



FACULTY OF JURIDICAL SCIENCES

COURSE: B.A.LL.B. I st Semester

SUBJECT: LAW OF TORTS

SUBJECT CODE: BAL 106

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LECTURE 1

TOPIC: NATURE AND DEFINITION OF LAW

1. Introduction-

The term “Law’ denotes different kinds of rules and Principles. Law is an instrument which regulates human conduct/behaviour. Law means Justice, Morality, Reason, Order, and Righteous from the view point of the society. Law means Statutes, Acts, Rules, Regulations, Orders, and Ordinances from point of view of legislature. Law means Rules of court, Decrees, Judgment, Orders of courts, and Injunctions from the point of view of Judges. Therefore, Law is a broader term which includes Acts, Statutes, Rules, Regulations, Orders, Ordinances, Justice, Morality, Reason, Righteous, Rules of court, Decrees, Judgment, Orders of courts, Injunctions, Tort, Jurisprudence, Legal theory, etc.

2. Meaning of Law-

In old English “Lagu” i.e. law, ordinance, rule, regulation from old Norse “lagu” law collective Plural of “Lag” is layer, measure, stroke ‘Literally’ something laid down of fixed. The term law has different meanings in different Places/societies at different times (as it is subject to amendments). In Hindu religion law implies “Dharma” in Muhammadan religion (Islam) it is “Hukum” in Roman its “Jus”, in French, its “Droit” in Arabic, Alqanoon, in Persian and Turkish, its Kunoon, in Latin its “Legam” in Philipino its “Batas” in Albanian language its “Ligj” in Czech its “Zakon” in Danish its “Lor” in Dutch its “Wet” in Italian its “Legge” and in Lithuanian its “Teise” and so on. It varies from place to place in the sense adultery is an offence in India (under section 497 of the Indian penal code, 1860) while it is no offence in America. Law differs from religion to religion in the sense personal laws viz. Hindu

law, Muslim law etc. differ from one another. For instance, A Muslim can have four wives living at a time, but, a Hindu can have only one wife living at a time (Monogamy). If a Hindu male marries again during the life time of first wife he is declared guilty of the offence of bigamy and is Punishable under sec. 494, The law is subject to change with the change in society.

Generally, the term law is used to mean three things:

First it is used to mean “legal order”. It represents the regime of adjusting relations, and ordering conduct by the systematic application of the force of organized political society.

Secondly, law means the whole body of legal Percepts which exists in a politically organized society.

Thirdly, law is used to mean all official control in a politically organized society. This lead to actual administration of Justice as contrasted with the authoritative material for the Guidance of Judicial action. Law in its narrowest or strict sense is the civil law or the law of the land.

3. **Definitions of law-**

It is very difficult to define the term law. Many Jurists attempted to define the term law. For the Purpose of clarity, some of the definitions given by Jurists in different Periods are categorized as follows.

Salmond: - According to salmond “the law may be defined as the body of principles recognized and applied by the state in the administration of Justice.

According to Gray, “the Law of the State or of any organized body of men is composed of the rules which the courts, that is the judicial organ of the body lays down for the determination of legal rights and duties.”

Nature of law

What is the nature of law? This question has occupied center stage Jurisprudence and philosophy of law in the modern era, and has been the central occupation of contemporary analytic Jurisprudence. This entry in the legal theory Lexicon aims to give an overview of the “what is law” debate. Historically, the answer to the question, “what is Law” is thought to have two competing answers. The classical answer is provided by natural law theory, which is frequently characterized as asserting that there is an essential relationship between law and morality and Justice.

The modern answer is provided by legal positivism, which as developed by John Austin, asserted that law is the command of the sovereign backed by the threat of punishment. Contemporary debates over the nature of law focus on a revised set of positions legal positivism is represented by Analytical legal positivists, like H.L.A Hart Joseph raza and Jules Coleman.

The natural law tradition is defined by John Punis and a new position, interpretivism is represented by the work of the late Ronald Dworkin.

In some ways, the title of this lexicon entry is misleading because of focus on the “what is law” question as it has been approached by contemporary legal philosophers. There are other important perspectives on the nature of law that focus on law’s functions rather than the meaning of the concept for criteria of legal validity.

Functions of law

Ever since the down of Human civilization, mankind has had some sort of rule or that they used to Govern itself in society laws set the standard in which we should live in if we want to be part of society. Law set up rules and regulations for society so that we can freedom, gives Justice to those who were wronged, and it set up that it protects us from our own Government. Most importantly the law also

provides a mechanism to resolve disputes arising from those duties and rights and allows parties to enforce promises in a court of law.

According to Corley and Reed (1986) law is a body of rules of action or conduct Prescribed by controlling authority, and having legal binding forces. Laws are created because it helps prevent chaos from happening within the business environment and as well as society.

Exercise:

1. The word 'Tort' has been derived from the latin word:
 - a) Tortum
 - b) Tortus
 - c) Torts
 - d) None of these
2. "Tort is 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 the other merely equitable obligation". This definition of 'tort' is given by
 - a) Winfield
 - b) Salmond
 - c) Pollack
 - d) Clerk and Lindsell
3. "The law of torts in civil wrongs is a collective name for the rules of government many species of liability, which, although their subject matter is wide and varied have certain broad features in common, are enforced by the same kind of legal process and are subject to similar exceptions". This statement was given by
 - a) Salmond
 - b) Winfield
 - c) Pollack
 - d) S.P Singh

4. "Tortious liabilities arises from the breach of a duty primarily fixed by the law: this duty is towards persons generally and its breach is redressible by an action for unliquidated damages".
 - a) Salmond
 - b) Winfield
 - c) Pollack
 - d) Clerk and Lindsell
5. The essential characteristic of a tort is, violation of
 - a) Right *in personam* (a right available only against some determinate person or property).
 - b) a contractual right
 - c) right *in rem* (a right vested in some determinate person and available against the world at large).
 - d) None of the above.