

Independent Tortfeasors and joint tortfeasors

Independent Tortfeasors

When the acts of two or more persons, acting independently, concur to produce a single damage, they are known as independent tortfeasors. There is no concerted action on the part of independent tortfeasors. There is mere similarity of design on their part although they act quite independently of one another. For eg. two motorists driving negligently and coming from the opposite direction collide and a pedestrian is crushed between the two cars, these motorists are independent tortfeasors.

In The Koursk, due to independent negligence of the two ships, they collided with one another and as a consequence of the same, one of them ran into and sank a third vessel. It was held that they were not joint tortfeasors but only independent tortfeasors. The liability of the independent tortfeasors was not joint but only “several” and, therefore, there were as many causes of action as the number of tortfeasors. It was thus further held that since they were severally liable, an action against one of them was no bar to an action against the other.

Joint tortfeasor

Two or more persons are said to be joint tortfeasors when the wrongful act, which has resulted in a single damage, was done by them, not independently of one another, but in furtherance of a common design. When two or more persons are engaged in a common pursuit and one of them in the course of and in furtherance of that commits a tort, both of them will be considered as joint tortfeasors and liable as such.

In Brook v. Bool,

A and B entered Z’s premises to search for an escape of gas. Each one of them, in turn, applied damage to Z’s premises in this case, even though the act of A alone had caused the explosion, but both A and B were considered to be joint tortfeasors and thus held liable for the damage.

Persons having certain relationships are also treated as tortfeasors. The common examples of the same are : Principal and his agent, master and his servant and the partners in a partnership

firm.

If an agent does a wrongful act in the scope of his employment for his principal, the principal can be made liable along with the agent as a joint tortfeasor.

Similarly, when the servant commits a tort in the course of employment of his master, both the master and the servant are liable as joint tortfeasors.

In the same way, for the wrongful act done by one partner in a partnership firm, in the course of performance of his duties as a partner, all the other partners in the firm are liable along with the wrongdoer.

Liability of Joint Tortfeasors

Liability of joint tortfeasors arises in three circumstances and they are:

Agency

When one person is authorized by another person to do work on his behalf then any tort committed by that person, the agent then principal who is authorizing the work will jointly and independently be held liable. When a tort is committed by an agency then both principal and agent are considered as joint tortfeasors. When any partner commits tort during the course of the business, then all other partners are also considered as joint tortfeasors.

Vicarious Liability

When a person is liable for the tort committed by another person under special circumstances, the liability is joint and both are joint-tortfeasors. Thus, when a servant commits a tort in the course of employment, the master can be made liable along with the servant as a joint-tortfeasors.

Joint Action

Where two or more persons join together for common action then all the persons are jointly and severally liable for the tort committed in the course of action.

When two or more persons join together for common action, then all the persons are jointly and severally liable for any tort committed in the course of such action. There were three principles in English Common Law with regard to the liability of joint tortfeasors.

- The first principle is that the liability of wrongdoers is joint and several i.e. each is liable for the whole damage. The injured may sue them jointly or separately.
- The second principle was laid down in the case of *Brinsmead v Harrison*, where it was held that a judgment obtained against one joint wrongdoer released all the others even though it was not satisfied.
- The third rule was laid in the case of *Merryweather v Nixon*, where it was held that in common law, no action for contribution could be sustained by one wrongdoer against another, although one who sought a contribution might have been compelled to pay the full damages. The reason alleged for this rule was that any such claim to the contribution must be based on an implied contract between the tort-feasors and that such a contract was illegally concluded with a view to committing an illegal act.

But the above rules were virtually abolished by the Law reforms Act, 1935 and the Civil Liability Act, 1978. The first rule in *Brinsmead* case being unjust, was abolished by the Act 1935 and therefore by the Act of 1978 which now provides that judgment recovered against any person liable in respect of any debt or damage should not be bar to an action, or to the continuance of an action, against another person who is jointly liable with him with respect to the debt and damage.

The second rule in *Merryweather* case is that a tortfeasor who has been held liable cannot recover contribution from other joint tortfeasors, being unjust, has also been abolished by the Act of 1935 which, as per section 6(1), provides that a tortfeasor who has been held liable to pay more than the share of the damages, can claim contribution from the other joint tortfeasors.

The third unjust rule was created by section 6(1)(b) of the Law Reform Act, of 1935 that if successive actions are brought, the amount of damages recoverable shall not, in the aggregate exceed, the amount of damages awarded in the first judgment. This rule, being unjust has now been repealed and replaced by section 4 of the civil liability Act, 1978 which now disallows the only recovery of cost in the subsequent suits, unless the court is of the opinion that there was a reasonable ground for bringing the action.