

## **TORT AND OTHER WRONGS**

### **Tort and Crime – Distinguished**

(1) A tort is basically a private wrong, i.e. it is the infringement of a person's right in rem, in other words, it is an infringement of a personal right. While a crime is a public wrong, i.e. is against the whole world and the state, it is an infringement of rights in personam, in other words, it is an infringement of the public right.

(2) The remedy in the case of law of torts is in the form of damages, while in the case of a crime, it is in terms of punishment.

(3) In the case of a tort, a suit is filed. Whereas, in the case of a crime, a complaint is filed.

(4) Law of torts is an uncodified law whereas law of crimes is a codified law.

(5) In tort, intention is important but not in all cases, whereas in the case of criminal law intention is the crux of the offence itself.

Example: A good example of this can be Assault, where the party who has been assaulted can bring charges against the person who has assaulted him or her. Also he or she can claim for damage in the civil courts under Tort law.

### **Torts and Breach of Contract – Distinguished**

(1) In the case of a tort the duty is fixed by the law, whereas in the case of contract the duty is fixed by the parties involved.

(2) In case of a tort, the duty is towards everyone in the society, whereas in the case of a contract, the duty is towards specific individuals only.

(3) Motive is often taken into account in the case of a tort, while, in the case of a contract, motive is irrelevant.

(4) Damages in the case of a tort are different under different circumstances, whereas, in the case of a contract, the damages are in the form of compensation for the loss suffered in peculiar form.

(5) In the case of a tort, intention is taken into consideration in some cases, whereas, in the case of a breach of contract, intention is irrelevant.

Example : A father who employs a surgeon for the treatment of his minor son, and if his son is injured by the surgeon's carelessness. Here the father can sue the surgeon for the breach of contract also, as there is no contract between the minor son and the surgeon, the minor son can sue the surgeon (for the careless act which amounts to negligence) in tort and can also put charges on the surgeon but he cannot sue for the breach of contract.

### **Torts and Breach of trust – Distinguished**

(1) In the case of a tort, the compensation is in the form of unliquidated damages, whereas, in the case of breach of trust, the compensation is in the form of liquidated damages.

(2) Law of torts has originated as a part of common law whereas, breach of trust could be redressed in the Court of Chancery.

(3) Law of trust is regarded as a division of the law of property, whereas, law of tort is not regarded as a division of the law of property.

### **Liquidated damages vs Unliquidated damages**

Both of these damages solidifies the plaintiffs right to be compensated. Liquidated damages, on one hand, have their amount of compensation fixed while on the other hand, unliquidated damages have no prior fixed amount, they change with the intensity of the offence committed by the defendant.

The extent of the amount to be compensated in the case of liquidated damages is predetermined whereas in the case of unliquidated damages in order to get the maximum compensation the plaintiff has to prove the extent of the damage he has suffered from.