

## LAW OF TORTS

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## A. INTRODUCTION AND PRINCIPLES OF LIABILITY IN TORT

### ✓ Introduction

In order to understand the Law of Tort from the beginning, it is very important to understand the terminology of Tort.

### **What is “Tort”?**

A tort is a civil wrong committed against someone causing personal injury to them and making the infringer liable for damages. Unlike criminal wrongs which are against the society at large, tort is against an individual or group of individuals. Every person is entitled to a bundle of basic civil rights which are necessary to live in a society and maintain peace. Tort is infringement of such personal rights of one person by another (eg. Trespass, nuisance, defamation). The injured party is entitled to reasonable compensation by the infringer to recover damages. The damages may be of two kinds in case of a tort – compensatory and punitive. In most of the cases, a simple compensation serves enough punishment against the tort-feaser. However, in exceptional cases, severe punitive damages are afforded by the court where the injury is heinous and to a large no. of people. For ex. In case of a simple nuisance done by a neighbor by playing loud music repeatedly for a week post 10pm, a reasonable compensation to the injured/disturbed neighbor will suffice. However, in case of a severe defamation case wherein the defendant is liable for Libel against the plaintiff and injured his reputation to a grave extent, punitive damages may be awarded. The word ‘tort’ has been derived from a Latin term ‘*tortum*’ which means twisted or crooked. This refers to such acts which are not straightforward and are twisted in such a way that may injure the fellow person. According to Salmond, “Tort is a civil wrong for which the remedy is a common law action for unliquidated damages, and which is not exclusively the breach of contract, or, the breach of trust, or, other merely equitable obligation.” According to this definition it is clear that tort is a violation other than

a breach of contract and breach of trust. Tort happens when one party injures the other party due to their

negligence and carelessness. This makes the later liable for damages in the form of compensation to the former. Tort allows people to secure their private rights by making the injuries accountable and redressable. In light of the above discussion, it is apparent that in order for any action to constitute tort there must be three pre-requisites:

- a. There is a wrongful act
- b. Such a wrongful act causes legal injury to another
- c. Such a legal injury gives rise to a legal right which is redressable by compensation

***Explanation of Torts given by various authors:***

**Winfield:** “Tortious liability arises from the breach of a duty primarily fixed by law, this duty is towards persons generally and its breach is redress-able by an action for unliquidated damages.”

**Pollock:** “The law of torts in civil wrongs is a collective name for the rules governing many species of liability which although their subject-matter is wide and varied have certain broad features in common, enforced by the same kind of legal process and are subject to similar exceptions.”

**Fraser:** It is infringement of a right in rem of private individual giving a right to compensation at the suit of the injured party.

**Prof Bangia:** “Tort is a civil wrong which is redress-able by an action for unliquidated damages, and which is other than a mere breach of contract or breach of trust.”

**Salmond:** “Tort is a civil wrong for which the remedy is a common-law action for unliquidated damages, and which is not exclusively the breach of contract, or, the breach of trust, or, other merely equitable obligation.”

In the above definitions, it is observed that there is a huge contradiction between the definitions given by Salmond and Winfield. Salmond's definition takes into consideration the practical application aspect of the law, whereas Winfield is restricted to the theoretical explanation of the same.

The lawyers who deal with different cases in the courts of law know the practical angle of the law and they prefer to go by Salmond's definition. On the other hand, students who are still in the function of learning the law prefer the definition given by Winfield. This is because it is argued that Salmond has given a narrower view and Winfield has explained the broader view.

### **Law of Torts in India**

Tort law is considered as common law and is relatively new in India. Unlike the other codified Indian laws, there is no codified statute for Tort law. However, it is very much accepted and adjudicated by the Indian courts. Although the Law in India is majorly inspired and based on the English or UK law, there was a huge amount of *judicial activism* associated with the development of the Torts Law.

This has also given rise to a majority of criticism among various state bar councils across the country. Tort is considered as a duty which is not bound by a contract and that also causes harm to the plaintiff. This further gives rise to the civil cause of action for which judicial remedies are available for the same. If in case, there is no remedy which exists for the plaintiff then the case cannot be covered under tort, because the very basis of Tort is that the plaintiff is provided with a remedy.

It is reiterated that the word "tort" is derived from the Latin word "tortum" which means 'to twist'. In simpler terms, it refers to an activity which is not straight and is twisted in terms of delivery. This involves a conduct or behaviour which is not lawful but on the other hand, is crooked, unlawful or twisted in nature. The equivalent word in English language for tort is

‘wrong’. This branch of law deals with the unlawful and wrongful acts which are conducted by one party, which violate the basic civil rights of the party at the receiving end.

It is based on the principle that every Indian citizen is entitled to their basic legal rights. Where on one hand, a crime is some activity which is conducted upright and the evidence are available for the same, torts is the wrong-performance or non-performance of the duty imposed upon the party. There is a different approach which is followed to deal with the cases pertaining to Torts.

### **Tort is a Civil Wrong**

Tort is the act of wrongdoing which belongs to the category of civil wrongs. Civil wrong is different from criminal wrong on basis of its very nature. In a civil wrong the action is against an individual/a bunch of individuals; whereas, in a criminal wrong the action is against the society at large. In case of civil wrong, the party which is harmed and damaged initiates a civil proceeding against the wrongdoer. In almost every case pertaining to torts, the prescribed remedy is the payment of damages. In most incidents, where a civil proceeding is filed, the plaintiff is compensated by the wrong doer for the damages caused on him. On the other hand, in comparison with the criminal proceedings, the criminal case is initiated by the state against the wrongdoer.

In a criminal case the sufferer is not compensated in monetary terms through the judicial procedure. It is however possible that a person be involved in a criminal as well as tort activity at the same time. In a case with such a nature, both the procedures of civil as well as tort would come into effect. This would entitle the sufferer to receive compensation from the wrongdoer and the court can also pronounce an extended punishment for the person found guilty.

### **Tort Holds More Impact Than Simple Breach of Contract or Breach of Trust**

Tort is a particular kind of civil wrong, which is not in conjunction with another kind of civil wrong. Tort is not a breach of contract and breach of trust. For instance, in a common scenario, if a person first agrees to purchase a product or commodity and then later denies to purchase it, it is merely a breach of contract. The establishment for the theory of tort can be made through the process of elimination. Firstly, it should be ascertained whether the civil wrong is a breach of trust or breach of contract. If it is neither of these, then the wrong is a tort.

### **Tort is Redress-able by An Action for Unliquidated Damages**

As discussed, one of the most important remedy associated with torts is that of damages. In most cases, monetary settlement is initiated in order to settle the dispute and this is done when the act of tort is proven in court. In other cases, the service provider or the wrong doer also gives the option of settlement out of the court in order to avoid the legal proceedings. Also, even after the payment of the settlement amount, it is not possible to compensate the actual physical damage which is caused to the sufferer as the harm cannot be undone.

One of the most common argument in this direction is that if the reputation of a person is damaged by the act of tort, the damage cannot be undone and cannot be compensated even by payment of settlement amount. The only maximum amount of damage which is paid in such a case is the sum of amount which is considered equivalent to the amount of damage done to the namesake. The wrongdoer is asked to pay the same amount to the plaintiff in conjunction with the damages, in order to draw a settlement. It is argued that there are certain other remedies that should be available in case the activity of tort is established. This argument holds ground because it is witnessed in many cases that the other remedies are more effective in compensating the loss or damage, instead of the monetary compensation. For example, in case, the plaintiff is facing a particular type of nuisance from the wrongdoer's end, in such a

case, the plaintiff would be more interested that the activity of nuisance should end, instead of claiming damages from time to time.

The idea of damages when highlighted in the definition of the tort is provided in order to explain the nature and impact of the tort. Also, it is argued that when it is described that the only remedy is payment of damages, it denotes that the wrong committed is a civil wrong and not a criminal wrong.

### **Nature of Torts**

The actual nature of the torts law can be understood by understanding its difference between:

- Tort and a Crime
- Tort and a Contract

### **Tort and a Crime**

There are several implications when a wrong is committed, some are on a lower level and some have a wider social implication. The wrongs that have a lower level of impact and occur on a private level are considered as a tort. On the other hand, a wrong which is more serious and has a wider implication and a substantial part of the public is impacted by it, is known as a crime.

Tort is considered as an infringement of the private rights of an individual and hence it is also declared as “civil injury” in that context. On the other hand, crime is a breach of the public rights and public duties, and a wider part of the community is impacted by it. There are harsher implications associated with the act of crime, as compared to those of the torts.

Various wrongs have various affiliations under the scheme of law and they are dealt with differently on basis of their nature. Some of the very common wrongs that occur are known as Defamation, Conspiracy, Assault, Nuisance and Negligence. The definition of these wrongs is different from one another, as outlaid by the civil and criminal law. The rule of law of torts is applicable in case of any civil liability and the rule of criminal law is applicable in

case of criminal liability. In many cases, it has been witnessed that when a wrong has wider implication and it impacts a wider part of the society, the courts refer to it as crime and treat it under the criminal law.

A very common example of the above statement is that when someone parks a car in front of a society's gate, blocking the entry and exit of the members of the whole society, it is treated as a private nuisance. Similarly, if someone parks a car in the middle of the road, causing widespread traffic blockage, it is treated as a public nuisance as stated in Section 268 of the Indian Penal Code. There is a difference in application of rules in case of a tort and that of a crime.

Tort	Crime
<ul style="list-style-type: none"> <li>- It is applicable when private or civil rights of an individual are infringed</li> <li>- It is redressed in a civil court</li> <li>- Plaintiff is entitled to damages against the wrongdoer</li> <li>- The suit is aimed at recompensing the damages suffered by the plaintiff</li> </ul>	<ul style="list-style-type: none"> <li>- It is applicable when the public rights of the wider community are breached</li> <li>- It is redressed in a criminal court</li> <li>- The suit is filed by the State against the accused for severe punishment.</li> <li>- The suit is aimed at awarding suitable punishment for the accused, if found guilty, preventing similar crime in future.</li> </ul>

### Tort and Contract

On the outset, there are a lot of similarities between a contract and tort and the inter-relationship is judged on the basis of the evaluation of damages posed by the event.

In a contractual agreement, both or all the parties entering the contract are bound to behave in a particular manner and owe some responsibility towards each other. The parties are entitled

to act reasonably towards each other. The performance of duties is outlined and covered in the contract and if any of the party fails to perform their respective duties, the said party is entitled to pay damages to the other party as a compensation for breach of contract.

Both the parties

are privy to contract in contract law; whereas, no such contract, responsibility is defined in case of tort. Most of the times the parties are also unknown before the occurrence of tortious event. The Difference between Tort and Contract are:

<b>Tort</b>	<b>Contract</b>
<ul style="list-style-type: none"> <li>- There is no existence of Privity among the parties</li> <li>- Tort is inflicted against a party, with or without its consent</li> <li>- ‘Mistake’ cannot be argued as a reason for defence in most cases in Tort even if the defendant is innocent. For example; entering someone else’s premises even by mistake is still considered as trespassing</li> <li>- Tort affixes a duty which is owed to a wider community and not to a specified individual/individuals</li> <li>- Motive is taken into consideration in Tort</li> </ul>	<ul style="list-style-type: none"> <li>- When parties enter into contract, there exists Privity between them</li> <li>- Consent is considered as the basis of any contract</li> <li>- A contract is termed as void if it is entered in by mistake. The point to be noted here is that the ignorance for law of the land is not a valid defence</li> <li>- The duty fixed under contract is defined for a person/persons</li> <li>- ‘Motive’ aspect is not considered in a contract</li> </ul>

<p>- Damages awarded in tort can be real, unliquidated, exemplary or contemptuous. Damages are undefined before adjudication</p>	<p>- Damages awarded in case of contract are real and liquidated. It is a rarity to award exemplary damages. Damages are defined in contract.</p>
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### Essential Constituents of Tort

The law of tort motivates people to stick to adhere to various standards and obligations society and to secure and respect the rights of citizens as a whole as well of the parties involved in a contract. The satisfaction ensured by the Torts law is that the person whose interests are protected by the law can claim reasonable compensation against the violation of its rights. This compensation is drawn from the same person who is responsible to violate the interests and rights.

The law considers while calculating compensation the value of loss and impact suffered by a person. In some cases, it is observed that there is a gap in understanding of what needs to be compensated and what should not be.

In such a case, Tort law helps in understanding all the factors involved in the case scenario and what all interests are covered as per the agreement among both the parties. It is very important to understand that every wrongful act is not a tort and there are some elements that should be involved, to pronounce an act as tort. The essentials of a tort are; I) a person must commit a wrongful act, II) The wrongful act must result in legal damage, III) Legal remedy must be available for such a damage

- I) Wrongful Act

In some cases the act committed in a wrongful manner is not actually considered a tort. While in some other cases the defendant may be prima facie innocent but it actually amounts to tort.

The main element that defines the nature of a case being tortious is the act of invasion of legal rights of a person or entity. In the case of *Rogers v. Rajendra Dutt*, in which it was declared by the court that in accordance with the law, it is critical for the wrong to be a 'legally wrongful act' in contradiction with what was complained by the party. The court further explained that the act must prejudicially impact the party in a legal aspect and not mere harm of interest can be taken into consideration.

Legal Right is a faculty that resides in a determinate party or the defined parties by virtue.

Such a legal right may be divided as public rights and private rights. There is a legal duty or obligation available with every corresponding right which consists the performance of some act or refrainment from performance of the act. It is also denoted that the liability for torts only arises when the wrongful act amounts to either infringement of private rights which are legal in nature, or violation or breach of legal duties.

## II) Damage

The basic involvement in case pertaining to tort activity is the act conducted by one party which causes injury to another party and the latter person claims damages against the first person. The first aspect is to understand the term damage and damages. The ordinary sense in which the term damage is used is in case of normal injury or loss or deprivation of sorts. Damages may also be used for the compensation which is claimed by the affected party in the courts of law. Another terminology which is related to the tort act is that of injury which is "the actionable wrong committed against a party." This further explains that damage refers to harm or loss occurring in fact, whether it is actionable as an injury or not.

Legal damage may be of two types: Damnum Sine Injuria and Injuria Sine Damnum

a) **Damnum Sine Injuria (Damage Without Injury)**

In normal day-to-day affairs, there are many activities which are considered as harmful, however they are not considered wrongful legally. Damnum Sine Injuria refers to cases where damage is posed without any injury being caused to the party under effect, in other words it is known as damage without injury. Injury here means ‘violation of legal rights.’ Such as damage which is caused without any breach of legal rights, does not constitute to being a tort.

There are several incidences that have been witnessed, where a damage was suffered from a justifiable act. If there is an activity or omission which is conducted with all due legal justification, it cannot be considered as an action. One of the most prominent example in this regard is that of the Gloucester Grammar School Master Case, in which it was held that the plaintiff school master did not possess any right in complaining towards opening of a new school in its vicinity which led to strict competition. In this case, the damages that were caused were merely *damnum sine injuria* i.e., the damages without any injury.

**Landmark Judgements explaining Damnum Sine Injuria:**

- *Ravi Yashwant Bhoirv. District Collector, Raigad and (Others Supreme Court):* This Court in *Ravi Yashwant Bhoirv. District Collector, Raigad & Ors.*, (2012) 4 SCC 407, held as under: "58. Shri Chintaman Raghunath Gharat, ex-President was the complainant, thus, at the most, he could lead evidence as a witness. He could not claim the status of an adversarial litigant. The complainant cannot be the party to the *lis*. A legal right is an averment of entitlement arising out of law. In fact, it is a benefit conferred upon a person by the rule of law. Thus, a person who suffers from legal injury can only challenge the act or omission. There may be some harm or loss that may not be wrongful in the eye of the law because it may not result in injury to a legal

*right or legally protected interest of the complainant but juridically harm of this description is called **damnum sine injuria**.*”

- **Robinson v. Kilvert(BROWN PAPER CASE):** There was a two floor building where the defendant owns the ground floor where as the plaintiff owns the upper floor. Plaintiff use to do some work related to brown paper (highly flammable) whereas defendant use to do sort of work that produces heat. One day, due to heat production, plaintiff's brown paper caught fire and everything got burnt. *No Compensation was given as the heat produced wasn't extra ordinary. It was plaintiff's mistake that he kept the brown paper on the floor even after knowing that there are chances of burning. Also, there was no legal injury faced by plaintiff.*

#### b) Injuria Sine Damnum (Injury Without Damage)

The term Injuria Sine Damnum refers to a loss or damage impacted on a person or in other words, the infringement of a legal right without any actual damage or loss. The development of Injuria Sine Damnum provides a valid cause for action to the person, whose rights have been infringed, however it also includes the fact that no actual injury was suffered by the person affected. The extension of the law does not make the person liable to prove any particular or special damage.

The law extends the understanding that each and every injury further poses a damage or has any ill-impact on the person affected; Injury (legal injury) in itself implies that the person can seek compensation. It also explains that the person who suffers a particular injury from any act is further hindered from his/her rights to conduct several tasks. The basis of this schema is that each and every person has been provided by a right to property which is absolute in nature, has a right to immunity and the absolute right to his/her liberty. The infringement of these rights in any form are actionable by law per se. The foundation of action is essential

and the actual perceivable damage is not in such a case. When a party argues on basis of the Injuria Sine Damnum basis, it is compulsory to prove the factor of violation of right and then only the court can take the function forward. In some acts such as battery, assault, false imprisonment, trespass and libel etcetera, it is merely required to state the happenings of such incidents in the court of law, rather than proving injuries in such acts; such acts are directly punishable under the law. In such cases the court is bound to award the plaintiff with the basic compensation or damages, even if the actual damage is not proven.

One major precedent in this direction is that of *Ashby v. White* in which the plaintiff was wrongfully prevented from exercising his right to vote by the defendants in a parliamentary election. The candidate for 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.

#### **Landmark Cases Pertaining to Injuria Sine Damnum:**

- ***Bhim Singh v. State of Jammu & Kashmir***: Bhim Singh (plaintiff) was detained by the police when he was on his way to attend assembly session for his work. He was not even presented in front of magistrate within the requisite time. Hence, here the legal rights of plaintiff are violated.

*The defendant was held liable and plaintiff was compensated for the same.*

- ***Ashrafilal v. Municipal Corporation of Agra***: In this case, the Ashrafilal's (plaintiff) name was deleted and dropped from the voters list by the concerned authorities, consequence of which plaintiff was not able to exercise his right to vote. Plaintiff sued Defendant.

Defendant was held liable as the plaintiff's legal right was violated and compensation was granted to plaintiff.

### III) Remedy

The basis on which the law of tort is developed in the constitution is that '*ubi jus ibi remedium*' or 'there is no wrong without a remedy'. This is further explained, that if a man enjoys a right, he must also have the necessary remedies to maintain the immunity of the rights. The law is based on the logic that it is in vain to imagine that a right can exist without any remedy to maintain the same. It clearly states that a person's want towards the right and want towards the remedy reciprocate each other. In case if there is no possible remedy available for a condition, there exists no wrong according to law. Even in such case, when the remedy is absent, it is considered as evidence but it does not pertain that rights don't exist.

### **Pigeon Hole Theory**

The Pigeon Hole Theory exists in conjunction with the torts law and it is often argued if the law should be called the 'law of tort' or 'law of torts'. Salmond suggests that it is stated as the 'law of torts' and so he developed a theory to prove his hypothesis right. This Theory is known as the Pigeon Hole Theory. In his book, Salmond questions the fundamental, 'Does the law of torts consist of a fundamental general principle that it is wrongful to cause harm to other persons in the absence of some specific ground of justification or excuse, or does it consist of a number of specific rules prohibiting certain kinds of harmful activity, and leaving all the residue outside the sphere of legal responsibility?'

In his support we can propose examples, as in *Furniss v. Fitchett* (1958) N.Z.L.R. 396 at 401 Barrow C.J. said 'the well-known torts do not have their origin in any all-embracing general principle of tortious liability.'

In *Bollinger v. Costa Brava Wine Co. Ltd.* (1960) ch.262 at 283, Danckwerts J. said

‘ the substance was that before a person can recover for loss which he suffered from another person’s act, it must be shown that his case falls within the class of actionable wrongs.’

Pigeon hole theory: Salmond chose the Second alternative, and as per him the liability under this branch of law arises only when the wrong is covered by any one or the other nominate torts. We can presume these nominate torts as pigeon holes with some specific essentials. If the plaintiff can place his wrong in any one of the pigeon hole, each containing a labeled tort, he will succeed.

So, there is no general principle of liability. According to Salmond just as criminal law torts consists of a body of rules establishing specific injuries.

### **KINDS OF ACTIONS THAT AMOUNT TO TORT**

There are 3 kinds of actions that amount to tortious liability-

**a. Malfeasance-** Malfeasance is simply the act of committing wrongful activity which is illegal per se. There is no debate that such an activity is legal and proving it is extremely non-controversial. For examples, acts like trespass, assault are questionable per se. These acts are dependent on the proof of malice/motive of the person.

Landmark Judgement in Malfeasance: *Jay Laxmi Salt Works (P) Ltd v. State of Gujarat on 4 May, 1994*

**b. Misfeasance-** Misfeasance is the act of performing a legal activity improperly so as to amount to a legal damage. This generally happens where a person owed a duty of care towards the other but failed to carry out such a duty properly. The manner of committing the act is wrongful. In this case, neither the act is illegal nor the intention (malice), in such a case the manner of performing is illegal which results in injury. For example; a restaurant has a

wet floor and someone slips, falls and gets injured on the floor. It holds the restaurant responsible towards the injured party, because the restaurant (through its janitor) owed the act of care towards the person using the facility.

Landmark Judgement in Misfeasance: ***Ghaziabad Development Authority v. Balbir Singh on 17 March, 2004***

**c. Nonfeasance-** Nonfeasance is the act of non-performance or inaction in terms of a duty that was promised to a party. This involves the fact that the defendant party owed a duty towards the other party and did not perform the duty. The non-performance of the duty led to the injury of the other party and so the defendant party is held responsible for the injury caused. For example, a nurse had a duty to give the patient medicine at a decided hour. She failed to do so (due to negligence) which led to failed health of the patient. The nurse/hospital is liable for such an in-action.

Landmark Judgement in Nonfeasance: ***Union of India And Ors v. Adarsh Sharma on 9 October, 2013***

### **Various Defenses Against Tortious Liability**

There are several arguments that pertain to be used as a 'defense' in court of law that further aim to convince the court of law that the defendant is not guilty and that the act was committed due to some unavoidable factor. Some of the defenses are:

#### ***Volenti non fit injuria***

This is one of the primary defenses available to the defendant. *Volenti Non Fit Injuria* is a Latin doctrine which means 'no injury is done to a willing person'. That is, where the plaintiff puts himself in a dangerous situation and is very much aware of the risks associated with it and thereafter faces injury due to some act of the defendant being in such a situation cannot claim damages and act injured. Under this doctrine, the alleged plaintiff consents impliedly or expressly to the risks of damage. For eg. A boxer participating in a boxing

competition gets hit by another boxer cannot claim damages if he gets hurts by actions falling within or outside the scope of boxing.

### ***Consent***

The term of consent pertains to the fact that the element of consent was existent among the parties when the impugned act was committed and the plaintiff was completely aware of the act being committed in front of him. For instance, if defendant picks something in front of the plaintiff from a pile for his/her personal use and the other party witnesses it, then the plaintiff cannot later put a claim on the defendant of theft as he/she had impliedly consented to the act.

### ***Plaintiff is a Wrongdoer***

Another defense which is commonly used in the court against the act of tort is that of “*ex turpi causa non oritur action*” which means that no action can arise from an immoral cause. So, if the plaintiff was himself involved in the unlawful act, it provides for a valid defense to the defendant in the court of law, especially in case of tort.

### ***Inevitable Accident***

The term inevitable accident is considered as an activity which is considered to not have been avoided from happening even by exercising of due care or caution. This defense comes in effect if the defendant can prove that he would not have averted the said “happening” even with his proper skill or exercise of care.

### ***Act of God***

One of the defenses used in case of tort in the court of law is that of the “*Act of God*” which means that there were some natural factors which existed in the case, upon which the defendant had no control over. For example, if the defendant owned a property to the plaintiff and the said property was damaged due to floods, then the defendant did not commit any damage to the said property because he/she did not have any control over the floods which spoiled it.

### ***Private Defense***

The argument of private defense is given by the court due to the understanding that each and every individual has the right to private defense under threat. In order to protect his life and property, the person is entitled to use some extent of force if necessary. The act of defense is not only restricted to the protection of self and family, but the wider community as well. However, the defendant is required to establish the fact in court that there existed a valid and inevitable threat in the case, that needed to be defended.

### ***Necessity***

The defense of “Necessity” is very closely related to the function of self-defense and almost all courts of law recognize the fact that the welfare of the people is considered as the supreme law. The defense of necessity is commonly used in the acts of trespass of property. For instance, if A sees a fire in B’s fields and he enters B’s field to douse the fire, he cannot be charged with trespassing because the act was the “necessity” of the situation.

### ***Mistake***

Another very common defense used in case of defending a case of tort is that of a “mistake”. In this function, the defendant claims that although he was aware about the conditions pertaining to tort, he committed the said activity by mistake and without any ill-will/malice towards the plaintiff and without any intention to cause harm.

## **B. SPECIFIC POPULAR TORTS-**

### ***1. Vicarious Liability***

Vicarious liability is a form of secondary liability which arises due to the presence of agency between two or more individuals. Vicarious liability makes the superior liable for the acts of the subordinate. It works on the latin maxim ‘*respondeat superior*’ i.e., it is the responsibility of the superior for the acts of its subordinates. This principle applies for various kind of relationships such as ‘Master-Servant’, ‘Employer-Employee’, ‘Principal-Agent’, etc. In

order to make the superior liable for the acts of the subordinate, the most important rule is that the subordinate must be in the course of his employment while committing the violation. If the subordinate is not in his course of employment and has committed a violation while doing a personal act then he cannot make the superior liable to the third person who is injured. For example, if a servant badly sweeps the floor of his house and a guest falls down and injures himself, the master will be liable as the servant wrongfully performed his act in his course of employment. Whereas, if the servant commits theft in the after hours of work (where his duty timings are finished) the master will not be held liable for such a theft.

### ***Master and Servant/Employer and Employee/Principal and Agent***

Similar to the above function of holding one party responsible for the activities conducted by the employer, is that of the Master and Servant function of the law. This explains the fact that the employer can also be held responsible for the activities conducted by the employee or servant. The factor that has to be considered here is that how much control does the employer possess over the activities and decisions of the servant.

*Landmark Case: State of West Bengal and anr.v. West Bengal Regn. Copy Writers Assn. and anr. - Court Judgment*

### ***Doctrine of Common Employment***

The Doctrine of Common Employment explains that the employee cannot sue an employer or file a suit for compensation from the employer in case of injury caused by another employee. It restricts the employee to only file a suit against the concerned employee to recover damages and not against the employer.

*Landmark Case: Johnson v. Mammoth Vein Coal Co., 88 Ark. 243, 114 S.W. 722 (1908).*

"The preliminary act of getting into the dangerous employment is said to be accompanied by assumption of risk."

### ***Concept of Course of Employment***

The course of employment is a valid legal consideration in various cases and has legal implications in deciding the case and its outcome. This happened when a person is indirectly sued conducted his employee. In such a case, the course of employment is considered as to decide, whether the person was employed by the employer, while the act was committed. It is also necessary to establish whether the specific object of the activity was provided by the employee or was attained by the person from an external source. By this concept the employer will be held liable for the acts of his employee only if such an act was done in the course of his employment. If an employee is driving a motor vehicle during working hours and harms the person or property of another, a court would consider course of employment to determine if the employer had vicarious liability for the harm. Extreme examples would likely find the employer is liable for a truck driver on his assigned route but not for a secretary picking up her child from day care.

*Landmark Judgement: Shakuntala Chandrakant Shreshti v. Prabhakar Maruti Garvali & Anr.*  
on 10 November, 2006

### **Liability of the State in Tort**

Liability of the State in case of a tort or misconduct refers to the function which holds the State responsible for the activities conducted by the employees of the State. Although Indian law is a reflection of the British Law and the act of Torts, travel to this country from England, there are still many variations in the actual implementation of the law. The British law was based on the function of “The King can do no wrong” when it was introduced in India. This statement does not hold any ground in today’s functioning of the world and the activities of the employees are collated with the State and the State is held responsible for the harms committed by the employees. The State is often held in the court to compensate for the activities conducted by the employees. For example, in a State run transport company, an employee who is a driver employed by the State, injures pedestrians on the road, then the

injured pedestrians can file for compensation from the State and the State is bound to pay the compensation.

*Landmark Judgement: Shreelkha Vidhyarathi v. State of U.P (1991 S.C .C 212) Supreme Court*

### **Doctrine of Sovereign Immunity**

Although in the above section the liability of the state is fixed and discussed due to the negligence and wrongdoing of the servant of the State, the State still enjoys certain immunity under the law. Sovereign Immunity is also known as Crown Immunity, which refers to the fact that the State enjoys immunity and cannot be sued by any citizen of the State. The basis of this function is that the State does not perform any activity because of any ill-will and always executes a plan with goodwill towards the citizens. In other words, it is said that the State cannot commit a 'legal wrong out of malice' and it cannot be sued for a civil suit or criminal proceedings.

### **Article 300 of the Indian Constitution in this regard:**

1. *The Government of India may sue or be sued by the name of the Union of India and the Government of a State may sue or be sued by the name of the State any may, subject to any provision which may be made by Act of Parliament or of the Legislature of such State enacted by virtue of powers conferred by this Constitution, sue or be sued in relation to their respective affairs in the like cases as the Dominion of India and the corresponding provinces or the corresponding Indian States might have sued or been sued if this Constitution had not been enacted.*
2. *If at the commencement of this Constitution –*
  - i) *any legal proceedings are pending to which the Dominion of India is party, the Union of India shall be deemed to be substituted for the Dominion in those proceedings; and*

ii) Any legal proceedings are pending to which a Province or an Indian State is a party, the corresponding State shall be deemed to be substituted for the province or the Indian State in those proceedings.

## **2. Strict Liability**

Strict Liability is the general liability that arises in cases where a violating act is committed without a wrongful intention or fault of the defendant. The defendant becomes liable without any fault in such cases. This doctrine is commonly applied wherein the subject matter is inherently defective and it causes exemplary harm to the plaintiff. The presence of malice is not an issue in such cases. Proving that an injury or damage occurred as a result of plaintiff's activities or product is the focal point. For eg. If ABC Company is constructing road and a child playing nearby falls over its rock dune and hurts himself badly. The company will still be held liable for the injury inspite of none of their fault or negligence. In most of the cases, strict liability torts include injuries caused by animals (livestock/dogs/wild or dangerous animals) possessed or owned by defendant, hazardous products dealt by (blasting/storing/disposing/leaks/production) the defendants, etc. The rule of strict liability was elaborately explained in the landmark case of Rylands v. Fletcher.

### ***Rule in Ryland's v. Fletcher***

One of the most prominent landmark case in direction of Strict Liability is that of *Rylandsv. Fletcher*. It was in the year 1868 that the case came in the forefront in which it was established that any person who keeps any hazardous substance in his/her property would be held responsible for any damages or harm caused to the other party due to such hazardous substance. In this case, it was witnessed that Fletcher had a particular mill on the land that he owned and in order to power the mill, F built a reservoir on his land. When an accident occurred, the stored water from the reservoir overflowed and flooded the nearby lands owned by Ryland.

Ryland filed a suit against Fletcher and it was established that Fletcher was responsible for the loss, because the factor that caused damage to Ryland was owned and stored by Fletcher. Had Fletcher not built the said reservoir, the flood wouldn't have happened and the lands would not have been flooded. This case has established the fact once and for all that the person who possesses any particular dangerous object which can harm the other person or property is held responsible for the loss. *Rylands v. Fletcher's* case established the following essentials that amount to strict liability:

**(a). Dangerous Thing**

The terminology of Dangerous Thing refers to the common use of the function of hazardous commodities and their sale in general sense. The function holds the person selling hazardous commodities responsible for selling the products without proper instructions given about the hazard. For instance, an old example which is commonly discussed in this case is that of a sale of pistol to a minor boy. An arms seller and a toy shop owner sold a pistol to a twelve-year-old boy, without sharing knowledge of its hazards. While playing with the pistol, the boy injured another minor boy of 10 years. The shop owner is held responsible for the fact that he did not share appropriate knowledge about the product with the boy and so the boy was injured.

**(b). Escape of Things**

The next essential to amount to strict liability is that the dangerous thing' must "escape" from the area which is under control and occupation of the defendant. The following example explains the case with details:

***Crowhurstv. Amersham Burial Board***, (1878) 4 Ex. D. 5; ***Cheater vs. Cater***, (1908) 1 K.B.247:- If the branches of a poisonous tree that is planted on the defendant's land spreads out to the neighboring plaintiff's land, this amounts to the escape of that dangerous,

poisonous thing from the boundaries or control of the defendant and onto the plaintiff's land. Also, if the cattle of the plaintiff nibbles on these leaves, then the defendant will be held liable under the mentioned rule even when nothing was done intentionally on his part.

**In *Read v. Lyons and Co.*, (1947) A.C. 156: -**

The plaintiff worked as an employee in the defendant's shell manufacturing company, while she was on duty within the premises of the company, a shell being manufactured there exploded due to which the plaintiff suffered injuries. A case was filed against the defendant company but the court let off the defendant giving the verdict that strict liability is not applicable here as the explosion took place within the defendant's premises, the concept of escape of a dangerous thing like the shell from the boundaries of the defendant is missing here. Also, negligence on the part of the defendant could not be proved.

**(c) *Non-Natural Use of Land:***

When a natural resource, such as land is used for various occupational uses, such as tilling or storage of water, it is called natural use of land. In other cases, as referred to in: *Rylands V. Fletcher*, when land is used to store huge quantities of water in form of a reservoir, it is called as 'Non-Natural Use of Land'. The description and distinction drawn in terms of 'natural' and 'non-natural' use of land are on basis of the social conditions that are prevalent. In another example, it is explained that growing trees on the land is considered as a natural use of land, however if a person grows trees that are poisonous in nature, then it is known as a 'non-natural use of land'. On other terms, if the concerned land has been used naturally and yet a conflict arises between the plaintiff and the defendant, then the court does not hold the defendant liable on grounds of 'non-natural use of land'.

**In *Charing Cross Electric Supply Co. v. Hydraulic Power Co.* (1914) 3 KB 772, the defendants' duty was to supply water for industrial works but they were unable to keep their**

mains charged with the minimum required pressure which led to the bursting of the pipe line at four different places resulting in heavy damage to the plaintiff which was proved with evidence. The defendants were held liable in spite of no fault of theirs.

In cases of strict liability, the defendant is not without defenses. The primary defenses available with the defendants are as under:

- Assumption of Risk i.e. the plaintiff was aware of the risks of the plaintiff's activity and yet he undertook the same and got injured.
- Plaintiff the wrong doer
- Misuse or Abuse of the plaintiff's product
- Act of God

### ***Absolute Liability***

The Doctrine of Absolute Liability comes into picture when the principle of Strict Liability to accommodate the rights of the persons injured (due to defences available and limited compensation in strict liability). Rule of absolute liability is applied in cases of extreme risk & damage as opposed to strict liability:

- If there exists an enterprise or industry which is involved in certain activities that are termed dangerous in nature, then in such case, the defendants of the case or the owners of the said industry or enterprise would not have any exception or defence and would be held 'absolutely responsible' to pay compensation to the aggrieved party(s).
- The concerned entity or individual would be held responsible for all the losses, consequences or damages resultant from the activities. The nature of the work in the concerned industries, makes them responsible to provide the workers and labourers with all the concerned safety equipment and fulfil all the safety precautions. This provision helps in safeguarding the interests of the workers and labourers involved in

the functioning of the enterprise. There is a 'promise' involved with providing the workers with a safe and refined working atmosphere.

- One of the primary elements of the clause of 'Strict Liability' is that of the 'element of escape'. This element must be ignored in case of Absolute Liability. This is so as damage may have been caused because of the factor which is already prevalent on the property itself and might not have 'escaped' from the land and it might have caused damage to the workers inside the enterprise. In case such an incident occurs on the premises of the enterprise than the worker's Right to Compensation cannot be ignored. It is a primary element of the Doctrine, which is applied on the wider context, and it rules out the element of escape.
- In cases, where there is the involvement of the element of Strict Liability, the compensation paid is in accordance with the quantum and nature of damage caused. On the other hand, in cases pertaining to 'absolute liability' the damages or compensations paid are considered exemplary in nature. The amount of compensation or damages caused in terms of absolute liability are more than the damages caused, because the nature of damage caused in industrial hazardous accidents is acute and it causes a widespread damage and destruction.
- Unlike strict liability, there are no defences available in absolute liability. The defendant will be liable to exemplary compensation with

Landmark Cases Pertaining to Absolute Liability which actually defined the law in India:

***M.C. Mehta v. Union of India***, A.I.R. 1987 S.C. 1086: -

The S.C. of India was dealing with claims of leakage of oleum gas on the 4th and 6th December, 1985 from one of the units of Shriram Foods and Fertilizers Industries, Delhi. Due to this leakage, several workers had died. An action was brought against the industry through a writ petition under Article 32 of the Indian Constitution by way of a Public Interest

Litigation (PIL). The judges in this case refused to follow the Strict Liability

Principle set by the English Laws and came up with the Doctrine of Absolute Liability. The court then directed the organizations who had filed the petitions to file suits against the industry in appropriate courts within a span of 2 months to demand compensation on behalf of the aggrieved victims.

***Bhopal Gas Tragedy / Union Carbide Corporation v. Union of India***, (1991) 4 SCC 548:-

This doctrine was upheld in the infamous Bhopal Gas Tragedy which took place between the intervening night of 2nd and 3rd December, 1984. Leakage of methyl-iso-cyanide(MIC) poisonous gas from the Union Carbide Company in Bhopal, Madhya Pradesh led to a major disaster and over three thousand people lost their lives. There was heavy loss to property, flora and fauna. The effects were so grave that children in those areas are born with deformities even today. A case was filed in the American New York District Court as the Union Carbide Company in Bhopal was a branch of the U.S. based Union Carbide Company. The case was dismissed there owing to no jurisdiction. The Government of India enacted the Bhopal Gas Disaster (Processing of Claims) Act, 1985 and sued the company for damages on behalf of the victims. The Court applying the principle of 'Absolute Liability' held the company liable and ordered it to pay exemplary compensation to the victims and their employees.

### ***Nuisance***

The explanation or description of the term "Nuisance" is derived from the French word 'nuire', which further means 'to hurt or annoy someone'. When someone is in possession of a property, he/she is entitled to complete enjoyment and utility of the property which is of 'undisturbed' nature to the inhabitants in the vicinity. If there is an intervention or interference of someone's activities in his concerned property, then it is considered as nuisance. In other words, if the person in possession of the property, performs certain

activities which interfere with the freedom or 'enjoyment' of the property possessed by other parties, it is considered as nuisance.

In other words, it is explained that Nuisance refers to the unlawful interference with some person's enjoyment or utility of property or some right over with connection to it. Nuisance is considered as an injury to the right of a person in terms of the person's use of the property which is in his/her possession. As per law, each and every person has a legal right to 'undisturbed' and non-interfered enjoyment of the property and any unlawful interference in any person's right to enjoyment of the property is considered as 'nuisance'.

Stephen defined nuisance to be "anything done to the hurt or annoyance of the lands, tenements of another, and not amounting to a trespass."

*According to Salmond*, "the wrong of nuisance consists in causing or allowing without lawful justification the escape of any deleterious thing from his land or from elsewhere into land in possession of the plaintiff, e.g. water, smoke, fumes, gas, noise, heat, vibration, electricity, disease, germs, animals".

#### **Landmark Case with element of Nuisance:**

In *Halsey v. Esso Petroleum Co. Ltd.* (1961) 2 All ER 145: the defendant's depot dealt with fuel oil in its light from the chimneys projected from the boiler house, acid smuts containing sulphate were emitted and were visible falling outside the plaintiff's house. There was proof that the smuts had damaged clothes hung out to dry in the garden of the plaintiff's house and also paint work of the plaintiff's car which he kept on the highway outside the door of his house.

The depot emanated a pungent and nauseating smell of oil which went beyond a background smell and was more than would affect a sensitive person but the plaintiff had not suffered any injury in health from the smell. During the night, there was noise from the boilers which at its

peak caused window and doors in the plaintiff's house to vibrate and prevented the plaintiff's sleeping. An action was brought by the plaintiff for nuisance by acid smuts, smell and noise.

### ***Types of Nuisance:***

#### **Public Nuisance- Not a Tort**

Section 268 of the Indian Penal Code, defines it as “an act or illegal omission which causes any common injury, danger or annoyance, to the people in general who dwell, or occupy property, in the vicinity, or which must necessarily cause injury, obstruction, danger or annoyance to persons who may have occasion to use any public right.”

Examples of public nuisance are Carrying on trade which cause offensive smells, *Malton Board of Health v. Malton Manure Co.*, (1879) 4 Ex D 302; Carrying on trade which cause intolerable noises, *Lambton v. Mellish*, (1894) 3 Ch 163; Keeping an inflammable substance like gunpowder in large quantities, *Lister's case*, (1856) 1 D & B 118; Drawing water in a can from a filthy source, *Attorney General v. Hornby*, (1806) 7 East 195

Public Nuisance can only be brought to challenge by way of a single action, else the party can be involved in several suits at once. Also, if the Public Nuisance clause is not restricted to one action, it can add to the burden on the judicial system of the country. In other words, Public Nuisance is not considered as a tort and does not pertain to any civil action:

Given are the circumstances in which an individual has a private right of action pertaining to public nuisance:

- The particular injury or damage suffered by the person should be public in nature, such that it must also be suffered by other members of the community.
- The injury must be direct and not consequential in nature; such that one is obstructed and other is left open

- The injury must not be evanescent or fleeting and must be of substantial nature

### **Private Nuisance**

When one's property is used in an unauthorized manner, or use of something which is in one's control so that it effects the occupier of the property by injuring physically or damaging his property. This damage also impacts the enjoyment of property by materially interfering the property, comfort, health or convenience.

As opposed to the Public Nuisance, Private Nuisance impacts a particular person or individual, other than public at large. The remedy prescribed for Private Nuisance is the civil action for damages or injunction of both and not indictment.

### **Elements of Private Nuisance:**

- It consists unlawful or unreasonable interference
- The interference results in enjoyment or use of land, or right over land
- It pertains to damage

*Landmark Case: Ram Raj Singh v. Babulal, AIR 1982 All. 285:* the plaintiff, a doctor, complained that sufficient quantity of dust created by the defendant's brick powdering mill, enters the consultation room and causes discomfort and inconvenience to the plaintiff and his patients.

### **Remedies for Nuisance**

The following are the remedies available for Nuisance:

- **Injunction:** Injunction can be granted on temporary or interim basis or it can also be reversed or either confirmed. If the injunction is confirmed, it forms the permanent Injunction. It is the discretion of the court to grant injunction.
- **Damages:** The damages offered to the concerned parties that are aggrieved, can be nominal damage. In other words, damages that are enough to recognize that

technically some harm or injury was caused to the plaintiff and the amount of the damage is decided upon by court. The very purpose of paying damages to the plaintiff is not to compensate him/her but to deter the wrongdoer from committing the crime again.

- **Abatement:** The abatement refers to the remedy summary or removal of the nuisance by the party who is injured without the need to recourse towards legal proceedings. The remedy is not generally advocated or advised by law. A very common case in this direction that if the plaintiff cuts branches of tree extended into his property and then claims for nuisance.

### ***Negligence***

In the everyday use of the term Negligence, it is denoted as a mere act of carelessness. The legal angle of the terminology takes it to the next level and describes it as an act of exercising standard reasonable care by the doer. Generally, there exists a duty to care for the fact that when a certain act would not be fulfilled, it would cause certain damage or injury to the receiving party. When adequate precautions are not taken, several kinds of harms can be afflicted on the other party.

*According to Winfield and Jolowicz- Negligence is the breach of a legal duty to take care which results in damage, undesired by the defendant to the plaintiff [Ref. Winfield and Jolowicz on Tort, Ninth Edition, 1971, p. 45].*

### ***Essentials of Negligence***

The following aspects are to be proven by the plaintiff to prove an action's negligence:

**Duty:** One of the primary aspects of negligence is to prove that the defendant owed a particular duty of care towards the plaintiff.

Case Pertaining to the Angle of Duty: In *Grant v. Australian Knitting Mills Ltd.*, 1935 AC 85; the plaintiff purchased two sets of woolen underwear from a retailer and contacted a skin

disease by wearing an underwear. The woolen underwear contained an excess of sulphate which the manufacturers negligently failed to remove while washing them. The manufacturers were held liable as they failed to perform their duty to take care.

**Duty to Whom:** In certain cases, such as *Donoghue V. Stevenson*, 1932 it was decided as to what is the actual scope of the duty decided and it was argued that the duty is extended to one's neighbor. LORD ATKIN said that the answer must be "the persons who are so closely and directly affected by my act that I ought reasonably to have them in contemplation as being so affected when I am directing my mind to the acts or omissions which are called in question".

**Duty Towards Plaintiff:** It is not sufficient to prove that defendant owed a duty to take care, it is also necessary to establish that the defendant owes a duty towards plaintiff to take care.

*In Bourhill v. Young*, 1943 AC 92; the plaintiff, a fishwife, alighted from a tram car. While she was being helped in putting her basket on her back, a motor-cyclist after passing the tram collided with a motor car at the distance of 15 yards on the other side of the tram and died instantly. The plaintiff could see neither the deceased nor the accident as the tram was standing between her and the place of accident. She had simply heard about the collision and after the dead body had been removed she went to the place and saw blood left on the road. Consequently, she suffered a nervous shock and gave birth to a still-born child of 8 months. She sued the representatives of the deceased motor-cyclist. It was held that the deceased had no duty of care towards the plaintiff and hence she could not claim damages.

**Consequential Harm:** The final essential that is required to prove tort as negligence is that the damage caused to the plaintiff was resultant of Breach of Duty. The following classes have been identified as negligence:

- Physical Harm
- Harm to Reputation

- Harm to Property
- Economic Loss
- Mental Harm

In *AchutraoHaribhauKhodwa v. State of Maharashtra* (1996) 2 SCC 634; a cotton mop was left inside the body by the negligence of the doctor. The doctor was held liable.

**Causation:** In order for the plaintiff to establish that the omission or damage was conducted by the negligence of the defendant, it is important to establish that the cause of injury was negligence. The point of concern here is that the relationship between negligence and the act is legally sufficient.

**Proximate Cause:** The term Proximate Cause refers to a particular event which is related to the injury which is being referred to in court of law. The main aspect of Proximate Cause is the “but-for” element, which denotes the basis of the incident that has happened. The “but for” example in general is the occurrence of incident because of some instigating incident. For example: “But for the accident wouldn’t have happened, if he hadn’t jumped the red light”.

### **Remedies for Negligence**

- Award of negligence is considered as the principle remedy for the case of negligence
- The damage which is taken into consideration, must be termed as ‘reasonably foreseeable’
- A loss which is referred, must be considered as a foreseen as the type of injury, which is the damage or loss

Landmark Case: *Donogue v. Stevenson* Case (Snail in the bottle case) 1932

One of the most prominent cases in direction of tort of negligence is that of *Donogue v. Stevenson* Case, which is also referred as the ‘Snail in the bottle case’. The rule passed in this case is thus referred to as the most prominent precedent in the direction of tort of negligence.

Several businesses refer to this case as the primary reference while understanding the duty of care extended towards their customers. The case so discussed occurred in Paisley, Scotland in 1928.

While attending a store, Ms. May Donoghue was given a bottle of ginger beer, purchased for her by a friend. The bottle was later discovered to contain a decomposing snail. Since the bottle was not made of clear glass, Donoghue consumed most of its contents before she became aware of the snail. She later fell ill and a physician diagnosed her with gastroenteritis. Donoghue subsequently took legal action against Mr. David Stevenson, the manufacturer of the ginger beer. She lodged a writ in the Court of Sessions, Scotland's highest civil court, seeking £500 damages.

Donoghue could not sue Stevenson for breach of contract because she had not purchased the drink herself. Instead, Donoghue's lawyers claimed that Stevenson had breached a duty of care to his consumers and caused injury through negligence. At the time, this area of civil law was largely untested. Stevenson's lawyers challenged Donoghue's action on the basis that no precedents existed for such a claim. They referred to an earlier action by Donoghue's lawyer, *Mullen v. AG Barr*, where a dead mouse was found in a bottle of soft drink; judges dismissed this action due to a lack of precedent. Donoghue's initial action failed but she was granted leave to appeal to the House of Lords (which, at the time, had the judicial authority to hear appellate cases). The leading judgement, delivered by Lord Atkin in 1932, established that Stevenson was responsible for the well-being of individuals who consumed his products, given that they could not be inspected. The case was returned to the original court. Stevenson died before the case was finalized and Donoghue was awarded a reduced amount of damages from his estate.

Defamation

Defamation is considered as an act of injury that is directed towards the reputation of a

person. If the reputation of a person is injured by another person, it is done at own risk of the person inflicting the injury. It is considered as a similar risk to that of interference with the property. A reputation of a person is considered as his property and it is also argued as being much more valuable than the property.

If there exists any intentional communication which is false in nature and which is either spoken or written, and which injures the reputation of the person, or it induces hostile, disagreeable opinions or disparaging feelings against the person, are termed as defamation.

Scrutton LJ defined a defamatory statement as ‘a false statement about a man to his discredit’.

**Criminal Defamation:** When a crime is committed or a criminal offense is involved as an act for defaming the image of a person, it is called as Criminal Defamation. In most cases, the party inflicting Criminal Defamation is prosecuted and held liable. The IPC describes it as a criminal act.

**Civil Defamation:** When no criminal activity is involved in defaming the image of a person, it is referred to as Civil Defamation. But on account of such activity, the person inflicting civil defamation can be sued for legal compensation for the act of defamation. It is considered as a civil wrong under the Law of Torts.

### Libel and Slander

The term Defamation is further divided under two actions; Libel and Slander. While Libel is considered as a representation which is made in a more permanent form such as movie, picture or writing etcetera, Slander on the other hand is the infliction of defamatory statement in a more transient form, through gestures or spoken words etcetera.

While Libel is directed towards the eyes, Slander is directed towards the ears. In Indian law,

both are criminal offences under Section 499 and 500 of IPC.

The Essentials of Defamation:

- It must be a published statement
- There is no necessity to establish the intention to defame
- It must clearly be directed towards the plaintiff
- It must be false

Defences Against Defamation

- Truth or Justification
- Fair Comment
- Privilege

Landmark Judgement

In **Newstead v. London Express Newspapers Ltd.**

The defendants published an article stating that 'Harold Newstead, a Camberwell man' had been convicted of bigamy. The story was true of Harold Newstead, a Camberwell barman. The action for defamation was brought by another Harold Newstead, the barber. As the words were considered to be understood as referring to the plaintiff, the defendants were liable.

**Trespass of a Person**

One of the oldest and widest writs in the Law of Torts is that of Trespass. Both criminal and civil aspects of its ambit are covered in this extension. The basic idea behind the law is to provide security and privacy from another party or person in terms of violence and any kind of bodily injury. There are essentially three main ingredients in the act of criminal trespass:

- i) Forcible and direct bodily intervention
- ii) Without any outlined consent

iii) Suffering of legal injury

There is consideration of interference to be direct even if there is an involvement of a third party in the middle. It is still considered as trespass even if the act was involuntary and there was an apprehension of danger by the defendant. Various elements included in the trespass are:

- *Assault*

The definition of Assault as per law is: “An attempt or offer to apply force to the person of another directly or indirectly, if the persons making the attempt or offer causes the other to believe on reasonable grounds that he has present ability to execute his purpose. It is the overt act indicating an immediate intention to commit a battery coupled with the capacity of carrying with that intention. Therefore, a person can be guilty of assault under the offence of battery but not vice versa. Assault also comes under the purview of the Indian Penal Code i.e. under section 351.”

- *Battery*

The meaning of battery contains the element of hostility towards a person and touching a person against his/her will. The basic aim of battery is to hurt a person or cause grievous injury.

Some principles laid down by the Landmark Case *Cole v. Turne* are:

- i) It is considered as *Battery* if there is even least touching involved in the act
- ii) If two parties meet in a narrow passage and tend to touch each other without any intention to hurt each other, it is not considered as *Battery*.
- iii) If any of the party execute violence against the other party to pass through the passage or there is any act of struggle involved which injures the other party physically, it is considered as *Battery*. The critical element that must be considered is that of intention to harm the other party.

- False Imprisonment

False Imprisonment means forcefully confining a person without any particular legal justification for the imposed imprisonment. Even if the plaintiff is not aware about the imprisonment, it is still considered as imprisonment. For example; the plaintiff was asleep in a room and the door was latched from outside, it is still false imprisonment. The most important aspect which is considered in this direction is that there should be total restraint.

Trespass of Property

**Malicious Prosecution**

Malicious Prosecution refers to the incident when a party is prosecuted on various grounds i.e. bankruptcy or criminal or liquidation proceedings without any prevailing reasonable or probable cause. It is understood that the common law promotes the idea of bringing justice to the citizens of the country by bringing the criminals under punishment, the law of Malicious Prosecution prevents the rights of innocents who can be wrongfully presented as criminals in courts of law. Malicious Prosecution is considered as the abuse of the whole legal process and court proceedings by setting the law in motion wrongfully by slapping criminal charges against an innocent person.

*The points that need to be proven by the plaintiff in malicious prosecution are:*

- 1) There was a wrongful prosecution against him by the defendant
- 2) The complained proceeding was ruled in favor of the present plaintiff
- 3) There was no reasonable cause involved in the prosecution which was filed against him
- 4) There was a malicious/dishonest intention behind filing the persecution
- 5) The plaintiff suffered damages to reputation or safety

Malicious Prosecution is considered as an abuse in terms of setting the court in order or bringing the court process in order with wrongful intention of harassing someone with a criminal charge.

### **Nervous Shock**

Nervous Shock is also known as Psychiatric Injury in legal terms and it has gained importance in recent times. This is the situation in which a claimant seeks compensation or damages from the defendant not for any physical injuries but for the harassment received on a mental level.

#### *Meaning of Nervous Shock or Psychiatric Damages:*

The medical science defines Nervous Shock as a circulatory failure or a sudden fall in the blood pressure which further results in pallor, fast pulse, sweating or a sudden collapse. The causes which are further explained include, injury, disease or a physical trauma. There are certain Medical Specification which are required to fulfill the specifications of Psychiatric Damage, which are as follows:

i) **Psychiatric Illness which is recognizable**

Lord Bridge explains that the first and foremost aspect which is important to establish is that the person is actually undergoing Nervous Shock and not suffering from any grief or normal emotional stress. The symptoms of Nervous Shock are noted as post-traumatic stress, morbid depression, hysterical personal disorder, pathological stress disorder and Chronic Fatigue Syndrome. The following symptoms should be testified and approved by a medical expert or medical witness.

ii) **Reasonable Test which is Foreseeable**

Also, the damages caused on the psychiatric level must be tested beyond the point of simple Foreseeability test. The first case to be followed in this regard was *Delieu. White & Sons*.

- *Surbhi Aggarwal*  
(*Founder & CEO, School of Legal Education*)  
**Thankyou**

