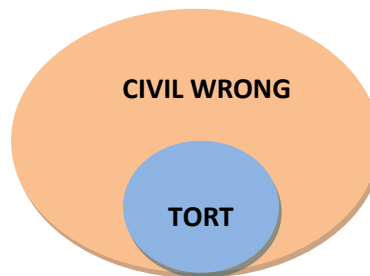


## NATURE AND DEFINITION OF TORT

- Tort is a **French** term which means 'wrong' in English.
- Origin of 'tort'- derived from Latin word "**tortum**" meaning 'to twist- i.e. twisted or crooked conduct'.
- **Basis of torts**
- **Ubi jus ibi remedium**- It means '**where there is a right there is a remedy**'. This Maxim is the foundation of the law of torts. It is a fundamental principle that no wrong can remain without a remedy.
- Right without a remedy is toothless. The court in **Ashby Vs White** recognized the principle and held that if a person has a right he must have the means to vindicate and maintain it.
- The law of tort is based on English common law. it is basically the product of judicial decisions.
- Supreme Court in **Rajkot Municipal Corporation versus Majnuben Jayantilal Nakum 1997**- held that in absence of statutory law with respect to torts common law principles evolved in England may be applied in India.

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- **Definition of Tort:**
  - **Salmond**- "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 a trust or other merely equitable obligation."
  - **Winfield**- "Tortious Liability arises from the breach of a duty primarily fixed by the law: this duty is towards persons generally and its breach is redressable by an action for unliquidated damages."
  - **Fraser**- "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."

- The definition of **the Limitation Act, 1963 - Section 2(m)**, “ Tort means a civil wrong which is not exclusively a breach of contract or breach of trust.”
- 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 breach of trust.
- The damages in torts are **unliquidated** which means they are not pre decided.




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- **Tort v. Torts**

- ✓ The law of Tort, i.e., is every wrongful act, for which there is no justification or excuse to be treated as a tort. **Winfield** was the supporter of this theory according to him if wrong happens without justification the person will be liable. Winfield's book is titled as 'law of tort'
- ✓ The Law of Torts, consisting only of a number of specific wrongs beyond which the liability under this branch of law cannot arise. **Salmond** was the supporter of this theory according to him the liability arises only when the wrong falls in one of the specified tort. This theory is also known as **Pigeon Hole Theory**. Salmond book is titled 'law of torts'

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- **Essentials of Tort**

- The most common essentials for tortious liability are:
  - 1) **Act or omission** on part of defendant

2) Such Act or omission result in legal damage i.e. **violation of a legal right** vested in plaintiff.

- Both positive act and negative act [omission] make a person liable in torts. The Act must be a wrongful act or omission
- If there is a legal duty upon any person to do or refrain from doing any acts and he violates such duty then also he is made liable in torts.
- The plaintiff has to prove that he has suffered legal damage as a result of act or omission of defendant unless there is any violation of legal right of plaintiff there cannot be any action in torts
- Following are the two maxims governing this principle
  - 1) Injuria sine damnum
  - 2) Damnum sine injuria
- **Injuria sine damnum**
- ✓ **Injuria** means infringement of a legal right
- ✓ **Sine** means without
- ✓ **Damnum** means substantial harm, loss or damage
- ✓ The Maxim injuria sine damnum means **violation of legal right without any harm or damage to the plaintiff**
- ✓ The essence of action in torts is violation of legal right. Therefore if there has been injury for violation of legal right but there is no damage or loss caused to the plaintiff then also the plaintiff can sue for the action of torts.
- ✓ **Ashby v. White**- Plaintiff was Voter who was not allowed to vote by defendant, the candidate plaintiff wanted to vote for won nonetheless, court held defendant as liable;
- ✓ **Bhim Singh v. State of J&K**- An MLA was wrongfully detained by the police because of which he could not attend assembly session for which court awarded Rs.50.000 in damages

- **Damnum sine injuria:** When there is no violation of a legal right, no action can lie in a court of law even though the defendant's act has caused some loss or harm or damage to the plaintiff.
- **Gloucester Grammar School Case-** The defendant, a schoolmaster, set up a rival school to that of the plaintiffs. Because of the competition the plaintiffs had to reduce their fees. It was held that the plaintiffs had no remedy for the loss suffered by them;
- **Magul Steamship co. v. McGregor Grow and Co. -** A number of steamship companies drove the plaintiff out of the business by combining an offering reduced Freight. The court held that the plaintiff had no cause of action because the defendant employed lawful means to reduce Freight.
- **Mayor of Bradford Corporative v. Pickles-** The House of Lords went a step further and held that even if the harm to the plaintiff has been caused maliciously. No action can lie for the same unless the plaintiff can prove that he has suffered injuria.
- **Chesmore vs. Richards** the plaintiff was using the water stream for his mill. This water came from an underground stream. Defendants dug a well on their land and the water from the stream was formed into that well. The court held that defendants were not liable.
- **Town Area Committee v. Prabhu Dayal-** The plaintiff made certain construction without complying with the provisions of the U.P. Municipalities Act. The defendants demolished the construction. The plaintiff sued the defendants contending that the demolition was illegal as some of the officers of the Town Area Committee were acting maliciously in getting the construction demolished. The Allahabad High Court held that the demolition of a building illegally constructed was perfectly lawful. The Court did not investigate the question whether the act was done maliciously or not as the same was considered to be irrelevant.

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- **Classification Of Torts- Based On Mental Element**

- 1) Those involving intention and where the mental element is relevant, (Assault, Battery, Trespass etc.)
- 2) Those involving negligence,
- 3) where the mental element is not relevant i.e. wrongs of strict liability, absolute liability

- **Tort v. Crime v. Breach of contract**

- **'Crime'** is a wrongful act, which results from the breach of a duty recognized by criminal law, it is a Public wrong, which occurs on breach of Public duties. In crime the wrongdoer is prosecuted by the state, it is a public wrong
  - **'Breach of contract'** is the non-performance of a duty undertaken by a party to a contract,
  - **'Tort'** is a breach of duty recognized under the law of torts; it is a Private wrong, which occurs on breach of private duties.
  - It is a Private wrong which means action against the 'tort-feasor' or 'wrongdoer' is brought by the injured party.
  - Tort is a private wrong that contravenes the legal right of an individual or a group.
  - (In contracts also the same happens but the duty which is breached in contract is imposed by the contract, in tort the breach is of a duty which is imposed by law n public in general)
  - It is a Civil wrong and tort litigation is compoundable which means that the complaint can withdraw the suit filed by him. (cannot be done that in crimes)
  - The damages in torts are **unliquidated** which means they are not pre decided.
  - **Overlap between areas:** There are various wrongs which find their place both under criminal law and law of torts, some examples of such wrongs are Assault, Defamation, Negligence, conspiracy and Nuisance.
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