



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 9

TOPIC: GENERAL CONDITIONS OF LIABILITY IN TORTS INCLUDING MENTAL ELEMENT

Legal Damage:

In general, a tort consists of some act done by a person who causes injury to another, for which damages are claimed by the latter against the former. The word damage is used in the ordinary sense of injury or loss or deprivation of some kind. [Whereas damages mean the compensation claimed by the injured party and awarded by the court.] The word injury is strictly limited to an actionable wrong, while damage means loss or harm occurring in fact, whether actionable as an injury or not.

The real significance of a legal damage is illustrated by two maxims, namely, *Damnum Sine Injuria* and *Injuria Sine Damno*.

Damnum Sine Injuria:

That means “actual loss without legal loss”, economic loss or financial loss are actual loss which are not violate legal right and they are not actionable in tort.

Case Ref: In this point the leading case is **Gloucester Grammer School Case, 1410.**

There are many acts which though harmful are not wrongful and give no right of action to him who suffers from their effects. Damage so done and suffered is called *Damnum Sine Injuria* or damage without injury. Damage without breach of a legal right will not constitute a tort. They are instances of damage suffered from justifiable acts. An act or omission committed with lawful justification or excuse will not be a cause of action though it results in harm to another as a combination in furtherance of trade interest or lawful user of one’s own premises. In *Gloucester Grammar School Master Case*, it had been held that the plaintiff school master had no right to complain of the opening of a

new school. The damage suffered was mere *damnum absque injuria* or damage without injury. *Acton v. Blundell*, in which a mill owner drained off underground water running into the plaintiff's well, fully illustrate that no action lies from mere damage, however substantial, caused without the violation of some right. There are moral wrongs for which the law gives no remedy, though they cause great loss or detriment. Loss or detriment is not a good ground of action unless it is the result of a species of wrong of which the law takes no cognizance.

Gloucester Grammar School Case 1410 Y.B.li Hen 4th

A school master set up a rival school next to that of B. Many students left the old established school of B and got admission in the newly opened school of A. As a result B suffered a heavy loss and filed a suit against A for damages. Held, That "no suit could lie on the ground as bona fide Competition can afford no ground of action Whatever damage it may cause"

Injuria Sine Damnum-

That means "legal loss without actual loss". Legal loss refers to breach of private right, trespass etc. and its actionable in law of tort. Defendant is liable for give damages.

Case Ref: In this point the leading case is **Ashby V. White, 1703**.

It is an infringement of a legal private right without any actual loss or damage. In such a case the person whose right has been infringed has a good cause of action. It is not necessary for him to prove any special damage because every injury imports a damage when a man is hindered of his right. Every person has an absolute right to property, to the immunity of his person, and to his liberty, and an infringement of this right is actionable *per se*. actual perceptible damage is not, therefore, essential as the foundation of an action. It is sufficient to show the violation of a right in which case the law will presume damage. Thus, in cases of assault, battery, false imprisonment, libel, trespass on land, etc., the mere wrongful act is actionable without proof of special damage. The court is bound to award to the plaintiff at least nominal damages if no actual damage is proved. This principle was firmly established by the election

case of *Ashby v. White*, in which the plaintiff was wrongfully prevented from exercising his vote by the defendants, returning officers in parliamentary election. The candidate from whom the plaintiff wanted to give his vote had come out successful in the election. Still the plaintiff brought an action claiming damages against the defendants for maliciously preventing him from exercising his statutory right of voting in that election. The plaintiff was allowed damages by Lord Holt saying that there was the infringement of a legal right vested in the plaintiff.

Ashby v. White (1703):

In this case plaintiff was wrongfully prevented from exercise his vote by the defendant White, returning officer in parliamentary election. Plaintiff Ashby wanted to give vote had come out successful in the election. But defendant returning officer prevented to do this there is no actual loss or damage with Ashby but there is a legal loss. So, Ashby claiming damages against defendant. And plaintiff Ashby allowed for damage by Lord Holt saying that “there is infringement a legal right.”

Exercise:

1. Malicious prosecution consists in
 - a) Instituting unsuccessful criminal proceedings maliciously and without reasonable & probable cause
 - b) Instituting unsuccessful civil proceedings maliciously and without reasonable & probable cause
 - c) Both (a) & (b)
 - d) Neither (a) nor (b)
2. In a claim for malicious prosecution, damages can be claimed on account of
 - a) Damage to ones reputation
 - b) Damage to ones person
 - c) Damage to ones property
 - d) All of the above
3. In *Donghue v. Stevenson*, the duty of manufacturer was stated to be
 - a) Towards retailer only

- b) Towards the buyer from retailer
 - c) Towards the ultimate consumer
 - d) None of the above
4. Last opportunity rule is
- a) An exception to contributory negligence
 - b) A modification to contributory negligence
 - c) An alternative to contributory negligence
 - d) Supplements to contributory negligence
5. The rule of strict liability is contained in
- a) Donoghue v. Stevenson
 - b) Rylands v. Fletcher
 - c) Lloyd v. Grace Smith & Co.
 - d) Ormord v. Orosville Motors Service Ltd.