



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 2

TOPIC: NATURE AND DEFINITION OF LAW

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 dawn 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. Consider the following statements:

- 1) In tort, the duty is towards specific persons.
- 2) The nature of the wrong is similar in tort and crime.
- 3) In tort, the duty is primarily fixed by the parties.
- 4) The general remedy in tort is an action for injunction.

Which of the above statements is/are correct?

- a) 3 and 4
 - b) 1 and 4
 - c) 2 alone
 - d) 3 alone.
2. Which one of the following is not correct?
- a) In tort, damages are unliquidated; but in breach of contract, they are liquidated.

- b) The duty in tort is primarily fixed by the law, but in a contract the same is created by the parties themselves.
 - c) Proof of malice is generally necessary for an action in tort while it is not relevant in case of breach of contract.
 - d) In tort, the duty is towards persons generally; while in contract the same is towards the parties to the agreement.
3. The general remedy in law of tort is
- a) Action for damages.
 - b) Action for injunction.
 - c) Specific restitution of property
 - d) Action for unliquidated damages.
4. Unliquidated damages is not the only remedy for a tort and that for some torts, it is not even the primary remedy. There are other remedies also. They are
- a) Self help
 - b) Injunction
 - c) Action for specific restitution of property.
 - d) All of the above
5. Which one of the following statements is correct?
- a) Contemptuous damages are awarded when it is considered that an action should never have been brought.
 - b) Nominal damages are awarded when there has been infringement of the plaintiff's legal right but he has suffered no loss thereby.
 - c) Ordinary damages are awarded where it is necessary to compensate the plaintiff fairly for the injury he has in fact sustained.
 - d) Exemplary damages are not awarded under the law of torts.