ANATOMY OF LAW, TORT LAW AND, TORT CLASS

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ABSTRACT

The notion of law, the anatomy of tort law, and the anatomy of the tort class are all summarised in this study article. The topic "Concept of Law" has opened up new frontiers, such as legal institutions, the connection between ethics, morals, and customs, the meaning of law in the Indian constitution, and why we need law. This research paper has covered all of the main issues and subtopics under Anatomy of Tort Law, including its meaning, various tort liabilities, and various tort defences, among others. What should the goals and structure of a tort class be? under Anatomy of Tort Class, a basic overview has been provided. The concept of law has been explored previously in order for readers to grasp tort law and the anatomy of the tort class in a clear, vivid, and unambiguous manner.

CONCEPT OF LAW

"*Because the phenomenon of social control is an objective, unsegmented continuum, law can and has been defined in numerous ways.*"

– Popsicle Leopold.

Many discussions have raged for a long time about how to define law and what questions should be asked about it.

"*Conceptual analysis will not be able to solve these questions.*"

- Gibbs

This legal idea is multidisciplinary.[1]

ASSUMPTIONS

The concept of law is thought to be founded on two assumptions.

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[1] Joseph W. Bingham, what is the law? Vol. 9, Issue 1, *Michigan Law Review,* pp. 1-25(Nov., 1912).

- A part of what we call law;
- An aspect or a part of a social phenomenon or culture (Warriner).

These assumptions, however, distinguish law from other related phenomena, and they are expressed in terms of universal phenomena.[2]

PHENOMENON

There are two types of phenomena that are classified as "law."

1. A collection of rules and norms expressed in writing or orally.

2. The actions that carry out or express these norms.[3]

LAW AS AN INSTITUTION

Law is an "institution" made up of normative law, which is a collection of assertions, as well as legal action.[4]

1. When normative law is distinguished from other cultural aspects, law is called an institution.
2. Legal action differs from other forms of social structure.

"Law is a bundle of rules guiding daily human activity," says the basic definition of law.

"An institution is made up of concepts (ideas, doctrines, notions, and interests, for example) and a structure." William Graham[5]

Because law is an institution, it resides on a different plane than power, ethics, morality, and tradition. When power is exercised by legal apparatus in legal action, then it can be considered as a part of legal institutions. Ethics, Custom and morality are the part of the legal institutions when their norms and values are enforced by the legal apparatus in legal action.[6]

[2] ibid
[3] Ibid
[4] Alan V. Johnson, A DEFINITION OF THE CONCEPT OF LAW, Vol.2, Issue 1, *Mid-American Review of Sociology*. 47-71(1977)
[5] enclyclopedia.com,Sumner, William Graham(May 14,2018) https://www.encyclopedia.com/people/social-sciences-and-law/sociology-biographies/william-graham-sumner
[6] Supra Note 1

DIFFERENCE BETWEEN US LEGAL INSTITUTION AND ESKIMO LEGAL INSTITUTIONS:[7]

US legal institution	Eskimo Legal Institutions
Made up of federal, state, local legislatures etc.	Made up of shamans, headmen, and song duels

RUDIMENTS OF THE INSTITUTION OF LAW:[8]

1. Law is a type of institution.
2. It is made up of two parts: normative law and legal action.
3. Legal interpretations frequently diverge from group members' actual behavior.
4. Legal understandings are a group effort.
5. Legal acts are social in nature.
6. **There are two categories of norms:**
    a) Primary legal norms (substantive law), which specify what should be done in specific situations.
    b) Secondary legal norm (procedural law), which specifies how institutional structures carry out main legal norms.

It's important to remember that when discussing the foundations of legal institutions, normative law and legal action should be discussed separately. Both are part of the legal system, yet they are two distinct entities.[9] The simplest legal institutions are made up of the most basic norms and behaviors. While analyzing a legal institution, it is important to assess the level of differentiation of the institutions as a whole, because increasing differentiations in legal action and normative law could generate a wide gap between legal institutions and society as a whole. It puts a lot of strain on the relationship between legal institutions and the rest of society and social organizations. This strain is most often used to serve the pluralistic sector of a community, rather than all others. [10]

[7] ibid
[8] ibid
[9] ibid
[10] ibid

INTERTWINING OF LAW WITH POWER, ETHICS, MORALITY, AND CUSTOM TO SOME LEVEL

Law is useful because it encompasses both cultural and social organizational features. We must examine both rules and behaviors on an equal footing in order for the law to work properly. If we place undue emphasis on any of them, we will end up with an incomplete image of the law. Power, ethics, morality, and custom are all linked with the concept of law at times. However, in order to obtain a true definition of law, we must first answer the following two questions:

1. To what extent does law rely on these power and ethical factors?
2. When can these variables be considered part of the law and when are they not?[11]

Because of the synchronous nature of the social phenomenon, answering these issues is critical. In actuality, power separation, law, and ethics do not exist. They are part of the same continuity, with subtle transitions from one to the other. Power and law share the same boundaries because both suggest deference to authority and extend outside the social group.[12]

Ethics and law are inextricably linked because:

1. Ethical values include normative law;
2. For legality, one form of ethical value is ideal.[13]

Custom, law, and morality are all intertwined because:

1. All of these are geared towards the social environment;
2. All of this is based on behavioral norms.
3. All connects the group's members to one another and to non-members.[14]

As a result, law is intertwined with power, ethics, morality, and custom to some level.

MEANING OF LAW IN CONTEXT OF INDIAN CONSTITUTION

Law is a system of laws that determines what actions we should do or not take in real life, as well as our everyday human behavior. If we break this legislation, we shall face consequences.

[11] ibid
[12] ibid
[13] ibid
[14] ibid

"Ordinance, order, rule, regulation, notification, custom, or usage having the force of law throughout the territory of India," according to Article 13 of the Indian constitution.[15]

WHY WE NEED LAWS?

We require regulations/laws for the following reasons:

a) To sustain the status quo in society
b) To grant individuals in society the right to self-determination.
c) To promote people's well-being, moral improvement, and the preservation of life, property, and reputation.
d) To carry out justice.[16]
e) For societal homogeneity and flexibility

LAW OF TORTS

Meaning: Tort, which is derived from the Latin word "tortum," is a legal claim that individuals can make against others who have committed wrongdoing.[17]

DISTINCTION BETWEEN TORTS AND CONTRACTS[18]

TORTS	CONTRACTS
Commitment fixed by law itself	Commitment fixed by party themselves
General duty towards people, community and society	Duty towards specific people or party
Intention is taken into account	Intention is not taken into account
Remedy is unliquidated damages	Remedy is liquidated damages

[15] The Constitution of India,1950, Art. 13
[16] judicial learning centre, Law and the rule of Law (Last Visited: May 15,2022) https://judiciallearningcenter.org/law-and-the-rule-of-law/
[17] Legal Information Institute(Cornell Law School),Tort(Last visited: April 15,2022) https://www.law.cornell.edu/wex/tort
[18] Differencebetween.net,Difference Between Contract and Tort(Last Visited: April 15,2022) http://www.differencebetween.net/miscellaneous/legal-miscellaneous/difference-between-contract-and-tort/#:~:text=A%20contract%20means%20a%20promise,losses%2C%20injuries%2C%20or%20damages.

Mostly concerned with losses	Mostly concerned with promises

TORT FUNDAMENTALS

a) It is a civil wrong
b) It's a type of common law.
c) It is a branch of common law that is not regarded a breach of contract or a breach of trust.
d) Unliquidated damages are the remedy.
e) Legal rights must be infringed upon.

TWO ASPECTS OF TORTS

a) Injuria Sine Damnum

It is the infringement of a legal right without causing any harm. It is possible to assert it in a court of law.[19]

b) Damnum Sine Injuria

It is the harm caused by a breach of a legal right. It is not admissible in a court of law.[20]

VARIOUS LIABILITIES UNDER TORT

1. VICARIOUS LIABILITY: In tort law, a person is entirely responsible for his or her own wrongdoings. "Vicarious responsibility" occurs when one person is held accountable for the wrongdoings or conduct of another. Nowadays, it is very usual for someone to commit a crime on behalf of someone else. So here enters the function of vicarious responsibility, which states that both the person who orders and the person who performs the conduct are liable. It's also referred to as indirect liability. In a nutshell, one individual is held responsible for the actions of another.[21]

[19] ILMS academy, Principles of Damnum Sine Injuria and Injuria Sine Damnum (Last visited: April 15, 2022) https://www.ilms.academy/blog//principle-of-damnum-sine-injuria-and-injuria-sine-damnum#:~:text=Injuria%20Sine%20Damnum%20refers%20to,is%20no%20violation%20of%20them.
[20] Ibid
[21] Rajni Negi, Vicarious Liability, Law Times Journal(Last visited: April 15,2022) https://lawtimesjournal.in/vicarious-liability-2/#:~:text=When%20an%20agent%20commits%20a,between%20the%20two%20of%20them.

For instance, Ram and Sam formed a partnership and created an investment bank. They used to take people's money and put it into the stock market. Now, if Sam has taken money from somebody, he absconds with it after taking it. In this situation, Ram will also be liable because he was Sam's business partner and can be sued for Sam's labour.

The following are the various connections:

1. MASTER-SERVANT RELATIONSHIP: A master hires a servant to execute particular chores under his or her supervision in this relationship. If a servant engages in criminal behavior while on the job, not only the servant but also the master may be held liable. This is founded on the principle of "qui facit per alium facit per se," which asserts that "in law, he who performs an act through another is held to have performed it himself." Because the servant is acting under the master's authority, the latter must also be held accountable. A servant, on the other hand, differs from a "independent contractor" in that the latter is not subject to the "direction of control" of the person who hired him.

Two tests can be used to determine whether a master-servant relationship exists:[22]

Hire and Fire Test: A person with hiring and firing authority is referred to as a "master," while the individual over whom he exercises such authority is referred to as a "servant."

Direction and Manage Test: A person who has the ability to delegate work to another person while also being able to direct and control that person to do the task in a specific manner is referred to as a "master," while another person is referred to as a "servant."

To be tried on the idea of vicarious liability, the act must be committed in the "course of employment." The act that is being prosecuted must be "approved." Consider the following scenario: Suppose A instructed his servant B to drive his car to the garage for repairs. B harmed C on the way. For monetary damages, C files a lawsuit against A. Because B was his servant and committed the crime while working for A, A would be held liable for B's acts.

2. PRINCIPAL AGENT RELATIONSHIP: The term "principal" refers to someone who has the authority to act on behalf of another person. The principal will be held vicariously liable if

[22] ibid

the agent undertakes an act that causes harm to a third party. The act must be carried out "in the course of employment. "The term "agent" is distinct from "independent contractor."[23]

3. PARTNERSHIP: During the course of their employment in the partnership, the partners are "jointly and severally" accountable for each other's activities. "All at once" means "all at once," while "one by one" means "one by one." This means you can sue each partner alone or all of them together for any of the partners' actions.[24]

4. STRICT LIABILITY: There is no room for intention or motivation here, and even blame is missing. Some activities are exceedingly dangerous and pose a significant risk to a person's life and property. As a result, the concept of "responsibility" emerges, which must be considered when engaging in such activities. The concept of negligence will likewise be absent from the defendant's case.[25]

Example: RYLANDS VS FLETCHER[26]: In this case, the defendant, Fletcher, built a reservoir on his property to supply water to his mill. He was unaware of an unused mineshaft located next to his reservoir. The water from the reservoir overflowed into that unused mineshaft one day, flooding the plaintiff Rylands' adjoining coalmines. Fletcher was not negligent, yet he was also unaware of the mineshaft's existence. Despite this, the honorable court held Fletcher accountable for the loss because he stored something unsafe on his land, and that dangerous thing got out and destroyed the Rylands' coalmines.

5. ABSOLUTE LIABILITY: It's similar to strict liability, except that it's a liability without fault for which there's no excuse or defense.[27]The concept of Absolute Liability first came to India in case of MC Mehta vs Union of India[28]. Here, this gas leak happened shortly after the catastrophic Bhopal gas leak, causing widespread concern in Delhi. The incident resulted in the death of one person and the hospitalization of several more. The premise of absolute culpability and the concept of deep pockets are established in this case.

[23] ibid
[24] ibid
[25] Legal Information Institute (Cornal Law School), Strict Liability (Last visited: April 15,2022) https://www.law.cornell.edu/wex/strict_liability#:~:text=Overview,examples%20of%20strict%20liability%20offenses.
[26] Rylands v Fletcher [1868] UKHL 1
[27] Shraman Adwibedi, Strict and Absolute Liability, Legal Services India (Last Visited: April 15,2022) http://www.legalservicesindia.com/article/2155/Strict-and-Absolute-Liability.html
[28] M.C. Mehta v. Union of India 1987 SCR (1) 819; AIR 1987 965

Example: BHOPAL GAS LEAK TRAGEDY CASE[29]: In this instance, the honorable court found the issue to be one of absolute liability and stated that the defendant would have no defense. Even if there was no fault on his side, the person should be held accountable.

LIST OF DEFENSES UNDER TORTS

VOLENTI NON FIT INJURIA (VOLENTI= VOLUNTARY, INJURIA=INJURY): When a person puts himself in a situation where he might be injured, it becomes applicable.[30]

Some key points:

a) Each party should agree to bear the risk of potential harm that was foreseeable to him;

b) Risk should be taken willingly and not coerced into a risky scenario.[31]

Consider the following scenario: Ram attended a Formula One race. He'd taken a seat in the bleachers. One of the fast-racing cars suddenly loses control and collides with the Ram, destroying the shield. Ram suffered a serious injury as a result of his actions. Ram is unable to seek compensation in this case because it is a matter of volenti non fit injuria, as Ram put himself in this position.

PLAINTIFF, THE WRONG DOER: In this case, if the plaintiff does anything wrong, he cannot seek damages for the injury he suffers as a result of that wrongdoing.[32] For example, if a man plans to kidnap his neighbor's child for extortion and the child's mother sees him trying to steal the child, she throws a heavy metal on his head, severely injuring him. In this scenario, this man is unable to seek compensation for his losses because he was the one who caused them.

INEVITABLE ACCIDENT: Incidents or mishaps that are unavoidable fall under the category of unavoidable accident.[33]

[29] Union Carbide Corporation vs Union Of India 1990 AIR 273, 1989 SCC (2) 540
[30] Legal Information Institute (Cornell Law School),volenti non fit injuria(Last visited: April 15,2022) https://www.law.cornell.edu/wex/volenti_non_fit_injuria
[31] ibid
[32] PreventiveOfficer.com, General Defences in Tort to Avoid Tortious Liability & Case Laws(May 23,2021) https://preventiveofficer.com/general-defences-in-tort-to-avoid-tortious-liability-case-laws/1675/
[33] Preszlerinjury lawyers, WHAT IS AN INEVITABLE ACCIDENT?(Last visited: April 15,2022) https://www.preszlerlaw.com/blog/what-is-an-inevitable-accident/

Essentials:

a) Incidents cannot be predicted;
b) All reasonable precautions have previously been taken to prevent or mitigate such incidents.
c) c) The person in question has complete control over the situation.[34]

Example: A and B, for example, were fighting. D attempted to stop them, but he was accidentally hit. D, who was hurt, cannot sue C for damages because the collision was unavoidable.

ACT OF GOD

When an injury is caused by natural events, this defense can be applied.[35]

The following are the essentials:

a) The injury must be caused by natural factors.
b) Natural forces must not be predictable, or extreme caution must be exercised to avoid them.[36]

Assume, a dam was built by a contractor. Assuming it is well-made and has passed all quality tests. The dam wall was breached one day due to severe rain and earth earthquakes, and all of the water poured to the surrounding community, causing massive property damage and the loss of many lives. The contractor might claim that this was an act of God because it was triggered by natural forces and was inescapable, unprecedented, and unexpected.

D. ANATOMY OF A TORT CLASS

When we write legal articles, we usually presume we're writing about universal and public legal theory, but this assumption is frequently inaccurate and harmful because nothing in this relativist world comes ready-made as it was taught in class or based on the research of any previous scholars. Past decisions made by scholars and researchers in any situation should not be regarded as the final word. Because it lacks subjectivity and objectivity, most people

[34] ibid
[35] Investopedia, Act of God(Last visited: April 15,2022) https://www.investopedia.com/terms/a/act-god.asp
[36] ibid

consider it is poorly written, over-edited, tough to grasp, and trivial in style. A temporary approach would be to omit existential experiences and political disputes from the study in order to make it more relevant and intriguing. Not only have abstract rules failed to give discrete situations, but abstract knowledge has also failed to provide effective teaching in some cases. To create a legal mind, knowledge delivery should include real-life examples, hypotheticals, and phenomenology.[37] In some law of torts classes, the teacher's language of power fails to serve as an effective teaching manual for a large number of pupils because it excludes all of the aspirations, disappointments, and hierarchies that make up the experience reality of every class. It can become politically prejudiced, denying law students the opportunity to become professionally cultured and educated. Sometimes law students do not write what their teacher taught in class in order to shield themselves from criticism and discussion, which naturally reinforces the apparent inevitability of the current situation. [38] When law students complain that they didn't get enough history in their doctrinal courses, it's usually because they didn't get the right kind of history. When people complain that they didn't get any theory, it's usually because they got the wrong sort. As a result, we require a change in teaching pedagogy. It has been discovered that tort courses often revolve on a small number of narratives and stories, which lose a significant deal of their splendor and authority when summarized. Finding precise and logical narrative while leaving out obscure details has a lot of attraction.

THREE STORIES

The first story: Rules vs Mush

It defines law in two ways, both of which are inherently incompatible. To begin with, it states that law is simply a system of norms that encourages critical reasoning among lawyers. Then it contradicts itself, claiming that law can be manipulated using irrational and erroneous reasons. Students' psychology demands logic and assurance at all times. Professors are being asked to explain the "rule of law" in the topic. Professors are often so enamored of their knowledge that they refuse to acknowledge such objections. As students seek assurance and real-life analysis, such factors make the concept of legal learning as perplexing, frustrating, and unfounded as possible.[39]

[37] James Boyle, The Anatomy of a Torts class,34 AM U.L. REV. 1003(1985)
[38] ibid
[39] ibid

The second history: Logic of history

Historicism in contracts takes the shape of a narrative about how we evolve from old, awful rigidity to new, humanitarian flexibility. In torts, however, historicism is taking us away from an ethical definition of carelessness and toward a cost definition, from negligence to strict liability, and so on.[40]

The third story: Law and Economics

In his book "The Problem of Coase," published in 1960, Ronald Coase attempted to explain the economic study of legislation. Frederick Hayek did the same thing afterwards. This topic was explained by Richard in his book "Economic Analysis of Law." They used economic concepts to describe the impact of laws and regulations. The use of economics techniques to the application of law allows us to gain a better understanding of the economy and the laws that govern it through economic analysis of law. Experimentally, it has been discovered that students with a strong economics background can readily grasp the concepts of law and always participate in class, but students without an economics background have difficulties grasping the principles of law and rarely participate in class.[41]

GOAL OF TORT CLASS

The goal of the torts law lesson is:

i. to teach all of the persuasive skills rapidly without confounding the subject or making it more politicized.
ii. To improve legal history and eliminate unnecessary historicism.
iii. To emphasize the significance of patterns of ideas and clusters of beliefs that correlate to the "natural, inevitable, and right" in the world.
iv. To strengthen students' legal reasoning and expose them to the devastating and liberating impacts of contingency.
v. To make the class feel less hierarchical, alienating, and monotonous.[42]

[40] ibid
[41] ibid
[42] ibid

CONCLUSION

To sum up, comprehending the true meaning of law is a difficult task. Its evolution is enormous and ongoing, implying that it has been developing and will continue to do so in the future. Uncodified law has always been a facet of tort law. It was one of the most ever-changing laws due to the diverse interpretations by judicial precedents. To make tort class more interesting, it should be goal and research driven. The way law schools teach law subjects to its students needs to be improved. Rather than being theoretical, schools should emphasize pragmatism in their teaching approaches.