



CHAPTER

3(B)

Law of Torts

Learning Outcomes:

Students will be able to

- Understand the meaning of Torts
- Differentiate between civil and criminal laws
- Differentiate between Tort and Breach of Contract
- Identify the sources of Tort law
- Explain the different types of wrongful acts in Torts
- List the types of Intentional Torts
- Explain the components of the Tort of Negligence
- Understand the concept of Strict Liability and its components
- Differentiate between Strict liability and Absolute liability
- Summarise the different types of harm in torts

A. Introduction

Concept

‘Tort’ essentially means a ‘wrong’. It is derived from the Latin word ‘tortum’, which means ‘twisted’ or ‘crooked’.

In law, tort is defined as a civil wrong or a wrongful act, of one, either intentional or accidental, that results in injury or harm to another who in turn has recourse to civil remedies for damages or a court order or injunction.

According to Sir John Salmond, an English legal scholar, Tort is a civil wrong for which the remedy is a common law action for unliquidated damages, and which is not exclusively a breach of contract, or a breach of trust, or other merely equitable obligation. In the words of M.C. Setalvad, the first Attorney General of India, “law of torts is an instrument for making people adhere to standards of reasonable behaviour and respect the rights and interests of one another.

Damages under law of torts are essentially compensatory and seek to place the defendant in the position that he would have been had the wrongful act not been performed. The remedy is often in the nature of ‘unliquidated damages’. Unliquidated damages can be defined as **the sum of money that cannot be foreseen or assessed by a fixed or predecided formula**. Damages may be categorised as unliquidated when the amount of damages is unidentifiable or subject to an unforeseen event that makes the amount not calculable.



It must be mentioned that tort is a civil wrong as distinguished from criminal wrong; both the substantive elements and the procedures are different in civil law and criminal law. In a criminal case, the state initiates legal proceedings in a criminal court on behalf of the victim and is punished if found guilty by the court. A civil action, like the tort suit, is pursued in a civil court where the person aggrieved or his representatives or survivors prosecute the wrong-doer usually for compensation in the form of monetary damages and also at times for other relief or injunction. Generally, tort cases aim at compensating the victim while criminal lawsuits often result in punishments, for example, prison sentences. Injunctions are court orders that, for example, may prohibit the wrong-doer from harming the victim or prevent the former from trespassing the latter's property. Occasionally, courts may also grant punitive damages, which are costs or damages in excess of the compensation.

It is also important to mark the distinctions between tort and breach of contract.

Tort	Breach of Contract
A Tort is a civil wrong in which the remedy is action for damages.	Breach of contract is a breach of a promise the primary remedy of which is performance of the contract.
Damages are always unliquidated.	In breach of contract the damages are liquidated.
In tort motive may be taken into consideration	In breach of contract the motive is irrelevant.
In tort duty is bound towards the persons generally.	In breach of contract the duty is bound towards a specific person or persons.
In tort the damages may be compensatory or even exemplary damages may also be awarded.	In breach of contract, nature of damages is compensatory

A tort can be intentional or accidental. It includes wrongful acts such as battery and assault (physical or mental injury to the claimant), nuisance (an act which is harmful or offensive to the public or an individual), defamation (where claimant's reputation is injured), property damage, trespass (to claimant's land or property), negligence (careless behaviour), and others; some of these are discussed below.

The three fundamental elements of a tort are:

1. Wrongful act;
2. Damage;
3. Remedy.

These tortious wrongs may also have aspects which overlap with other fields of law like criminal law and contract law, examples of which may be found in the chapters on criminal law and contract law. In this chapter, we are concerned only with some of the basic features of law of torts in relation to these wrongs.

Sources of Law of Torts

Tort is mostly a Common Law subject. The law of torts did not develop from a statute or an act passed by the Parliament, but from centuries of judicial decisions – based on case decisions in English courts as well as in courts of other countries following the Common law system such as that of India, Canada, Australia or the United States of America.

In India as well as in other jurisdictions both criminal law and contract law are based on statutes, for example, the Indian Penal Code and the Indian Contract Act respectively. However, there is no single statute or a group of statutes that comprehensively deal with tort law as a separate area of law.



It is easy to explain this difference. A lawyer focusing on contract matters would ordinarily look at the Contract Act or the Sale of Goods Act to find out the rules which might apply to a given fact situation. On the other hand, a tort lawyer cannot merely look at the statute to find out the law that could apply to a given fact situation. A tort lawyer has to pore through the case law including the applicable precedents in other jurisdictions to examine the existence of a tortious wrong. To summarise, the law of torts includes both statutes and case laws and cannot be traced to a single source.

However, in many jurisdictions, including in India, there is a move to enact statutes concerning tortious wrongs which were hitherto governed only by case laws. In India, for instance, automobile accidents as well as harm caused to consumers of goods and services are covered by the Motor Vehicle Act of 1988 (as amended) and the Consumer Protection Act of 1986 (as amended) respectively.

B. Kinds of Wrongful Acts

In tort cases, the victim or the plaintiff claims that the defendant or the wrong-doer has conducted a wrongful act or is liable for injury incurred by the plaintiff. Primarily, there are three kinds of wrongs in tort law. The wrongful act can occur:

1. either intentionally, or
2. negligently on part of the wrong-doer, or
3. the defendant is strictly liable for the wrongful act.

B.1 Intentional Tort

An intentional tort requires the claimant to show that the defendant caused the injury on purpose. The claimant must also show that he or she suffered a particular consequence or injury, and that the defendant's actions caused the consequence or injury. Different intentional torts deal in different consequences and intents. Depending on the contexts and situations, there are various kinds of intentional torts. These include assault, battery, false imprisonment, unlawful harassment, invasion of privacy and so on. These may also have aspects of criminal law, but treating them also as torts increases the possibility of higher compensation. The kinds of intentional torts are explained below.

Battery and Assault

The tort of battery occurs when the defendant shows an intentional and direct application of physical force of the claimant with the intent to cause harm or offense. Both 'intent' and 'causation' are required for the tort of battery to occur.

The act of touching doesn't necessarily have to be done with the defendant's hands always, it could be anything touching the plaintiff such as throwing hot water at someone.

The tort of assault occurs when the defendant intends to cause in the claimant's mind a reasonable apprehension (feeling of anxiety or fear) of an imminent harmful or offensive touching to the claimant; and when this causes the claimant to suffer a reasonable apprehension of an imminent harm.

For example, if the defendant throws an iron ball at the claimant and misses his head as the claimant moves his head away from the direction of the iron ball, this amounts to assault. The perception of the claimant is important.

If the defendant points an unloaded gun at the claimant who does not know that it is unloaded and he thinks he is about to get shot, this amounts to assault, which can take place without battery.

Likewise, battery can take place without assault; for example, someone may hit another person from behind.



False Imprisonment

The intentional tort of false imprisonment is satisfied whenever there is an intent to unlawfully confine or restrain the claimant in a bounded area and when this actually causes the claimant to be knowingly confined or restrained in a bounded area unlawfully. This leads to the total restraint of liberty of a person. For example, the defendant intentionally locks the claimant in the classroom without having the legal authority to do so, and the claimant knows he is trapped.

Sometimes courts allow the actual harm to substitute for the awareness of the imprisonment - so even if the claimant is unaware that he is trapped but suffers injury, the tort of false imprisonment is satisfied. However, the claimant should not be trapped willingly and consensually.

Trespass to Land

The tort of trespass to land occurs when the defendant has the intent to interfere with the possession of land belonging to the claimant.

This is done by physically invading property of the claimant without the claimant's approval or consent. The invasion can happen with objects or by people. It includes invasion of some area of air above the land and some area below the land. For example, the defendant may litter the claimant's land, or may create a drainage outlet below the land of the claimant.

Trespass to Chattels

The tort of trespass to chattel occurs when the defendant has the intent to and does interfere with the lawful possession of goods belonging to the claimant.

This is done when the defendant uses or intermeddles with a chattel (moveable personal property), which was in the possession of the claimant and causes significant or perpetual dispossession, deprivation of use, or damage as to condition, quality, or value of the chattel, or causes some other harm to claimant's legally secured interest.

For example, if the defendant paints the car of claimant that was parked on the side of the street, without the consent of the claimant while the claimant was away, this amounts to trespass to chattels.

Conversion

The tort of conversion is somewhat related with the tort of trespass to chattels. Conversion is defined as an act of wilful interference, without lawful justification, with any chattel in a manner inconsistent with the right of another, whereby that other is deprived of the use and possession of it.

It occurs when the defendant intentionally uses or intermeddles with the chattel of the claimant in such a serious way that it becomes fair to ask for compensation or money payment for the total prior value of the chattel. In other words, the defendant is forced to buy the chattel for a purchase price based on the original value. Thus, the remedy in conversion is forced sale. Conversion is applicable in many situations including where the chattel is taken, transferred to someone else, changed, misused or damaged.

Unlawful harassment and Intentional Infliction of Emotional Distress

Defendant may be held liable for any act of deliberate physical harm to the victim even when no battery or assault is involved. For example, if the defendant lies to the claimant that the latter's son met with a road accident, which causes nervous shock to the claimant resulting in illness, this constitutes tort of unlawful harassment.

Sexual harassment may also amount to tort of unlawful harassment. For example, if one follows another person, sends unwanted messages or phone calls; although there is no violence or threat of violence involved, this act amounts to a tort of harassment.



Defamation

Defamation is defined as the publication of a statement which tends to lower a person in the estimation of the right-thinking members of society generally, and tends to make them shun or avoid that person. It can be defined as any intentional false communication, either written or spoken, that harms a person's reputation; decreases the respect, regard, or confidence in which a person is held; or induces disparaging, hostile, or disagreeable opinions or feelings against a person.

It is interesting to note that Defamation can be both a tort as well as a crime.

Criminal Defamation: The act of offending or defaming a person by committing a crime or offence. For criminal defamation, the liable person can be prosecuted. It is studied in IPC as a criminal act.

Civil Defamation: Civil defamation involves no criminal offence, but the claimant can sue the wrongdoer for compensation. It is studied under law of torts as a civil wrong.

English law divides actions for defamation into Libel and Slander.

Libel refers to causing defamation in a permanent form, i.e. writing or pictures. It is recognized as an offence under the English Criminal Law.

On the other hand, slander refers to causing defamation in a transient form such as spoken words or gestures. Slander is actionable under law of torts in the English law.

B.2 Negligence

Negligence is defined as the breach of the duty to take care which results in damages. Basically, it can be said that the wrong-doer or the defendant has been careless in a way that harms the interest of the victim or the claimant. For example, when the defendant carries out an act of constructing something on her premises, she owes a duty of care towards the claimant (and anyone in proximity) and the standard of duty of care depends on whether the claimant was on the site or in the neighbourhood as well as whether the claimant was a lawful visitor or a trespasser. Generally, in order to argue successfully that the defendant has been negligent, the victim or the claimant must establish three elements against the defendant in a tort of negligence case –

- 1) the defendant owes a duty of care to the victim;
- 2) there has been a breach of duty of care on part of the defendant; and
- 3) the breach of the duty to care resulted in the harm suffered by the claimant.

Let us consider these elements here.

Duty of Care

The duty of care principle can be explained by citing an actual case. In **Donoghue v Stevenson**, a case decided in England, the plaintiff Donoghue drank a soft drink (ginger beer) manufactured by the defendant Stevenson. The drink had a decomposed snail in the bottle that made the claimant ill. The court held that the manufacturer owed duty of care to those who are 'reasonably foreseeable' to be affected by the product.

"In a case like the present, where the goods of the defenders are widely distributed throughout Scotland, it would seem little short of outrageous to make them responsible to members of the public for the condition of the contents of every bottle which issues from their works. It is obvious that, if such responsibility attached to the defenders, they might be called on to meet claims of damages which they could not possibly investigate or answer."



Thus, the duty of care is owed to those whom one can reasonably foresee as being potentially harmed. This principle is applicable to numerous fact situations. To give another example, a landlord owes a duty of care with reasonable foresight to his tenants and should ensure that no hazardous substance like petrol is stored by him in the basement of the apartment where tenants stay.

Breach of Duty of Care

Once the duty of care is proven the claimant then must establish that the duty of care was broken; i.e., the defendant was unsuccessful in fulfilling the duty of care in accordance with the standard of 'reasonableness'. The standard is that of 'reasonable conduct' or 'reasonable foresight'; however, the act need not be flawless. In the case of *Donoghue v Stevenson* discussed above, the court held that the manufacturers of products owe a duty of reasonable care to the consumers who use the products. Similarly, the standard of duty of reasonable care will vary based on the peculiar fact situation of every case.

Harm to the Claimant

In the case of *Donoghue v Stevenson*, the negligence on part of the manufacturer of the soft drink resulted in the illness or injury to the claimant. Or, in the second example, the apartment catches fire because of petrol being stored in the basement causing damage to the tenants.

In **MacPherson v. Buick Motor Co. (1914)**, a famous American case, the Plaintiff bought a car from a retail dealer, and was injured when a defective wheel collapsed. The Plaintiff sued the Defendant, Buick Motor Co. (Defendant), the original manufacturer of the car, for negligence. The wheel was not made by the defendant; it was bought from another manufacturer. The Defendant, however, failed to inspect the wheel.

It was observed by the court that the defendant was responsible for the finished product. It was not at liberty to put the finished product on the market without subjecting the components to tests.

In order to establish duty of care in relation to ultimate purchasers, it must be proved that-

- nature of the product must be such that it is likely to place life and limb in danger if negligently made. This knowledge of danger must be probable, not merely possible.
- there must be knowledge that in the usual course of events, the danger will be shared by people other than the buyer. This may be inferred from the nature of the transaction and the proximity or remoteness of the relation.

The court held that the manufacturer of the product placed this product on the market to be used without inspection by its customers. If the manufacturer was negligent and the danger could be foreseen, a liability will follow.

What is No-Fault Liability?

In fault-based liability, the legal right of the claimant is violated due to a mistake of the defendant, and the defendant is liable to pay compensation. However, there are certain situations where the defendant is liable to pay compensation even if the violation of the claimant's right is not done by the defendant, but there is a violation of the claimant's right. This is known as no fault liability. In short, liability arising without any fault is a no-fault liability. It covers two kinds of liability:

- Strict Liability
- Absolute Liability

Strict Liability

Strict liability is a standard of liability under which a person is legally responsible for the consequences



of an activity even in the absence of fault or criminal intent from the defendant. Under the strict liability law, if the defendant possesses anything that is inherently dangerous, as specified under the 'ultrahazardous' definition, the defendant is then strictly liable for any damages caused by such possession, no matter how careful the defendant is in safeguarding them. The claimant does not have to establish any sort of or level of blame attributable to the defendant based on the intention or the degree of carelessness.

The rule of strict liability evolved in the year 1868, in the case of **Rylands Vs. Fletcher** which took place in England. Rylands and Fletcher were neighbours. Rylands owned a mill for whose energy requirement he constructed a water reservoir on his land. The work of construction was done by an independent contractor who was negligent in his work. Due to this negligence, the water escaped and leaked into Fletcher's mines, causing heavy losses to him. Fletcher sued Rylands for the damage caused.

Rylands took the defence that the construction work was carried out by an agency and was inspected by an engineer. It was contended that Rylands was not a part of the work and was also not informed about the security regarding the construction. The court held that it does not matter what care the appellant took but he was responsible for the damage as he brought such an article to his premises which could be dangerous if it escapes.

Rylands was thus held liable for the loss incurred by Fletcher and had to pay compensation.

In the above case, three basic principles regarding strict liability were established:

1. DANGEROUS THING - non-natural use of the land
2. ESCAPE - the escape of water from Rylands land
3. LIABILITY - as the thing escaped, it caused damage

*If someone brings on his land something that is dangerous and **it escapes and because of this escape damage is caused**, the person is strictly liable.*

The general rule with respect to ultra-hazardous activity is that when the defendant carries out or keeps an unusually hazardous situation or activity on his or her building or involves in an activity that offers an inevitable danger of injury to the claimant or his or her property, the defendant could be responsible for the damage caused even if the defendant has exercised reasonable care to prevent the harm.

Exceptions to Strict Liability:

1. **Plaintiff's Own Fault:** When the cause of the damage is an act or default of the claimant himself, no remedy would be available to the plaintiff in that case.
2. **Act of God:** When the escape is caused directly by natural causes without any human intervention, then the defendant can use 'act of God' as a defence.
3. **Mutual Benefit:** When there is express or implied consent of the plaintiff to the presence of the source of damage or danger. Also, there is no negligence on the part of the defendant. In such a case the defendant will not be held liable.
4. **Act of Stranger:** When the cause of harm is the act of a stranger or third party. Here, it should be noted that this third party is neither the servant of the defendant nor he is having any control over that person.
5. **Statutory Act:** If it is an act of the government or corporation, then it is also a defence.



Absolute Liability

In India, a related principle of Absolute Liability was introduced by the Supreme Court in the aftermath of the two instances of gas leaks from factories killing thousands and injuring lakhs.

The first case was the infamous Bhopal gas leak disaster of 1984 where a factory of the Union Carbide Corporation located in Bhopal had a major leakage of the gas methyl isocyanate that killed 2260 and injured around 600,000 people.

In the second incident of 1985 in Delhi, a factory of the Shri Ram Foods and Fertilizer Industries leaked oleum gas that killed one person that had few others hospitalized and created huge panic among the residents.

The then Chief Justice of India P.N. Bhagwati, in the famous 1987 case of *M.C. Mehta v. Shri Ram Foods and Fertilizer Industries*, held:

“We are of the view that an enterprise, which is engaged in a hazardous or inherently dangerous industry, which poses a potential threat to the health and safety of the persons working in the factory and residing in the surrounding areas owes an absolute and non-delegable duty to the community to ensure that no harm results to any one on account of hazardous or inherently dangerous activity in which it is engaged must be conducted with the highest standards of safety and if any harm is done on account of such activity, the enterprise must be absolutely liable to compensate for such harm and it should be no answer to the enterprise to say that it had taken all reasonable care and that the harm occurred without any negligence on its part.”

If an industry/enterprise is engaged in some inherently dangerous activity from which it is deriving commercial gain and that activity is capable of causing catastrophic damage then the industry officials are absolutely liable to pay compensation to the aggrieved parties. The industry cannot plead that all safety measures were taken care of by them and that there was no negligence on their part. They will not be allowed any exceptions neither can they take up any defence like that of ‘Act of God’ or ‘Act of Stranger’.

The basic principles of absolute liability as emerged above are:

1. Enterprise (commercial objective)
2. Hazardous or inherently dangerous activity
3. Escape is not necessary

Differences Between Strict Liability and Absolute Liability

1. Strict Liability arises in cases in which the court holds the defendant liable to pay compensation for the loss incurred by the claimant, even if such losses are neither intentionally nor negligently suffered. However, when there is an injury caused to a workman in the course of employment, the court holds the employer responsible for providing compensation. Here it is immaterial who caused the injury. In most cases, the employer has to pay the liability. This is called absolute liability.
2. Strict liability is applicable to persons whereas absolute liability is applicable to enterprises, i.e., commercial undertakings.
3. In strict liability, the escape of hazardous or dangerous components from the premises of the owner is necessary. But escape is not necessary in absolute liability.
4. In the case of strict liability, the defendant has got certain exceptions that he/she can use to prevent himself from the liability. But no exceptions are provided in the case of absolute liability to the defendant. This means that, if any person faces damages due to the hazardous element, then the defendant would be absolutely liable for the same.



5. The compensation is as per the nature and quantum of damages incurred in case of strict liability. In absolute liability, the quantum of damages relies on the magnitude and financial capability of the organization.

BASIS FOR COMPARISON	STRICT LIABILITY	ABSOLUTE LIABILITY
Meaning	Strict Liability implies the legal responsibility of a person for compensating the injured or aggrieved, even when he or she was not at fault or negligent.	Absolute Liability arises from inherently hazardous activities like keeping dangerous animals or using explosives.
Talks about	Person	Enterprise
Escape	Necessary	Not Necessary
Exceptions	Yes	No
Payment of compensation	Nature and quantum of damages	Exemplary in nature

C. Summary of the Kinds of Harms

Here is the summary of the examples of the many ways in which the claimant may suffer injuries that have been discussed in this chapter.

- Property interests in land-** The law of tort protects the claimant's interests in her landed property by preventing intentional intrusions or trespass of the property by the defendant or the wrong-doer. The claimant may also suffer harm by the damage caused due to carelessness or negligence of the defendant. When the defendant interferes with the claimant's right to enjoy his/her land, the defendant commits the tort of nuisance.
- Other types of Property-** Tort law prohibits taking away of tangible property deliberately, which amounts to the tort of 'conversion'. The damage to the property may also occur due to carelessness or negligence.
- Bodily Injury-** Tort law protects the claimant against any harm to his/her interests of bodily integrity. Tort of battery and assault applies to any intentional harm caused to the body. Harm may also be caused by negligence as well as any breach of statutory duty like, traffic laws, health laws and so on. Mental distress is an element in bodily injury which raises any compensation to the victim.
- Economic Interests-** To a lesser extent, the economic interests are also protected by the law of tort. Injury caused by both intentional act as well as negligence can cause economic harm to the claimant.

Conclusion

To conclude, it can be said that unlike a crime, law of torts does not aim to punish the wrongdoer. Rather, it aims to help the aggrieved person reach the position he/she was in before the cause of action arose. It thus seeks to provide restorative justice.



Exercise

Based on your understanding, answer the following questions:

1. Define what is law of tort? What is the difference between tort law and criminal law?
2. What are the sources of tort law?
3. What is intentional tort? Explain at least three different kinds of intentional tort?
4. What is tort of negligence and how does duty of care relate with negligence?
5. What is strict liability principle? Give one example.
6. Some basic principles regarding strict liability were established in Ryland V Fletcher. Discuss these principles.
7. There are certain exceptions to strict liability which are not available in a case of absolute liability. List these exceptions.
8. Discuss the main differences between strict liability and absolute liability, with the help of relevant case law.
9. What are the objectives behind having tort law?
10. Explain the meaning of the following terms:
 - a. Unliquidated damages
 - b. Defamation
 - c. Conversion

UNIT I

UNIT II

UNIT III

UNIT IV

UNIT V

UNIT VI

UNIT VII

UNIT VIII