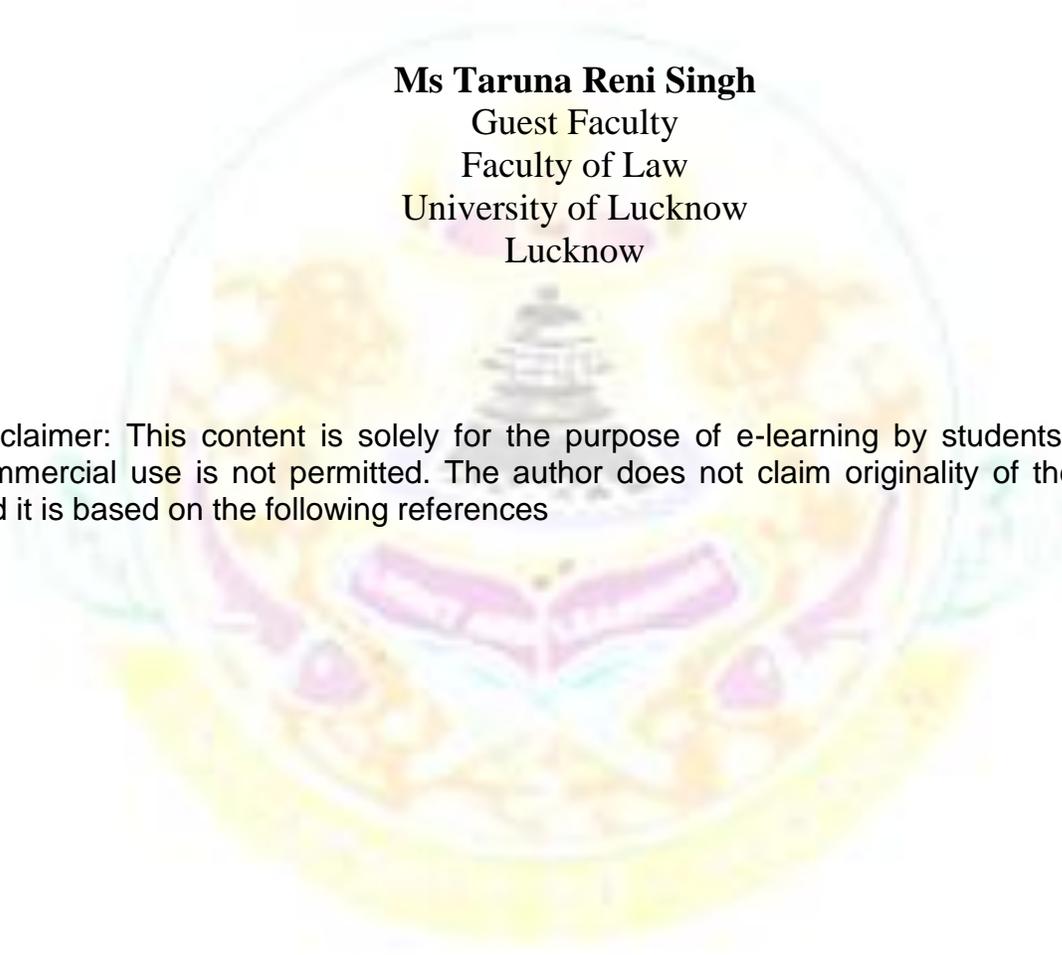


Law of Torts

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Law of Tort

Unit-I:

Introduction and Principles of Liability in Tort

(Lectures-12)

- i. Definition of Tort
- ii. Development of Law of Torts
- iii. Distinction between Law of Tort, contract, Quasi-contract and crime
- iv. Constituents of Tort: Injuria sine damnum, Damnum sine injuria
- v. Justification in Tort, Volenti non-fit Injuria, Necessity, Plaintiff's default, Act of God, Inevitable accidents, Private defense
- vi. Remedies in Tort; Ubi jus ibi remedium, Remoteness of Damages

Unit-II:

Specific Torts-I

(Lectures-10)

- i. Negligence
- ii. Assault & Battery, Trespass & Conversion
- iii. Nuisance
- iv. False Imprisonment and Malicious Prosecution
- v. Judicial and Quasi: Judicial Acts vi. Parental and Quasi-Parental authority

Unit-III:

Specific Torts-II

(Lectures-08)

- i. Vicarious Liability; Joint Tortfeasors
- ii. Doctrine of Sovereign Immunity
- iii. Strict Liability and Absolute Liability
- iv. Defamation v. Cyber Tort & Tort in Intellectual Property Rights Passing Off.

Unit-IV:

The Consumer Protection Act, 1986

(Lectures- 10)

- i. Definitions of Consumer, Goods and Services
- ii. Rights and Duties of Consumer
- iii. Authorities for Consumer Protection
- iv. Remedies

Books

1. Salmond & Heuston-On the Law of Torts, Universal, Delhi
2. D.D.Basu, The Law of Torts. Kamal, Calcutta
3. Winfield & Jolowiz on Tort Sweet and Maxwell, London
4. Ratan Lal & Dhiraj Lal-The Law of Torts Universal, Delhi.
5. R.K.Bangia, Law of Torts.

GENERAL CONDITIONS OF LIABILITY IN TORTS INCLUDING MENTAL ELEMENT

Legal Damage:

In general, a tort consists of some act done by a person who causes injury to another, for which damages are claimed by the latter against the former. The word damage is used in the ordinary sense of injury or loss or deprivation of some kind. [Whereas damages mean the compensation claimed by the injured party and awarded by the court.] The word injury is strictly limited to an actionable wrong, while damage means loss or harm occurring in fact, whether actionable as an injury or not.

The real significance of a legal damage is illustrated by two maxims, namely, *Damnum Sine Injuria* and *Injuria Sine Damno*.

Damnum Sine Injuria:

It means damage suffered without injury to a legal right does not give any remedy under the law of Tort. Causing of damage, however substantial, to another person is not actionable in law unless there is also violation of a legal right of the plaintiff. In *Gloucester Grammar School Case*¹ the defendant, a schoolmaster, set up a rival school to that of the plaintiffs. Because of the competition, the plaintiffs had to reduce their fees from 40 pence to 12 pence per scholar per quarter. It was held that the plaintiffs had no remedy for the loss thus suffered by them. Hankford J. said : *Damnum may be abseque injuria*, as if I have a mill and my neighbour builds another mill whereby the profit of my mill is diminished, I shall have no action against him, although I am damaged but if a miller disturbs the water from going to my mill, or does any nuisance of the like sort, I shall have such action as the law gives".

In *Ushaben v. Bhagyalaxmi Chitra Mandir*², the plaintiffs sued for a permanent injunction against the defendants to restrain them from exhibiting the film named "Jai Santoshi Maa". It was contended that the film hurt the religious feelings of the plaintiff in so far as Goddesses Saraswati, Laxmi and Parvati were depicted as jealous and were ridiculed. It was observed that hurt to religious feelings had not been recognized as a legal wrong. Moreover, no person has a legal right to enforce his religious views on another or to restrain another from doing a lawful act, merely because it did not fit in with the tenets of his particular religion. Since there was no violation of a legal right, request of injunction was rejected.

In *Bradford Corporation (Mayor of) v. Pickles*³ House of Lords went a step further and held that even if the harm to the plaintiff has been caused maliciously, no action can lie for the same unless the plaintiff can prove that he has suffered *injuria*. In this case, the plaintiffs had been deriving water from the adjoining land of the defendant which was at a higher level. The defendant sank a shaft over his own land which diminished and discoloured the water flowing to the land of the plaintiffs. The plaintiffs claimed an injunction to restrain the defendant from sinking the shaft alleging that the sole purpose of the same was to injure the plaintiffs as they did not purchase his land at an exorbitant price. The House of Lords held that since the defendant

¹ (1410) YB 11 Hen IV, fo. pl. 201, 23, f. 47, pi. 19

² AIR 1978 Guj 13, (1977) GLR 424

³ [1895] A.C. 587

was exercising his lawful right, he could not be made liable even though the act, which injured the plaintiff, was done maliciously.

Injuria sine damno:

means violation of a legal right without causing any harm, loss or damage to the plaintiff. Unless there has been violation of a legal right, there can be no action under law of torts. If there has been violation of a legal right, the same is actionable whether, as a consequence thereof, the plaintiff has suffered any loss or not. This is expressed by the maxim "Injuria sine damno." *Injuria* means infringement of a right conferred by law on the plaintiff of an unauthorized interference, howsoever trivial, with the plaintiff's right. *Damnum* means substantial harm, loss or damage in respect of money, comfort, health or the like. Thus, when there has been *injuria* or the violation of a legal right and the same has not been coupled with a *damnum* or harm to the plaintiff, the plaintiff can still go to the court of law because no violation of a legal right should go unredressed. *Ashby v. White*⁴ is a leading case explaining the maxim *injuria sine damno*. In this case, the plaintiff succeeded in his action, even though the defendant's act did not cause any damage. The plaintiff was a qualified voter at a Parliamentary election, but the defendant, a returning officer, wrongfully refused to take plaintiff's vote. No loss was suffered by such refusal because the candidate for whom he wanted to vote won the election in spite of that. It was held that the defendant was liable.

In case of *injuria sine damno*, the loss suffered by the plaintiff is not relevant for the purpose of a cause of action. It may be relevant only as regards the measure of damages. If the plaintiff has suffered no harm and yet the wrongful act is actionable, the question which arises is how much compensation is to be paid to the plaintiff? In such a case, generally, nominal damages may be awarded. For instance, the amount of compensation payable may be just five rupees. The purpose of law is served in so far as the violation of legal right does not remain without a legal remedy. If, however, the court feels that the violation of a legal right is owing to mischievous and malicious act, as had happened in *Bhim Singh's* case, the court may grant even exemplary damages.

In *Bhim Singh v. State of J. & K*⁵, the petitioner, an M.L.A. of J & K. Assembly, was wrongfully detained by the police while he was going to attend the Assembly session. He was not produced before the Magistrate within requisite period. As a consequence of this, the member was deprived of his constitutional right to attend the Assembly session. There was also violation of fundamental right to personal liberty guaranteed under Article 21 of the Constitution. By the time the petition was decided by the Supreme Court, *Bhim Singh* had been released, but by way of consequential relief, exemplary damages amounting to Rs. 50,000 were awarded to him.

Direct Consequence:

Tort is a civil wrong and has many different between crimes. A defendant is not liable of all consequence for his wrongful act or defaults. Liability must be found for an act which is direct cause of harm or injury and which is complain of. Remoteness of damages is not liable for tort.

⁴ 92 ER 126, Volume 92

⁵ AIR 1986 SC 494, 1986 CriLJ 192, 1985 (2) SCALE 1117, (1985) 4 SCC 677

Case Ref: In this point the leading case is **Doughty V. Tunner Manufacturing Co., 1964**⁶.

The causal connection between the damage and the defendant's act is not sufficiently direct, that is to say, when the two cannot be concatenated as cause and effect, there is no liability, for the damage is too remote. In these cases, though the damage to the plaintiff results from the wrong done by the defendant as a matter of fact, it is not eye of law sufficiently connected with the wrong to make the defendant to compensate the plaintiff for it. This is a question of law, the court in deciding it has to take into consideration all the circumstance of the case in which the question arise and is guided by practical considerations of convenience and common sense and does not profess to be acting upon principles of abstract logic.

Firstly--- those that have been intended by the actor. Here the connection between the act and the consequence is obvious, and hardly needs as explanation.

Secondly--- those that are the 'natural and probable consequence' of his act. Liability for the natural consequence has been said to rest upon a presumption of intention which id expressed in the maxim "A man presumed to intend the natural consequence of his act." Where this rule applies, the act itself is the chief or sole proof of the intention with which it has been done.

Thirdly--- those that could not be contemplated as 'natural and probable' but are nevertheless directly traceable to the defendant's wrongful act, and not due to the operation of 'independent causes' having no connection with that act.

⁶ [1964] 1 QB 518

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References

Books –

- A Lakshminath M Sridhar, RAMASWAMY IYER'S THE LAW OF TORTS (10th edition)
- Ratanlal and Dhirajlal, THE LAW OF TORTS, (26th Edition)
- M.N. Shukla: The Law Of Torts(20th edition)
- Dr.S.K.Kapoor on Law of Torts (7th Edition)
- W.V.H Rogers, WINFIELD AND JOLOWICZ TORTS, (8th edition)
- J.N. Panday : Law of Torts(9th edition)

LINKS

- <https://lucidlaw.co.uk/tort-law/nuisance/private-nuisance/bradford-corporation-v-pickles/>
- https://www.toppr.com/guides/legal-aptitude/indian-penal-code/difference-between-crime-and-tort/#:~:text=Unlike%20a%20crime%2C%20tort%20is,a%20private%20person%20or%20property.http://www.legalserviceindia.com/articles/torts_s.htm
- https://link.springer.com/chapter/10.1007/978-1-349-14295-8_3#:~:text=The%20law%20of%20tort%2C%20like,developed%20from%20common%20law%20principles.&text=In%20civil%20jurisdictions%2C%20contract%20and,the%20remedy%20sought%20is%20damages.
- <https://lexpeeps.in/gloucester-grammar-school-case-1410-y-b-11-hen-iv-of-47/>
- <http://www.uniset.ca/other/cs5/1895AC587.html>

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