

ESSENTIALS OF TORTS

The word tort has been derived from a Latin word “tortum” which means twisted or crooked. 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.”

It is different from breach of contract and trust. Tort is when the act of one party causes some harm to the other party due to negligence, carelessness on the part of another party. The one who sues is known as ‘plaintiff’ and the one who is sued is known as ‘defendant’.

The person who causes such harm shall be made liable to pay compensation to the injured party (plaintiff), this compensation can be in the form of money. This money received in the form of compensation is known as ‘damages’. In order to claim damages, there must be some breach of duty towards plaintiff which resulted in such injury.

Even if the harm which is caused was not intentional but due to carelessness or negligence, then also the other party can be sued. Tort allows people to hold the other person accountable for the injuries suffered by them.

Act/omission: To constitute a tort there must be an act, which can either be negative or positive. There must be some breach of duty to constitute such wrongful act or omission. It means there was a duty to do or not to do a certain action, or to behave in a particular manner which a reasonable man is expected to act under certain circumstances. If a corporation maintains a children park which has a poisonous plant but fails to put proper fencing. If one of the children eats a fruit from that tree and dies, then the corporation can be held liable for such an omission. A person cannot be held liable for social or moral wrong. For example, if somebody fails to help a starving man then he cannot be held liable because it is a moral wrong unless some legal duty can be proved.

Cases: 1) Glasgow coronary V. Taylor, 1992: In this case a corporation fails to put proper fencing to keep the Children away from a poisonous tree and a child plucks and eat the fruits orchestra the poisonous tree and dies, the corporation be liable for such omission.

2) General cleaning corporation Ltd V. Christmas 1953: In this case employer failed to provide a safety belt for safe system off work liable for consequence of such omission.

Legal Damage: In order to constitute tort, breach of legal duty must be there. The legal right vested with the plaintiff should have been breached i.e certain act or omission have resulted in the breach of legal duty. The action can be instituted if there is a breach of legal right. For the injury sustained by the plaintiff, damages could be claimed by him. Legal damage could be understood more clearly with the help of following maxims:

a) Injuria sine damnum:

Injuria sine damno is a violation of a legal right without causing any harm, loss or damage to the plaintiff and whenever any legal right is infringed, the person in whom the right is vested is entitled to bring an action. Every person has an absolute right to his property, to the immunity of his person, and to his liberty & infringement of this right is actionable per se. A person against whom the legal right has been infringed has a cause of action such that even a violation of any legal right knowingly brings the cause of action. The law even gives the liberty that if a person merely has a threat of infringement of a legal right even without the injury being completed, the person whose right has been threatened can bring a suit under the provisions of Specific Relief Act under Declaration and injunction.

For Example:- If a person is wrongfully detained against his will, he will have a claim for substantial damages for wrongful imprisonment even if no consequential loss was suffered upon the detention.

As was cited in the case of Ashby Vs. White (1703) wherein the plaintiff was a qualified voter at the parliamentary elections which were held at that point of time. The defendant, a returning officer wrongfully refused to take the plaintiff's vote. The plaintiff suffered no damage since the candidate which he wished to vote already won the elections but still, the defendant was held liable. It was concluded that damage is not merely pecuniary but injury imports a damage, so when a man is hindered of his rights he is entitled to remedies.

Injuria sine Damno is even applicable in the cases of trespass as was observed in the case of Sain Das Vs. Ujagar Singh (1940) that nominal damages are usually awarded and the principle of injuria sine damno is applicable to an immovable property when there has been an unjustifiable intrusion on the property in possession of another. It was also concluded that the rule cannot be extended to every case of attachment of property irrespective of the circumstances.

So in total, the maxim Injuria Sine Damno refers to the remedies which are provided in the form of damages or compensation in violation of any legal right such that if the legal right is violated then action lies even if there is no harm to another. In other words, it is an infringement of a right where no loss is suffered but it creates a cause of action.

Bhim Singh Vs. State of Jammu & Kashmir:

In the following case of Bhim Singh vs. State of Jammu & Kashmir, MrBhim Singh, an MLA of Jammu & Kashmir was arrested & detained in police custody & was deliberately prevented from attending the sessions of the legislative assembly to be held. There was also a voting session which was going to be held and since he was not allowed to go. At the assembly session where his vote was very important. Though the person to whom he wanted to vote won but his right to vote was infringed. He was arrested and was not even presented before the court for four days and was kept in a hidden place. The case is all about the violation of personal liberty where the police though obtaining remand of the arrested person, not producing him before the magistrate within the requisite period. There was a gross violation of rights under Article 21 & Article 22.

It was held that there was an arrest with the mischievous & malicious intent & the plaintiff was entitled to the compensation of Rs. 50,000 since there was an arrest of a member of the legislative assembly while he was on his way to the legislative assembly which resulted in the deprivation of the right to attend the impending assembly session. In the particular cases of Injuria Sine Damnum, the court has the jurisdiction to compensate by awarding suitable monetary compensation.

It was concluded that the member of the legislative assembly was arrested while en route to the seat of assembly & in consequence of the member was deprived of his constitutional rights to

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attend the assembly session & responsibility for the arrest & hence is entitled to reasonable compensation.