



**FACULTY OF JURIDICAL SCIENCES**

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

**SUBJECT: LAW OF TORTS**

**SUBJECT CODE: BAL 106**

**Name of Faculty: Dr. Aijaj Ahmed Raj**

## LECTURE 6

### TOPIC: GENERAL CONDITIONS OF LIABILITY IN TORTS INCLUDING MENTAL ELEMENT

Here are two theories with regard to the basic principle of liability in the law of torts or tort. They are:

**# Wider and narrower theory- all injuries done by one person to another are torts, unless there is some justification recognized by law.**

**# Pigeon-hole theory- there is a definite number of torts outside which liability in tort does not exist.**

The first theory was propounded by Professor Winfield. According to this, if I injure my neighbor, he can sue me in tort, whether the wrong happens to have a particular name like assault, battery, deceit or slander, and I will be liable if I cannot prove lawful justification. This leads to the wider principle that all unjustifiable harms are tortious. This enables the courts to create new torts and make defendants liable irrespective of any defect in the pleading of the plaintiff. This theory resembles the saying; my duty is to hurt nobody by word or deed. This theory is supported by Pollock and courts have repeatedly extended the domain of the law of torts. For example, negligence became a new specific tort only by the 19th century AD. Similarly, the rule of strict liability for the escape of noxious things from one's premises was laid down in 1868 in the leading case of *Rylands v. Fletcher*.

The second theory was proposed by Salmond. It resembles the Ten Commandments given to Moses in the bible. According to this theory, I can injure my neighbor as much as I like without fear of his suing me in tort provided my conduct does not fall under the rubric of assault, deceit, slander or any other nominate tort.

The law of tort consists of a neat set of pigeon holes, each containing a labeled tort. If the defendant's wrong does not fit any of these pigeon holes he has not committed any tort. The advocates of the first theory argue that decisions such as *Donoghue v. Stevenson* shows that the law of tort is steadily expanding and that the idea of its being cribbed, cabined and confined in a set of pigeon holes is untenable. However, Salmond argues in favor of his theory that just as criminal law consists of a body of rules establishing specific offences, so the law of torts consists of a body of rules establishing specific injuries. Neither in the one case nor in the other is there any general principle of liability. Whether I am prosecuted for an alleged offence or sued for an alleged tort it is for my adversary to prove that the case falls within some specific and established rule of liability and not for me to defend myself by proving that it is within some specific and established rule of justification or excuse. For Salmond the law must be called The Law of Torts rather than The Law of Tort.

So, tort is different from crime and breach of contract. In tort the category of responsibility is liability. Liability of Tort are arising the following way---

#### 1. **Wrongful Act:**

In case of tort there must be a wrongful act or omission on the part of defendant. An act which prima facie looks innocent may become tortious, if it invades the legal right of another person. Every act is liable for tort, in this respect motive is not essential. In **Rogers v. Ranjendro Dutt**, the court held that, the act complained of should, under the circumstances, be legally wrongful, as regards the party complaining. That is, it must prejudicially affect him in some legal right; merely that it will however directly, do him harm in his interest is not enough.

A legal right, as defined by Austin, is a faculty which resides in a determinate party or parties by virtue of a given law, and which avails against a party (or parties or answers to a duty lying on a party or parties) other than the party or parties in whom it resides. Rights available against the world at large are very numerous. They may be divided again into public rights and private rights. To every right, corresponds a legal duty or

obligation. This obligation consists in performing some act or refraining from performing an act.

Liability for tort arises, therefore when the wrongful act complained of amounts either to an infringement of a legal private right or a breach or violation of a legal duty.

**Every wrongful act is not a tort. To constitute a tort:-**

- # There must be a wrongful act committed by a person;
- # The wrongful act must be of such a nature as to give rise to a legal remedy and
- # Such legal remedy must be in the form of an action for un-liquidated damages.

**Exercise:**

1. In tort, mistake
  - a) Of law is defence
  - b) Of is a defence
  - c) Is no defence
  - d) Of law and of fact both are defences
2. Necessity is available as defence
  - a) When harm is caused intentionally to prevent a greater evil
  - b) When harm is caused intentionally to prevent a smaller evil
  - c) When harm is caused intentionally to prevent no evil.
  - d) A-ll of the above.
3. An act done as Act of State
  - a) Can be questioned in municipal courts with all facets
  - b) Can be questioned in municipal courts to a limited extent.
  - c) Cannot be questioned at all in municipal courts
  - d) None of the above
4. The doctrine of vicarious liability applies when there is a
  - a) Relationship of principal and agent
  - b) Relationship of partners

- c) Relationship of master and servant
  - d) All of the above.
5. Under the vicarious liability, the liability is
- a) Joint only
  - b) Several only
  - c) Joint and several
  - d) Any of the above depending on the facts and circumstances.