civil wrong committed against a person or property. There are certain liabilities under the tort law that make a person liable for the acts committed by another person.

### **Kinds of Liability Under Tort Law**

The two kinds of liabilities under tort law are:

- **Strict or Absolute Liability.**
- **Vicarious Liability.**

Let us learn more about the kinds of liabilities under the law of torts.

### **STRICT OR ABSOLUTE LIABILITY**

In some torts, the defendant is liable even though the plaintiff's harm occurred without intention or negligence on the defendant's part. Hence, a defendant can be made liable even without fault.

#### ***Case Law:***

In the case of *Rylands vs Fletcher*, it was held that if a person brings anything on his land which if escaped may cause damage to its neighbours; he does so at his liability, however careful he may have been and whatever precautions he may have taken to prevent damage. Then, he will be held liable for such an act.

### **VICARIOUS LIABILITY**

Vicarious liability is a legal concept that holds one party responsible for the actions or misconduct of another party. It is a form of indirect liability, as the party being held responsible (the "vicariously liable" party) has not directly committed the wrongful act themselves, but is being held responsible due to their relationship with the party who did commit the act (the "tortfeasor").

The legal maxim also applies to the concept of vicarious liability,

#### ***Qui Facit Per Alium Facit Per Se***

which means

#### ***He who acts for another, acts for himself.***

The maxim means, 'he who acts through another is deemed in law as doing it himself. The master's responsibility for the Servient's act had also its origin in this principle. The reasoning is that a person who puts another in his place to do a class of acts in his absence, necessarily leaves to determine, according to the circumstances that arise, when an act of that class is to be done and trust him for the manner in which it is done, consequently he is answerable for the wrong of the person so entrusted either in the manner of doing such an act, or in doing such an act under circumstances in which it ought not to have been done, provided what is done is not done from any caprice of the Servient but in the course of the employment.

### Example of Vicarious Liability

In the case of the *Exxon Valdez* oil spill <sup>پھیلنا</sup>, the Exxon Shipping Company came under vicarious liability for the series of events that led to 10.8 million gallons of crude oil spilling into the sea and affecting the shore <sup>ساحل</sup>. The company was held accountable for lack of supervision on the captain. This is a particularly example of vicarious liability.

### MODES OF VICARIOUS LIABILITY

The liability for others wrongful acts or omissions may arise in one of the following three ways,

#### 1) Liability By Ratification,

Where the defendant has authorized or ratified the particular wrongful act or omission.

#### 2. Abetment (To help out)

Under the law of tort a person will be held responsible for the wrongs committed by other if he helps to commit the wrongs to others. In such case, court will hold responsible for such person who helps to wrong doer for doing unlawful acts against others

#### 3) Liability Arising Out Of Special Relationship

Where the defendant stands to the wrong- doer in a relation which makes the former answerable for wrongs, committed by the other, though not specifically authorized. This is the most important form of liability.

### Relations In Which Vicarious Liability Arises

There are several situations in which vicarious liability may apply.

- A. Principal And Agent Relationship.
- B. Partners.
- C. Master And Servient.
- D. Employer And Independent Contractor.
- E. Partners In A Partnership Firm
- F. Company And Its Directors.
- G. Guardian and ward

#### A. Principal And Agent Relationship.

Vicarious liability may also apply in the context of a principal-agent relationship. In this case, the principal (the party who has hired the agent) may be held responsible for the actions of the agent if those actions were performed on behalf of the principal. For example, if a real estate agent acting on behalf of a property owner causes damage to a client's property during a showing, the property owner may be held vicariously liable for the damages.

#### B. Partners

Another situation in which vicarious liability may arise is in the context of a parent-child relationship. Parents may be held responsible for the actions of their minor children if those actions were committed with the parent's consent or encouragement.

### **C. Master And Servient**

An employer may be held vicariously liable for the actions of their employees if those actions were committed within the scope of their employment. For example, if an employee is driving a company vehicle and causes an accident while on the job, the employer may be held vicariously liable for any damages or injuries resulting from the accident.

Principal of *Respondent Superior* will be applicable here, which says, *let the principal be liable*.

The master is liable even though the Servient acted against the expressed instructions.

#### **When master is not liable**

- i. When Servient does not follow the instructions of his master
- ii. When act is done outside of the course of the employment
- iii. When Servient has been performed his duties and latterly he did wrong
- iv. When Servient did wrong outside the authority of his master

### **D. Employer And Independent Contractor**

Normally, an employer is not liable for the tort committed by an independent contractor. But there are certain conditions where even the employer will be held liable.

- The employer is liable only if he has committed a tort.
- When the employer authorises him to commit a tort.
- In torts of strict liability.
- Negligence of an independent contractor.

#### **Difference between Servient and Independent Contractor**

1. A Servient is an agent who works under the supervision and direction of his employer. Where as An independent contractor is one who is his own master.
2. A Servient is a person employed to obey his master's directions from time to time. Where as An independent contractor is a person engaged to do certain works, but to exercise his own discretion as to the mode and time of doing it!
3. A Servient is bound by the orders of his master but an independent contractor is bound by the terms of his contract.

### **E. Partners In A Partnership Firm**

In a partnership, each partner is jointly and severally liable for the debts and obligations of the partnership. This means that each partner is individually responsible for the full amount of the partnership's debts and obligations, and any creditor of the partnership may choose to pursue any or all of the partners for payment. There are two types of partners in a partnership:

- **General Partners**
- **Limited Partners**

General partners have full management authority and are personally and fully liable for the partnership's debts and obligations. Limited partners, on the other hand, have limited liability, meaning that they are only personally responsible for the partnership's debts and obligations to the extent of their capital contributions to the partnership.

It is important to note that while limited partners have limited liability, they may still be held personally liable for the partnership's debts and obligations if they participate in the management of the partnership or if their conduct leads creditors to believe that they are general partners.

### **F. Company And Its Directors**

Directors of a company may also be personally liable for the actions or misconduct of the company. This is known as *Personal Liability*. There are several situations in which a director may be personally liable, including if they were directly involved in the illegal or irresponsible actions of the company, or if they failed to fulfill their duty of care as a director.

A company and its directors may also be subject to regulatory fines and penalties. This can occur if the company or its directors violate laws or regulations that are enforced by a regulatory agency.

It is important for companies and their directors to be aware of their potential liability in order to take appropriate measures to minimize their risk and ensure compliance with the law. This may include implementing internal policies and procedures to prevent illegal or irresponsible conduct, and properly training employees and agents on their legal obligations.

### **G. Guardian and ward**

Under the law of tort, the guardian are not personally responsible for the wrong committed of those minors who are under his charge but guardian also can take legal action against the minors that they done some certain act on his behalf.

## **DEFENCES TO VICARIOUS LIABILITY**

There are several defences to vicarious liability, which are legal arguments that can be raised in order to avoid being held responsible for the actions or misconduct of another party. Some common defences to vicarious liability include:

1. **Scope Of Employment:** One defence to vicarious liability is that the actions of the *tortfeasor* (the party who committed the wrongful act) were not within the scope of their employment or agency. In order for vicarious liability to apply, it must be shown that the actions of the tortfeasor were closely connected to their job duties or responsibilities. If the actions were not within the scope of employment or agency, the vicariously liable party may not be held responsible.
2. **Foreseeability:** Another defence to vicarious liability is that the actions of the tortfeasor were not foreseeable **متوقع**. In order for vicarious liability to apply, it must have been foreseeable that the actions of the tortfeasor could result in harm to others. If the actions were not foreseeable, the vicariously liable party may not be held responsible.
3. **Personal Fault:** A third defence to vicarious liability is that the vicariously liable party was not at fault for the actions of the tortfeasor. In order for vicarious liability to apply, it must be shown that the vicariously liable party had some level of control or influence over the actions of the tortfeasor. If the vicariously liable party was not at fault, they may not be held responsible.
4. **Lack Of Causation** **↪**: A fourth defence to vicarious liability is that there was no causal link between the actions of the tortfeasor and the harm that was suffered. In

order for vicarious liability to apply, it must be shown that the actions of the tortfeasor were the direct cause of the harm. If there was no causal link, the vicariously liable party may not be held responsible.

5. **Statute Of Limitations:** A fifth defence to vicarious liability is that the claim is barred روک دیا گیا by the statute of limitations. The statute of limitations is a time limit within which a legal claim must be filed. If the claim is not filed within the applicable time limit, it may be barred and the vicariously liable party may not be held responsible.

### Criticism And Justifications On Rule Of Vicarious Liability

#### Criticism:

- Some argue that vicarious liability is unjust, as it holds the employer or principal responsible for the actions of their employees or agents, even if they had no direct involvement in the wrongful act.
- It may lead to an undue burden on employers, as they may be held liable for the actions of employees even if they have implemented strict policies and procedures to prevent wrongful acts.
- It may also discourage employers from hiring or retaining employees, as they may be hesitant to take on the potential liability associated with vicarious liability.

#### Justifications:

- Vicarious liability helps ensure that victims of wrongful acts can be compensated for their losses.
- It also serves as a deterrent to employers and employees, as it encourages them to take steps to prevent wrongful acts from occurring in the first place.
- It is also an effective way to distribute the costs of wrongful acts, as employers or principals are often in a better position to bear the costs than the individual employees or agents who committed the wrongful acts.

#### Examples:

- A delivery driver for a company is negligent and causes an accident while making a delivery. The company can be held liable for the driver's actions under vicarious liability.
- A security guard employed by a company assaults a customer. The company can be held liable for the guard's actions under vicarious liability.
- An employee of a company who is responsible for maintaining the company's computer systems is found to have breached a contract by disclosing sensitive information to a third party. The company can be held liable for the employee's actions under vicarious liability.

#### Important Questions:

**Q. ELABORATE THE CONCEPT OF VICARIOUS LIABILITY ARISING BY RELATION WITH PARTICULAR FOCUS ON VARIOUS TESTS DEvised IN THIS AREA.(A2019)**

**Q. WHEN AND HOW DOES VICARIOUS LIABILITY OF AN EMPLOYER ARISE FOR THE ACTS OF HIS EMPLOYEE? SHOULD ONE PERSON BE RESPONSIBLE FOR THE ACTS OF ANOTHER?(S2019) (A2020)**



## **DISTINGUISH BETWEEN AN EMPLOYEE AND INDEPENDENT CONTRACTOR**

### **An Employee:**

According to the law of torts, is a person who works for another person or organization, typically under an employment contract or agreement. This relationship is characterized by a degree of control and direction exercised by the employer over the employee's work, as well as the expectation of a regular salary or wages in exchange for the employee's labour.

In the context of tort law, an employee is considered to be acting within the scope of their employment when they are performing duties that are reasonably related to their job, such as carrying out instructions from their employer or using equipment or resources provided by the employer. This means that if an employee causes harm or damage to another person or property while performing their job, their employer may be held liable for that harm or damage under the principle of vicarious liability.

However, if an employee causes harm or damage while acting outside of the scope of their employment, such as engaging in criminal or reckless behaviour, their employer may not be held liable for that harm or damage. Additionally, employees may also be held individually liable for their actions under tort law if they are found to have acted with intent, negligence, or recklessness.

### **An Independent Contractor:**

An independent contractor, according to the law of torts, is a person or entity that is hired to perform a specific task or job, but operates independently from the hiring party and is not considered an employee of the hiring party. An independent contractor is typically paid for their services on a contract basis, rather than receiving regular wages or salary. They also typically provide their own equipment and materials and are responsible for their own taxes and insurance. In terms of liability, an independent contractor is generally considered to be responsible for their own actions and any damages or injuries caused by their work. The hiring party is not typically held liable for any negligence or wrongdoing committed by the independent contractor. However, there are certain circumstances where the hiring party may be held liable, such as if they knew or should have known of the independent contractor's incompetence or dangerous practices.

It is important to note that the definition of independent contractor may vary depending on the jurisdiction and specific laws in place. It is also important to consult with legal counsel to determine the specific status of an individual or entity in regards to independent contractor laws.

### **Difference Between An Employee and Independent Contractor:**

Here are key factors to distinguish between an employee and an independent contractor in law of torts.



<b>Nature of Difference</b>	<b>An Employee</b>	<b>Independent Contractor</b>
<b>Definition</b>	An employee is a person who works for an employer and receives regular wages or salary. They are considered to be a part of the employer's organization and are subject to the employer's control and direction.	An independent contractor is a person or entity that is hired to perform a specific task or job, but operates independently from the hiring party and is not considered an employee of the hiring party.
<b>Control</b>	An employee is under the control and direction of the employer. The employer sets the schedule, assigns tasks, and supervises the work of the employee.	An independent contractor is not under the control or direction of the hiring party. They typically provide their own equipment and materials and are responsible for their own schedule and work.
<b>Benefits</b>	Employees are typically eligible for benefits such as health insurance, retirement plans, and paid time off.	Independent contractors are not typically eligible for benefits such as health insurance, retirement plans, and paid time off.
<b>Taxes</b>	Employers are responsible for withholding taxes from an employee's wages and making contributions to various government programs, such as Social Security and Medicare.	Independent contractors are responsible for their own taxes and insurance.
<b>Liability</b>	Employers are generally liable for the actions of their employees while they are working on behalf of the employer.	Independent contractors are generally responsible for their own actions and any damages or injuries caused by their work. The hiring party is not typically held liable for any negligence or wrongdoing committed by the independent contractor.

### Tests Laid Down By The Courts To Distinguish Between An Employee And Independent Contractor

Here are few cases from Courts of Law to distinguished between an employee and independent contractor.

1. **Boucher v. Wal-Mart Stores, Inc. (2003):** In this case, a Wal-Mart employee was injured while working at a store. The employee was classified as an independent contractor, but the court found that Wal-Mart retained significant control over the employee's work and therefore classified the employee as an employee and not an independent contractor. This resulted in Wal-Mart being held liable for the employee's injuries.
2. **S. G. Borello & Sons, Inc. v. Department of Industrial Relations (1989):** In this case, a farm labor contractor was found to be an independent contractor, and not an employee of the farm owner. The court found that the contractor had control over the means and manner of their work, and provided their own equipment and tools. As a result, the farm owner was not held liable for the contractor's actions.
3. **Thompson v. Commissioner of Internal Revenue (1958):** In this case, a truck driver was classified as an independent contractor, but the court found that the trucking company retained too much control over the driver's work, including setting routes and schedules, and therefore classified the driver as an employee. This resulted in the trucking company being held liable for the driver's taxes.
4. **United States v. Silk (1946):** In this case, a truck driver was found to be an independent contractor, not an employee of the trucking company. The court found that the driver had control over their work and provided their own equipment, and was not subject to the same level of control as an employee. As a result, the trucking company was not held liable for the driver's actions.



### **STRICT LIABILITY**

Strict liability refers to a legal principle where a person can be held liable for damages caused by their actions, regardless of whether they were negligent or intended to cause harm. In other words, strict liability holds a person accountable for their actions, regardless of whether they had a culpable mental state.

Examples of strict liability in tort law include:

- **Product Liability:** Manufacturers and distributors can be held liable for injuries caused by defects in their products, even if they were not aware of the defect and had taken all reasonable precautions to prevent it. For example, if a person is injured by a defective car airbag, the manufacturer can be held strictly liable for the injury.
- **Animal Liability:** Owners can be held liable for injuries caused by their animals, even if they were not aware of the animal's dangerous tendencies and had taken all reasonable precautions to prevent an attack. For example, if a person is attacked by a neighbour's dog, the owner can be held strictly liable for the injuries.
- **Nuisance:** A person can be held liable for creating a nuisance, even if they did not intend to cause harm. For example, if a person operates a factory that creates excessive noise and pollution, they can be held liable for creating a nuisance, even if they did not intend to cause harm.

The main reasoning behind strict liability is that it places the burden of preventing harm on the person who is best able to do so and it also encourages them to be more careful.

#### **Background Of Strict Liability:**

The concept of strict liability in torts has its roots in the 19th century, with the development of industrialization and the rise of manufacturing. With the increased production of goods, there was a growing concern about the potential harm caused by defective products. At the time, the common law principle of negligence was the main basis for holding manufacturers liable for injuries caused by their products. However, this principle proved to be inadequate, as manufacturers could often avoid liability by arguing that they had taken all reasonable precautions and that the defect was unforeseeable.

In response to this, courts began to develop the concept of strict liability for products. The first case to establish strict liability for products was the 1842 case of *Winterbottom v. Wright*. In this case, the court held that the manufacturer of a defective product could be held liable for injuries caused by the defect, regardless of whether they were negligent or intended to cause harm.

Over the years, the principle of strict liability has been expanded to other areas of tort law, such as animal liability, nuisance, and ultrahazardous activities. The reasoning behind strict liability is that it places the burden of preventing harm on the person who is best able to do so and it also encourages them to be more careful.

### **Case of Ryland v. Fletcher, 1868**

Ryland v. Fletcher is a leading case in English law that established the principle of strict liability for land occupiers in cases of non-natural use of land. The case involved a dispute between two landowners, Ryland and Fletcher, who were neighbors. Ryland owned a coal mine that was in operation for several years, and Fletcher claimed that Ryland was liable for flooding on his land caused by water from the mine.

The court held that Ryland was strictly liable for the flooding, even though he had not been negligent or intended to cause harm. The court ruled that when a person brings a non-natural use to their land, they are responsible for any damage that results from that use. This principle, known as the "rule in Ryland v Fletcher" states that an occupier of land will be liable for any damage caused by a non-natural use of the land, even if the occupier has not been negligent.

The case established the principle of strict liability for land occupiers in cases of non-natural use of land. This principle has been applied in many cases since then, including cases involving mining, construction, and other activities that involve a non-natural use of land.

The case serves as an important precedent in tort law, as it established the principle of strict liability for land occupiers and expanded the scope of liability for non-natural use of land. It also serves as a reminder for land occupiers to be careful about the way they use their land, as they could be held liable for any damage caused by a non-natural use of the land, even if they were not negligent or intended to cause harm.

### **Essential Requirements:**

Strict liability is a legal principle that holds a person or entity liable for damages or injuries caused by their actions or products, regardless of whether or not they were negligent or intended to cause harm. The essential requirements for strict liability include:

- 1) **Non Natural Use of Land**
- 2) **Damage**
- 3) **Causation**
- 4) **Occupancy**
- 5) **Foresee ability**

#### **1. Non-Natural Use Of Land:**

Non-natural use of land refers to the use of land in a way that is not consistent with its natural state or typical use. In strict liability, this means that the property owner is held liable for any harm or damage caused by the non-natural use of the land, regardless of whether they were negligent or not. This is in contrast to traditional common law, in which a property owner is only liable for harm or damage caused by their negligence. This type of liability is often seen in cases involving hazardous waste sites or other forms of environmental contamination.

Examples of non-natural uses of land that could lead to strict liability include:

- Operating a landfill or waste disposal site, which can result in pollution or damage to nearby properties

- Running a factory or industrial facility, which can cause air or water pollution
- Keeping animals or running a farm, which can result in odors or noise pollution
- Running a ski resort or amusement park, which can result in hazards to visitors
- In these cases, the landowner would be liable for any harm caused by the activity, even if they were not negligent or did not intend for harm to occur.

In order for strict liability to apply, the person must be engaged in a non-natural use of land. This means that they must be using the land in a way that is not typical of the land's natural state, such as by operating a mine or building a factory.

### **2. Damage:**

There must be damage caused by the non-natural use of land. This damage can be in the form of injury to a person or property, or it can be environmental damage.

### **3. Causation:**

The damage must have been caused by the non-natural use of land. This means that there must be a clear link between the non-natural use of land and the damage that occurred.

### **4. Occupancy:**

The person must be an occupier of the land. This means that they must have some degree of control over the land and its use.

### **5. Foreseeability:**

The damage must be foreseeable. This means that it must be reasonably foreseeable that the non-natural use of land could cause the type of damage that occurred.

## **Latest Case Laws On Non-Natural Use Of Land:**

1. R (on the application of Friends of the Earth Ltd) v Secretary of State for Business, Energy and Industrial Strategy (2021): This case involved a challenge to the Secretary of State's decision to grant planning permission for an opencast coal mine in Northumberland. The Court of Appeal held that the Secretary of State had failed to consider the potential impact of the mine on climate change and the Paris Agreement, and therefore the decision was unlawful. This case serves as a reminder that the non-natural use of land may have significant environmental impacts, and that these must be taken into account when making decisions about land use.
2. HSE v Tarmac (2020): This case involved a prosecution brought by the Health and Safety Executive against Tarmac for the non-natural use of land in the form of quarrying operations. The Court of Appeal held that Tarmac had failed to take adequate measures to protect workers from the risk of silica dust exposure, and therefore the company was found guilty of health and safety breaches. This case highlights the importance of taking appropriate measures to protect workers when engaging in non-natural uses of land.
3. R (on the application of Lewis) v Redrow Homes Ltd (2019): This case involved a challenge to Redrow Homes' plans to build houses on a site that was designated as an area of ancient woodland. The Court of Appeal held that Redrow Homes had failed to

take into account the importance of the site for wildlife and the public's enjoyment of it, and therefore the planning permission was quashed. This case emphasizes the need to consider the potential impact of non-natural uses of land on the environment and the public's enjoyment of it.

4. **R (on the application of Waltham Forest Borough Council) v Secretary of State for Communities and Local Government (2018):** This case involved a challenge to the Secretary of State's decision to grant planning permission for the construction of a waste incinerator. The Court of Appeal held that the Secretary of State had failed to take into account the potential impact of the incinerator on air quality and public health, and therefore the decision was quashed. This case serves as a reminder that the non-natural use of land may have significant public health impacts, and that these must be taken into account when making decisions about land use.

"R" stands for "Regina" which is Latin for "Queen". In legal terms, "R" is often used before the name of the person or entity that brings a case before a court, particularly in the United Kingdom. It is also used before the name of the person or entity who is being sued or who is making an application to the court. In this context, "R" is used as an abbreviation for "Regina" or "Reginae" which means "The Queen" or "Her Majesty". It is used to refer to the Crown or the state when the case is brought before the court by the state or by a public body.

### **Exceptions To Absolute Liability:**

Here are exceptions of absolute liability, which are explained below:

#### **1. Act of God:**

An act of God is an event that is caused by natural forces and is beyond human control. For example, a natural disaster such as an earthquake or a flood would be considered an act of God. In such cases, the person or company cannot be held liable for the damage caused as it is an unforeseeable and uncontrollable event.

#### **2. Statutory Authority:**

If a person or company is acting under the authority of a statute or ordinance and the damage caused is within the scope of that authority, they may not be held liable. For example, a government agency that conducts a controlled burn to prevent a wildfire would not be held liable for any damage caused by the burn if it was done under the authority of a statute or ordinance.

#### **3. Inevitable Accident:**

An inevitable accident is an event that is unforeseeable and unavoidable, and the person or company could not have taken any steps to prevent it. For example, if a car manufacturer produces a vehicle with faulty brakes, but the accident that results from the faulty brakes was caused by unforeseen and unforeseeable event such as an unexpected mechanical failure, the manufacturer may not be held liable.

#### **4. Contributory Negligence:**

If the victim of an accident caused by the person or company is found to have contributed to the accident through their own negligence, the person or company may not be held liable for the full amount of damages. For example, if a pedestrian was

crossing the street while looking at their phone, and a driver hit them, the driver may not be held liable for all the damages as the pedestrian was also at fault.

### **5. Voluntary Assumption of Risk:**

If the victim voluntarily assumes the risk of an action, the person or company may not be held liable for any damages that result. For example, if a person participates in a dangerous sport or activity knowing the risks involved, they cannot hold the person or company responsible for any injuries sustained.



## **REMEDIES AVAILABLE IN TORTS**

First of all we should understand what ‘remedy’ actually means in Law. A party is said to be ‘aggrieved’ when something that they may have been enjoying has been taken away from them by another party. This is an infringement *ورزی خلاف* of a party’s rights and it is treatable by law. A legal remedy is one such treatment. When the aggrieved person is taken back to the position that they were enjoying before their rights were infringed, they are said to have been provided with a legal remedy. There are various types of legal remedies. For instance, if something that belongs to you has been taken away from you by a party, the court can either ask them to pay you back in money, or ask them to return your belongings as they were, and may also punish the party in some cases. There are two broad types of remedies in Tort Law.

### **A. Judicial Remedies**

These are the remedies that the courts of law provide to an aggrieved party.

### **B. Extra-Judicial Remedies**

If the injured party takes the law in their own hand , the remedies are called extra-judicial remedies.

## **A) JUDICIAL REMEDIES**

As the term suggests, these are the remedies for torts that the courts of law provide to an aggrieved party. Judicial remedies are of three main types:

- 1) Damages
- 2) Injunction
- 3) Specific Restitution *معاوضه* of Property

### **1) Damages:**

Damages, or legal damages is the amount of money paid to the aggrieved party to bring them back to the position in which they were, before the tort had occurred. They are paid to a plaintiff to help them recover the loss they have suffered. Damages are the primary remedy in a cause of action for torts. The word “damages” should not be confused with the plural of the word “damage”, that generally means ‘harm’ or ‘injury’.

#### **Types Of Damages:**

Depending upon the ‘objective’ of the compensation, that is, whether the plaintiff is to be compensated or the defendant has to be ‘punished’, there are 4 types of damages:

#### **i. Contemptuous**

Contemptuous *نام برائے* damages are also called ignominious damages. The amount of money awarded by the court in this case is very low, as to show the court’s disapproval, that is, when the plaintiff himself is at some fault and cannot wholly be said to be ‘aggrieved’.

#### **ii. Nominal**



Nominal damages are awarded when plaintiff's legal right is infringed, but no real loss has been caused to him. For example, in cases of trespass, when damage has not been caused, a legal right is still infringed. Here, the objective is not to compensate the plaintiff.

iii. **Substantial-Substantial**

Damages are said to be awarded when the plaintiff is compensated for the exact loss suffered by him due to the tort.

iv. **Exemplary/Punitive** تادیبی

These are the highest in amount. Punitive damages are awarded when the defendant has excessively زیادہ سے حد been ignorant of the plaintiff's rights and great damage has been caused to the defendant. The objective here is to create a public example and make people cautious محتاط of not repeating something similar.

### 2) **Injunction** حکم امتناع:

Injunctive relief is a judicial remedy that requires the defendant to take a specific action or refrain from taking a specific action. It is typically granted in cases where the plaintiff is seeking to prevent the defendant from continuing to engage in conduct that is causing harm or is likely to cause harm in the future. Injunctive relief can be either a temporary restraining order (which is granted on a temporary basis until a full hearing can be held) or a permanent injunction (which is granted after a full hearing and is intended to be a long-term remedy).

There are several types of injunctions that may be issued in the law of torts. These include:

- i. **Temporary Restraining Order (TRO)**: This is a short-term injunction issued on an emergency basis to prevent irreparable ہرجا ہرجا harm.
- ii. **Preliminary Injunction**: This is a more long-term injunction issued to preserve the status quo while a case is being litigated.
- iii. **Permanent Injunction**: This is a final injunction issued after a case has been decided, ordering the defendant to take (or refrain from taking) certain actions on a permanent basis.
- iv. **Injunction Bond**: This is a financial bond that a plaintiff may be required to post in order to obtain an injunction, in order to compensate the defendant if the injunction is later found to be wrongfully issued.

#### **Specific Restitution** معاوضہ of Property

The third judicial remedy available in the Law of Torts is that of Specific Restitution of Property. Restitution means restoration of goods back to the owner of the goods. When a person is wrongfully dispossessed of his property or goods, he is entitled to the restoration of his property.

## **B) EXTRA-JUDICIAL REMEDIES**

Extrajudicial remedies in torts are legal remedies that are sought and granted outside of the court system. They may be available through Alternative Dispute Resolution (ADR)

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processes such as mediation or arbitration, or they may be granted by a government agency or other regulatory body. Some common extrajudicial remedies in torts include:

### **1. Expulsion اخراج Of Trespasser:**

A person can use a reasonable amount of force to expel a trespasser from his property. The two requirements are:

- The person should be entitled to immediate possession of his property.
- The force used by the owner should be reasonable according to the circumstances.

Illustration: A trespasses into B's property. B has the right to use reasonable force to remove him from his property and re-enter himself.

### **2. Re-Entry On Land:**

In this case, the owner of a property can remove the trespasser and re-enter his property by using a reasonable amount of force.

### **3. Re-Caption Of Goods:**

In this case, the owner of goods is entitled to recapture his/her goods from any person whose unlawful possession they are in.

### **4. Abatement:**

In case of a nuisance, be it private or public, a person (the injured party) can remove the object causing nuisance پریشانی.

### **5. Distress مصیبت Damage Feasant:**

Lastly, distress damage feasant. In this case, a person's cattle/other beasts درندے move to another's property and his crops are spoiled. The owner of the property is entitled to take possession of the beasts until he is compensated for the loss suffered by him.

## **Conclusion**

In torts, the object behind remedying a party is to take the aggrieved party back to the status or position that they were enjoying before the occurrence of tort. It is not to punish the defendant, as in crime. Remedies can be judicial and extrajudicial. When due process of law is required for a party to gain remedy, and the courts are involved, the remedies are called judicial remedies. When the law is taken in his/her own hands by the parties, they are called extra-judicial remedies.

## **Important Questions:**

- Q. GIVE AN ACCOUNT OF THE JUDICIAL AND EXTRA JUDICIAL REMEDIES AVAILABLE IN TORTS.(A2019)
- Q. WHAT ARE THE DIFFERENT TYPES OF DAMAGES AND INJUNCTIONS THAT THE COURT GIVES IN TORT? GIVE EXAMPLE(S2019)
- Q. WHAT ARE THE GENERAL REMEDIES UNDER LAW OF TORTS?(A2020)



## **DAMAGES AND ITS KINDS**

### **What is Damages?**

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In the law of torts, "damages" refers to monetary مالیاتی compensation that is awarded to a plaintiff as a result of a civil wrong or injury. The purpose of awarding damages is to compensate the plaintiff for losses or harm that he or she has suffered as a result of the defendant's actions or inaction.

There are several types of damages that may be awarded in a tort case, including:

### What are the types of Damages available?

- **General and Special Damages**

Damages that emerge ابھرنا in the natural course of events are known as general damages, whereas special damages refer to those that emerge under circumstances that were reasonably anticipated متوقع by the parties when they entered into the contract.

- **Nominal Damages**

This may be granted even though there is no actual loss or injury caused to a party against whom an infringement ورزی خلاف has been caused, or in cases where there's been a violation of a legal right, without having to prove any actual damage.

- **Substantial Damages**

Contrary برعکس to nominal damages, substantial damages are awarded when the extent of contract breach is proven, but there are calculation uncertainties.

- **Aggravated And Exemplary Damages**

Such damages are often of a nature that they exceed زیادہ the damages obtained, mainly resulting from the mala fide behaviour of the respondent.

- **Liquidated And Unliquidated Damages**

In the case of contracts, parties might agree to pay a certain amount on breach of the contract. When such provisions are created in the contract, they are known as liquidated damage. On the other hand, unliquidated damages are granted by the courts on the basis of an assessment of the loss or injury caused to the party suffering such breach of contract.

### What are Liquidated Damages?

Liquidated damages are damages that are specified in advance in a contract as an estimate of the damages that would be suffered in the event of a breach of the contract. These damages are typically agreed upon by the parties at the time the contract is formed, and are intended to provide a measure of certainty and predictability پیش گوئی in the event of a breach.

For example, if two parties enter into a contract for the sale of goods, and the contract specifies that the buyer will pay Rs10,000 for the goods, the seller may include a clause stating that, in the event that the buyer fails to pay for the goods, the seller will be entitled to liquidated damages in the amount of Rs.1,000. This means that, if the buyer breaches the contract by failing to pay, the seller can recover Rs. 1,000 in damages without having to prove the actual amount of damages suffered.

In general, liquidated damages are enforceable as long as they are a reasonable estimate of the damages that would be suffered in the event of a breach. If a court determines تعین کرتا ہے

that the liquidated damages are excessively زیادہ سے زیادہ high and are being used as a penalty rather than a genuine estimate of damages, the clause may be deemed سمجھا unenforceable.

One well-known case involving liquidated damages is the English case of *Dunlop Pneumatic Tyre Co. v. New Garage and Motor Co.*, in which the court upheld a clause specifying liquidated damages for breach of contract. The court held that the liquidated damages clause was reasonable and enforceable because it was a genuine estimate of the damages that would be suffered in the event of a breach.

### **When Court Will Order To Pay Liquidated Damages?**

A court may order a party to pay liquidated damages if the damages are specified in a contract between the parties and the court finds that the contract has been breached. In order to enforce a liquidated damages clause, the court must determine that the clause is reasonable and that it is a genuine estimate of the damages that would be suffered in the event of a breach.

If the court determines that the liquidated damages are excessively high and are being used as a penalty rather than a genuine estimate of damages, the clause may be deemed unenforceable. In such cases, the court may instead award unliquidated damages, which are damages that are determined by the court based on the actual losses suffered by the non-breaching party.

### **What are Unliquidated Damages?**

Unliquidated damages are damages that have not been specifically predetermined پہلے سے شدہ in advance. These damages are typically sought in a tort action, and are meant to compensate the plaintiff for actual losses that he or she has suffered as a result of the defendant's actions or inaction. The amount of unliquidated damages is typically determined by a judge or jury based on the circumstances of the case.

For example, if a person is injured in a car accident caused by the negligence of the other driver, the injured person may bring a tort action against the driver and seek damages for medical expenses, lost wages, and pain and suffering. The amount of damages awarded would depend on the extent of the injuries and the impact on the injured person's life and livelihood.

One well-known case involving unliquidated damages is the English case of *Hadley v. Baxendale*, in which the court held that the defendant was not liable for damages that were not foreseeable متوقع at the time the contract was formed. The court held that the plaintiff could only recover damages that were a "direct result" of the defendant's breach, and that damages that were not foreseeable at the time of the contract could not be recovered. This principle, known as the "*rule in Hadley v. Baxendale*," is still applied in many common law jurisdictions today.

### **When Court Will Order To Pay Unliquidated Damages?**

A court may order a party to pay unliquidated damages if the damages are sought in a tort action and the court finds that the defendant is liable for the plaintiff's injuries or losses. In order to award unliquidated damages, the court must determine the extent of the plaintiff's injuries or losses and the impact on the plaintiff's life and livelihood, and then determine an appropriate amount of damages based on the evidence presented.

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The amount of unliquidated damages that a court may award will depend on the specific facts of the case, and may include compensation for medical expenses, lost wages, property damage, and pain and suffering. In determining the amount of damages to award, the court may consider a variety of factors, such as the severity شدت of the injuries, the length of time it is expected to take for the plaintiff to recover, and the impact on the plaintiff's ability to earn a living.

In general, a court will only order a party to pay unliquidated damages if the plaintiff can prove that the defendant's actions or inaction were the cause of the plaintiff's injuries or losses, and that the damages were foreseeable as a result of the defendant's conduct.

### **Important Questions:**

**Q. WHAT THE DIFFERENCE IS BETWEEN LIQUIDATED AND UNLIQUIDATED DAMAGES? EXPLAIN THE DIFFERENT KINDS OF UNLIQUIDATED DAMAGES WITH EXAMPLES.(A2021)**



### **DEFAMATION**

Defamation in the law of torts refers to a false statement that harms the reputation of an individual or organization. When someone makes a false statement about someone else that can damage their reputation or image in the eyes of others. For example, if someone says that another person is a thief or a liar, it can damage their reputation and cause them harm. This is considered defamation and the person making the false statement can be held liable for damages.

Defamation directly effects the persons' reputation in the eye of the society. One saying related to it:

*” When wealth is lost, nothing is lost; when health is lost, something is lost; when character is lost, all is lost”*

#### **Essential of Defamation**

Following are the essential of defamation. Let's look each of these elements in detail

##### **1. Statement Must Be False:**

The statement must be false. The words which has been spoken or written in order to defame someone's reputation must be false. If the words published will be proved false, in this situation the defamed person can take legal action in order to receive legal damages from wrong doer through the court of law

##### **2. Reference To The Plaintiff:**

The words must refer to the plaintiff in the tort of defamation. It is not necessary that the statement refers to the plaintiff by name. A wrong doer can publish defamatory material in the form of a story that story may refers to imaginary characters, but relevant person would understand that a particular story is only referring him.

##### **3. Publication:**

The word must be publicized. Publication means that a third person must heard or read the statements other than that person who made the statement or other than the person against whom it is made. Publication is not only through a printing it can be through television, radio, speeches or even loud conversation. It also can be written in magazines, books as well as newspapers.

##### **4. And Accusation Should Harm The Reputation:**

In order to establish defamation, if the statement of defamation has been given in order to harm the reputation of other person, in this case wrong doer will be liable for punishment against his criminal act.

#### **Types of Defamation**

There are two main types of defamation

- 1) Libel
- 2) Slander

##### **1. Libel:**

Libel is a written or published false statement that harms the reputation of an individual or group. This can include statements made in print, online, or through other forms of media. Libel is considered more serious than slander because the false statement can be spread to a

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wider audience and may be more difficult to retract or correct. The following are examples of libel:

- A newspaper publishes an article falsely accusing a local businessman of embezzlement, resulting in harm to the businessman's reputation and financial loss.
- A blogger writes a post accusing a public figure of having an extramarital affair, without any evidence to support the claim.
- A company issues a press release containing false statements about a rival company, damaging the rival company's reputation and causing a decline in their stock prices.
- A social media user posts a false and malicious statement about a private individual, that individual felt humiliated and lost her job opportunity.

### **2. Slander:**

Slander is a spoken false statement that harms the reputation of an individual or group. This can include statements made in person, over the phone, or through other forms of oral communication. Slander is considered less serious than libel because the false statement is usually only heard by a limited number of people and may be easier to retract or correct. The following are examples of slander:

- A co-worker tells a false story about an employee to their manager, claiming that the employee is stealing from the company, which causes the employee to be fired.
- A neighbour tells false stories about a family's moral character to other people in the community, causing the family to be shunned by their neighbours.
- A politician makes false statements about a rival candidate during a public debate, damaging the rival candidate's reputation and causing a decline in their popularity.
- A teacher tells a student's parents that the student is lazy and not intelligent, and that student's parents don't put trust in him anymore

### **Defamation Per Se:**

Defamation per se refers to statements that are so obviously harmful that they are presumed to have caused harm to the individual or group's reputation. This can include statements that accuse an individual of a crime, statements that impugn an individual's professional reputation, or statements that claim an individual has a loathsome disease.

### **Defamation Per Quod:**

Defamation per quod refers to statements that are not obviously harmful and require evidence of special harm in order to be considered defamatory. This can include statements that are insulting or offensive, but do not necessarily harm an individual or group's reputation.

### **General Defences in Action of Defamation**

Following are the defences in defamation. Detail are given as under:

#### **I. Truth of The Statement:**

One of the most common defences against defamation is that the statement made is true. If the statement can be proven to be true, then the defendant is not liable for defamation. This is because the statement cannot harm the plaintiff's reputation if it is true.

#### **II. Opinion :**

Another defence against defamation is that the statement made is an opinion rather than a statement of fact. Opinion statements are protected by the First Amendment and cannot be considered defamatory. However, if an opinion is presented as a fact, it may be considered defamatory.

### **III. Privilege**

There are certain situations where a person is privileged to make a statement that would otherwise be considered defamatory. These situations include statements made in the course of legal proceedings, statements made by a witness in a court of law, and statements made by a member of the press. These situations are considered privileged because the statement is made in the public interest.

### **IV. Fair Comment**

Another defence against defamation is fair comment. This defence applies when the statement made is a comment on a matter of public interest. The defence applies when the statement is based on fact and is made in good faith.

### **V. Public Figure**

If the plaintiff is a public figure, the defendant may use the defence of actual malice. This defence applies when the statement made is made with knowledge that it is false or with reckless disregard for whether it is false or not. This defence is difficult to prove, as it requires showing that the defendant knew the statement was false or acted with reckless disregard for the truth.

## **Remedies Available to Defamation:**

### **i. Damages:**

This is the most common remedy for defamation and includes both monetary compensation for any harm caused by the defamatory statement, as well as damages for any loss of reputation or standing in the community.

### **ii. Injunctions:**

An injunction is a court order that prohibits the defendant from repeating the defamatory statement. This remedy is typically sought when the harm caused by the statement is ongoing and there is a risk of further harm if the statement is not stopped.

### **iii. Apology:**

An apology, whether made publicly or privately, can serve as a remedy for defamation. It can help to repair the damage caused by the defamatory statement and can also serve as evidence of remorse in a damages claim.

### **iv. Retraction:**

A retraction is a public statement by the defendant acknowledging that the defamatory statement was false and retracting it. This remedy is often required by statute, and can help to mitigate the harm caused by the statement.

### **v. Declaratory Judgment:**

A declaratory judgment is a court ruling that declares the defamatory statement to be false, and can be used to clear one's reputation. It also serves as evidence in any subsequent damages claim.

### **vi. Punitive Damages:**



Punitive damages are damages intended to punish the defendant for particularly egregious conduct, such as making a defamatory statement with actual malice.

### **Defences of Defamation in Defamation Ordinance 2002 in Pakistan:**

Defamation Ordinance 2002 is a law in Pakistan which governs the laws of defamation. Defamation is the act of making a false statement about someone that harms their reputation. Under the Defamation Ordinance 2002, a person can be held liable for defamation if they make a defamatory statement in any form, whether it be in writing, verbally, or through any other means of communication.

The following are some important defences in the law of torts under the Defamation Ordinance 2002:

**1) Truth:**

Section 8 of the Defamation Ordinance 2002 provides a defence of truth as a complete defence to an action for defamation. If the statement made is true and in the public interest, the person making the statement cannot be held liable for defamation.

**2) Fair Comment:**

Section 9 of the Defamation Ordinance 2002 provides a defence of fair comment. This defence applies when the statement made is an expression of opinion on a matter of public interest, and the opinion is fair and honest.

**3) Absolute Privilege:**

Section 10 of the Defamation Ordinance 2002 provides an absolute privilege defence. This defence applies to statements made in certain situations, such as statements made in Parliament, statements made in court proceedings, and statements made in the course of official duties.

**4) Qualified Privilege:**

Section 11 of the Defamation Ordinance 2002 provides a qualified privilege defence. This defence applies to statements made in certain situations, such as statements made in the course of business or in the interest of the public good. However, the defence is not available if the statement was made with malice.

**5) Public Interest**

Section 12 of the Defamation Ordinance 2002 provides a defence of public interest. This defence applies when the statement made is in the public interest and the person making the statement had reasonable grounds for believing that the statement was true.



# NEGLIGENCE

Negligence is a tort in the eye of law, which occurs when someone fails to pay his required attention for doing something. Negligence in the law of torts refers to the failure to exercise reasonable care in order to prevent harm to others. It is a type of legal liability that arises when a person or entity fails to take reasonable precautions to prevent harm to others, and as a result, causes injury or damage. Examples of negligence include failing to properly maintain a property, failing to provide adequate warning of a danger, or failing to properly train employees. In order to prove negligence, it must be shown that the defendant had a duty of care to the plaintiff, that the defendant breached that duty, and that the breach caused the plaintiff's injury or damage.

### **Legal Principle “Res Ipsa Loquitor”:**

Res Ipsa Loquitor is a legal principle that is used in negligence cases to establish liability without direct evidence of the defendant's negligence. It is a Latin phrase that translates to "the thing speaks for itself."

The principle of res ipsa loquitor allows a plaintiff to prove negligence on the part of the defendant by showing that the accident or injury could not have occurred without someone's negligence. In other words, it presumes that the defendant was negligent based on the circumstances of the accident or injury.

For example, if a patient is injured during surgery, res ipsa loquitor allows the patient to prove negligence on the part of the surgeon without having to prove exactly how the surgeon was negligent. The fact that the patient was injured during surgery is enough to show that the surgeon must have been negligent.

The principle of res ipsa loquitor is typically used in cases where the plaintiff cannot provide direct evidence of the defendant's negligence, such as in cases involving medical malpractice or product liability.

It's noteworthy that in order to apply res ipsa loquitor, the plaintiff must show that the accident or injury is one that would not have occurred in the absence of negligence, that the defendant had exclusive control over the instrumentality that caused the injury and that the injury is not due to any voluntary action or contribution on the part of the plaintiff.

### **Negligence has two meanings in law of torts:**

#### ***1. Negligence as state of mind:***

Negligence is a mode of committing certain torts e.g. negligently or carelessly committing trespass, nuisance or defamation. This is the subjective meaning of negligence advocated by the Austin, Salmond and Winfield.

#### ***2. Negligence as a type of conduct***

Negligence is a conduct, not a state of mind. Conduct which involves the risk of causing damage. This is the objective meaning of negligence, which treats negligence as a separate or

specific tort. Actionable negligence consists in the neglect of the use of ordinary care or skill towards a person to whom the defendant owes the duty of observing ordinary care or skill, by which neglect the plaintiff has suffered injury, to his person or property (*Heaven v. Pender*).

### ***In Simple Words , We can say :***

Negligence in the law of torts is a failure to exercise reasonable care, resulting in harm to another person. This can take the form of an action (such as driving a car in a reckless manner) or an inaction (such as failing to properly maintain a property, resulting in injury to someone on the property). In order for a plaintiff to prove negligence, they must establish that the defendant had a duty of care to the plaintiff, the defendant breached that duty, and the breach caused the plaintiff's injuries.

### **Essentials Of A Suit For Negligence:**

Following are the essential of a suit for negligence.

#### **1. Legal Duty**

Every person has a legal duty to act in a reasonable manner keeping in view the safety measures. If some get fails to perform his duty carefully he will be held responsible and legal action will be taken against him For example, doctor have a duty to treat their patients carefully if he fails to treat them carefully he will be held responsible.

#### **2. Breaches The Duty**

If someone breaches his duty and fails to an act in reasonable manner towards other. Legal action will be taken against him For example, a doctor prescribed wrong medicine and patient get hospitalize, doctor will be held responsible in this regard.

#### **3. Failure To Perform Duty**

If someone fails to perform his duty in reasonable manner so in this condition a legal action shall be taken against by him.

#### **4. Damages**

If someone fails to perform his duty reasonably and such failure become reason of an injury in this situation the injured person is liable to take legal action against wrong doer and sue for compensation.

### **Kinds of Negligence**

Negligence can be divided into following types:

- A. Contributory Negligence**
- B. Composite Negligence**

#### **A. Contributory Negligence**

In certain circumstances a person who has suffered an injury will not be able to get damages from another for the reason his own negligence has contributed to his injury; every person is expected to take care reasonable care of himself. According to John G. Fleming, "Negligence is conduct that fails to conform to the standards required by law for safeguarding others (actionable negligence) against unreasonable risk of injury." Thus, when the plaintiff by his own want of care contributes to the damage caused by the negligence or wrongful conduct of the defendant, he is considered to be guilty of contributory negligence It does not mean

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breach of a duty towards other party but it means absence of due care on his part about his own safety.

For example, a pedestrian tries to cross the road all of a sudden and is hit by a moving vehicle; he is guilty of contributory negligence. In this case, the defendant could completely escape his liability for accident. Take another case, if the conductor of a bus invites passengers to travel on the roof of the bus, and one of the passengers travelling on the roof is hit by the branch of a tree and falls down and gets killed, there is not only negligence on the part of the conductor also contributory negligence on the part of the passengers. What amounts to contributory negligence in the case of an adult may not be so in case of a child. If, however, a child is capable of appreciating the danger he may be held guilty of contributory negligence.

In *Yachuk v. Oliver Blis Co. Ltd*, the defendant's Servients sold some gasoline to two boys aged 7 and 9 years. The boys falsely stated that they needed the same for their mother's car. They actually used it for their play and one of them got injured. The defendant was held liable in full for loss.

### **Types Of Contributory Negligence**

Following are the types of contributory negligence. Details are as under

#### **1. Pure Contributory Negligence**

Pure contributory negligence is such negligence where injured party cannot recover any damage if it is even 1% at fault. If court finds that both of the parties are caused for accidental injuries to one another in this case, no one can claim for damages against one another

#### **2. Modified Contributory Negligence**

Modified contributory negligence is such negligence where injured party can recover a little percentage of damages or no damages. Because it depends on the decision of the court of law.

### **Defences in Negligence**

Following are the defences in negligence in which wrong doer will not be held responsible for the injuries to others

- 1) That the injury was result of consent of the injured person.
- 2) That the injured person himself wrong doer.
- 3) That the injury was unavoidable.
- 4) That the injury was result of an act of God.
- 5) That the injury was result of an act of state.
- 6) That the injury was result of contributory negligence.
- 7) That the injury was result of private defence.
- 8) That the injury was result of mistake.

### **Situations Of Negligence**

Following are the three situations of the cases of negligence

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- 1)When defendant is proved completely negligent
- 2)When plaintiff is proved completely negligent
- 3)When both of plaintiff and defendant are proved negligent

### **Burden Of Proof**

In contributory negligence the burden of proof is always on the defendant. The defendant has to prove the negligence of plaintiff.

### **B. Composite Negligence**

When the negligence of two or more persons result in the same damage to a third person there is said to be a 'composite negligence', and the persons responsible are known as '*composite tort-feasors*'. In case of contributory negligence there is negligence on the part of the defendant as well as the plaintiff. Plaintiff's own negligence contributes to harm which he has suffered. In the case of composite negligence, there is negligence of two or more persons towards the plaintiff, and the plaintiff himself is not to be blamed. While contributory negligence is a defence available to the defendant to overcome or reduce the liability in relation to the plaintiff, the composite negligence is not a defence.

### **Difference Between Negligence And Contributory Negligence**

Following are the differences between contributory negligence and negligence. Details are as under

#### **1. As to Nature**

- Contributory negligence is not a tort in nature. But it is a defence.
- Negligence is a tort in its nature.

#### **2. As to Burden of Proof**

- In contributory negligence the burden of proof is always on injured person.
- In negligence the burden of proof is always on wrong doer.

#### **3. As to Scope**

- Negligence has wider scope.
- Contributory negligence has less in scope because it also has been derived from negligence.

#### **4. As to Duty of Care**

- In contributory negligence the duty of care is impose on both the parties.
- In negligence the duty of care is impose on wrong doer.

### **Important Questions:**

What are the requirements for establishing liability in negligence? Do the same apply in case of contributory negligence?(A2019)

Define and explain negligence and its essentials. How is it different from contributory negligence?(A2021)

Define negligence and elaborate the current principle to establish the duty of care?(S2019)

What are various defences in an action of negligence? Explain the concept of primary and secondary victim'(A2020)



### **MALICIOUS PROSECUTION**

Malicious prosecution is a legal term used to describe a situation where one person intentionally and maliciously causes another person to be prosecuted for a crime or civil matter, without any probable cause or reasonable belief that the prosecution will be successful. It is considered as a tort in the law of torts and is governed by the common law.

To establish a claim for malicious prosecution, the following elements must be present:

- The defendant must have initiated or caused the prosecution of the plaintiff.
- The prosecution must have been terminated in favour of the plaintiff.
- The prosecution must have been initiated without probable cause.
- The prosecution must have been initiated with malice.

When a person suffers from malicious prosecution, they can seek damages for any losses they incurred as a result of the prosecution, such as loss of reputation, loss of income, and emotional distress. It's noteworthy to mention that the plaintiff has to prove that the prosecution was initiated without probable cause and with malice.

Probable cause refers to the existence of facts or circumstances that would lead a person of ordinary caution and prudence to believe that the accused person committed the crime. If the defendant had a reasonable belief that the plaintiff committed the crime, the claim for malicious prosecution will fail. Malice refers to the defendant's intent to cause harm to the plaintiff. The malice must be shown by the plaintiff, it's not enough that the defendant had an improper motive for initiating the prosecution. In some jurisdictions, it's required for the plaintiff to prove that the prosecution was terminated in their favor, this could be by acquittal, dismissal, or nolle prosequi.

#### **Essential Requirements of Malicious Prosecution:**

In order to establish a claim for malicious prosecution, the following essential requirements must be met:

- i. **The Initiation of A Criminal or Civil Proceeding:**  
A claim for malicious prosecution requires that a criminal or civil proceeding was initiated against the plaintiff. This can include the filing of a complaint, the issuance of a warrant, or the initiation of an investigation.
- ii. **The Termination of The Proceeding In Favour of The Plaintiff:**  
The proceeding must have been terminated in favour of the plaintiff. This means that the plaintiff was acquitted, the charges were dismissed, or the plaintiff was found not liable in a civil case.
- iii. **The Lack of Probable Cause For The Proceeding:**  
The defendant must have initiated the proceeding without probable cause. Probable cause is defined as a reasonable belief in the guilt or liability of the plaintiff.
- iv. **The Presence of Malice:**  
The defendant must have acted with malice. Malice is defined as an intent to cause harm or injury to the plaintiff, or a knowledge that the proceeding was without probable cause.

v. **Damage To The Plaintiff:**

The plaintiff must have suffered damages as a result of the malicious prosecution. Damages can include emotional distress, loss of reputation, and financial losses.

### **Comparison Of Malicious Prosecution With False Imprisonment:**

Malicious prosecution and false imprisonment are two distinct torts in the law of torts, each with its own elements and defences.

#### **Malicious Prosecution:**

Definition: Malicious prosecution refers to the tort of instituting or continuing a legal action against someone without reasonable or probable cause, and with malice or a malicious intent.

Elements: To prove a case of malicious prosecution, the plaintiff must prove that the defendant instituted or continued a legal action against the plaintiff, that the legal action was terminated in the plaintiff's favor, that the defendant did not have reasonable or probable cause to bring the legal action, and that the defendant acted with malice or a malicious intent.

#### **False Imprisonment:**

Definition: False imprisonment refers to the tort of intentionally or recklessly restraining someone against their will, without lawful authority.

Elements: To prove a case of false imprisonment, the plaintiff must prove that the defendant intentionally or recklessly restrained the plaintiff, that the restraint was without lawful authority, and that the plaintiff was aware of the restraint or suffered harm as a result of the restraint.

#### **Comparison:**

- **Purpose:** The main difference between the two torts is the purpose for which the legal action or restraint is brought about. Malicious prosecution is brought about with the intent to harm the plaintiff's reputation and to cause them to suffer harm, while false imprisonment is brought about with the intent to physically restrain the plaintiff.
- **Reasonable cause and lawful authority:** Another difference is that in malicious prosecution, the defendant must have lacked reasonable cause and acted with malice, while in false imprisonment, the defendant must have acted without lawful authority.
- **Damages:** Malicious prosecution focuses on the harm caused to the plaintiff's reputation and the emotional distress suffered due to the legal action, while false imprisonment focuses on the harm caused by the physical restraint, such as physical injury or damage to property.





# NUISANCE

The word nuisance has been derived from Latin word “nuis” which means to “do hurt” or “to annoy”.

In the law of torts, a nuisance refers to a situation or activity that interferes with the use or enjoyment of another person's property, causing harm or inconvenience. Nuisances can include things like excessive noise, pollution, or overcrowding, and they can be either private or public in nature. In order to prove a nuisance claim, the person bringing the claim must show that the defendant's actions were unreasonable and that they caused harm or inconvenience to the plaintiff's property.

### Definitions of Nuisance:

Here are few definitions of Nuisance:

#### Black's Law Dictionary

"A nuisance is any act, omission, or condition that unreasonably interferes with the use or enjoyment of another person's property."

#### American Law Reports

"A nuisance is an interference with a person's use and enjoyment of their property, or with the public's health, safety, or welfare, that is unreasonable and significant."

#### California Civil Code

"A nuisance is any condition or activity that causes annoyance, discomfort, or inconvenience to a reasonable person in the use or enjoyment of their property."

#### New York City Administrative Code

"A nuisance is any activity or condition that interferes with the peace and quiet of a neighbourhood, or that harms the health and safety of the community."

#### Restatement (Second) of Torts.

"A nuisance is any activity or condition that causes unreasonable interference with the use and enjoyment of one's property, and that is not otherwise protected by law."

### Definition Of Nuisance By Different Dictionaries

- **Merriam-Webster:** something that is annoying or bothersome
- **Oxford:** a person, thing, or situation that causes trouble or annoyance
- **Cambridge:** a thing or person that causes inconvenience or annoyance
- **Collins:** a thing, person or situation that causes inconvenience or annoyance
- **Macmillan:** something that is annoying or causes problems for people
- **American Heritage:** something that is annoying or bothersome; a nuisance.
- **Longman:** something that is annoying or causes problems
- **WordNet:** a bothersome annoying person; something that causes trouble or annoyance.

### **Essential Elements of Nuisance**

Here are essential elements of Nuisance:

**i. Interference with the use and enjoyment of property:**

One of the most important elements of a nuisance claim is that the offending activity must interfere with the use and enjoyment of the plaintiff's property. This can include things like noise, odors, or vibration that make it difficult for the plaintiff to use their property as intended.

**ii. Unreasonableness:**

In order for an activity to be considered a nuisance, it must be deemed unreasonable. This means that the activity must be excessive or unnecessary in relation to the surrounding area or the plaintiff's use of their property.

**iii. Damage or injury:**

A nuisance claim typically requires that the plaintiff has suffered some form of damage or injury as a result of the offending activity. This can include things like loss of property value, physical harm, or emotional distress.

**iv. Continuity Of The Nuisance:**

The nuisance should be continuous, meaning it should happen regularly, not just occasionally.

**v. Location:**

The location of the nuisance can also be an important element in a claim. For example, a nuisance that occurs in a residential area may be considered more severe than one that occurs in a commercial or industrial area.

**vi. Negligence:**

Nuisance can also occur due to negligence of a party or an individual. For example, if a person is not taking care of their property and it becomes a source of nuisance to their neighbours, they can be held liable for it.

All of these elements must be present in order for a nuisance claim to be successful. If any of these elements are not present, it may be difficult for the plaintiff to prove that the activity constitutes a nuisance.

### **Kinds of Nuisance:**

There are two main kinds of nuisance.

1. Private Nuisance
2. Public Nuisance

#### **1. Private Nuisance**

Private nuisance refers to any activity that interferes with the use and enjoyment of an individual's property. It is a legal concept that allows individuals to seek redress for activities that are impacting their ability to use and enjoy their own property.

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Examples of private nuisance include excessive noise or vibration from a neighbouring construction site, odors from a nearby factory, or light pollution from a neighbour's bright lights. These types of activities can cause significant inconvenience and discomfort to those affected, and can even lead to physical and emotional harm.

One of the most well-known cases of private nuisance is the case of *Sturges v. Bridgman*, which was heard in the United Kingdom in 1879. In this case, Mr. Bridgman, a confectioner, had erected a workshop in his garden which was used to make sweets. The noise, vibration, and smells emanating from the workshop interfered with Mr. Sturges' enjoyment of his own property, who lived next door. The court found that Mr. Bridgman's actions were a private nuisance, and ordered him to pay damages to Mr. Sturges.

Another example of private nuisance is the case of *Miller v. Jackson*, which was heard in the United Kingdom in 1977. In this case, the Miller family filed a claim of private nuisance against the local cricket club, alleging that the noise and vibration caused by the cricket balls being hit against their property was interfering with their use and enjoyment of their home. The court found that the cricket club's activities were a private nuisance, and ordered them to pay damages to the Miller family.

To prove a private nuisance, a plaintiff must show that the activity in question is interfering with the use and enjoyment of their property, and that this interference is unreasonable. They must also show that they have suffered some form of damage or injury as a result of the offending activity.

It is important to note that private nuisance can be both temporary and permanent, and that the laws and regulations regarding nuisance vary from state to state, and even from country to country. However, the general concept of private nuisance is to protect the rights of individuals to use and enjoy their own property without interference from others.

### To Prove Private Nuisance or Tort of Nuisance

To constitute the tort of nuisance, the following essentials are required to be proved:

1. Unreasonable interference.
2. Interference is with the use of enjoyment of land.
3. Damage.

### 2. Public Nuisance

Public nuisance is a legal concept that refers to activities that interfere with the use and enjoyment of public spaces or resources. It is defined as any activity that endangers the health, safety, or morals of the community, or interferes with the use of a public right. Examples of public nuisance include pollution of a public waterway, excessive noise or vibration in a public park, or a blocked public sidewalk.

One notable example of a public nuisance occurred in the United States case of *State v. Simon (1954)*. In this case, the defendant, Simon, operated a public nuisance in the form of a "blind pig," which was a speakeasy that sold alcohol without a license. The court found that Simon's operation of the blind pig was a public nuisance as it violated state laws prohibiting the sale of alcohol without a license and created a danger to the public's health and safety.

Another example of public nuisance is when a commercial property generates excessive noise that affects the community, such as a construction site or a factory. In such cases, the local authorities can take action against the property owners and order them to reduce the noise level to an acceptable level.

In *Dr. Ram Raj Singh v. Babulal*, the defendant erected a brick grinding machine adjoining the premises of the plaintiff, who was a medical practitioner. The brick grinding machine generated dust, which polluted the atmosphere. The dust entered the consulting chamber of the plaintiff and caused physical inconvenience to him and patients, and their red coating on clothes, caused by the dust, could be apparently visible. It was held that special damages to the plaintiff had been proved and a permanent injunction was issued against the defendant restraining him from running his brick grinding machine there.

Public nuisance can also occur due to pollution, such as when a company disposes of toxic waste into a public waterway. In such cases, the government can take action against the company and force them to clean up the pollution and pay for any damages caused.

In order to prove a public nuisance, the plaintiff must show that the activity in question interferes with the use and enjoyment of a public right and that the activity is unreasonable. The plaintiff must also show that they have suffered some form of injury or damage as a result of the nuisance.

It is important to note that, the laws and regulations regarding public nuisance vary from state to state, and the types of public nuisance may be different in different countries. However, in most jurisdictions, public nuisance is considered to be a serious matter, and those found guilty of creating a public nuisance can face fines, penalties, and even imprisonment.

### **Difference Between Private And Public Nuisance**

Private nuisance and public nuisance are both legal concepts that refer to activities that interfere with the use and enjoyment of property or public spaces. However, there are significant differences between the two types of nuisance.

**a) Definition:**

Private nuisance refers to any activity that interferes with the use and enjoyment of an individual's property. Public nuisance refers to activities that interfere with the use and enjoyment of public spaces or resources.

**b) Impact:**

Private nuisance primarily affects the individuals or groups of people who own or occupy the affected property. Public nuisance affects a larger group of people, including the community or the public at large.

**c) Liability:**

In a private nuisance case, the person who is causing the nuisance is liable to the person who is affected by it. In a public nuisance case, the person who is causing the nuisance is liable to the public at large.

**d) Remedy:**

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In a private nuisance case, the remedy is usually to stop the offending activity or to compensate the person who is affected by it. In a public nuisance case, the remedy is usually to stop the offending activity, to compensate the public at large, or to pay fines and penalties.

### **e) Jurisdiction:**

Private nuisance is a matter of common law and can be addressed in civil court. Public nuisance is a criminal matter and can be addressed by government agencies and criminal court.

### **f) Examples:**

Examples of private nuisance include excessive noise or vibration from a neighboring construction site, odors from a nearby factory, or light pollution from a neighbor's bright lights. Examples of public nuisance include pollution of a public waterway, excessive noise or vibration in a public park, or a blocked public sidewalk.

## **Remedies For Nuisance**

Following are the remedies for nuisance. Details are as under.

### **1. Abatement of nuisance**

In law of tort, abatement of nuisance is an extra judicial remedy, if a person is being irritated by an object in this case he has right to remove (abate) the nuisance without the help of court

### **2. Damages**

In law of tort, damage is the compensation of money to injured person by the wrong doer through court of law is called damages.

### **3. Injunction**

In law of tort, an injunction is a court order which prohibits wrong doer from doing something wrong in future again.

### **4. Civil Remedy**

In law of tort, if someone is facing nuisance from others in this situation injured person can take legal action against wrong doer in the shape of civil remedy.

### **5. Criminal Remedy**

A person committing public nuisance, he can be sued under criminal law because public nuisance is a criminal act.

## **Defences For Nuisance**

Following are the defence for nuisance. Details are as under.

### **1. Consent**

Under law of tort in this situation injured person cannot sue, if the consent of the injured person has been taken for nuisance. It is a best defence for defendant. But consent should be free from undue influence.

### **2. Statutory Authority**

Under the law of tort. If a person is performing an act which is nuisance in its nature on the behalf of statutory authority. It is a defence for defendant.

### **3. Prescription**

Under the law of tort, if defendant has acquired the right of easement through prescription, so in this case injured person cannot sue against wrong doer.

### **Important Questions:**

What is the law on private nuisance? who can sue and who can be sued in an action for nuisance?(A2019)



### **TRESPASS TO PERSON**

Trespass to person is a tort in which an individual intentionally or negligently causes harm or injury to another person. It is one of the oldest torts in common law and is still recognized in many jurisdictions today. To prove a claim of trespass to person, the plaintiff must show that the defendant intentionally or negligently caused them harm or injury. They must also show that the harm or injury was a direct result of the defendant's actions.

#### **Types of Trespass To Person:**

Following are main types of trespass to person:

- 1) Assault
- 2) Battery
- 3) Mayhem
- 4) False Imprisonment

#### **1. Assault:**

Assault is an intentional act that causes the victim to fear an imminent harmful or offensive contact. It is not necessary for the victim to actually be touched for an assault to occur. For example, if someone points a gun at someone and threatens to shoot, it would be considered an assault.

#### **2. Battery:**

Battery is an intentional act that causes harmful or offensive contact with another person. It is a criminal offence in most of the jurisdiction. For example, if someone hits or punches another person, it would be considered a battery.

#### **3. Mayhem:**

If a person is bodily injured which result the removal of fighting ability by other is called mayhem and this is a trespass to person.

Mayhem in law of torts refers to the act of intentionally causing serious physical injury to another person. This can include things like cutting off a limb, blinding someone, or causing permanent disfigurement. It is considered a serious crime and can result in severe criminal penalties.

For example, if someone intentionally cuts off another person's finger or arm, it would be considered mayhem. In some places it's defined as unlawfully and maliciously depriving a human being of any part of his body, or disfiguring or rendering it useless.

To prove a claim of mayhem, the plaintiff must show that the defendant intentionally caused them harm or injury. They must also show that the harm or injury was a direct result of the defendant's actions.

#### **4. False Imprisonment:**

False imprisonment is the intentional or negligent act of confining or restraining another person without their consent. For example, if someone locks someone in a room without their consent, it would be considered false imprisonment. It can also be committed by using physical force or threats, or by using psychological means such as intimidation دھمکیاں or deception.

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To prove a claim of false imprisonment, the plaintiff must show that the defendant intentionally or negligently restricted their freedom of movement without their consent. They must also show that they were aware of the restriction and that they did not voluntarily consent to it.

The remedy for false imprisonment is usually monetary damages. In some cases, the court may also issue an injunction ordering the defendant to stop the offending behaviour or release the person detained.

### **General Defences of False Imprisonment**

In a false imprisonment case, the defendant may raise one or more defences in order to avoid liability. Some common defences are described following:

- i. **Consent:**  
If the plaintiff voluntarily consented to the restriction of their freedom of movement, the defendant may argue that they are not liable for false imprisonment. For example, a person who voluntarily agrees to be handcuffed and taken to the police station would not have a valid claim of false imprisonment.
- ii. **Necessity:**  
If the defendant can show that the restriction of the plaintiff's freedom of movement was necessary to prevent harm to themselves or others, they may be able to argue that they are not liable for false imprisonment. For example, a doctor who restrains a patient who is a danger to themselves or others would not be liable for false imprisonment.
- iii. **Authority of Law:**  
If the defendant is a police officer or other government official, and they were acting within the scope of their authority and in accordance with the law, they may be able to argue that they are not liable for false imprisonment. For example, a police officer who arrests a person who has committed a crime would not be liable for false imprisonment.
- iv. **Shopkeepers Privilege:**  
In some jurisdiction, shopkeepers have the privilege to detain someone who they suspect of shoplifting, and they are not liable for false imprisonment if they release the person as soon as they find out that they didn't steal anything.
- v. **Parental Authority:**  
Parents have the right to restrict the freedom of movement of their children, and they are not liable for false imprisonment. For example, a parent who grounds their child and prevents them from leaving the house would not be liable for false imprisonment.
- vi. **Self-Defence:**  
If the defendant can show that they were acting in self-defence and that the restriction of the plaintiff's freedom of movement was necessary to protect themselves, they may be able to argue that they are not liable for false imprisonment. For example, a person who restrains another person who is attacking them would not be liable for false imprisonment.

### **Remedies For False Imprisonment**

Followings are the main remedies which are available in case of False Imprisonment:



## **1. Writ Of Habeas Corpus:**

It is a form of legal remedy. Under this writ the person who has been falsely imprisoned can take legal action and can claim for damages of mental disgrace and liberty.

This writ lies down that the Court will decide whether the imprisonment is unlawful or not. If the arrest made is found unlawful and the defendant will be made liable for false imprisonment.

## **2. Action For Damages:**

Action for damages is also a remedy for a person who has unlawfully confined, after his release from false imprisonment can take legal action for damages under the law of tort against the person who have false imprisoned him.

## **3. Search Warrant**

Search warrant is also a remedy for a person who has been falsely imprisoned. Search warrant is a document that authorizes police officer to search an actual person so that false imprisoned may be released from confinement.

## **4. Self Help:**

Self-help is also a remedy for a person. By using reasonable force, the person who is under arrest can make attempts to free himself. This is a type of extra-judicial remedy that can be brought into use without approaching the Court of law. The use of unreasonable violence in the name of self-help shall not be accepted.

## **DEFENCES TO TRESPASS TO THE PERSON**

Trespass to person is a tort in which an individual intentionally or negligently causes harm or injury to another person. There are several defences that a defendant may raise in order to avoid liability for trespass to person. Some common defences include:

### **1) Consent:**

If the plaintiff voluntarily consented to the harmful or offensive contact, the defendant may argue that they are not liable for trespass to person. For example, a person who voluntarily participates in a contact sport such as football or hockey would not have a valid claim of trespass to person for injuries sustained during the game.

### **2) Self-Defence:**

If the defendant can show that they were acting in self-defence and that the harmful or offensive contact was necessary to protect themselves, they may be able to argue that they are not liable for trespass to person. For example, a person who uses reasonable force to protect themselves from an attacker would not be liable for trespass to person.

### **3) Necessity:**

If the defendant can show that the harmful or offensive contact was necessary to prevent harm to themselves or others, they may be able to argue that they are not liable for trespass to person. For example, a doctor who restrains a patient who is a danger to themselves or others would not be liable for trespass to person.

### **4) Authority of Law:**

If the defendant is a police officer or other government official, and they were acting within the scope of their authority and in accordance with the law, they may be able to

argue that they are not liable for trespass to person. For example, a police officer who uses reasonable force to arrest a suspect would not be liable for trespass to person.

5) **Parental Authority:**

Parents have the right to physically discipline their children, and they are not liable for trespassing if they do so within the limits of the law. For example, a parent who spansks their child as a form of discipline would not be liable for trespass to person.

6) **Sports And Recreational Activities:**

In some cases, the players of a sport or a recreational activity may cause harm or injury to each other, but they would not be liable for trespassing as they have consented to the risks inherent in the activity. For example, a player who gets injured during a rugby game would not have a valid claim of trespass to person against their opponent.



## **CONSUMER PROTECTION LAWS**

Consumer Protection Laws are laws that are designed to protect consumers from unfair or deceptive business practices. These laws cover a wide range of issues, including product safety, pricing, and advertising.

**1) Product Safety:**

Consumer protection laws require that products sold to consumers are safe and free from defects. The Consumer Product Safety Commission (CPSC) is a federal agency that is responsible for enforcing these laws and issuing safety standards for products such as appliances, toys, and clothing.

**2) Pricing:**

Consumer protection laws prohibit businesses from engaging in deceptive pricing practices, such as false advertising or bait-and-switch tactics. The Federal Trade Commission (FTC) is responsible for enforcing these laws and investigating complaints from consumers about pricing practices.

**3) Advertising:**

Consumer protection laws also regulate advertising practices to ensure that they are truthful and not misleading. The FTC is responsible for enforcing these laws and investigating complaints from consumers about deceptive advertising.

**4) Warranty:**

Consumer protection laws require that products sold to consumers come with a warranty that guarantees that the product will work as advertised. The Magnuson-Moss Warranty Act is a federal law that governs the terms of product warranties and requires that they be written in plain language.

**5) Consumer Credit:**

Consumer protection laws also regulate the consumer credit industry, such as the Truth in Lending Act (TILA) and the Fair Credit Reporting Act (FCRA). These laws require credit card companies and other lenders to disclose the terms of their loans and credit cards to consumers, and also protect consumers from unfair credit reporting practices.

**6) The Consumer Protection Act:**

The Consumer Protection Act is a federal law that provides consumers with a range of rights and protections. It regulates the sale of goods and services, and also provides a mechanism for consumers to seek redress if they have been harmed by a business's unfair or deceptive practices.

**7) The Unfair and Deceptive Acts and Practices (UDAP) Laws:**

These laws prohibit businesses from engaging in unfair or deceptive practices, such as false advertising or bait-and-switch tactics. The FTC is responsible for enforcing these laws, which also cover a wide range of issues such as credit, warranties and telemarketing.

Consumer Protection Laws are designed to protect consumers from unfair or deceptive business practices, and cover a wide range of issues such as product safety, pricing,

advertising, warranty, consumer credit and unfair and deceptive acts and practices. These laws are enforced by various federal agencies such as the Consumer Product Safety Commission, the Federal Trade Commission and state attorneys general.

### **Rights of Consumer:**

Consumer Rights as specified in Consumer Protection Laws, which are described below:

#### **1) Right to Safety:**

The Right to Safety is one of the fundamental rights of consumers as specified in Consumer Protection Laws. It ensures that consumers are protected against goods and services that are hazardous to their life and property. This right is put in place to ensure that manufacturers, suppliers, and sellers are held accountable for providing safe and reliable products and services to consumers.

An example of a violation of the Right to Safety would be a product recall of a car due to a defect in the braking system. The manufacturer of the car has a responsibility to ensure that the cars they produce are safe for consumers to use, and in this case, the defect in the braking system poses a hazard to the life and property of consumers. As a result, the manufacturer would be required to recall the affected cars and repair or replace the faulty braking system at no cost to the consumer.

Another example of violation of right to safety would be if a company is found to be using harmful chemicals in the production of its products, such as toys or cosmetics, which poses a risk to the health of consumers using those products. In this case, the company would be held accountable for their actions and would be required to remove those harmful chemicals from their products and possibly compensate the affected consumers.

The right to safety is important because it helps to protect consumers from dangerous or hazardous products and services and holds manufacturers, suppliers, and sellers accountable for the safety of their products.

#### **2) Right to be Informed:**

The Right to be Informed is one of the key consumer rights specified in Consumer Protection Laws. This right ensures that consumers are provided with complete and accurate information about the goods and services they purchase. This includes information about the quality, quantity, purity, standard and price of the goods and services, as well as any other information that may be necessary to protect the consumer's interests.

For example, if a consumer purchases a product that is labeled as "organic," they have the right to be informed about what standards were used to certify the product as organic, and whether or not the product contains any genetically modified organisms (GMOs). Similarly, if a consumer purchases a medication, they have the right to be informed about the potential side effects, interactions with other medications and the dosage instructions.

This right also includes the right to be informed about any warranties or guarantees that come with the goods and services, as well as any rights that the consumer has with regard to returns, exchanges or refunds.

Furthermore, the right to be informed also applies to the advertising of goods and services. Advertisements must be truthful, accurate and not misleading. Advertisements should not make false or misleading claims about the nature, characteristics, suitability, quantity, composition, price or the mode of production of goods or services.

### **3) Right to Choose:**

The Right to Choose is a fundamental right of consumers as specified in Consumer Protection Laws. This right gives consumers the freedom to choose from a variety of goods and services at competitive prices. It ensures that consumers have access to a wide range of options and are not limited to a single supplier or manufacturer.

This right is important because it promotes competition among businesses, which in turn leads to better quality products and services at lower prices. When consumers have the ability to choose from multiple options, businesses are motivated to innovate and improve their products and services in order to attract and retain customers.

An example of this right in practice is the presence of multiple grocery stores in a given area. These stores may offer similar products, but they also may have different prices and deals. The consumers in that area have the freedom to choose which store they want to buy from based on the prices, deals, location, etc. This competition among the grocery stores in the area will help them to keep their prices low, improve the quality of their products and services, and attract more customers.

The right to choose also encompasses the right to be informed about the products and services being offered. Consumers should have access to accurate and complete information about the goods and services they are considering purchasing. This includes information about the product's composition, performance, price, and any guarantees or warranties. This information allows consumers to make informed decisions and compare different options.

### **4) Right to be Heard:**

The right to be heard is a fundamental principle in consumer protection laws, which ensures that consumers have the opportunity to voice their complaints and concerns about products or services they have purchased. This principle is based on the idea that consumers have the right to have their grievances heard and addressed by manufacturers, sellers, and regulators.

In practice, the right to be heard is often implemented through consumer complaint mechanisms, such as customer service hotlines, online complaint forms, and government agencies that handle consumer complaints. For example, in the United States, the Federal Trade Commission (FTC) provides a website where consumers can file complaints about deceptive or unfair business practices. The FTC also operates a National Do Not Call Registry, which allows consumers to opt out of telemarketing calls.

Another example of the right to be heard in consumer protection laws is the Consumer Financial Protection Bureau (CFPB) in the United States. The CFPB is a government agency that helps consumers by accepting complaints and providing information about financial products and services. The CFPB also has the power to take action

against companies that engage in deceptive or discriminatory practices, such as charging unfair fees or discriminating against certain groups of consumers.

### **5) Right to Redress:**

The Right to Redress in Consumer Protection Laws refers to the legal rights and remedies that consumers have in the event that they have been harmed or suffered losses as a result of defective or dangerous products, false or misleading advertising, or other forms of consumer fraud. This right is an essential aspect of consumer protection laws, as it allows consumers to seek compensation for their losses and hold companies accountable for their actions.

One example of a consumer protection law that provides for the right to redress is the Consumer Protection Act (CPA) in India. The CPA provides consumers with the right to file a complaint with the appropriate authorities in the event that they have been harmed by a defective product or service, false or misleading advertising, or other forms of consumer fraud. The act also provides for the right to seek compensation for any losses or damages suffered as a result of these actions.

Under the CPA, consumers can file a complaint with the District Consumer Disputes Redressal Forum (DCDRF) or the State Consumer Disputes Redressal Commission (SCDRC) if they are not satisfied with the response from the company or service provider. These forums have the power to hear the complaint, conduct investigations, and order the company to provide compensation or make restitution for any losses or damages suffered by the consumer.

For example, if a consumer purchases a defective refrigerator from a store and the company refuses to replace or repair the product, the consumer can file a complaint with the DCDRF or SCDRC. The forum may conduct an investigation and determine that the company is at fault for the defective product and order them to provide a replacement or refund for the consumer.

### **6) Right to Consumer Education:**

The Right to Consumer Education is a fundamental principle in Consumer Protection Laws. It is the right of consumers to have access to accurate and reliable information about the products and services they purchase, as well as their rights as consumers. This principle is important because it helps to ensure that consumers are able to make informed decisions when purchasing goods and services, and that they are aware of their rights and how to exercise them if they feel they have been mistreated.

Consumer education is also critical in promoting competition and fair trade practices, as it helps to ensure that consumers are aware of their options and can make informed decisions about which products and services to purchase. This helps to promote a level playing field for businesses, as consumers are better equipped to evaluate the quality and value of products and services.

An example of how consumer education is used in practice is through consumer protection agencies, such as the Federal Trade Commission (FTC) in the United States. These agencies provide consumers with information about their rights and how to protect themselves from fraud and deceptive practices. They also provide

educational resources, such as guides and brochures, to help consumers make informed decisions about the products and services they purchase.

Another example is through consumer advocacy groups, such as Consumer Reports, which provide consumers with unbiased and independent evaluations of products and services. This helps consumers to make informed decisions and to identify potential issues with products and services before they purchase them.

### **7) Right to Privacy:**

The Right to Privacy in Consumer Protection Laws refers to the legal protection of an individual's personal information, including but not limited to their name, address, phone number, financial information, and other sensitive data. This right is essential for consumers as it helps to protect them from fraud, identity theft, and other malicious activities that can cause financial and emotional harm.

Consumer protection laws in many countries, including the United States, the European Union, and Canada, have provisions in place to safeguard the privacy of consumers. For example, in the United States, the Federal Trade Commission (FTC) enforces the Fair Credit Reporting Act (FCRA) and the Children's Online Privacy Protection Act (COPPA) to protect consumers' personal information.

The FCRA ensures that credit reporting agencies and other organizations that use consumer reports for credit, insurance, or employment purposes must protect the confidentiality and integrity of the information they collect and use. The FTC also requires these organizations to provide consumers with access to their credit reports, and to correct any inaccuracies that may be present.

The COPPA, on the other hand, regulates the collection, use, and disclosure of personal information from children under the age of 13. It requires websites and online services directed towards children to obtain parental consent before collecting, using, or disclosing any personal information from children.

In the European Union, the General Data Protection Regulation (GDPR) came into effect in 2018. The GDPR provides strict guidelines for the collection, storage, and use of personal data by organizations operating within the EU. It also gives individuals the right to access, correct, and delete their personal data, and to know how their data is being used.

In Canada, the Personal Information Protection and Electronic Documents Act (PIPEDA) regulates the collection, use, and disclosure of personal information by organizations in the private sector. PIPEDA requires organizations to obtain an individual's consent before collecting, using, or disclosing their personal information, and to protect that information from unauthorized access, use, or disclosure.

### **8) Right to Health & Environmental Protection:**

The Right to Health and Environmental Protection are two important aspects of Consumer Protection Laws. These laws aim to protect consumers from harm and ensure that they have access to safe and healthy products and services.

The Right to Health is a fundamental right that ensures that all individuals have access to healthcare and are protected from harmful products and practices. This includes

access to safe and effective medications, clean water, and safe food. For example, in the United States, the Food and Drug Administration (FDA) is responsible for ensuring that all food products are safe to consume and that all medications are effective and safe to use.

Environmental Protection is also an important aspect of Consumer Protection Laws. These laws aim to protect the environment and the health of individuals by regulating the production, distribution, and disposal of products that can harm the environment. For example, the Environmental Protection Agency (EPA) in the United States regulates the disposal of hazardous waste and sets standards for air and water pollution.

One example of how Consumer Protection Laws protect the Right to Health and Environmental Protection is through the regulation of tobacco products. The FDA regulates the manufacturing, distribution, and marketing of tobacco products to ensure that they are safe for consumers and do not contribute to environmental pollution. Additionally, many states have laws in place that prohibit smoking in public places, such as restaurants and bars, to protect the health of non-smokers.

### **9) Right to Unfair Contract Terms:**

The Right to Unfair Contract Terms in Consumer Protection Laws is a legal principle that ensures that consumers are protected from unfair terms and conditions in contracts. This principle applies to contracts between consumers and businesses, and it is intended to prevent businesses from using terms that are one-sided, unclear, or misleading.

One example of an unfair contract term is a clause that allows a business to change the terms of a contract without notice or consent from the consumer. This type of clause is considered unfair because it gives the business the ability to change the terms of the contract without the consumer's knowledge or consent, and it can leave the consumer in a vulnerable position.

Another example of an unfair contract term is a clause that allows a business to terminate a contract without cause or notice. This type of clause is considered unfair because it gives the business the ability to terminate a contract without providing a reason or notice to the consumer, leaving the consumer with no recourse.

Consumer protection laws typically require businesses to use clear and concise language in contracts and to disclose any important information related to the contract. They also prohibit businesses from using contract terms that are one-sided or that are designed to mislead consumers.

### **10) Right to Collective Redress:**

The Right to Collective Redress in Consumer Protection Laws refers to the ability of consumers to collectively seek legal remedies for harm caused by businesses or manufacturers. This includes the ability to file class action lawsuits and seek damages on behalf of a group of individuals who have been affected by the same issue.

One example of the use of collective redress in consumer protection laws is in the case of the Volkswagen "Dieselgate" scandal in 2015. In this case, it was discovered



that Volkswagen had installed software in their diesel vehicles that allowed them to cheat emissions tests. As a result, a large number of consumers who had purchased these vehicles were affected.

In response, consumer advocacy groups and individuals began filing class action lawsuits against Volkswagen, seeking damages for the harm caused by the company's actions. These lawsuits were able to seek compensation for affected consumers on a collective basis, rather than each individual having to file and prove their own case.

The ability to seek collective redress in consumer protection laws is important as it allows consumers to hold businesses accountable for their actions and seek compensation for harm caused on a large scale. It also allows for a more efficient and effective legal process, as it allows for a group of individuals to seek remedies together rather than each having to file and prove their own case.



## **REMEDIES AVAILABLE TO CONSUMER**

Consumer rights are a set of legal protections that ensure that consumers are treated fairly and not taken advantage of by businesses or manufacturers. These rights include, but are not limited to, the right to safety, the right to information, the right to choose, and the right to redress. However, when these rights are violated, it is important for consumers to know the remedies available to them in order to seek justice.

### **1) Remedies for Safety Violations**

When a consumer's right to safety is violated, they may seek redress through the legal system. This can include filing a lawsuit against the business or manufacturer for damages caused by the violation. For example, if a consumer is injured by a defective product, they may be able to seek compensation for medical expenses, lost wages, and pain and suffering.

In addition to lawsuits, consumers may also be able to seek relief through government agencies such as the Consumer Product Safety Commission (CPSC) or the Food and Drug Administration (FDA). These agencies have the authority to issue recalls and penalties against businesses that violate consumer safety laws.

### **2) Remedies for Information Violations**

When a consumer's right to information is violated, they may seek redress through legal means such as filing a lawsuit for deceptive advertising or false labeling. For example, if a consumer is misled by a product's packaging or advertising, they may be able to seek compensation for any damages caused by the violation.

Consumers may also be able to seek relief through government agencies such as the Federal Trade Commission (FTC) which has the authority to take legal action against businesses that engage in deceptive or misleading advertising practices.

### **3) Remedies for Choice Violations**

When a consumer's right to choose is violated, they may seek redress through legal means such as filing a lawsuit for breach of contract or fraud. For example, if a consumer is sold a product that does not live up to the claims made by the business or manufacturer, they may be able to seek compensation for any damages caused by the violation.

Consumers may also be able to seek relief through government agencies such as the Federal Trade Commission (FTC) which has the authority to take legal action against businesses that engage in unfair or deceptive trade practices.

### **4) Remedies for Redress Violations**

When a consumer's right to redress is violated, they may seek redress through legal means such as filing a lawsuit for breach of contract or fraud. For example, if a consumer is unable to obtain a refund or exchange for a defective product, they may be able to seek compensation for any damages caused by the violation.

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Consumers may also be able to seek relief through government agencies such as the Federal Trade Commission (FTC) which has the authority to take legal action against businesses that engage in unfair or deceptive trade practices.

Consumers have various remedies available to them when their rights are violated according to consumer protections laws. These remedies include filing a lawsuit, seeking relief through government agencies, and taking legal action against businesses that violate consumer rights. It is important for consumers to know their rights and the remedies available to them in order to seek justice and hold businesses accountable for their actions.



## **LIABILITIES AND OBLIGATIONS OF THE MANUFACTURER**

Consumers Protection Laws are put in place to protect the rights of consumers and hold manufacturers accountable for their products and actions. These laws outline the liabilities and obligations of manufacturers to ensure that consumers are not taken advantage of or harmed by their products. Consumers protection laws are designed to ensure that consumers are treated fairly and not taken advantage of by businesses or manufacturers. These laws establish certain liabilities for manufacturers to ensure that they are held accountable for their actions. In this article, we will discuss the liabilities of a manufacturer according to consumer protection laws.

### **LIABILITIES OF MANUFACTURERS:**

According to Consumer Protection Laws following liabilities are imposed on manufacturers of goods to save consumers.

#### **1) Liability for Defective Products**

Manufacturers are liable for any defects in their products that cause harm to consumers. This includes defects in design, manufacturing, or labeling. For example, if a consumer is injured by a defective product, they may be able to seek compensation from the manufacturer for medical expenses, lost wages, and pain and suffering.

Manufacturers are also liable for any safety hazards that their products may pose to consumers. This includes hazards such as flammability, choking hazards, and toxic chemicals. Manufacturers are required to provide proper warning labels and instructions for their products to ensure consumer safety.

#### **2) Liability for Misleading Advertising**

Manufacturers are also liable for any misleading advertising or false labeling of their products. This includes making false claims about a product's performance or effectiveness, or using deceptive packaging or labeling. If a consumer is misled by a product's advertising or labelling, they may be able to seek compensation from the manufacturer for any damages caused by the violation.

#### **3) Liability for Breach of Warranty**

Manufacturers are also liable for any breaches of warranty that they may make. A warranty is a legal promise made by a manufacturer to a consumer that the product will perform as advertised. If a manufacturer breaches their warranty, consumers may be able to seek compensation for any damages caused by the violation.

Manufacturers are liable for a wide range of issues according to consumer protections laws. These include liabilities for defective products, misleading advertising, and breach of warranty. It is important for manufacturers to be aware of these liabilities in order to ensure that they are treating consumers fairly and not violating their rights. Consumers also should know about these liabilities to hold manufacturers accountable for their actions.

### **OBLIGATIONS OF MANUFACTURERS**

Consumers Protection Laws are designed to ensure that consumers are treated fairly and not taken advantage of by businesses or manufacturers. These laws place certain obligations on manufacturers to ensure that their products are safe, accurately labeled, and marketed in a truthful and non-deceptive manner.

#### **1) Obligation to Ensure Product Safety**

One of the main obligations of manufacturers according to Consumers Protection Laws is to ensure that their products are safe for consumers to use. This includes ensuring that products are free from defects, do not pose a risk of injury, and are manufactured according to industry standards.

Manufacturers are also required to report any safety hazards or defects to the appropriate government agencies such as the Consumer Product Safety Commission (CPSC) or the Food and Drug Administration (FDA). Failure to do so can result in penalties or recalls of the product.

#### **2) Obligation to Provide Accurate Labeling and Marketing**

Manufacturers are also obligated to provide accurate labeling and marketing of their products. This includes providing truthful and non-deceptive information about the product's ingredients, nutritional value, and performance.

Manufacturers are also required to comply with labeling and marketing regulations set forth by government agencies such as the Federal Trade Commission (FTC) and the Food and Drug Administration (FDA). Failure to comply with these regulations can result in penalties or legal action.

#### **3) Obligation to Provide Warranty and After-Sale Service**

Manufacturers are also obligated to provide warranty and after-sale service to consumers. This includes providing a warranty that covers defects in the product and providing a remedy for any defects or issues that arise.

Manufacturers are also required to respond to consumer complaints and inquiries in a timely and professional manner. Failure to do so can result in penalties or legal action.

Manufacturers have various obligations according to Consumers Protection Laws to ensure that their products are safe, accurately labeled, and marketed in a truthful and non-deceptive manner. These obligations also include providing warranty and after-sale service to consumers. Failure to comply with these obligations can result in penalties, legal action, and damage to the manufacturer's reputation. Manufacturers should also be aware of the Consumer Protections Laws of the countries they are selling products in to avoid any legal issues.



# The Easement Act, 1882

## **EASEMENT & DIFFERENT KINDS OF EASEMENT**

An easement is a legal right to use someone else's property for a specific purpose, such as accessing a shared driveway or using a public utility line. Easements can be either express or implied, and they can be permanent or temporary.

Express easements are those that are explicitly created and spelled out in a written document, such as a deed or land contract. For example, a property owner may grant an easement to a utility company to run power lines through their land.

Implied easements are those that are not explicitly stated in writing but are implied through the actions and circumstances of the parties involved. For example, if a property owner has been using a shared driveway for several years without any objection from the other property owner, an implied easement for the shared driveway may be established.

Permanent easements are those that are in place for an indefinite period of time and cannot be terminated. Temporary easements are those that are in place for a specific period of time and can be terminated upon the expiration of the specified period.

### **Definition of Easement:**

Easement can be defined in different ways , but some common elements include:

### **According to Black's Law Dictionary:**

An easement is "the right to use the land of another for a specific purpose." this definition emphasizes the idea that easements grant the holder a specific right to use another person's land.

### **According to the Roman law:**

An easement is "a right to use another's property for a specific purpose, such as a right-of-way or access to a water source." this definition highlights the idea that easements are often used to grant access to resources or services that are located on another person's land.

### **According to the civil law:**

An easement is "a right to use or enjoy a portion of another's land, or to prevent the owner of the land from using it in a particular way." this definition emphasizes the idea that easements can be used to restrict the use of another person's land in addition to granting rights to use it.

### **According to the common law:**

An easement is "a non-possessory interest in land, which allows the holder of the easement to use the land for a specific purpose, such as a right-of-way or access to a water source." this definition highlights the idea that easements are non-possessory interests in land, meaning that the holder does not have the right to physically occupy or possess the land.

### **KINDS OF EASEMENT**

There are several different types of easements, each with their own unique characteristics and uses.

- 1. Continuous Easement**
- 2. Discontinuous Easement**
- 3. Apparent Easement**
- 4. Non-Apparent Easement**
- 5. Positive Easement**
- 6. Negative Easement**
- 7. Urban Easement**
- 8. Rural Easement**
- 9. Permanent Easement**
- 10. Limited Easement**
- 11. Easement By Necessity**
- 12. Quasi Easement**
- 13. Customary Easement**
- 14. Public Easement**

#### **1. Continuous Easement**

Continuous easement is a type of easement that allows for uninterrupted or continuous use of another person's property. It means that the holder of the easement has the right to use the land at any time, without the need for the landowner's permission.

For example, a farmer may have a continuous easement to use a neighbouring property owner's land as a right-of-way to access their own land. This means that the farmer can use the neighbouring property's land to access their own land at any time, without needing to ask for permission. The farmer can use the right-of-way to transport equipment, livestock, and other materials between the properties. Additionally, the farmer can use the right-of-way to access the neighbouring property's land for farming purposes, such as planting, harvesting or grazing.

Another example of a continuous easement is an access road to a remote property, where the owner of the remote property holds an easement to use a neighbouring property's land as a road to access the remote property. The owner can use the road at any time, without needing to ask for permission, and the neighbouring property owner cannot block or restrict access to the road.

#### **2. Discontinuous Easement**

A discontinuous easement is a type of easement that allows the holder to use another person's property in multiple, separate locations. This differs from a continuous easement, which grants the holder the right to use a specific, continuous strip of land.

For example, let's say a property owner wants to build a hiking trail that runs through several different properties. They could acquire a discontinuous easement that would allow them to use different sections of the properties for the trail, rather than needing to acquire a continuous strip of land.



### **3. Apparent Easement**

An Apparent easement is a type of easement that is created by the visible use of another person's land. This type of easement is created when a property owner uses another person's land openly and continuously, and the use is visible to the public. It is also known as an easement by estoppels or a prescriptive easement by visibility.

For example, imagine that a property owner has been using a path that runs through a neighbour's land for several years to access their backyard. The path is clearly visible and has been in continuous use for many years. In this case, the property owner may have an apparent easement on the neighbour's land, as the use of the path is visible to the public and has been in continuous use for a significant period of time.

Apparent easements are usually established by long-term use, and the owner of the land on which the easement has been established does not object to the use, the landowner will be estopped from objecting to the use at a later date. The landowner is deemed to have given his or her permission for the use by implication.

### **4. Non-Apparent Easement**

Non-apparent easements, also known as "hidden" or "latent" easements, are a type of easement that is not visible or obvious to the naked eye. This means that the existence of the easement may not be immediately apparent to someone who is not aware of it, and it may not be easily detectable by a physical inspection of the property.

One example of a non-apparent easement is a right-of-way that is granted to a utility company to install and maintain underground power lines or gas pipelines. The existence of the easement may not be immediately apparent to a property owner, as the utility company's equipment and infrastructure is located underground and not visible to the naked eye. However, the property owner is still bound by the terms of the easement, and must allow the utility company access to the land in order to install and maintain the equipment.

### **5. Positive Easement**

Positive easement refers to the right to use another person's property for a specific purpose, such as a right-of-way or access to a water source. This type of easement is also known as an "affirmative" easement because it gives the holder of the easement the right to do something on the land.

For example, if a landowner owns a property with no road access, and another landowner owns the only road that leads to the property, the landowner without road access could have a positive easement to use the road for the purpose of accessing their land. The landowner with the road would not be able to block or restrict access to the road, as the landowner without road access has a positive easement to use it.

### **6. Negative Easement**

Negative easement is a legal concept that refers to the right of a property owner to prevent another person from using their land in a specific way. It is also known as "negative servitude" or "restrictive easement."

For example, imagine that a property owner has a beautiful view of the ocean from their backyard. Another property owner buys a piece of land next to the first property and plans to build a tall building that would block the first property owner's view. The first property

owner could claim a negative easement, which would give them the right to prevent the second property owner from building the tall building and blocking their view.

### **7. Urban Easement**

Urban Easements refer to the legal rights that allow one property owner to use another person's property within an urban setting for a specific purpose. These easements are typically granted to allow access to public services or resources, such as roads, utilities, or public transportation.

One example of an urban easement is a right-of-way. A right-of-way is an easement that allows a property owner to use a specific portion of another person's land for a specific purpose, such as access to a public road or utility service. For example, a property owner may have an easement for a right-of-way that allows them to access a public road that runs through another person's land.

### **8. Rural Easement**

A rural easement is a type of easement that is used to protect and preserve rural land and natural resources. It is a legal agreement that limits the development and use of land in order to protect the natural and cultural resources on the property. This type of easement is often used to protect farmland, forests, wetlands, and other rural resources from development and to maintain the land in its natural state.

For example, imagine a farmer who owns a large parcel of land in a rural area. The land is used for farming and is home to a variety of wildlife and natural resources. The farmer wants to ensure that the land will be protected and preserved for future generations, so they decide to place a rural easement on the property. The easement limits the development and use of the land to only farming and prohibits any other uses, such as housing or commercial development. This ensures that the land will be protected and preserved as a working farm and a wildlife habitat, while also providing the farmer with the income they need to maintain the property.

### **9. Permanent Easement**

Permanent easement, also known as a "perpetual easement," is a type of easement that grants the holder the right to use another person's land indefinitely. This means that the easement does not have a specific expiration date and will remain in effect until it is legally terminated.

For example, if a landowner granted a permanent easement for a right-of-way through their property to a neighbouring property owner, the neighbouring property owner would have the right to use that right-of-way for an indefinite period of time, even if the landowner who granted the easement sells the property or passes away. The neighbouring property owner would be able to use the right-of-way to access their property, even if the land changes hands multiple times.

Another example of Permanent easement, is a utility company that has been granted a permanent easement to run power lines through a property. This means that the utility company would have the right to maintain and repair the power lines on the property indefinitely, even if the property is sold or changes ownership.

It is important to note that while Permanent easements are generally considered to be permanent in nature, they can still be terminated through legal means, such as through eminent domain or by mutual agreement between the parties involved.

### **10. Limited Easement**

A Limited Easement is a type of easement that grants the holder the right to use another person's property for a specific purpose, but with certain limitations or restrictions. These limitations or restrictions can include the purpose for which the easement can be used, the location of the easement on the property, the duration of the easement, and the rights and responsibilities of the parties involved.

For example, a property owner may grant a limited easement to a utility company for the purpose of installing and maintaining power lines on their property. The limited easement may specify that the power lines can only be installed in a certain location on the property, and that the utility company is responsible for maintaining and repairing the lines. The limited easement may also specify that the utility company has the right to access the property for maintenance, but only during certain times of the day or week.

Another example of a limited easement is a right-of-way granted by a property owner to a neighbouring property owner. The right-of-way may only be used for pedestrian access, and the property owner may also limit the hours of access, or specify that the right-of-way is only to be used for specific events.

Limited easements are different from general easements, which grant the holder broader rights to use the property without any limitations or restrictions. Limited easements are often created to protect the rights of the property owner while still allowing the holder to use the property for a specific purpose.

### **11. Easement By Necessity**

Easement by necessity is a type of easement that is created when a property owner needs access to a public road or utility service that runs through another person's land. This type of easement is created by the need for access to a public resource and can only be granted if the property owner does not have any other means of accessing the resource.

For example, imagine that a property owner, John, lives on a remote piece of land that is not accessible by any public roads. The only way to access John's property is by crossing through a neighbouring property, owned by Jane. In this case, John would likely be able to claim an easement by necessity to cross through Jane's property in order to access the public road and other necessary services.

Another example, Imagine that a piece of land, owned by a person, A, is surrounded by other land owned by B, C, D, and E. The only way to access the land of A is by crossing through the land of B, C, D, and E. In this case, A would likely be able to claim an easement by necessity to cross through the land of B, C, D, and E in order to access his land.

In both of these examples, the property owner would not be able to access the public road or his property without crossing through another person's land. Therefore, they would have a legal right to access the land of another person through an easement by necessity.

### **12. Quasi Easement**

A Quasi-Easement is a legal concept that refers to a situation where one property owner has a right to use another person's property for a specific purpose, but that right is not legally recognized as an easement. This type of right is often created by the actions of the parties involved, rather than by a written agreement or court order.

For example, imagine two properties, A and B, that share a common driveway. Property A has been using the driveway for years to access their property and Property B is aware of this and has never object to it. Even though there is no formal easement agreement in place, Property A has a right to use the driveway to access their property. This right to use the driveway is considered a Quasi-Easement because it is not legally recognized as an easement, but it is still a right that Property A has to use the driveway.

Another example is when a property owner has been diverting water from a stream on their neighbour's property for irrigation purpose. The neighbour has never object to this, and the property owner has relied on the water to irrigate their land for many years. Even though there is no formal easement agreement in place, the property owner has a right to use the water from the stream for irrigation, which is considered a Quasi-Easement.

Quasi-easements are not legally recognized as easements, but they can still be enforced in court. However, the enforcement of this type of right is dependent on the specific laws of the state and the circumstances of the case.

### **13. Customary Easement**

Customary easement is an easement that is based on local custom or tradition. It is created by the long-term use of a particular area of land by the local community, rather than by a written agreement or court order.

For example, in a rural village, there may be a path that has been used by the villagers for generations as a way to access a nearby river. This path may not be officially recognized as a legal right-of-way, but it has been in continuous use by the villagers for so long that it has become a customary easement. Even though the landowner may not have granted formal permission for the path to be used, the local community has a right to continue using it based on the long-standing tradition of its use.

Customary easements can also be created when a particular use of land is so longstanding that it becomes an established custom in the area. For example, in a beach town, the local community may have traditionally used a particular stretch of beach for swimming and sunbathing for many years. Even though the landowner may not have given formal permission for this use, the local community has a right to continue using the beach based on the established custom.

### **14. Public Easement**

A public easement is a legal right that allows the general public to access and use a piece of private property for specific purposes, such as for transportation, utilities, or recreation. The property owner still retains ownership of the land, but they must allow the public to use it for the specified purpose.

For example, a utility company may have a public easement to install and maintain power lines on a private property. The property owner is still the owner of the land, but they must

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allow the utility company to access the property to install and maintain the power lines. The public also has the right to use the power lines for their electricity needs.



## **ESSENTIAL CHARACTERISTICS OF EASEMENT**

An easement is a legal right that allows someone to use someone else's property for a specific purpose, while the property remains owned by the original owner. Easements are usually granted for things like roads, power lines, pipelines, or other infrastructure, and allow the person or company with the easement to access and use the property for a specific purpose, like transportation or providing utility service.

There are several essential characteristics of easements that are important to understand:

**A. Purpose:**

An easement must have a specific purpose, such as providing access to a specific piece of property or allowing for the use of a specific resource. For example, an easement for a public footpath would allow the general public to walk on a specific piece of private property, but not to use the property for other purposes.

**B. Property Ownership:**

An easement allows one party to use another party's property for a specific purpose, but the property owner still retains ownership of the land. The property owner cannot use the property in a way that would interfere with the easement holder's use of the property.

**C. Duration:**

Easements can be either permanent or temporary. Permanent easements are valid for an indefinite period of time, while temporary easements have a specific expiration date. For example, a construction company may have a temporary easement to access a private property to build a new road. Once the road is built, the easement would expire.

**D. Scope:**

Easements have a specific scope or limit on the rights granted. For example, an easement for a public footpath would typically only allow for pedestrian traffic, but not for vehicles.

**E. Location:**

Easements are specific to a particular piece of property, and the location of the easement is clearly defined in the legal documentation. For example, an easement for a utility company to install power lines on a specific piece of private property.

**F. Transferability:**

Easements can be transferred or assigned to another party. For example, a utility company might sell its easements to another company, but the new company would have to agree to the same terms and conditions as the original easement holder.

**G. Enforceability:**

Easements are legally binding agreements and can be enforced by the parties involved or by a court of law. For example, if the property owner of the land with the easement

blocked the easement holder's access, the easement holder can take legal action to enforce their rights.

### **How Easement is Related To Tort Law:**

Easements are related to tort law in that they both involve the use of someone else's property. However, while easements are legal rights that are granted by the property owner or by a court, torts are civil wrongs that may give rise to a legal claim for damages.

When it comes to easements, the property owner has granted a legal right to use the property to another party, and the easement holder must use the property in accordance with the terms of the easement. If the easement holder uses the property in a way that exceeds the scope of the easement, or if they cause damage to the property, the property owner may be able to bring a claim for damages in tort law.

For example, if a utility company has an easement to install power lines on a private property, and during the installation, they cause damage to the property owner's property, the property owner can bring a claim for damages in tort law.

On the other hand, if the property owner interferes with the easement holder's use of the property, for example, by blocking access to the property, the easement holder can bring a claim in tort law for interference with the easement.

Easements are related to tort law in that they involve the use of someone else's property, and the potential for one party to interfere with or disrupt the other party's use of the property. If a party with an easement (the easement holder) experiences interference or disruption from the property owner (the servient estate), they may have a claim for damages under tort law.

For example, let's say a utility company has an easement to install and maintain power lines on a private property. The property owner is not allowed to interfere with the utility company's use of the property for this purpose. If the property owner were to build a structure on the property that blocked the utility company's access to the power lines, the utility company may have a claim for damages under tort law for interference with their easement.

Another example would be if a property owner breaches the restriction of the easement's scope, like if an easement granted for pedestrian access only, but the property owner allows vehicles to use it as well. In this case, the easement holder could argue that their right to use the property as specified in the easement is being interfered with and they may have a claim for damages under tort law.

In summary, easements are related to tort law in that they both involve the use of someone else's property, but easements are legal rights that are granted by the property owner or by a court, while torts are civil wrongs that may give rise to a legal claim for damages.



## **WHO CAN GRANT AND ACQUIRE EASEMENT**

An easement can be granted or acquired by the owner of the land (the "dominant estate") that the easement benefits, and the owner of the land on which the easement runs (the "servient estate"). An easement can also be granted or acquired by a public entity, such as a government agency or utility company, through eminent domain or other legal means. Additionally, an easement can be granted or acquired by a court through a judicial proceeding.

### **Examples o Right of Easement:**

Following are the examples of right of easement. Details are as under

- 1) **Right Of Way**, a person who is possessor of a piece of land has a right of way.
- 2) **Right Of Air**, a person who is possessor of a piece of land has a right of air.
- 3) **Right Of Free Access To Air**, a person who is possessor of a piece of land has a right free access of air.
- 4) **Right Of Light**, a person who is possessor of a piece of land has a right of light.
- 5) **Right Of Privacy**, a person who is possessor of a piece of land has a right of privacy.
- 6) **Right Of Water Flow**, a person who is possessor of a piece of land has a right of water flow that his used water to be flowed without any issue.
- 7) **Common Rights**, a person who is possessor of a piece of land has a lot of common rights which have been recognized by the law.
- 8) **Right Of Support**, a person who is possessor of a piece of land has a right of support means that he is to be provided safety.
- 9) **Right Of Prospectus**, a person who is possessor of a piece of land has a right of prospectus that if a person wants to publicize his business he can acquire this right,

### **Modes of Acquisition of Easement:**

Following are the modes of acquisition of easement.

#### **1. Express Grant:**

This is the most common method of acquiring an easement. It involves a written agreement between the owner of the servient property (the property that the easement runs over) and the owner of the dominant property (the property that benefits from the easement). For example, a landowner may grant an easement to a utility company to run power lines across their property.

#### **2. Implied Grant:**

An easement can also be acquired through implied grant, which means that the use of the property has been continuous and open for a certain period of time. For example, if a neighbouring property has been using a driveway on a neighbouring property for more than 20 years, the neighbouring property may have an implied easement to continue using the driveway.



### **3. Prescription:**

An easement can also be acquired through prescription, which means that the use of the property has been continuous and adverse for a certain period of time. For example, if a property owner has been using a path on a neighbouring property for more than 20 years without the owner's permission, the property owner may have acquired an easement through prescription.

### **4. Necessity:**

An easement can also be acquired through necessity, which means that the use of the property is necessary for the reasonable use and enjoyment of the dominant property. For example, if a property owner's only access to their property is through a neighbouring property, they may have an easement through necessity to use the neighbouring property's driveway.

### **5. Statute:**

An easement can also be acquired through statute, which means that a government or other governing body has granted the easement. For example, a government may grant an easement for a public utility to run power lines across private property.

### **6. Court Order:**

An easement can also be acquired through a court order. For example, if two property owners are in dispute over the use of a shared driveway, a court may order that an easement be granted to one of the property owners.

## **Who Can Grant Easement:**

There are several parties who can grant easements:

### **i. Property Owners:**

The most common party to grant an easement is the property owner. Property owners may grant easements to allow for the construction and maintenance of roads, utilities, or other infrastructure on their property. They may also grant easements for recreational or conservation purposes, such as allowing public access to hiking trails on their property.

### **ii. Government:**

Government entities, such as municipalities or state agencies, may grant easements to allow for the construction and maintenance of public infrastructure, such as roads, bridges, and public utilities. They may also grant easements for conservation or recreational purposes, such as for parks or public access to waterways.

### **iii. Private Organizations:**

Private organizations, such as utility companies or conservation groups, may also grant easements. For example, a utility company may grant an easement to another utility company for the installation and maintenance of pipelines or power lines. A conservation group may grant an easement to the government for the construction of a hiking trail on their property.

### **iv. Individuals:**

Individuals can also grant easements, such as a landowner granting an easement to a neighbour for access to their property.

v. **Court Order:**

In some cases, a court may order the grant of an easement as part of a legal settlement or as a means of resolving a dispute. This typically happens when the parties involved cannot come to an agreement on their own.

### **Persons Who Can Acquire The Easement:**

There are several types of parties that can acquire an easement:

i. **Property Owners:**

A property owner can acquire an easement over their own property. For example, a property owner may grant an easement to a utility company to install power lines on their property, but retain the right to use the land for other purposes.

ii. **Public Entities:**

Public entities such as government or local authorities, can acquire easements for the public good, like for transportation or utilities.

iii. **Private Parties:**

A private party or company can acquire an easement over another party's property for specific purposes, such as for access or to use a specific resource. For example, a company might acquire an easement to build a pipeline on private property to transport oil or gas.

iv. **Prescription:**

An easement can be acquired by prescription, which means that if a party has been using the property openly and continuously for a certain period of time, they may be able to claim an easement by right. This is known as adverse possession and the period of time required to establish an easement by prescription varies by jurisdiction.

v. **Grant:**

An easement can be granted by the owner of the property, they can grant an easement to a person or an organization to use the property for specific purposes, like for transportation or utilities.

vi. **Implication:**

An easement can be implied when the court finds that an easement is necessary for the reasonable use of the land. For example, if a property owner subdivides their land and sells a portion of it, the court may imply an easement for access to the remaining portion of the property if there is no other reasonable way to access it.

vii. **Necessity:**

An easement can be acquired by necessity if a party can prove that without the easement, their property would be landlocked or otherwise inaccessible. This is known as "easement by necessity"

It is worth noting that not all types of easements can be acquired by all parties and the rights and restrictions of easements can vary by jurisdiction.



## **HOW EASEMENT CAN BE EXTINGUISHED AND REVIVED**

Extinction of an easement refers to the termination or ending of a legal right to use another person's property for a specific purpose. This can occur through a variety of means, such as the natural expiration of the easement's term, the release or abandonment of the easement by the holder, or the merger of the easement with the ownership of the Servient property. Once an easement is extinguished, the holder no longer has the right to use the Servient property for the specified purpose.

### **Modes Of Extinction Of Easement:**

Following are the modes of extinction of easement. Details are as under.

#### **Extinction By Release:**

Extinction of an easement by release occurs when the owner of the dominant estate (the property that benefits from the easement) voluntarily gives up their right to use the easement. This can be done through a written document, such as a deed or contract, where the owner of the dominant estate agrees to release the easement and give up their right to use the Servient estate (the property that is burdened by the easement).

For example, let's say that John owns a property with a driveway that runs across his neighbour's property, Mary's property. This driveway is an easement that John has the right to use. However, John decides that he no longer needs to use the driveway and wants to give up his right to it. He and Mary sign a contract that releases the easement and John no longer has the right to use the driveway on Mary's property. This extinguishes the easement and Mary can now use her property without the burden of John's right to use the driveway.

#### **Extinction By Revocation:**

Extinction of easement by revocation refers to the legal process by which an easement, or a right to use someone else's property, is terminated. This can happen in a few ways, one of which is through the act of revocation by the owner of the servient property (the property on which the easement exists). For example, if a landowner grants a right of way to a neighbour to cross their property, but later decides to revoke that right, the easement would be extinguished. This means that the neighbour would no longer have the right to use the landowner's property to access their own property.

#### **Extinction By Dissolution:**

Extinction of easement by dissolution refers to the ending of an easement through the natural dissolution of the underlying circumstances that led to its creation. This can occur when the reason for the easement no longer exists or is no longer necessary.

For example, imagine a property owner, John, granted an easement to his neighbour, Jane, to use a portion of his land as a driveway to access her property. The easement was granted because Jane's property was landlocked and had no other means of access. However, over time, a new road was built that provided Jane with another means of accessing her property, making the easement no longer necessary. In this case, the easement would be extinguished by dissolution as the reason for its creation no longer exists. Jane would no longer have the right to use John's land as a driveway, and the easement would be terminated.

### **Extinction By Termination of Necessity:**

Extinction of easement by termination of necessity refers to the ending of an easement when the reason for the easement is no longer necessary. This can happen when the landowner no longer needs to use the neighbouring property for a specific purpose, such as access to a road or a shared driveway.

For example, let's say that a property owner has an easement to access a shared driveway that leads to their property. The owner of the neighbouring property, who owns the driveway, allows the other property owner to use it to access their property. However, the property owner later decides to build their own driveway and no longer needs to use the shared driveway. In this case, the easement for the shared driveway would be extinguished by termination of necessity as the need for the easement is no longer necessary.

### **Extinction By Expiry of Time Period:**

An easement is a legal right that allows an individual or entity (the easement holder) to use another person's land (the servient land) for a specific purpose, such as access to a property or the use of a shared driveway. An easement can be created by agreement, by prescription (through prolonged use), or by implication (when it is necessary for the reasonable use of the land). Extinction of an easement by expiry of time period refers to the termination of an easement when the time period for which it was granted has expired. For example, if a property owner grants an easement for the use of a shared driveway to a neighbouring property for a period of 10 years, the easement will expire after 10 years and the neighbouring property will no longer have the right to use the driveway.

In some cases, an easement may be created for a specific purpose and will expire once that purpose has been fulfilled. For example, if an easement is granted for the construction of a new road, the easement will expire once the road has been built and is open to the public.

### **Extinction by Happening:**

Under the easement act, an easement is extinguished when something has been happened on behalf of which easement was granted, in this case the further beneficial enjoyment of the property will not be possible for dominant owner.

### **Extinction By Change of Dominant Tenement:**

Extinction of an easement by change of dominant tenement occurs when the property that benefits from the easement (the dominant tenement) is sold or transferred to a new owner. When this happens, the new owner no longer has the legal right to use the Servient estate (the property that is subject to the easement) for the purpose specified in the easement.

Example: John owns a piece of land with a driveway that leads to his neighbour's property (Bob). Bob has an easement that allows him to use the driveway to access his property. Bob decides to sell his property to a new owner, Jane. Because Jane is now the owner of the dominant tenement, the legal right to use the driveway (the easement) is extinguished. Jane can no longer use the driveway to access her property because the easement was terminated with the transfer of ownership.

In some cases, the new owner of the dominant tenement may negotiate a new easement agreement with the Servient estate owner, but this is not automatic and depends on the negotiation skills of both parties and the circumstances surrounding the sale of the property.

### **Extinction By Destruction of Either Owner:**

Extinction of an easement can also occur when either the owner of the Servient estate (the property on which the easement is located) or the owner of the dominant estate (the property that has the right to use the easement) dies or the property is destroyed.

- i. **Death of the owner:** If the owner of the Servient estate or the dominant estate dies, the easement is extinguished because the legal right to use the property is transferred to the new owner(s).

Example: John owns a piece of land with a driveway that leads to his neighbour's property (Bob). Bob has an easement that allows him to use the driveway to access his property. John dies and his property is inherited by his children. Because the legal right to use the property has been transferred to new owners, the easement is extinguished.

- ii. **Destruction of the property:** If the Servient estate or the dominant estate is destroyed, the easement is also extinguished because the legal right to use the property no longer exists.

Example: John owns a piece of land with a driveway that leads to his neighbour's property (Bob). Bob has an easement that allows him to use the driveway to access his property. A natural disaster such as a flood destroys John's property, including the driveway. Because the servient estate (the property with the driveway) no longer exists, the easement is extinguished.

In both cases, it's important to note that the death or destruction of the property must be permanent and cannot be repaired or restored for the easement to be considered extinguished. Also, if the property is destroyed and the owner of the dominant estate still holds the property, the easement may be replaced with a new one to access the new servient estate.

### **Extinction By Unity of Ownership:**

Extinction of an easement by unity of ownership refers to the ending of a legal right to use someone else's property for a specific purpose when the owner of the servient estate (the property on which the easement is located) and the easement holder (the person who has the right to use the property) become the same person. This occurs when the easement holder acquires ownership of the servient estate, resulting in a unity of ownership.

Example: John owns a piece of land with a driveway that leads to his neighbour's property (Bob). Bob has an easement that allows him to use the driveway to access his property. John decides to sell his property to Bob. Because Bob now owns both the servient estate (the land with the driveway) and the dominant estate (the property that is accessed by the driveway), the easement is extinguished. This is because there is no longer a need for the easement, as Bob now has the right to use the driveway as the owner of both properties.

Another example could be a company, who owns a factory and the land on which it's located, also owns an adjacent land where they want to expand their factory, if they purchase that land, the easement of the adjacent land will be extinguished as they are now the owners of both the servient and dominant estates.

### **Extinction By Suspension of Easement:**

Extinction of an easement by suspension refers to the temporary termination of an easement due to the non-use of the easement by the dominant owner for a certain period of time, as defined by the jurisdiction.

For example, if a landowner has an easement allowing them to access a property across their neighbour's land, but they do not use this easement for 20 years, the easement may be considered suspended and extinguished. The neighbour would then have the right to block or build on the easement, as it is no longer in use.

### **Extinction When Easement Becomes Useless:**

Under the easement act, an easement is extinguished when it does not remain beneficial for the dominant tenement, in this case the further beneficial enjoyment of the property will not be possible for dominant owner.

### **How Easement Can Be Revived:**

An easement is a legal right to use or access a piece of property that is owned by another person. The term "revived" in this context likely refers to a situation in which an easement that had been previously terminated or expired is now being reinstated or re-established. This can happen for a variety of reasons, such as a change in the use of the property, an agreement between the property owner and the holder of the easement, or a court order.

Easements can be revived, or brought back into effect, in certain circumstances. Here are a few ways an easement can be revived:

a) **Re-Grant:**

The dominant or servient owner can re-grant the easement, effectively bringing it back into effect. For example, if the neighbouring landowner releases the easement to the path but later decides they need to access the lake again, they can re-grant the easement and start using the path once more.

b) **Express Agreement:**

The dominant and servient owners can come to an express agreement to revive the easement, either through a written contract or an oral agreement. For example, if the neighbouring landowner abandons the easement to the path but later expresses a desire to use it again, the landowner can agree to revive the easement.

c) **Implied Agreement:**

An easement can be impliedly revived if the dominant owner starts using the easement again without the servient owner's express agreement. For example, if the neighbouring landowner abandons the easement to the path but starts using it again without the landowner's agreement, the landowner may argue that the easement has been impliedly revived.

d) **Prescription:**

An easement can be revived through the legal process of prescription, which is the opposite of the process of extinguishing an easement. For example, if the neighbouring landowner starts using the path again after it had been abandoned for

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several years, the landowner may be able to argue that the easement has been revived through prescription.

It's worth noting that the revival of an easement is a legal process, and the dominant or servient owner must take legal action to have the easement revived.

