



FACULTY OF JURIDICAL SCIENCES

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

SUBJECT: LAW OF TORTS

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LECTURE 3

TOPIC: NATURE, MEANING AND DEFINITION OF TORT

Nature, Meaning and Definition of Tort

Tort is a French word. The term “Tort” has been defined from the Latin term “*tortum*” literally it means “*to twist*”. Thus, something which is twisted to get unlawful or a wrongful act rather than an act which is lawful on straight. The Roman equivalent of tort is “*delict*” which means “*crooked*”. Sanskrit equivalent is “*Jimha*”. Jimha is those branches of law where the King compensate the victim. According to English ‘tort’ literally means ‘wrong’. A wrong denotes that anything which is not right. There are two types of wrong i.e. civil wrong and criminal wrong. There are two types of right i.e. *right in rem* and *right in personam*. *Right in rem* are those rights which available to an individual against the entire world. *Right in personam* are those rights which are available to an individual against the particular individual. Law of Tort is a branch of Common Law of England which is based on judicial decisions.

Definition of Tort

A tort is a violation of a right of a person/ breach of duty by one person towards another. Some of the important definitions, which indicate the nature of ‘tort’, are as under:

Winfield: Tortious liability arises from the breach of a duty primarily fixed by law. This duty is towards persons generally and its breach is repressible by an action for liquidated damages.

Salmond: Tort means 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 obligations.

Fraser: It is an infringement of a *right in rem* of a private individual giving a right of compensation at the suit of the injured party.

Lord Denning: The province of tort is to allocate responsibility for injurious conduct.

Section 2 (m) of the Limitation Act, 1963: Tort is a civil wrong which is not exclusively a breach of contract or breach of trust.

The basic idea which is indicated by these definitions is-firstly, tort is a civil wrong, and secondly, every civil wrong is not a tort. There are other civil wrongs also i.e. a breach of contract and breach of trust. Thus, tort is a civil wrong independent to contract.

Exercise:

1. Which of the following are the essentials of a tort?
 - a) There must be a wrongful act or omission on the part of a person.
 - b) That wrongful act or omission must result in legal damage to another.
 - c) The wrongful act or omission must be of such a nature as to give rise to legal remedy.
 - d) All of the above
2. Liability in tort depends upon
 - a) Quantum of damages suffered.
 - b) Involvement of intention.
 - c) Infringement of legal right.
 - d) Effect on public interest.
3. Consider the following elements:
 - 1) Infringement of a legal right.
 - 2) Legal damages
 - 3) Any damage.
 - 4) Existence of a legal right.

Right to claim damages in tort would arise only if

 - a) 1 and 2 are present.
 - b) 1,2 and 4 are present.
 - c) 1,3 and 4 are present.
 - d) 3 and 4 are present.
4. Consider the following set of legal propositions:
 - 1) A person can claim damages for wrongs he has suffered.
 - 2) A person can claim damages for wrongs only if they are caused intentionally.

3) A person can claim damages for wrongs if it is caused by infringement of his legal right.

4) A person can claim damages even he has suffered so no loss.

Of the above propositions:

a) 1 and 2 are correct

b) 3 and 4 are correct

c) 1 and 3 are correct

d) 2 and 4 are correct

5. *Injuria sine damnum* relates to cases where there is

a) An invasion of an absolute private right.

b) An invasion of a public right.

c) A violation of a legal right.

d) A legally authorized act resulting in injury.