

INTRODUCTION

The word tort originates from the French language. It is equivalent to the English word “wrong” and Roman law’s term “delict”. It is derived from the Medieval Latin word “tortum” which means “wrong” or “injury” which itself was further developed from the Old Latin word “torquere” which means “to twist”. It is a breach of duty which amounts to a civil wrong. A tort arises when a person’s duty towards others is affected, an individual who commits a tort is called a **tortfeasor**, or a wrongdoer. And where there are multiple individuals involved, then they are called **joint tortfeasors**. Their wrongdoing is called as a **tortious act** and they can be sued jointly or individually. The main aim of the Law of Torts is the compensation of victims.

Section 2(m) of the Limitation Act, 1963, Addresses tort as being a civil wrong which is not just exclusively a breach of contract or a breach of trust.

ESSENTIAL ELEMENTS OF A TORT

Three essential elements which constitute a tort are,

1. A Wrongful act or omission, and
2. Duty imposed by the law.
3. The act must give rise to legal or actual damage, and

It should be of such a nature that it should give rise to a legal remedy in the form of an action for damages.

WRONGFUL ACT

A legal wrongful act is one which affects one’s legal right, the wrongful act must be one recognized by law, the act must be in violation of the law to be a legal wrongful act. An act which seems *Prima facie* (based on the first impression) innocent may also end up infringing somebody else’s legal right, innuendo (Where a statement is said by an individual which may be *Prima facie* innocent but may also have a secondary meaning which can harm the reputation of another in the eyes of the public or the person who comes to know of such information) is an example of this. Liability for a tort arises when the wrongful act being complained of amounts to an infringement of a legal private right or a breach or violation of a legal duty. i.e. If a person is prevented from voting by another, even if the candidate he was going to vote for, wins, his legal right to vote has been violated.

DUTY IMPOSED BY LAW

A duty of care is one which is imposed on every individual and requires a standard of reasonable care that he could see as being harmful towards others. Hence, a duty imposed by law is a duty which is legally enforceable in the Indian courts.

SUBJECT MATTER

In order to prove an action for tort in the court, the plaintiff has to prove that there was a wrongful act or an act or omission which resulted in the breach of a legal duty or the violation of a legal right. So, there must be a violation of a legal right of a person and if there is no violation of a legal right then 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 the plaintiff has suffered any loss or not. This is expressed by the maxim, "*Injuria sine damno*" where '*Injuria*' refers to "infringement of the legal right of a person" and the term '*damnum*' means "substantial harm, loss or damage to that individual". The term '*sine*' means "without". However, if there is no violation of a legal right, no action can lie in a court despite of the loss, harm or damage to the plaintiff caused by the defendant.

The factual significance of legal damage is illustrated by two maxims namely:

- *Injuria sine damno*, and
- *Damnum sine injuria*.

Injuria sine damno means injury without damage. Such damage is actionable under the law of torts. It occurs when a person suffers a legal damage instead of actual loss, i.e. his legal right is infringed by some other individual. In other words, this is an infringement of an absolute private right of a person without having suffered any actual loss.

An example of this can be the landmark case of, *Ashby v. White*(1703) 92 ER 126, where Mr. Ashby, the plaintiff, was prevented from voting by the constable Mr. White. This rule is basically based on the old maxim "*Ubi jus ibi remedium*" which translates to "where there is a right, there will be a remedy."

Another example in the Indian context would be the case of,

Bhim Singh v. State of J and K, where the plaintiff was a Member of the parliament and was not allowed to enter into the premises of the Assembly election by a police constable, hence his legal right was infringed.

Damnum sine injuria whereas translates to damage without injury, here the party affected suffers damage which may also be physical but suffers no infringement of their legal rights. In other words, it means the occurrence of an actual and substantial loss to a party without any

infringement of a legal right. Here no action lies in the hands of the plaintiff as there is no violation of a legal right.