

# LAWXPERTS.

## WHY YOU SHOULD STUDY THIS ?

1. HIGH QUALITY.
2. BASED ON STANDARD SOURCES
3. POSSIBILITY OF DIRECT QUESTIONS
4. COMPLETELY SYLLABUS-ORIENTED.

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## SYLLABUS : NATURE AND DEFINITION OF TORT LAW

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### 1) CONCEPT: LAW OF TORTS ?

- a) Protects the variety of interest in the society from the violation of injuries Ex Delicto. (violation of duties imposed by the law)
- b) How? It protects the interests by compensating the losses to the suffered.
- c) Who develops it ? Originally- Judiciary. Legislature not wholly but elements of torts have been inculcated in our statutes eg :Fatal accidents Act.1895.

UBI JUS IBI REMEDIUM= Where there is a right , there is a remedy.

### 2) FUNCTIONS OF TORTS :

- ✓ Monetary compensation to the loss suffered.
- ✓ deterrence,
- ✓ appeasement or vindication of rights,
- ✓ justice and
- ✓ 'to provide a public forum in which to discuss new forms of behaviour.

### 3) DEFINITION:

The rules of liability which dictate whether the defendant's activity constitutes a civil wrong, thus enabling the court to grant a remedy, that is, compensation to the claimant victim.

SALMOND, FRASER, LIMITATION ACT. (See it in our notes)

- 4) **ARE ALL CIVIL INJURIES ARE TORTS ?** Of course no. it is infringement of a private right. Eg: Breach of trust - yes for civil action but no for tort.

### 5) ESSENTIALS OF TORT:

Act OR Omission + causation + Fault + protected interest + damage = liability.

### 6) DISTINCTION BETWEEN

#### A. TORT V. CRIME =

- Nature of the wrong : to individual V. against whole society
- Forum of redressal : Civil V. Criminal Court.
- Procedure : Personal initiation V. Sovereign (Union of India or States)
- Result : Damages as compensation V. Punishment

#### B. TORT V. BREACH OF CONTRACT :

- Violation of duty fixed by law V. Contract
- No privity V. Privity Doctrine applies.
- Right in rem V. in personam

### 7) INDISPENSABLE TWO MAXIMS :

ROOTS : Damnum = damage ; sine = no ; Injuria= Injury

- Damnum Sine Injuria = Damage without injury

Case law : Gloucester Grammar School case. New School with Low tuition fee offering . Not Tort. But competition.

- Injuria Sine Damno = Injury without Damage ; ASHBY V . WHITE : Returning officer denies right to vote. Althou' candidate you desired to vote for has won. R.O is liable for injury.

**8) IS IT LAW OF TORT OR LAW OF TORTS ?**

- UNITY THEORY / LAW OF TORT = every wrongful act is actionable as tort. Winfield.
- PIGEON WHOLE THEORY / LAW OF TORTS = Only few set of wrongs are actionable as tort. Salmond.

**9) MALICE = mental state of a person.**

- A. MALICE IN LAW
- B. MALICE IN FACT
- C. EXCEPTIONS.

**10) TORT LAW & OTHER ALLIED CONCEPTS.**

**11) TORT LAW IN INDIA.**

END OF THE PRIMER. MORE ON THE NOTES!

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