

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 ہتک عزت of character. In a tort case, the person who has been harmed نقصان پہنچایا (the plaintiff مدعی) must prove that the other person (the defendant مدعا علیہ) 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;

- **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** ^{مزاحمت}: Intentionally frightening ^{خوفناک} another individual, causing severe ^{جذباتی} emotional or mental distress.

B) NEGLIGENT 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.
- **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 ^{دھماکے} or explosion ^{پھیلنا}.

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:

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*”

Faesser:

Faesser 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 ^{کروہ} 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

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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.

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 *خلاف ورزی* of Right in Rem
3. Torts Deal With Cases Related To Legal Rights
4. Remedy *داوری 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 *مقدمہ 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 *خلاف ورزی* 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 رोक تمام 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:

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 *مدخلت* 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 مدعی alleging الزام عائد کیا 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 رضا کارانہ 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 تماشاچی 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 Bapu***, 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 روکتا the plaintiff from recovering damages. For example, if a pedestrian پیدل 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 ایسی 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 بدینتی پر مبنی intention to harm the other party.

In the case of *Stanley v. Powell*, both of them went for pheasant شتر shooting during which the defendant fired a bullet for shooting down a pheasant. However the bullet got reflected the oak درخت 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 واقعه 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 منتشر 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 پتے 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 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 پچھانتا 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 بے خبر 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 معاوضہ compensation.

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 be 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 کیا 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

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from liability of tort and the aggrieved غمزدہ 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.

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 wing 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 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 غمزدہ parties, the importance of Defences for alleged parties for an important part of any law. Many a times, the defendant are innocent and victim ٻڌ 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 ^{غلل}, 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 dirt and filth, however offensive and noxious* نفسانہ *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 سب سے پہلے 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 شخص ہر شخص person would have or would not have done.

B. Legal Damage:

The second ingredient ضروری 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 غلط 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
Nature Of The Wrong	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.
Punishment	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 دکھانے the offender and others from committing similar crimes in the future.
Burdon Of Proof	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.
Parties Involved	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.
Types Of Remedies	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.
Courts	Torts cases are presented in the Civil Court.	Crimes cases are presented in the Criminal Court.
Examples	A sweeper has a duty to put up a wet floor sign after mopping. If he or she fails to	Crime examples threats and harassments, murder, theft, sexual assault, domestic

	put up the sign and someone falls and injures themselves, a negligence tort case may be filed. Other example of negligence torts include accident(car, bicycle other) and medical malpractice.	violence, child abuse, and 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
Nature of Duty	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.
Motive	Motive is often taken into account in the case of a tort.	In the case of a contract, motive is irrelevant.

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Damages	Damages in the case of a tort are different under different circumstances. Damages are always unliquidated.	In the case of a contract, the damages are in the form of compensation for the loss suffered. Damages are liquidated damages i.e. pre settled or actual damage.
Intension	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.
Nature of Rights	It is a right in rem.	It is a right-in-personem.
Relation	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.

Nature	Tort	Consumer Protection Law
Definition	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.
Purpose	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.
Examples	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.
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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)



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