RAMA UNIVERSITY

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FACULTY OF JURIDICAL SCIENCES

COURSE: LL.B. I st Semester

SUBJECT: LAW OF TORTS

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LECTURE 17

TOPIC: CLASSIFICATION OF TORTS- TRESPASS, NUISANCE, DEFAMATION, LIABILITY FOR MIS-STATEMENTS, NEGLIGENCE.

Negligence

Generally speaking, one is responsible for the direct consequences of his negligent acts where he is placed in such a position with regard to another that it is obvious that if he does not use due care in his own part, he will cause injury to another. The jurisprudential concept of negligence defies any precise definition. Eminent jurists and leading judgments it is said have assigned various meanings to negligence.

According to ***Winfield*** (Winfield and Jolowicz, Tort, 12th, p. 45) *"negligence as a tort is the breach of a legal duty to take care which results in damages."*

According to ***Charlesworth and Percy*** (On Negligence, 7th edn. P. 15) *"negligence is a tort which involves a person's breach of duty that is imposed upon him, to take care resulting in damage to the complainant."*

The concept of negligence as a tort is expressed in the well known definition of Alderson, B. In Blyth v. Birmingham Waterworks Co. (1856) 11 Exch. 781, as *"negligence is the omission to do something which a reasonable man guided upon these considerations which ordinarily regulate the conduct of human affairs would do, or doing something which a prudent and reasonable man would not do."*

The Apex Court of India approved above mentioned definition in the case of ***Jacob Mathew v. State of Punjab*** (AIR 2005 S.C. 3180), **Essential ingredients of Negligence**

In an action for negligence, the plaintiff has to prove the following essentials:

1. That the defendant owed a duty of care to the plaintiff;
2. The defendant made a breach of that duty; and
3. That there was consequential damage to the plaintiff.

In ***Donoghue v. Stevenson*** (1932) A.C. 562, the appellant plaintiff drank a bottle of ginger beer which was brought from a retailer by her friend. The bottle in fact contained the decomposed body of snail, which was found out by her when she had already consumed a part of the contents of the bottle. The bottle was dark opaque glass sealed with a metal cap so that its contents could not be ascertained by inspection. Court held that the manufacturer of the bottle was responsible for his negligence towards the plaintiff.

In ***Rural Transport Service v. Bezlum Bibi*** (AIR 1980 Cal 165), the conductor of an overloaded bus invited passengers to travel on the roof of the bus. On the way the bus swerved on the right side to overtake a cart. One of the passengers on the roof of the bus was struck by an overhanging branch of a tree. He fell down and died because of injuries. Held that there was negligence on the part of both the driver and the conductor of the bus.

Res Ipsa Loquitor (proof of negligence)

As a general rule, it is for the plaintiff to prove that the defendant was negligent. But there is a presumption of negiligence accordingly to the maxim *'Res ipsa loquitor'* which means 'the thing speaks for itself'. When the accident explains only one thing and that the accident could not ordinarily occur unless the defendant had been negligent, the law raises a presumption of negligence on the part of the defendant. In such a cases, it is sufficient for the plaintiff to prove accident and nothing more. *Res ipsa loquitur* is not a principle of substantive law; it is a *rule of evidence*, relating to burden of proof and nothing else. There are three requirements which must be satisfied for the application of the rule of *res ipsa loquitur*:

a. Absence of explanation;
b. Improbability of the happening; and

c. Management and control of object in causing accident in the defendant's hand.

In ***Municipal Corporation of Delhi v. Subhagwanti*** (AIR 1966 S.C. 1750), due to collapse of the Clock Tower situated opposite the Town Hall in the market of Chandani Chowk, Delhi, a number of persons died. The Clock Tower belonged to the municipal corporation of Delhi and its maintenance was exclusively under its control. It was 80 years old. On the facts, it was revealed that the type of materials used in it, the normal life of the structure of the top story of the building could not be more than 40 to 50 years. Supreme Court of India held that the rule of *res ipsa loquitur* applied and the fall of the clock tower was due to the negligence of the defendant corporation.

Contributory Negligence

It often happens that harm is suffered by the plaintiff not solely due to the negligence of the defendant but also due to the negligence of the plaintiff. Contributory negligence is an expression which implies that person, who has suffered damage, is also guilty of some negligence and has contributed towards the damage. In order to establish his defense, the defendant must prove that:

a. The injury of which the plaintiff complains results from that particular risk to which the negligence of the plaintiff exposed him;
b. The negligence of the plaintiff contributed to his injury; and
c. There was fault or negligence on the part of the plaintiff.

Explaning the concept of contributory negligence, the Supreme Court of India in ***Municipal Corpn. Of Greater Bombay v. Laxman Iyer*** (AIR 2003 S.C. 4182), observed that where an accident is due to the negligence of both the parties, substantially there would be contributory negligence and both the parties would be blamed.

In the leading case of ***Butterfield v. Forester*** (1809) 11East 60, the defendant partially obstructed the highway by putting a pole across a part of it. The plaintiff, riding violently at dusk, did not observe the pole and ran into it and suffered injury. It was held that the defendant is not liable.

Last Opportunity Rule

With a view to mitigate the rigorous of the common law rule of contributory negligence, courts modified it with the rule of last opportunity. In ***Davies v. Mann*** (1842) 10 M & W 546, the plaintiff left his donkey negligently after tying his legs on the highway and the defendant subsequently came fast in his wagon and negligently ran over the donkey and killed it. The defendant was held liable because the defendant had last opportunity to avoid the harm.

Salmond summarized the last opportunity rule as *"when an accident happens through the combined negligence of two persons, he alone is responsible to the other who had last opportunity of avoiding the accident by reasonable care..."*

Nervous Shock

This branch of law is comparatively of recent origin. It provides relief when a person may get physical injury not by an impact, e.g. by stick, bullet or sword etc., but merely by a nervous shock through what he has seen or heard. In other words, that an action can be brought for damages for mental shock even though it is sustained through the medium of eye or the ear. In the case of ***Wilkinson v. Downton*** (1897) L.R. 2 Q.B. 57, the defendant was held liable when the plaintiff suffered nervous shock and got seriously ill on being told falsely, by way of practical joke, by the defendant that her husband had broken both the legs in an accident. In ***Dulieu v. White and Sons*** (1901) 2K.B. 669, in this case the defendant servant negligently drove a horse van into a public house and the plaintiff, a pregnant woman, who was standing there behind the bar, although not physically injured, but suffered nervous shock, as a result of which she got seriously ill and gave premature birth to a stillborn child. An action for nervous shock resulting in physical injuries was recognized. The defendants were held liable.

Exercise:

1. ….. is when one person or entity inflicts an injury upon another.:

a) Tort

b) Tart
c) Criminal
d) Liability

2. In tort lawsuit, the injured party is known as

a) defendant
b) plaintiff
c) criminal
d) attorney

3. Example of specific tort include

a) negligence
b) nuisance
c) trespass
d) All of these

4. What does the word ‘negligence’ refer to in everyday usage?

a) Certainty
b) Law
c) Carelessness
d) Mindfulness

5. What does negligence result in?

a) Harm
b) Dissatisfaction
c) Displeasure
d) Laziness