



**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 5

### TOPIC: TORT DISTINGUISHED FROM CONTRACT, CRIME AND BREACH OF TRUST

#### Tort and Contract

There is a well-distinction between a Contract and a Tort. A contract is founded upon consent: a tort is inflicted against or without consent. A contract necessitates privity between the parties to it: in tort no privity is needed. A tort must also be distinguished from a pure breach of contract. First, a tort is a violation of a right in rem, i.e. of a right vested in some determinate person, either personally or as a member of community, and available against the world at large: whereas a breach of contract is an infringement of a right in personam, i.e. of a right available only against some determinate person or body, and in which the community at large has concern. Secondly, in a breach of contract, the motive for the breach is immaterial: in a tort, it is often taken into consideration. Thirdly, in a breach of contract, damages are only a compensation. In an action for tort to the property, they are generally the same. But where the injury is to the person, character, or feelings, and the facts disclose improper motive or conduct such as fraud, malice, violence, cruelty, or the like which aggravate the plaintiff's injury, he may be awarded aggravated damages. Exemplary damages to punish the defendant and to deter him in future can also be awarded in certain cases in tort but rarely in contract.

#### Tort and Crime

A tort is also widely different from a crime. First, a tort is an infringement or privation of the private or civil right belonging to individuals considered as individual; whereas a crime is a breach of public rights and duties which affect the whole community

considered as a community. Secondly, in tort, the wrongdoer has to compensate the injured party: whereas, in crime, he is punished by the state in the interests of society. Thirdly, in tort, the action is brought by the injured party: in crime, the proceedings are conducted in the name of the state and the guilty person is punished by the state. Criminal Courts are authorized within certain limits and in certain circumstances to order payment of a sum as compensation to the person injured out of the fine imposed on the offender. The compensation so awarded resembles the award of unliquidated damages in a tort action but there is a marked difference.

### **Torts and Breach of trust**

A tort is a civil wrong that is not exclusively a breach of a trust or a breach of any other equitable obligations. On the other hand, a civil wrong, which is a breach of trust, is not a tort. In breach of trust, the beneficiary has to pay compensation, which is determined on the basis of the harm caused to the trust property. As in contract, in trust the damages are fixed, whereas in tort the damages are not fixed. The distinction between tort and breach of trust is based on historical reasons. Historically the law of tort owes its origin to the common law of England whereas the law relating to trust owes its origin to the Equity court or the Court of Chancery. Basically, in tort there was violation of common law while in trust there was a breach of the law of property, which was under the jurisdiction of the Chancery Court. The Chancery Court had no knowledge of cases relating to Law of Torts. Thus, a suit for damages for breach of tort could be filed in the common law courts, whereas in case of breach of tort a suit for compensation could be filed only in the Chancery Courts. The American law system, which has assimilated certain rules from the Equity court due to British domination a few centuries ago, allowed for certain loopholes in the law which resulted in confusion in the application of tort and breach of trust.

### **Exercise:**

1. A music teacher was held liable for raping a minor girl even though he had taken her consent under the pretext that an operation (sexual intercourse) is required to improve her voice. It is the fact of the case in

- a) Ashby v White
  - b) R v Clarence
  - c) R v Williams
  - d) R v Catherine.
2. Tort is violation of
- a) A right *in personam*
  - b) A right in rem
  - c) Both right in personam and a right in rem.
  - d) Neither a right in personam nor a right in rem.
3. Law of tort has developed mainly through
- a) Custom and precedents
  - b) Judicial decisions
  - c) Enactments
  - d) All the above.
4. The propounder of pigeon hole theory is
- a) Salmond
  - b) Winfield
  - c) Clerk and Lindsell
  - d) Austin.
5. In tort the private defence is
- a) Not available
  - b) Is available to protect one's person as under criminal law
  - c) Is available to protect one's property as under criminal law
  - d) Both (b) and (c)