

YBN UNIVERSITY, RANCHI

Mrs. Manish Srivastava

Assistant professor of Law

LL.B

Law of Tort

Introduction to Law of Torts Notes - Law of Torts. The word 'Torts' is derived from Latin word "tortrum" which means "to twist". A tort in French literally refers to a 'wrong'. • Tort is a civil wrong (private wrong) that is not breach of Contract or Breach of Trust. In simple words it can be said that any civil wrong which can't be categorized under 'Breach of Contract' or 'Breach of Trust' is a Tort. • Defining torts in a single satisfactory definition is trying to confine the concept into a strait jacket from which it will continuously strive to escape. A wrongful act can be either Public Wrong (Crime) or Private Wrong (Civil wrong). Civil wrong is further classified under three categories, namely: i. Breach of Contract ii. Breach of Trust iii. Tort in order to determine that whether a civil wrong is tort or not, it must be first determined that the civil wrong doesn't fall under the first two categories. If it is not Breach of Contract or breach of Trust, then it is a Tort.

Therefore, Tort has a negative definition or method of Elimination is followed in determining it. • A person committing tort is called 'Tort-feasor'. Tort is the only law which is un-codified and derives its origin from the decisions of House of Lords in England. The law of Tort is created and developed by courts as it is not codified into an act or statute. Whenever a legal right vested in a person is violated by someone's act or omission, tort is committed. Tort is an important branch of law in common law countries like India.

Essential Elements of Tort: The essential elements/ingredients that are required to constitute an actionable tort are as follows: I. Legal Injury (Injuria) – Legal injury means violation of a legal right vested in a person

Wrongful act or omission – The legal injury should be inflicted as a result of a person's wrongful act (act) or omission (inaction). A wrongful act or omission occurs when a person owed a duty of care and breach of that duty result in legal injury to the other.

Legal Remedy – For a tort to be actionable it is pre-requisite that the wrongful act or omission shall fall under such category wherein civil action (case) for damages (compensation) can be institute.

The two foundational principles (Maxims) of Tort law: There are two root level maxims in tort law, the understanding and knowledge of which is extremely important to understand the concept of torts, and how a tort becomes actionable. 1. *Injuria Sine Damnum*: This maxim literally means ‘Legal Injury (*Injuria*) without (*Sine*) Damage/Loss (*Damnum*)’. Thus, cases of *Injuria Sine Damnum* include those instances in which legal right of a person is violated but as a result of it he/she doesn’t suffer any loss or damage. Cases of ‘*Injuria Sine Damnum*’ are actionable torts. Therefore, the person suffering legal injury is entitled for grant of damages (compensation) by Court. E.g.

A is an Indian Citizen aged 21. While going to cast his vote in the General elections of his constituency he was forcefully stopped by B and was not allowed to vote. Later when results were declared, the candidate whom A wanted to vote on the election. In the above illustration A’s ‘right to vote’ (Legal right) was violated by B’s action but A didn’t suffered any loss as the candidate whom he wanted to win actually won. So there is a Legal Injury (*Injuria*) without a damage or loss (*damnum*).

It is a classic example of *Injuria Sine Damnum* and hence it is an actionable tort. 2. *Damnum Sine Injuria*: This maxim literally means ‘*Damage (damnum) without (Sine) a legal injury (Injuria)*’. Such cases are not actionable torts and the plaintiff is not entitled to damages (compensation) despite the fact that loss has been suffered to them, because the most essential element for a tortious liability to arise is ‘Legal Injury’ that is missing. E.g.) A is the owner of a bakery shop and B is his employee. A enjoys complete monopoly in the market. After some time, B opens his own shop in A’s neighborhood that led to competition in the market and customers got divided, leading to a huge money loss to A. In the above illustration A suffered loss (*Damnum*) as a result of B’s act but none of his legal right was violated. The loss was suffered to A because B exercised his ‘legal right’. So, there is damage caused to A because B exercised his legal right and none of A’s legal right has been violated. It is an example of *Damnum Sine Injuria* and such cases are not actionable torts. Therefore, for a tortious liability to arise there must be ‘*Injuria*’, i.e. violation of a legal right vested in a person while ‘*Damnum*’, i.e. harm, loss or damage is irrelevant. Civil Wrong/Private Wrongs vs. Crime/Public wrongs: Civil Wrongs are also called Private wrongs because these wrongful acts are committed by one individual against another individual and the

state has no role to play in it because these are disputes among private individuals. On the other hand, Crimes are called Public wrongs because these include those wrongful acts that don't affect only a particular individual but the society (public) at large is affected.

2. In cases of civil wrong the Primary remedy is Compensation (in cash or kind), because its motive is to restore the previous position of the wronged person. While, in criminal cases the Primary remedy is Imprisonment, because the motive is to punish the wrongdoer. 3. In civil cases both the parties to the suit are private parties. However, the state may be plaintiff as well as defendant but it is not compulsive and depends upon the case. However, in Criminal Cases State is always Prosecution and it can never be Defendant. 4. In civil cases (torts) the wrongdoer is called Tortfeasor. While in Criminal cases he is called offender or criminal or accused. 5. All civil cases are compoundable, which means that the parties may compromise out of court and the case may be withdrawn. But, in most of Criminal cases involving public wrongs compromise is not allowed and hence they are non-compoundable. 6. Some categories of Wrongful acts constitute Crime as well as civil wrong, and it depends upon their gravity that they will fall under Public wrong or private wrongs. Some of these acts are: i. **Defamation.** ii. **Trespass.** iii. Assault iv. Negligence v.

Nuisance Types of Torts Since, Tort law is un-codified that's why it can't be restricted to specific boundaries. Moreover, Tort law is that branch of civil law which is constantly evolving by the courts in adjudicating a number of cases. As we have already discussed that Law of torts has a negative definition, that's why it is hard to lay down an exclusive list of wrongful acts that comes under the category of Torts. Any civil wrong which is not Breach of Contract or Breach of Trust is a Tort. Therefore, there is no exclusive list of acts that are tort. However, there are some specific categories of Torts, that are listed below, while Torts other than these categories are miscellaneous and hence, uncategorized. 1. Battery: When some physical force is applied to another person in some offensive manner which causes some harm, it is said to have committed battery refers to the intentional use of force on another person without any legal justification. If the party did not intend to injure the other person but he knows that his act could injure someone then also the battery is committed. Hitting someone on the face, beating someone with the bat are some of the common example of battery.

Essentials Elements of Battery are: a) Use of force: There must be use of force to bring the wrong under the tort of battery. Even if the force is trivial and there is no harm, the wrong is still committed. Physical hurt is not necessary. Least touching of another in anger is a battery. Slapping a person, using a stick to beat someone, throwing of water or spitting on someone are the examples of use of force. b) Without lawful justification: It is also essential that the use of force is intentional and without any lawful justification. Harm suffered due to the voluntary act of the plaintiff does not come under battery. Harm which is unintentional or caused by pure accident is not actionable. Like, in a narrow tunnel one person accidentally touches another gently, it does come under battery. However, if the touch is rude or in inordinate manner then it is actionable.

Assault: In Assault, there is a reasonable apprehension of the infliction of a battery upon another. When the act of defendant creates an apprehension in mind of plaintiff that he is going to commit battery, the wrong of assault is completed. Pointing a gun at someone, whether loaded or unloaded, creates an apprehension in the mind of the person on whom the gun is pointed. Hence the wrong of Assault has been committed. Essentials elements of Assault are: a) Intent to cause apprehension: If the victim proves that there was a reasonable circumstance to believe that the tortfeasor (person who commits a tort) is about to cause harm, the tort of assault is committed. b) Imminent harm: There must be an imminent danger to the plaintiff. There must be prima facie ability to do the harm. Like, if the fist is shown from such a distance that threat cannot be executed, there is no assault. ASSAULT BATTERY 1. In assault, there is only an apprehension in the mind of a person that a battery is about to be committed in battery, there is a use of force without any lawful justification. 2. No need to physical contact. Physical contact is necessary. 3. The purpose is to threaten. The purpose is to cause harm. 4. For Example: Pointing a gun towards another is assault. For Example: Hitting someone with the stick is battery, 5. In most of the instances Assault (which is Mental) precedes Battery (which is physical).

3. **False imprisonment:** False imprisonment means imposition of a total restraint upon the liberty of the person for a shorter period and without any lawful justification. When a person is deprived of his personal liberty by being confined within 4 walls or by being prevented from leaving the place where he is, then also it comes under false imprisonment. Essential elements of false imprisonment are: a) Total restraint on the liberty of a person: In criminal law, whether the restraint is total or partial, both are actionable. However, the same is not the case in tort. In tort

only total restraint is punishable. If a man is prevented from going into a particular direction but he is free to go to any other direction, then there is no imprisonment. To commit an offence of false imprisonment, a person must have been completely deprived of his liberty to move beyond a certain limit. For Example: A part of public footway was enclosed by the defendant. Seats were put there and entry to the enclosures was only allowed to those who have made the payment to watch the rowing there. The plaintiff climbed over the fence of the enclosure but was prevented to go forward. He brought an action for false imprisonment. It was held that there is no false imprisonment as there was no total restraint on the plaintiff liberty. The plaintiff was free to go back or even to cross the bridge through carriageway. c) Means of escape: If there is a means of escape then it will not come under false imprisonment. However, the means of escape should be intelligible to the person detained. For Example: If the person detained is blind, then he may not be able to locate the means of escape. The means of escape should also be reasonable. For Example: If the window providing escape is so high that it can cause injury to the person detained, then it will come under false imprisonment.

4. **Defamation:** Defamation is the injury to the reputation, goodwill and character of a person. A man's reputation is considered as his property which is more valuable than any other property so if a person injures the reputation of another, then he does so at his own risk They are of 2 types:

- i. Libel: It is the representation made in some permanent form. Like writing, printing, picture, e.t.c.
- ii. Slander: It is the publication of a defamatory statement in a transient form. Like, spoken words or gestures.

Essential elements of defamation: a) The statement must be defamatory: Defamatory statement is the one which tend to injure the reputation of the plaintiff. When the statement causes any one to be regarded with feeling of hatred, contempt, ridicule, fear, dislike, or disesteem, it is defamatory

For example: A local newspaper published a statement that 'A' has eloped with 'C' last night. A belongs to a well- educated family and was also a student of bcom final year. The news item published was untrue and had been published with utter irresponsibility and without any justification. Such publication affected A's marriage prospectus. The statement was held defamatory and the defendants were held liable. b) The statement must refer to plaintiff: The plaintiff has to prove that the statement which he thinks is defamatory must refers to the plaintiff.

It is immaterial here that defendant does not intend to defame the plaintiff. c) The statement must be published: Published here means that the defamatory matter must be known to some other person other than the person defamed unless no civil action arises. Sending a defamatory letter known for plaintiff is read by some third person who is not authorized to read it then the defendant is not liable. For Example: The defendant sent a defamatory letter in urdu to the plaintiff. The plaintiff did not know urdu and therefore the same was read over to him by a third person. In this case if it is proved that at the time of writing a letter in urdu, the defendant knew that urdu script was not known to the plaintiff then the defendant will be liable. 5. Trespass: It is an unreasonable interference of the property, land, person or goods. In trespass, the legal right of the owner is infringed because he is deprived of his right to enjoy the benefit of the property by misappropriation or exploitation of his right. Trespass are of 3 types: i. Trespass to Person ii. Trespass to Land

I. Trespass to Person: When some interference or harm is caused to the body of the person, it is called trespass to person. ➤ It is an invasion of person's right to freedom. ➤ It consists of following torts- Assault, Battery and false imprisonment. ➤ Example: Slapping someone or pointing a gun on someone. II. Trespass to Land: It is the interference with the possession of land without lawful justification. ➤ Trespass can be caused by a person himself entering the land of another person or doing the same through some material object. ➤ Going beyond the purpose for which a person has entered certain premises or crossing a boundary where he has authority to go, amounts to trespass ➤ If a person has entered the premise of another, just to save the life of someone then it will not amount to trespass.

III. Trespass to Goods: It is the interference with the goods which are in plaintiff's possession, without any lawful justification. ➤ Goods can be referred to personal property whether movable or immovable except for land. ➤ Mistake of ownership cannot be used a defence. Like, 2 friends are studying together, after studying B took the book of A assuming it to his book. Here in this case the mistake of ownership cannot be taken.

➤ If the defendant is wrongfully detaining the goods belonging to the plaintiff and refuses to deliver the same on lawful demands, the plaintiff can recover the same by bringing the action of

detainee. ➤ If a person willfully and without any justification converts the goods of another who is entitled to immediate use and possession of the good, then the person is liable for conversion of chattel. 5. Nuisance: Nuisance is the unlawful interference with the person's use or enjoyment of land. Acts interfering with comfort, health, safety, are the examples of it. Interference can of anyway, like, Noise, vibrations, smoke, excavation, etc. Nuisance is different from trespass: i. In trespass, interference is direct whereas the interference is consequential in Nuisance. ii. In trespass, the interference is always through some material or tangible objects whereas in nuisance, it can have committed through tangible as well as intangible objects also like smoke, vibration. iii. Trespass is actionable per se (without the need for the plaintiff to prove he has sustained actual damage) whereas in nuisance special damage has to be proved. Essential elements of Nuisance: a)

Unreasonable interference: ➤ Interference may cause damage to the plaintiff's property or may cause personal discomfort to the plaintiff in the enjoyment of the property. ➤ Every interference is not nuisance. Like if I have a house by the side of the road, I cannot bring an action for the inconvenience which is necessary incidental to the traffic on the road. ➤ An unreasonable activity cannot be excused on the ground that the reasonable care has been taken to prevent it becoming a nuisance. ➤ An act which is reasonable does not become unreasonable and actionable due to the sensitiveness of the plaintiff. Like if noise by neighbor does not annoy an ordinary person but disturbs only the plaintiff due to his over sensitiveness, then it is no nuisance. b) Interference with the enjoyment of land: ➤ Interference may cause either: (a) injury to the property (b) injury to comfort or health ➤ Injury to property: If there is an unauthorized interference with the use of property of another person through some tangible or intangible object then it a nuisance. Like allowing the branches of a tree to overhang on the land of another person. ➤ Injury to comfort or health: If there is an interference with the comfort and convenience in using the premises, then it is actionable under nuisance. However, the law does not take the trifling matters.

6. Negligence It is an absence of reasonable care which is imposed on all the persons so that no harm is caused to the other person. Burden of proof should be on plaintiff that the defendant was most likely negligent. For Example: Rohan, an owner of a big dog leaves his dog unattended who attacks a passerby badly injuring him. In this case it can be said that the act of Rohan was negligent. Essential elements of malicious prosecution: a) Duty of care: The defendant must owe a duty of

care to the plaintiff. ➤ The plaintiff has to establish that the defendant owed a specific legal duty to take care and he has breached that duty. ➤ Sometimes the relationship between plaintiff and defendant automatically creates a legal duty or obligation to act in a certain manner. Like doctor owes a duty of care to treat the patient in an appropriate manner. b) Breach of duty: The defendant made a breach of the duty. ➤ The defendant can be held negligent if he knew that his action would affect the other person, if he does not act in a correct way. Like, If the defendant knows that his dog is ferocious then he should put some warning sign outside his house “Beware of dog”. If he fails to do so, then he is negligent. c) Damage: The plaintiff must have suffered damage due to the act of defendant. ➤ It is important to prove that the defendant breach of duty caused damage to the plaintiff. ➤ The Plaintiff has to show that the damage is not too remote. ➤ The duty to access the damage is entirely the discretion of the court.

8. **Nervous shock:** Nervous shock means when the person suffers physical injury merely by a nervous shock through what he has seen or heard. Nervous shock is a psychiatric illness or injury caused to a person by events, due to the negligence of another person. It is a shock which arises from a reasonable fear to immediate personal injury to oneself. For Example: A falsely told B’s pregnant wife C that her husband B has suffered nervous shock and got seriously ill and had broken both the legs in an accident. In this case A was held liable of nervous shock When the plaintiff (the person who files a suit) brings an action against the defendant (the person against whom the suit is filed) for a particular tort, then the defendant can avoid his liability by taking the plea of some general defenses. General Defenses Vs Specific Defenses General defenses in Tort law are those defenses which may be taken against number of torts for instance the defence of Consent can be taken for Trespass, Defamation, or any other tort. Specific defenses refer to those defenses which are peculiar to some particular wrongs like the defense of fair comment, privilege, or justification that can be taken only for Defamation. General Defenses 1. Volante Non Fit Injuria (Consent) According to this maxim, “to a willing person, no injury is done.” It means that a person who willingly and knowingly puts himself in a dangerous situation cannot sue for any resulting injuries. When a person himself consents to the infliction of some harm upon himself then the person can take the defense of Volante Non Fit Injuria. The consent given may be express or implied. Essential condition for Volante non fit injuria: ➤ Consent must be free: For this defense it is necessary to

how that plaintiff consent was free. If the consent is obtained by fraud or under compulsion or under some mistaken impression, then the defendant cannot take a defense of the Doctrine of *Volenti non fit injuria*. For Example: A married woman (Plaintiff), noticed development of a painful lump in her hand. The lump had no effect on her uterus, but during surgery her uterus was removed without any justification. It was held that hospital (Defendant) was liable for deficiency in service and it was also held that the Plaintiff's consent for the operation of her hand did not imply her consent to the removal of uterus.

➤ Consent cannot be given for an unlawful act: Any consent for an unlawful act and which is prohibited by law cannot make the act legal. For example, consent for fighting with sharp swords is unlawful even though the parties may have consented.

➤ Mere Knowledge does not imply assent: For the maxim *volenti non fit injuria* to apply the two points need to be proved: (a) the plaintiff knew that the risk is there. (b) He, knowing the same, has agreed to suffer the harm. If both the points are proved, then only this maxim will apply. For Example: The plaintiff (Workmen) was employed by defendant for the purpose of cutting the rock. There was a crane at the working drill which is used to convey the stones. The crane is passed over the plaintiff head again and again. While the Plaintiff was busy in his work a stone fell from the crane and injured him. Here the Court held that there was mere a knowledge of risk without the assumption of it. So the maxim *Volenti non fit injuria* did not apply and the defendants were liable

2. Plaintiff, the wrongdoer If the Plaintiff himself did something wrong which caused him the injury then in that case the plaintiff cannot claim any damages from the Defendant. It is based on the maxim "*Ex turpicausa non orator action*" which means, from an immoral cause no action arises. For Example: If someone walks into someone's house without his permission and it is written on the gate that "beware of dogs" and after entering the dog bites him then in that case the plaintiff is himself the wrongdoer and he know the risk before entering the house so the plaintiff cannot claim compensation from the Defendant.

3. Inevitable Accident When an injury is caused to a person for an event which could not have been foreseen and avoided, in spite of reasonable care by the defendant then it comes under the defense of inevitable accident.

- In this defense it is necessary to show that: (a) the defendant does not intend to injure the Plaintiff (b) the defendant cannot avoid it in spite of the reasonable care. For Example: • Plaintiff and Defendant went for a pheasant shooting. The defendant fired at a pheasant, but the shot from his gun glanced off an oak tree and injured the plaintiff. It was held that injury was accidental i.e. an Inevitable Accident and hence the defendant was held not liable. For Example: Two strangers took a lift in a jeep. Afterwards,

one of the bolts fixing the right front wheel of the jeep to the axle gave way and the wheel flew away from the axle. The jeep was toppled; the two strangers got serious injuries resulting in death of one of them. It was found that it was mere an accident which could not be detected by periodical checkup. Therefore, the defendant was held not liable as he took the defense of inevitable accident.

4. Act of God It is a kind of inevitable accident with the difference that Act of God includes those consequences which arises out of the working of natural forces like exceptional heavy rainfall, volcanic eruptions, tides, etc. There are two essential condition needed for this defense: ➤ The event causing damage must be a working of a natural force without any intervention from human agency. For example: If the goods transported in the defendant's lorry was robbed by the unruly mob then it cannot be considered to be an Act of God and the defendant is liable for the loss of those goods. ➤ The occurrence must be extraordinary and not the one which could be anticipated and reasonably guarded against. For Example: The wall of building was collapsed on the day when there was rainfall of 2.66 inches which resulted in the death of 2 children. The court held that the defendant could not take the defence of Act of God as that much of rainfall in the rainy season is very common and not any extraordinary condition. Hence the defendant was held liable 6. Private

Defence If someone uses reasonable force to protect one person's or property, then one can be excused if the force used was reasonable. For instance, if someone is going to slap you and in self-defense you shoot that person then that would be an excessive use of force which is not required and hence unreasonable. The essential requirements for this defense are: ➤ The defendant must be under imminent threat to the personal safety or property. ➤ The defense must be for self-defense and not for any kind of revenge. ➤ The response must be proportional to attack or threat for Example: A, the defendant has laid some live electric wire on his land. The plaintiff while crossing it at 10 p.m. in order to reach his own land received a shock from the wire and sustained injuries. The defendant had given no visible warning about such wire. He was, therefore held liable for the injuries caused to the plaintiff. 7. Mistake There are 2 types of Mistakes: a) Mistake of Fact b) Mistake of Law Generally, both the mistakes are no defence in Law of Torts but there is an exception to this rule: When a defendant acts under honest but mistaken belief then he may take the defense of Mistake to avoid his/her liability under Law of Torts. For Example: Defendant published a statement that plaintiff had given birth to the twins in good faith but in reality the plaintiff got married just two months ago. The defendant was held liable for defamation

and the element of good faith is immaterial in such cases. 8. Necessity an act done to prevent a greater harm is not actionable even though the harm was caused intentionally. In necessity it is important to show that the act done was necessary. For instance, if someone throws the goods from the ship to save the ship from sinking comes under this defence. Necessity and Private Defense are different. In Necessity, there is an infliction of harm on an innocent person whereas in private defense, harm is caused to a plaintiff who himself is the wrongdoer. For Example. A person has to trespass into the neighbor's land in order to save the person in the adjoining house who is on fire. Then in this case the defendant can take the defence of Necessity. 9. Statutory Authority The damage caused from an act which a legislation/statute authorizes or directs to be done, is not an actionable tort.

It is a complete defense and the injured party has no remedy except for the damages which the legislature has provided in the statute. • This immunity is also for all the acts which are incidental to the exercise for such authority. For Example: • When the noise, vibration, smoke, etc. from the trains running may cause harm to a person but no action can lie except for the payment of such compensation which the Act himself may have provided. For Example: • The Respondent has been authorized to run the railways. On one fine day sparks from the train set fire to the Plaintiff's woods on the adjoining lands. It was held that defendant has taken proper care to prevent the sparks from the train and they were doing nothing more than what the Statute had authorized them to do. So, they are immune and hence held not liable