



FACULTY OF JURIDICAL SCIENCES

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

SUBJECT: LAW OF TORTS

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LECTURE 4

TOPIC: DEVELOPMENT OF LAW OF TORT

The law of tort is the first natural law in primitive society exercisable by mankind to control, limit and restrain the impulses of natural appetites and passions of human beings viz. lust, anger, avarice, delusion, pride and envy etc. For hundreds of years this primitive law alone had been evolving as pattern of societal behaviour became the dominating factor and gradually and steadily developed in the field of wrong-doing through payment of compensation. The sanctions imposed for civil (i.e. private) wrongs were pecuniary (in terms of cattle and at a later developing period in terms of currency).

Tort Law in India- In India the term tort has been in existence since pre-independence era. The Sanskrit word *Dharma*, which means crooked was used in ancient Hindu law text in the sense of 'tortious or fraudulent conduct'. However, under the Hindu law and the Muslim law, tort had a much narrower conception than the tort of the English law. The punishment of crimes in these systems occupied a more prominent place than compensation for wrongs. The law of torts in India presently, is mainly the English law of torts which itself is based on the principles of the common law of England. However, the Indian courts before applying any rule of English law can see whether it is suited to the Indian society and circumstances. The application of the English law in India has therefore been a selective application.

In this context, in *M.C. Mehta v. Union of India*, Justice Bhagwati observed- "We have to evolve new principles and lay down new norms which will adequately deal with new problems which arise in a highly industrialized economy. We cannot allow our judicial thinking to be constructed by reference to the law as it prevails in England or for the matter of that in any foreign country. We are certainly prepared to receive light from

whatever source it comes but we have to build our own jurisprudence.”

During British rule, courts in India were enjoined by Acts of Parliament in the UK and by Indian enactments to act according to justice, equity and good conscience if there was no specific rule of enacted law applicable to the dispute in a suit. In regard to suits for damages for torts, courts followed the English common law insofar as it was consonant with justice, equity and good conscience.

They departed from it when any of its rules appeared unreasonable and unsuitable to Indian conditions. An English statute dealing with tort law is not by its own force applicable to India but may be followed here unless it is not accepted for the reason just mentioned.

Exercise:

1. Assertion (A): No action lies for mere damage caused by some act which does not violate a legal right.
Reason (R): An action lies for interference with another's legal private right even where it causes no actual damage.
 - a) Both A and R are true and R is the correct explanation of A.
 - b) Both A and R are true but R is not the correct explanation of A.
 - c) A is true but R is false.
 - d) A is false but R is true.
2. "It is the plaintiff has a right, he must have means to vindicate and maintain it, and a remedy if he is injured in the exercise or enjoyment of it (*Ashby v White*).
The above rule was laid down by
 - a) Salmond
 - b) Hold, C.J.
 - c) Blackburn, J.
 - d) Winfield.
3. The maxim *Volantai noon fit injuria* means
 - a) Voluntarily suffered injury is not fit for action.
 - b) No breach of a legal right is committed against one who is a willing party.

- c) Harm suffered voluntarily does not constitute an injury and is not actionable.
 - d) All are correct.
4. Which one of the following is not a valid defence in tort?
- a) Volenti non fit injuria.
 - b) Vis major.
 - c) Scienti non fit injuria.
 - d) Consent.
5. The maxim '*scienti non fit injuria*' means
- a) no injury is done to one who knowingly does an act.
 - b) Voluntarily suffered injury is not fit for action.
 - c) Where there is right, there is remedy.
 - d) None of the above.