

## LAW OF TORTS INCLUDING MV ACCIDENT and CONSUMER PROTECTION LAWS-I

### Objective:

The objective behind teaching the 'Law of Torts' is to set out the law of private rights and remedies which are not covered by statute. Students need to be well acquainted with this branch of law governing actions for damages for injuries to certain kinds of rights, like the right to personal security, property and reputation. This branch of common law has a large potential to expand and apply its principles in contemporary areas like Human Rights, Environmental Rights, and Intellectual Property Rights. Hence, a student of law needs to have good knowledge about Law of Torts.

A tort is a civil wrong for which the legal remedy is an action brought by means of civil proceedings by or on behalf of the injured party for damages or some other legal remedy desired by the person who has suffered the wrong. Historically, a person had to make such a claim by reference to the specific "cause of action" appropriate to the particular claim and, although this is no longer the case, the historical pigeon-holing of claims means that we now have a law of torts, not a law of tort. This module examines introduction to the Law of Torts, standing of a person in tort, justifications of tort, discharge of torts, vicarious liability, strict liability, product and services liability and remedies.

This module deals with selected aspects of the law of torts. Four possible purposes may be served by the imposition of tort liability: **i. Compensation:** In many cases, the injured party seeks damages to compensate him or her for personal injury, property damage, financial loss or infringement of civil or personal rights caused by another's "tortious" act. **ii. Deterrence:** The imposition – or possible imposition – of tort liability may be designed to deter, or to have the effect of discouraging, undesirable conduct or to encourage desirable conduct. **iii. Justice:** Making a wrongdoer "pay" by imposing tort liability may appeal to a basic sense of justice that a wrongdoer should put right the "wrong" which he or she has done. **iv. Setting standards:** Tort cases frequently involve a judicial determination as to whether a defendant, be it a government department, a large commercial organisation, a small business or a single individual, has acted reasonably. The imposition – or possible imposition – of tort liability may operate to encourage "reasonable" standards of conduct.

**Unit**

**1. Introduction to the Study of Torts**

**(07)**

- A. Introduction
- B. Nature of Tort:
  - I. Definitions
  - II. Torts v/s Law of Crimes
  - III. Torts v/s Law of Contract
- C. The Conventional Basis for Imposing Liability in Torts:
  - I. Act and Omission:
  - II. Mental Elements:
    - Intention
    - Negligence
    - Breach of Strict Duty
  - III. Damage
    - Injuria Sine Damnum
    - Damnum Sine Injuria
  - IV. Remedy:
    - Ubi Jus Ibi Remedium
    - Concept of Unliquidated Damages
- D. Malfeasance, Misfeasance, Nonfeasance
- E. Reception of the Law of Torts in India
- F. Conclusion

**2. Standing of a Person in Tort**

**(07)**

- A. Introduction
- B. Locus Standi:
  - I. Traditional Doctrine of Locus Standi in Private Law Litigation
  - II. The Liberalisation of Locus Standi in Public Interest Litigation
    - Private Legal Injury to Others
    - Injury to Public Interest
    - Injury to Public Interest with Specific Injury
  - III. Bhopal Gas Leak Disaster and Class Action:
    - General Observations
    - Bhopal Gas Leak Disaster (Processing of Claims) Act, 1985
    - Charan Lal Sahu v. Union of India, (1990) 1 SCC 613
- C. Limitations of Personal Capacity
  - I. Who Cannot Sue?
    - Convict

- Alien Enemy
  - Insolvent Person
  - Husband & Wife
  - Corporation
  - Foreign State
- II. Who Cannot Be Sued?
- Foreign Sovereigns
  - Ambassadors
  - Infants
  - Lunatics
  - Corporations
  - Persons Having Parental or Quasi-Parental Authority
  - Trade Unions
  - Married Women

D. Conclusion

**3. Justification in Tort (05)**

- A. Introduction
- B. Volenti Non Fit Injuria
- C. Plaintiffs Default
- D. Mistake
- E. Act of God /Vis Major
- F. Necessity: Private and Public
- G. Inevitable Accident
- H. Private Defense
- I. Statutory Authority
- J. Judicial and Quasi-Judicial Acts
- K. Parental and Quasi-Parental Authority
- L. Conclusion

**4. Discharge of Torts (04)**

- A. Introduction
- B. Actio Personalis Moritur Cum Persona
- C. Waiver and Acquiescence
- D. Release
- E. Accord and Satisfaction
- F. Statutes of Limitation
- G. Conclusion

**5. Vicarious Liability (10)**

- A. Introduction
- B. Justification for the Vicarious Liability
  - I. Ratification
  - II. Abetment
  - III. Special Relationships: Master and Servant, Principal and Agent, Partners
- C. Course of Employment:
  - I. Policy Factors
  - II. Test Based on Implied Authority
  - III. Distinction between 'Authorised Acts' and 'Unauthorised Modes'
  - IV. Road Traffic Cases: Detour, Deviation, and Travel To and From Work
- D. Contribution between Employer and Employee
- E. Liability for the Torts of Independent Contractors
- F. Liability of Parents for the Torts of Their Children
- G. Liability of State for the Acts of Its Servants in India
  - I. General Observations
  - II. Legislative Provisions
  - III. Judicial Decisions
    - Introduction
    - Sovereign and Non-Sovereign Functions
      - Pre-Constitutional Decisions
      - Post-Constitutional Decisions
    - Cases Involving Fundamental Rights
- H. Uncertainty of Law
  - I. Need for Legislation
    - Law Commission of India First Report: Liability of the State in Tort
    - Suggestions
- J. Conclusions

**6. Strict Liability:**

**(06)**

- A. Introduction
- B. The Rule in Rylands v. Fletcher
- C. The Essentials of Liability:
  - I. The Thing Must Be Brought On To the Defendant's Land;
  - II. Escape
- D. Defences:
  - I. Plaintiff's Consent
  - II. Plaintiff's Own Fault
  - III. Act of Third Party
  - IV. Act of God
  - V. Statutory Authority
- E. Rylands v. Fletcher and Nuisance

F. The Future of Strict Liability in General:

- I. M.C. Mehta v. Union of India, AIR 1987 SC 1086
- II. Union Carbide Corporation v. Union of India, AIR 1992 SC 248
- III. Jai Laxmi Salt Works (P) Ltd. v. State of Gujarat, (1994) 4 SCC 1
- IV. Rural Indian Council for Enviro-Legal Action v. Union of India, AIR 1996 SC 1446
- V. The Public Liability Insurance Act, 1991
- VI. The National Environment Tribunal Act, 1995
- VII. Conclusion

**7. Products and Services Liability**

**(06)**

- A. Introduction
- B. The Position in the Indian Contract Act, 1872
- C. The Position in the Sales of Goods Act, 1930
- D. The Position in Tort
- E. Consumer Protection Act, 1986
  - I. Objects of the Consumer Protection Act, 1986
  - II. Working of the Consumer Protection Act, 1986
    - Definitions:
      - Consumer
      - Complaint
      - Defect
      - Deficiency
      - Unfair Trade Practices
  - III. Consumer Redressal Forum
    - District Forum
    - State Commission
    - National Commission
- F. What Difference Does the Consumer Protection Act 1987 really make?
- G. Conclusion

**8. Remedies**

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- A. Introduction
- B. Legal remedies -Judicial and Extrajudicial
  - I. Judicial Remedies:
    - Damages: Kinds of Damages, Measures of Damages and Remoteness of Damages
    - Injunction: Kinds of Injunction
    - Specific Restitution of Property
  - II. Extra-Judicial Remedies:
    - Self-Help
    - Re-Entry on Land

- Re-Caption of Goods
- Abatement of Nuisance
- Distress Damage Feasant

### C. Conclusion

### **Suggested Readings**

- Ratanlal Ranchhoddas, Dhirajlal Keshavlal Thakore and Guru Prasanna Singh, "Ratanlal & Dhirajlal's the Law of Torts", Wadhwa & Co: 2008
- Percy Henry Winfield, J.A. Jolowicz and T. Ellis Lewis, "Winfield on Tort", Sweet and Maxwell: 1963
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- Videh Upadhyay, "Public Interest Litigation in India: Concepts, Cases and Concerns", LexisNexis Butterworths: 2007
- N.R. Madhava Menon, "Documents and Court Opinions on Bhopal Gas Leak Disaster Case", National Law School of Indian University: 1991
- Upendra Baxi, Thomas Paul, "Mass Disaster and Multinational Liability: the Bhopal Case", N.M. Tripathi: 1986
- Upendra Baxi, Amita Dhanda and Indian Law Institute, "Valiant Victims and Lethal Litigation: the Bhopal Case", N.M. Tripathi: 1990
- Jenny B. Wahl, "Economic Analysis of Tort and Products Liability Law: A Collection of Essays & Cases (Law and Economics)", Routledge: 1998

- Gregory L. Fowler and Aspatore Books, "International Product Liability Law: A Worldwide Desk Reference Featuring Product Liability Laws & Customs in 50+ Countries", Aspatore Books: 2003
- Jai Narain Pandey, "Law of Torts: With Consumer Protection Act, 1986 and Motor Vehicles Act, 1988", Central Law Publication: 2002
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- P. K. Majumdar, "Law of Consumer Protection in India", Orient Publishing Company: 2002
- N. Barowalia, "Commentary on the Consumer Protection Act-1986", Universal Law Publishing Co. Pvt. Ltd.: 2002