THE CONCEPT OF TORT

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Tort law, derived from the Latin word "tortum," meaning "twisted," refers to a civil wrong distinct from breaches of contract or trust. Tort law deals with wrongs that result in harm or injury to individuals, and it provides remedies through legal actions for compensation, typically unliquidated damages. These are damages not predetermined but decided by the court based on the specifics of the case. According to the Limitation Act of 1963, a tort is a civil wrong that is not solely a breach of contract or trust. Legal scholars like Sir John Salmond and Winfield emphasize that torts involve breaches of duties set by law, which affect people generally rather than specific individuals and these breaches are redressable by actions for unliquidated damages. Tort law has its origins in English common law, evolving significantly over time. In England, tort law was based on specific categories like trespass and battery. Over time, negligence became a prominent category, providing broad protection. In India, tort law was introduced by the British and adapted based on principles of justice, equity, and good conscience. Indian courts have continued to develop tort law to address modern issues like state liability and medical negligence. Torts are categorized as civil wrongs, which are fundamentally different from criminal wrongs. In civil wrongs, the injured party (plaintiff) sues the wrongdoer (defendant) for compensation, usually in the form of damages. In criminal cases, the state prosecutes the wrongdoer, and the focus is on punishment rather than compensating the victim. Sometimes, an act can result in both a tort and a crime, allowing for both civil and criminal actions. A tort is not just any civil wrong; it must be distinct from breaches of contract or trust. For example, failing to fulfill a contract to purchase goods is a breach of contract, not a tort. Identifying whether a wrong is a tort involves determining whether it is a civil wrong that doesn't fit into other recognized categories. The primary remedy in tort law is damages, which are often unliquidated, meaning their amount is determined by the court. This is different from contract law, where damages can be liquidated or predetermined by the parties involved. In some cases, other remedies like injunctions, which can prevent ongoing harm, may be more effective than damages. Tort law is also distinguished from contract law in several ways. In tort, duties are imposed by law and are owed to people generally, while in contract, duties arise from agreements between specific parties. Additionally, in tort cases, the motive is usually

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irrelevant, whereas in contract law, the motive can sometimes influence the outcome. Furthermore, tort damages are typically unliquidated, while contract damages are often fixed by the contract terms.

THE NATURE OF A TORT

The word tort has been derived from the Latin term 'tortum' which means to twist. It is equivalent to the English term 'wrong'. Some definitions of tort are: "Tort means a civil wrong which is not exclusively a breach of contract or breach of trust."- S.2(m), The Limitation Act, 1963, "It is a civil wrong for which the remedy is a common law action for unliquidated damages and which is not exclusively the breach of a contract or the breach of trust or other merely equitable obligation."- Sir John Salmond, "Tortious Liability arises from the breach of a duty primarily fixed by the law; this duty is towards persons generally and its breach is redressible by and action for unliquidated damages."- Winfield "It is an infringement of a right in rem of a private individual giving a right of compensation at the suit of the injured party."- Fraser. The basic idea which is indicated by these definitions is – Firstly, tort is a civil wrong, and secondly, every civil wrong is not a tort. There are other civil wrongs also, the important of which are a breach of contract and a breach of trust.[1] The history of the law of tort is that the law of tort originated in the common law of England. The law of torts was established as a branch of law in several Commonwealth countries. However, tort law was viewed as relatively undeveloped by the mid-19th century; the first American Treatise on torts was published in the 1860s but the subject became particularly established when Oliver Wendell Holmes, Jr. wrote on the subject in the 1880s. There was the development of the law of torts in England. The English system has been based on a closed system of nominate torts, such as trespass and battery. There are various categories of tort, which lead to the system of separate causes of action. Tort negligence is however increasing in importance over types of tort, providing a wide scope of protection. The evolution of the law of torts in India. Torts existed in Hindu law and Muslim law for dealing with crooked behavior but had a much narrower conception than the tort of English law. Law of torts was introduced in India formally by the Crown which was mostly dependent on the principles of justice, equity and good conscience. New concepts of tortious liability are being determined like state liability, medical torts, and Constitutional torts. J. Bhagwati in the case of MC Mehta v. Union of India said, "We have to evolve new principles and lay down new norms which will adequately deal with new problems which arise in a highly

[1] Law of Torts, Dr. R.K. Bangia, pg. 4

industrialized economy. We cannot allow our judicial thinking to be constructed by reference to the law as it prevails in England or for the matter of that in any foreign country" CPC (Section 9) Enables the civil court to try all suits of a civil nature, impliedly confers jurisdiction to apply the Law of Torts as principles of justice, equity and good conscience.

TORT IS A CIVIL WRONG

Tort belongs to the category of civil wrongs. The basic nature of civil wrong is different from criminal wrong. In the case of a civil wrong, the injured party, i.e., the plaintiff, institutes civil proceedings against the wrongdoer, i.e., the defendant. In such a case, the main remedy is damages. The plaintiff is compensated by the defendant for the injury caused to him by the defendant. In the case of a criminal wrong, on the other hand, the criminal proceedings against the accused are brought by the State. Moreover, in the case of a criminal wrong, the individual, who is the victim of the crime, i.e., the sufferer is not compensated. Justice is administered by punishing the wrongdoer in such a case. It is, however, possible that the same act done by a person may result in two wrongs, a crime as well as a tort, at the same time. In such a case, both the civil and the criminal remedies would concurrently be available. There would be civil action requiring the defendant to pay compensation as well as a criminal action awarding punishment to the wrongdoer.

TORT IS OTHER THAN A MERE BREACH OF CONTRACT OR BREACH OF TRUST

Tort is a civil wrong which is not exclusively any other kind of civil wrong. If we find that the only wrong is a mere breach of contract or breach of trust, then obviously it would not be considered to be a tort. Thus, if a person agrees to purchase a radio set and thereafter does not fulfill his obligation, the wrong will be a mere breach of contract. It is only by the process of elimination that we may be able to know whether the wrong is a tort or not. First, we have to see whether the wrong is civil or criminal; if it is a civil wrong, it has to be further seen if it exclusively belongs to another recognized category of civil wrongs, like breach of contract or breach of trust. If it is found that it is neither a mere breach of contract nor any other civil wrong, then we can say that the wrong is a 'tort'.

TORT IS REDRESSIBLE BY AN ACTION FOR UNLIQUIDATED DAMAGES

Damages are the most important remedy for a tort. After the wrong has been committed, generally, it is the monetary compensation which may satisfy the injured party. After the commission of the wrong, it is generally not possible to undo the harm that has already been caused. II, for example, if the reputation of a person has been injured, the original position cannot be restored. The only thing which can be done in such a case is to see what is the money equivalent to the harm by way of defamation and the sum so arrived at is asked to be paid by the defendant to the plaintiff. There are other remedies also which could be available when the tort is committed. It is also just possible that sometimes the other remedies may be more effective than the remedy by way of damages. For example, when a continuing wrong like a nuisance is being committed, the plaintiff may be more interested in the remedy by way of 'injunction' to stop the continuance of nuisance, rather than claiming compensation from time to time, if the nuisance is allowed to be continued. The idea of mentioning the remedy by way of damages in the definition is just to explain the nature of the wrong. Apart from that, the fact that damages are the most important remedy for tort, and generally, it is the only remedy after the tort is committed, indicates that the wrong is a civil wrong, rather than a criminal wrong.[2]

CONTRACT AND TORT

Tort and contract differ from one another in the following respects:-

(1) In tort, there is a breach of duty which is primarily fixed by law whereas in contract there is a breach of duty which is fixed by the consent of parties, for example, it is my duty not to assault or defame any person.

(2) In tort, there is a violation of a right in the term, i.e., a right vested in some determinate person and available against the whole world, whereas a breach of contract is an infringement of a right in personam i.e., a right available only to a some definite person and in which the society has no concern. Thus if 'A' assaults 'B' or damages B's property without lawful justification it is a tort. In this case, the duty is a duty imposed by law and that is the duty not to do unlawful harm to the person or property of another. But if A' agrees to sell 100 quintals of wheat to 'B' for a price, and if he fails to perform the contract within a specified time, 'A' will be liable for breach of contract.

[2] Law of Torts, Dr. R.K. Bangia, pg. 6 & 7

(3) In tort, the motive for breach of duty is immaterial. But in case of breach of contract, it is often taken into consideration. Thus if the defendant does an act with good motive or in good faith to save a person from being harmed then he will not be liable to the plaintiff. But in a contract the defendant cannot take the defence of good faith or good motive and he has to pay damages to the plaintiff in every case.

(4) In both tort and contract the general remedy is an action for damages. But the purpose for which damages are given is different. In tort, exemplary damages are awarded to punish the defendant but in contract the nature of damages is compensatory and it is generally fixed.

(5) In tort the damages are generally unliquidated and are determined by the court on the facts and circumstances of the case. But in a contract, the damages are fixed according to the terms and conditions of the contract, for example, suppose 'A' contracted to build a house for 'B' within a year, and on failure to do so he agreed to pay Rs. 1000/- to 'B' as damages. Again if 'A' agrees to sell to 'B' 20 pigs for Rs. 10 each by the 10th of October, 1947 but he fails to do so, there is a fixed and determined measure to ascertain the damages. But in tort, the damages are not fixed nor is there any measure by which the plaintiff can estimate it correctly. It is determined by the Court on the basis of the facts and circumstances of each case.[3]

TORT AND QUASI-CONTRACT

In a quasi-contract, if a person gets an undue advantage to which he is not entitled then it is his duty to return such profit to the person who is entitled to get it. This type of duty is called a quasi-contract. For example, A and B both owe C 100 rupees. A pays the whole amount of loan to C B not knowing this fact pays again 100 rupees to C. In such a case C should return B's money. Although A has not violated any contract this duty is a quasi-contract. As regards the question of duty is concerned both tort and quasi-contract are similar because the duty is fixed by law. Tort and quasi-contract differ from each other in the following respects-

(1) In quasi-contract the claim for damages is for the amount of money given for definite services rendered in future whereas in tort the claim is for such amount which was not given earlier.

(2) In quasi-contract the damages are generally fixed whereas in tort the damages are not fixed.

[3] Law of Torts, Dr. J.N. Pandey, pg. 8

(3) In a quasi-contract the duty is towards the definite person whose violation is called a breach of quasi-contract. On the other hand, in tort, the duty is towards persons generally and not to a definite person.[4]

PRIVITY OF CONTRACT AND TORTIOUS LIABILITY

If there is a contract between A and B and as a result of the breach of contract by A, injury is caused to C, the question is can C, who is a stranger to the contract, bring an action against A, whose breach of contract with B has also resulted in the commission of tort against C?

When A's wrongful act results in the breach of a contract which he had entered into with B and also the commission of a tort against C, it was thought that just like B, C has also to show privity of contract before he can bring an action for tort. Winterbottom v. Wright[5]was responsible for the introduction of this "privity of contract fallacy into the law. The action in tort is independent of a contract and the rule that the privity of a contract is essential for an action in tort is highly irrelevant and unjust. This fallacy had its end in 1932. In Donoghue v. Stevenson[6], the consumer could bring an action in tort against the manufacturer even though there was no contract between the manufacturer and the consumer. Whatever the contract, it was only between the manufacturer and the retailer. Lord Macmillan observed: "On the one hand, there is the well-established principle that no one other than a party to the contract can complain of breach of that contract. On the other hand, there is equally the well-established doctrine that negligence apart from contract gives a right of action to the party injured by that negligence-and here I use the term negligence, of course, in its technical legal sense, implying duty owed and neglected. The fact that there is a contractual relationship between the parties that may give rise to an action for breach of contract does not exclude the co-existence of a right of action founded on negligence between the same parties, independently of the contract, though arising out of the relationship in fact brought about by the contract. Of this, the best illustration is the right of the injured railway passenger to sue the railway company either for breach of the contract of safe carriage or for negligence in carrying him. And, there is no reason why the same set of facts should not give one person a right of action in contract and another person a right of action in tort."[7]

[4] Law of Torts, Dr. J.N. Pandey, pg. 9
[5] (1842) 10 M. & W. 109.
[6] (1932) A.C. 562.
[7] Law of Torts, Dr. R.K. Bangia, pg. 11

ESSENTIALS OF A TORT

1. Act or Omission

In order to make a person liable for a tort, he must have done some act which he was not expected to do, or he must have omitted to do something which he was supposed to do. Either a positive wrongful act or an omission that is illegally made will make a person liable. For example, if A commits the act of trespass or publishes a statement defaming another person, or wrongfully detains another person, he can be made liable for trespass, defamation or false imprisonment, as the case may be.

2. Legal Damage

In order to be successful in an action for tort, the plaintiff has to prove that there has been legal damage caused to him. In other words, it has got to be proved that there was a wrongful act or omission causing a breach of a legal duty or the violation of a legal right vested in the plaintiff Unless there has been a violation of a legal right, there can be no action under the law of torts. If there has been a violation of a legal right, the same is actionable whether, as a consequence thereof, the plaintiff has suffered any loss or not.

LEGAL INJURY CAN BE EXPLAINED BY TWO MAXIMS

1. Injuria Sine Damnum (Injury without Damage)

   It means legal injury without actual damage. Law presumes the existence of legal injury and there is no need for actual injury. What is important is – the infringement of legal rights.

   Ashby v. White[8]: In this case, the defendant, a returning officer wrongfully refused to register a duty-tendered vote of the plaintiff. The candidate for whom the vote was tendered was elected and no loss was suffered by the rejection of the vote. The court held that action is allowed on the ground that the violation of the plaintiff's statutory right was an injury for which he must have a remedy and is actionable without proof of actual damage.

   Bhimsingh v. State of J&K[9]: On the opening day of the Budget Session of the Legislative Assembly, Shri Bhim Singh was suspended from the Assembly. He questioned the suspension in the High Court of Jammu & Kashmir. The order of

[8] (1703) 2 Lord Raym 938
[9] A.I.R 1986 S.C. 494

suspension was stayed by the High High Court. The next day, he was arrested and taken away by the police. His wife filed the present application for the issue of a writ to direct the respondents to produce Shri Bhim Singh before the court, to declare his detention illegal and to set him at liberty.

2. Damnum Sine Injuria (Damage without Injury)

   It means actual damage without legal injury. Damage without violation of legal rights is not actionable. Sometimes a person may suffer actual damage or loss but for that, he cannot take legal action.

   Gloucester Grammar School Case[10]: In this case, the defendant, set up a rival school next door to the plaintiff's school and the boys from the plaintiff's school flocked to the defendant's school. It was held that no action lay, as no damage was caused by a rival in the exercise of the right to employ oneself in one's without any hindrance and freely competing with one's rivals in the same calling, trade, or business.

   Mogul Steamship Co. v. McGregor Gow and Co.[11]: A number of steamship companies combined together and drove the plaintiff company out of the tea-carrying trade by offering reduced freight. The House of Lords held that the plaintiff had no cause of action as the defendants had by lawful means acted to protect and extend their trade and increase their profits.

[10] (1410) Y.B. Hill 11 Hen, 4 of 47, p. 21, 36
[11] (1892) A.C. 25