

DAMAGES AS A CONSTITUENT OF TORT LAW

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INTRODUCTION

Evolution and development of Torts

The word tort is of French origin and is equivalent of the English word wrong, and the Roman law term delict. It is derived from the Latin word tortum, which means twisted or crooked, which is not straight or lawful. It implies conduct that is twisted, unlawful or crooked and is civil in nature. It is commonly used to mean a breach of duty amounting to a civil wrong. Eminent jurists define the term of 'Tort' in a various ways and every time a new definition or a theory related to it is either introduced or proposed, respectively. Giving a concise and complete definition of tort is a very tedious and difficult task.

Some of the very commonly used definitions of tort, given by the eminent jurists are mentioned below:-

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Of the various attempts to define tort, Salmond's definition is rather popular. Salmond defines tort as 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.

A tort is committed due to a person's duty to others in generally which is created by one law or the other. The person by whom a tort is committed is called a tortfeasor, or a wrongdoer. If more than single person are involved in committing a tort either by active or by passive participation,

then they are called joint tortfeasers. Here each member is equally liable for the wrong committed. Their wrongdoing is called tortious act and they are liable to be sued jointly and severally. The principle aim of the Law of tort is compensation of victims or their dependants. Grants of exemplary damages in certain cases are the proof, that deterrence of wrong doers is also another aim of the law of tort.

OBJECTIVES OF LAW OF TORTS

- i. To determine rights between parties to a dispute.
- ii. To prevent the continuation or repetition of harm e.g. by giving orders of injunction.
- iii. To protect certain rights recognized by law e.g. a person's reputation or good name.
- iv. To restore property to its rightful owner e.g. where property is wrongfully taken away from its rightful owner.

CONSTITUENTS OF TORT

The law of tort is fashioned as an instrument for making people adhere to standards of reasonable behavior and respect the rights and interests of one another. A protected interest gives rise to a legal right, which in turn gives rise to a corresponding legal duty. An act, which infringes a legal right, is wrongful act but not every wrongful act is a tort. To constitute a tort or civil injury therefore:

1. There must be a wrongful act or omission.
- The first requirement for a tort is that the act complained of should be legally wrongful or that there must be the violation of a legal right. Certain rights which are recognized and protected by law are available to every individual. Any person who invades the legal right of another person is said to commit a wrongful act. All persons are under duty to respect the legal rights of others and not to violate them. In fact, to every legal right, there is a corresponding legal duty. Right and duty are the two sides of the same coin.

2. The wrongful act or omission must give rise to legal damage or actual damage and
3. The wrongful act must be of such a nature as to give rise to a legal remedy in the form of an action for damages.

- The term 'legal right' obviously means rights recognized by law and capable of being enforced at the law court. Such rights are recognized and protected by the state. It has been defined as a "capacity residing in one person of controlling with assent and assistance of the state the action of others".

The wrongful act or omission may however not necessarily cause actual damage to the plaintiff in order to be actionable. Certain civil wrongs are actionable even though no damage may have been suffered by the plaintiff.

Remedy in/for 'Torts'

The law of torts is said to be a development of the maxim 'ubi jus ibi remedium' or 'there is no wrong without a remedy'. The literal meaning of this legal maxim is "Where there is right, there is remedy" implying thereby that if there is right there shall be remedy for its breach. If a man has a right, he must of necessity have a means to vindicate and maintain it and a remedy if he is injured in the exercise or enjoyment of it; and indeed it is a vain thing to imagine a right without remedy; want of right and want of remedy are reciprocal. According to this principle, common law in England advanced remedy for each and every action.

Where there is no legal remedy there is no wrong. But even so the absence of a remedy is evidence but is not conclusive that no right exists. The maxim is basically true to its full extent. It shows the correlation between legal wrong and legal remedy and it would look and sound more presentable, if it is reversed so as to read, "**Where there is no legal remedy, there is no legal wrong.**"

Some General Conditions in Torts:-

1. **Act and Omission**- To constitute a tort there must be a wrongful act, whether of omission or commission, but not such acts as are beyond human control and as are entertained only in thoughts. An omission is generally not actionable but it is so exceptionally. Where there is a duty

to act an omission may create liability. A failure to rescue a drowning child is not actionable, but it is so where the child is one's own. A person who voluntarily commences rescue cannot leave it half the way. A person may be under duty to control natural happenings to his own land so as to prevent them from encroaching others' land.

2. **Voluntary and Involuntary Acts-** a voluntary act has to be distinguished from an involuntary act because the former may involve liability and the latter may not. A self willed act like an encroachment from business, is voluntary, but an encroachment for survival may be involuntary. The wrongfulness of the act and the liability for it depends upon legal appreciation of the surrounding circumstances.

3. **Malice-** malice is not essential to the maintenance of an action for tort. It is of two kinds, 'express malice' (or malice in fact or actual malice) and 'malice in law' (or implied malice). The first is what is called malice in common acceptance and means ill will against a person; the second means a wrongful act done intentionally without just cause or excuse. Where a man has a right to do an act, it is not possible to make his exercise of such right actionable by alleging or proving that his motive in the exercise was spite or malice in the popular sense. An act, generally cannot be made actionable by an averment that it was done with evil motive. A malicious motive per se does not amount to injuria or legal wrong.

Wrongful acts of which malice is an essential element are:

- # Defamation,
- # Malicious prosecution,
- # Willful and malicious damage to property,
- # Maintenance, and
- # Slander of title.

4. **Intention, motive, negligence and recklessness-** The obligation to make reparation for damage caused by a wrongful act arises from the fault and not from the intention. Any invasion of the civil rights of another person is in itself a legal wrong, carrying with it liability to repair it necessary or natural consequences, in so far as these are injurious to the person whose right is infringed, whether the motive which prompted it be good, bad or indifferent. A thing which is not a legal injury or wrong is not made actionable by being done with a bad intent. It is no

defense to an action in tort for the wrong doer to plead that he did not intend to cause damage, if damage has resulted owing to an act or omission on his part which is actively or passively the effect of his volition. A want of knowledge of the illegality of his act or omission affords no excuse, except where fraud or malice is the essence of that act or omission. For every man is presumed to intend and to know the natural and ordinary consequences of his acts. This presumption is not rebutted merely by proof that he did not think of the consequences or hoped or expected that they would not follow. The defendant will be liable for the natural and necessary consequences of his act, whether he in fact contemplated them or not.

5. **Malfeasance, misfeasance and nonfeasance**- the term 'malfeasance' applies to the commission of an unlawful act. It is generally applicable to those unlawful acts, such as trespass, which are actionable per se and do not require proof of negligence or malice. The term 'misfeasance' is applicable to improper performance of some lawful act. The term 'nonfeasance' applies to the failure or omission to perform some act which there is an obligation to perform.

6. **Fault**- liability for tort generally depends upon something done by a man which can be regarded as a fault from the reason that it violates another man's right. But liability may also arise without fault. Such liability is known as absolute or strict liability. An important example is the rule in Rylands v. Fletcher thus the two extremes of the law of tort are of non liability even where there is fault or liability without fault. Between these two extremes is the variety of intentional and negligent wrongs to the question whether there is any consistent theory of liability, all that can be said is that it wholly depends upon flexible public policy, which in turn is a reflection of the compelling social needs of the time

When a personal injury claim is settled either in court or out of court, the most common way the compensation payment is made is by a lump sum award in full and final settlement of the claim. Once accepted there can be no further award for compensation at a later time unless the claim is settled by provisional damages often found in industrial injury claims such as asbestos related injuries

DAMAGES

The sum of money awarded by court to compensate damage is called damages. Damage means the loss or harm caused or presumed to be suffered by a person as a result of some wrongful act of another. Legal damage is not the same as actual damage. Every infringement of the plaintiff's private right or unauthorized interference with his property gives rise to legal damage.

There must be violation of a legal right for a tort to be committed. Every absolute right, injury or wrong i.e. tortuous act is complete the moment the right is violated irrespective of whether it is accompanied by an actual damage. In case of qualified right, the injury or wrong is not complete unless the violation of the right results in actual or special damage. Every injury, thus imports damage, though may not have cost the victim a penny, but simply by hindering the right, as an action for a slanderous word, though a man does not lose a penny by speaking them yet he shall have an action. Also a man shall have an action against him who rides over his ground, though it does him no damage, for it is an invasion of his property and the other trespasser has no right to come there.

Damages in contract

A contract is an agreement between two or more parties; either individuals or companies. If one party does not follow their part of the contract, then they may be liable to pay damages to the other. Damages awarded for breach of contract. Generally, the purpose of an award of damages for breach of contract is to compensate the injured party. The aim of damages in contract law is to place the claimant or innocent party in the position which he or she would have been in if the contract had been followed. Damages are usually awarded for expectation loss (loss of a bargain) or reliance loss (wasted expenditure). Damages in contract law will often be liquidated damages, that is, the amount of loss is capable of being calculated.

Damages for breach of contract are subject to the principles of remoteness, causation and mitigation. In some cases the court may award damages which go beyond a strict measure of compensation. Examples of non-compensatory damages include nominal damages, aggravated damages, restitutionary damages and account of profits.

Damages in tort

A tort is a civil wrong done by one party to another. An example of a tort is defamation, where one person makes false comments or statements about another person. Damages awarded in respect of a tort. The general aim of an award of damages in tort is to put the injured party in the same position as he would have been in if the tort had not occurred. In this instance, money will be awarded to the second person to compensate them for the harm done to their reputation. As in contract, damages in tort are awarded to place the plaintiff in the position in which he or she would have been had the tort not been committed. Damages in tort aim to restore the claimant to his pre-incident position.

A claim in tort gives rise to unliquidated damages; the worth of the damage can only be estimated, not calculated exactly.

Proof of loss and damage

The Proof of Loss is an official, notarized, sworn statement from the claimant to the court concerning the scope of damage to their property. The court uses this information as a basis for determining the defendant's liabilities for the property loss. Once submitted by the plaintiff, the court will need to review the claim and respond with the one who is liable for the position on the claim.

A Proof of Loss is filed by the claimant after they have suffered a property damage loss. In order to be awarded damages, the claimant (the person bringing the claim) will need to prove that he or she has suffered loss or damage as a result of the breach of contract or the wrong committed by the defendant. This helps to substantiate the value of the insured's loss to the court. It typically serves as a summary of the critical information required under the policy. This means that the claimant will have to prove to a judge (or jury) that what they claim happened actually did happen. It includes the supporting evidence and estimates of the present value of loss to the claimant. In a legal injury claims, is up to the plaintiff to present and prove their loss to the court—The supporting documents enables the insured to do just that. Documentation such as medical bills and receipts is helpful improving the claimant's case.

Loss

Loss is damage, detriment, or suffering flowing from the act or omission of another. It is once this loss occurs that an action for damages or compensation can be brought. A common example of loss is that arising in personal injury cases. If you have suffered an injury that prevents you from working, then you may have suffered a loss of income. If you win your case and prove that you have not received income for a certain time period, then you will be entitled to compensation for your loss.

Injury

An accurate, thorough and substantiated claim value used on your Proof of Loss is vital. This value will need to accurately itemize and detail the property damage and what you are owed as a result.

GuesswoInjury Damages

Injury can mean physical or mental damage to a person. This type of injury can include the aggravation, acceleration or recurrence of a pre-existing injury, prenatal injury, psychological or psychiatric injury, damage to crutches or aids of a similar nature, nervous shock, death resulting from injuries and disease. Injury can also mean interference with a legal right, which will often be considered as having a monetary value, but does not require proof of damage. In the case of mental injury, the injury must be serious enough to amount to an identifiable psychiatric injury merely being upset will not be enough to have a claim for damages. The calculation of damages in a personal injury case depends on the losses suffered by the injured party. Damages usually include medical expenses to treat injuries, or the cost to replace or fix damaged property. However, damages can include more than just money directly used to address injuries. Injury can also mean physical damage to goods or property. If the injuries caused a person to miss work, damages can include lost wages. There's even a chance of recovering the lost future wages - known as loss of earning capacity - if your injuries prevent you from working in the future.

Find Law's Injury Damages section provides information about how economic compensation plays out in personal injury cases.

An example of this could be trespass to land, where the trespasser does not otherwise cause any damage.

TYPES OF DAMAGES IN TORT

NOMINAL DAMAGES:

Nominal damages awarded to an individual in an action where the person has not suffered any substantial injury or loss for which he or she must be compensated. This kind of damages reflects a legal recognition that a plaintiff's rights have been violated through a defendant's breach of duty or wrongful conduct. They are awarded by the court to the plaintiff not by compensation but by way of recognition of some legal rights of claimant which the defendant has infringed example, trespass, assault, invasion of a right of easement, etc.

The amount awarded is ordinarily a trifling sum, such as a dollar, which varies according to the circumstances of each case and that's why, they are so called because they have no relation even to the cost and trouble of suing and the amount awarded is usually a very small.

In certain jurisdictions, the amount of the award might include the costs of the lawsuit. The amount awarded is generally a small, symbolic sum, although in some jurisdictions it may equal the costs of bringing the lawsuit. In general, nominal damages may be recovered by a plaintiff who is successful in establishing that he or she has suffered a loss or injury as a result of the defendant's wrongful conduct but is unable to adequately set forth proof of the nature and extent of the injury.

The most famous case of nominal damages was when Prime Minister Winston Churchill was awarded a shilling (about 25 cents) in a libel lawsuit he had brought against author Louis Adamic for writing that Churchill had been drunk during a dinner at the White House. The Prime Minister was vindicated, but the jury could not find that his towering reputation had been damaged.

CONTEMPTUOUS DAMAGES:

Contemptuous damages are awarded when the level of harm caused to the claimant is low and the court feels that the claimant was wrong to bring a claim. They are the mirror image of nominal damages, in that the successful plaintiff is made to pay damages for bringing the lawsuit. Let us consider the example: Green and Brown are next-door neighbors who have never gotten along. Green's dog wanders onto Brown's property one day and relieves himself. Brown steps in the dog's feces, is disgusted, and sues Green for trespass and for failing to control his dog. The court finds that Brown waste technically legally correct and thus he must win the lawsuit, but that the lawsuit was rather ridiculous and wasted everybody's time. The court will award damages in the amount of the smallest monetary amount, to make this statement to Brown. It is to be distinguished from nominal damages because nominal damages are awarded when the plaintiff has suffered no loss, whereas contemptuous damages are awarded when the plaintiff has suffered some loss but he does not deserve to be fully compensated.

COMPENSATORY DAMAGES:

Compensatory damages are recovered in payment for actual injury, which does not include punitive damages (to be discussed later). It is a sum of money awarded in a civil action by a court to indemnify a person for the particular loss, detriment or injury suffered as a result of the unlawful conduct of another. These damages provide a plaintiff with the monetary amount necessary to replace what was lost and nothing more.

REAL DAMAGES:

Real or substantial damages are those which are assessed and awarded as compensation for damages actually suffered by the claimant, and not simply by way of mere recognition of a legal right violated-*injuria sine damno*. They are a um of money which is awarded to the claimant as a fair and equitable compensation for the injury suffered by him. They are also called ordinary or

compensatory damages. Such damages are awarded in a great majority of action in torts, such as, an action of negligence.

According to the Salmond's Observation, "Damages are not nominal merely because they are very small. If actual damage, however small, is proved, and damages, however small, are awarded in respect of it, such damages are real and not nominal. They represent 'damnum' and not merely 'injuria'.

AGGRAVATED DAMAGES:

Damages awarded by a court to reflect the exceptional harm done to a plaintiff of a tort action. When insult or injury to the plaintiff's feelings has been caused, the Court may take into account the motive for the wrong and award an increased amount of damages.

"Aggravated damages are an award, or an augmentation of an award, of compensatory damages for non-pecuniary losses. They are designed to compensate the plaintiff, and they are measured by the plaintiff's suffering. Such intangible elements as pain, anguish, grief, humiliation, wounded pride, damaged self-confidence or self-esteem, loss of faith in friends or colleagues, and similar matters that are caused by the conduct of the defendant; that are of the type that the defendant should reasonably have foreseen in tort cases or had in contemplation in contract cases; that cannot be said to be fully compensated for in an award for pecuniary losses; and that are sufficiently significant in depth, or duration, or both, that they represent a significant influence on the plaintiff's life, can properly be the basis for the making of an award for non-pecuniary losses or for the augmentation of such an award."

EXEMPLARY DAMAGES:

It is said that exemplary damages are awarded not by way of compensation for the claimant, but by way of punishment for the defendant. Others, regard them as a 'solatium; for wounded dignity and feelings. In simple words it could be explained as the sum o money awarded in excess of any

material loss suffered by the claimant. Exemplary damages are awarded where there has been great injury by reason of aggravating circumstances accompanying the wrong. A malicious motive, an arrogant or isolate manner are things which justify exemplary damages being given by judges or jury.

What SALMOND'S observation states that exemplary damages are "a sum of money awarded in excess of any material loss and by way of solatium for any insult or other outrage to the plaintiff's feelings that is involved in the injury complained of".

PUNITIVE DAMAGES:

Punitive damages are triggered by conduct that may be described by such epithets as high-handed, malicious, vindictive, and oppressive. They are awarded where the court feels that the award of compensatory damages will not achieve sufficient deterrence and that the defendant's actions must be further punished. Punitive damages bear no relation to what the plaintiff should receive by way of compensation. Their aim is not to compensate the plaintiff, but rather to punish the defendant. ...They are in the nature of a fine which is meant to act as a deterrent to the defendant and to others from acting in this manner. It is important to emphasize that punitive damages should only be awarded in those circumstances where the combined award of general and aggravated damages would be insufficient to achieve the goal of punishment and deterrence. As explained by McIntyre. J., "Punitive damages, as the name would indicate, are designed to punish. In this, they constitute an exception to the general common law rule that damages are designed to compensate the injured, not to punish the wrongdoer"

REMOTENESS OF DAMAGE

The damage is too remote, "when the damage and loss are not sufficiently concatenated as cause and effect".

-Lord Campbell

Remoteness of damage relates to the requirement that the damage must be of a foreseeable type.

A person who has suffered damages in consequences of the act of the defendant may be disentitled to recover damages under the following conditions:-

1. Where the defendant's act was not wrongful at all.
2. Where the defendant owed no duty to plaintiff although he violated it.
3. Where the damage is not of such a nature as may be recognized by the law.
4. Where the damage is too remote a consequence of the wrongful act of the defendant.

In negligence claims, once the claimant has established that the defendant owes them a duty of care and is in breach of that duty which has caused damage, they must also demonstrate that the damage was not too remote.

Damages are said to be too remote, where the casual connection between it and the defendant's act is regarded by the law as not sufficiently direct to create responsibility.

Remoteness of damage must also be applied to claims under the Occupiers Liability Acts and also to nuisance claims. It is often viewed as an additional mechanism of controlling tortious liability.

It is also known as the doctrine of Natural or Probable consequence. It is closely related to the law of negligence and has undergone a change in course of time as a result of judicial pronouncements. This doctrine is also expressed by the maxim "*In jure non remota causa sed proxima spectator*" (in law, the immediate, not the remote cause of any event is to be considered). Damage must be the direct and natural result of the defendant's act.

Not every loss will be recoverable in tort law. Originally a defendant was liable for all losses which were a direct consequence of the defendant's breach of duty.

A man is presumed to know the natural but not the remote consequence of his act. Damages is said to be too remote when, though arising out of cause of action, yet it does not so immediately flow from it, or which could have not been reasonably foreseen, that the wrongdoer would be made responsible for it. A man is not liable for all the consequences of his wrongful act or default.

For instance:-In *Re Polemis & Furness Withy & Company Ltd.* [1921] 3 KB 560 Some Stevedores carelessly dropped a plank of wood into the hold of a ship. The plank struck something as it was falling which caused a spark. The spark was ignited by petrol vapours resulting in the destruction of the ship. The arbitrator held that the causing of the spark could not

have been anticipated and therefore no liability arose. The claimant appealed. It was held that there was no requirement that the damage was foreseeable. The defendant was liable for all the direct consequences of their action. This was largely considered unfair as a defendant could be liable for damage which was not foreseeable and therefore could not take steps to prevent it. The direct consequence test was overruled in the *Wagon Mound no 1* and replaced with a new test for deciding if damages are too remote: *The Wagon Mound no 1* [1961] AC 388 House of Lords. The defendant's vessel, *The Wagon Mound*, leaked furnace oil at a Wharf in Sydney Harbour. Some cotton debris became embroiled in the oil and sparks from some welding works ignited the oil. The fire spread rapidly causing destruction of some boats and the wharf.

Held: *Re Polemis* should no longer be regarded as good law. A test of remoteness of damage was substituted for the direct consequence test. The test is whether the damage is of a kind that was foreseeable. If a foreseeable type of damage is present, the defendant is liable for the full extent of the damage, no matter whether the extent of damage was foreseeable.

- Causes of Remoteness of Damage

Due to the following two reasons mentioned below, Remoteness of damage is said to be brought:-

1. The operation of some *Novus Actus Interveniens*, the intervention of human activity between the defendant's acts and its consequences; that is intervening act of a third party.
 2. Some extraneous cause (*nova causa interveniens*) which is not directly traceable to the defendant's tort.
1. **Novus Actus Interveniens-** The phrase ***novus actus interveniens*** literally means a 'new intervening act'. As a general rule, damage is said to be too remote where it is caused by human violation of a third party, or when the injury to the plaintiff might have been occasioned by the intervening act of violation on the part of the plaintiff himself. The question whether a person who has been initially negligent, would be liable for all the consequences, expected or unexpected, probable or improbable, depends for its answer upon the application of a further test which has recently come into prominence, i.e. the test of isolation. According to this test, where the wrongful act is isolated from the consequence by an intervening act of human violation, the chance of causation between the wrongful act and consequence is deemed to have been snapped, and the defendant

ceases to be liable for such consequences as have arisen after the intervention of that other act of human violation. The prior act having exhausted itself, chance of causation has in contemplation of law been broken and the wrongdoer can no longer be held responsible for further consequence. This is called **novus actus interveniens**.

➤ **Related Cases**

- a. Hadley v. Baxendale, (1854) 9 Ex. 341
- b. Scott v. Shepherd, (1872) 2W. Bl. 892
- c. Clerk v. Chambers, (1887) 3 Q. B. D. 327
- d. Domine v. Grindsdall (1937) 106 L. 7, K. B. 386
- e. Haynes v. Hardwood, Sub. P. 154

An exception to novus actus interveniens- Damages is not necessarily too remote because it is brought about by the novus actus of a third person. There are certain well recognized exceptions to this rule. The following are the cases in which the defendant is liable in spite of the presence of the novus actus i.e. the intervening act of a third party.

- 1) If the intervening act has been procured intentionally by the defendant.
- 2) If the intervening actor is not totally responsible.
- 3) If the intervening act is such as could be reasonably anticipated.
- 4) If the intervening act is a mere reflex or involuntary action.
- 5) If the intervening act is in pursuance of duty.
- 6) The doctrine of alternative danger or choice of risk.

Where the **novus actus** is caused by an irresponsible actor, it does not break the chain of causation.

2. **Some extraneous cause-** Here the act of defendant is not the 'direct cause' of the damage sustained by the claimant. Direct cause excludes what is indirect, conveys the essential distinction, and is consistent with the possibility of the concurrence of more direct causes than one, operating at the same time and leading to a common result.

The Egg shell skull rule

A final aspect of remoteness of damage is the egg shell (or thin) skull rule. This means a defendant must take their victim as they find them. I.e. if the victim is particularly vulnerable or has a pre-existing condition resulting in them suffering greater injury than would be expected in an ordinary person, the defendant remains responsible for the full extent of the injury.

➤ **Related Cases**

Page v Smith [1996] 1 AC 155 House of Lords: The claimant had suffered from ME over a period of time and was in recovery when he was involved in a minor car accident due to the defendant's negligence. The claimant was not physically injured in the collision but the incident triggered his ME and had become chronic and permanent so that he was unable to return to his job as a teacher. He was successful at his trial and awarded £162,000 in damages. Held: Provided some kind of personal injury was foreseeable it did not matter whether the injury was physical or psychiatric. There was thus no need to establish that psychiatric injury was foreseeable. Also the fact that an ordinary person would not have suffered the injury incurred by the claimant was irrelevant as the defendant must take his victim as he finds him under the thin skull rule.

LEGAL FRAMEWORK OF LEGAL MAXIMS

The real significance of legal damage is illustrated by two maxims namely: Injuria sine damno and Damnum sine injuria. Damnum is meant damage in the substantial sense of money, loss of comfort, service, health or the like. Sine implies to without and by injuria is meant a tortious act. Following is the elaboration of the above mentioned legal maxims with their case law illustrations:-

Damnum Sine Injuria (Damage without Legal Injury)

There cannot be any liability in Tort, without violation of a legal right and there are many acts which though harmful are not wrongful and give no right of action to him who suffers from their effects. Damage so done and suffered is called Damnum Sine Injuria or damage without injury.

Damage without breach of a legal right will not constitute a tort. They are instances of damage suffered from justifiable acts. An act or omission committed with lawful justification or excuse will not be a cause of action though it results in harm to another as a combination in furtherance of trade interest or lawful user of one's own premises. There are moral wrongs for which the law gives no remedy, though they cause great loss or detriment. Loss or detriment is not a good ground of action unless it is the result of a species of wrong of which the law takes no cognizance.

(ii) **Injuria Sine Damno (Legal Injury without Damage)**

This means a legal injury without damage or an infringement of a legal private right without any actual loss or damage. In torts, a person is liable for his act which violates lawful rights of other(s). The basic principle of this legal maxim is to hold responsible the defendant only if there is any legal injury on account of him. In such a case the person whose right has been infringed has a good cause of action. It is not necessary for him to prove any special damage because every injury imports a damage when a man is hindered of his right. Every person has an absolute right to property, to the immunity of his person, and to his liberty, and an infringement of this right is actionable *per se*. Actual perceptible damage is not, therefore, essential as the foundation of an action. An action does lie in cases for interference with another's legal private right even where it causes no actual damage for it is sufficient to show the violation of a right in which case the law will presume damage. Thus in cases of assault, battery, false imprisonment, libel, trespass on land, etc., the mere wrongful act is actionable without proof of special damage. The court is bound to award to the plaintiff at least nominal damages if no actual damage is proved.

CASE LAW ILLUSTRATIONS

Simply damage, however substantial, without the infringement of a legal right, will give no ground for action-The following leading cases will explain the legal maxim *damnum sine injuria*:-

English Case Laws for 'Damnum sine injuria'

Indian Case Laws for 'Damnum sine injuria'

In Gloucester Grammar School Master Case, it had been held that the plaintiff school master had no right to complain of the opening of a new school. The damage suffered was mere *damnum absque injuria* or damage without injury. *Acton v. Blundell*, in which a mill owner drained off underground water running into the plaintiff's well, fully illustrate that no action lies from mere damage, however substantial, caused without the violation of some right.

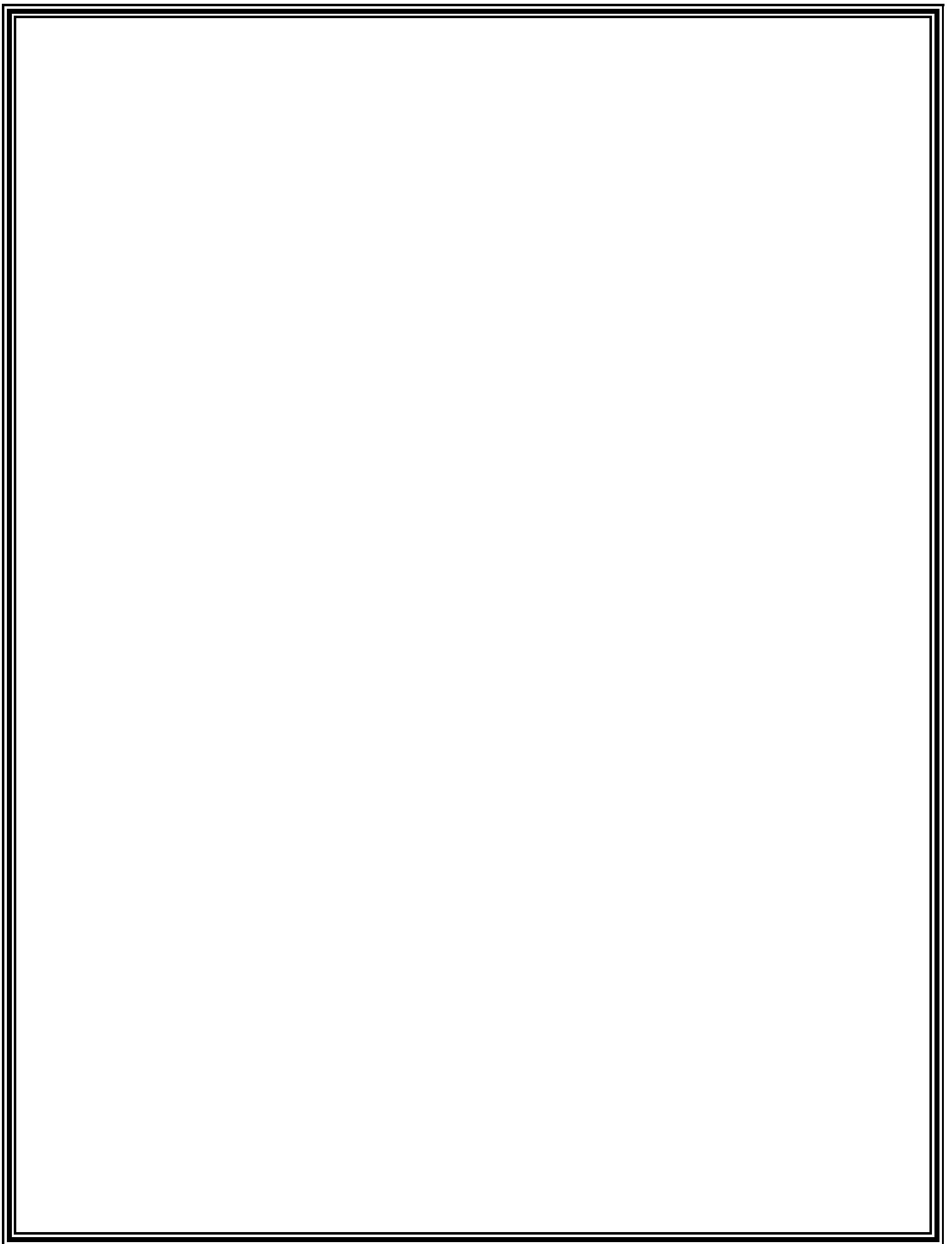
In the case of, *Mogul Steamship Co. vs. Me-Gregory* (1892), certain ship owners combined together. In order to drive a ship-owner out of trade by offering cheap freight charges to customers who would deal with them. The plaintiff who was driven out of business sued the ship-owner, for loss caused to him by their act. The court held that a trader who is ruined by legitimate competition of his rivals could not get damages in tort. There are moral wrongs for which the law gives no remedy, though they cause great loss or detriment. Loss or detriment is not a good ground of action unless it is the result of a species of wrong of which the law takes no cognizance.

Following are the leading cases of the legal maxim *injuria sine damno*, where it is clearly explained that how and why the court considers legal injury over actual injury for the judgments:-

English Case Laws for 'Injuria sine damno'

Indian Case Laws for 'Injuria sine damno'

This principle was firmly established by the election case of *Ashby v. White*, in which the plaintiff was wrongfully prevented from exercising his vote by the defendants, returning officers in parliamentary election. The candidate from whom the plaintiff wanted to give his vote had come out successful in the election. Still the plaintiff brought an action claiming damages against the defendants for maliciously preventing him from exercising his statutory right of voting in that election. The plaintiff was allowed damages by Lord Holt saying that there was the infringement of a legal right vested in the plaintiff.



CONCLUSION

The Law of Torts is not well developed in India as in countries like the United States of America and the United Kingdom. Hence applicability of its various aspects is also limited in the country. Damages form a very integral part of Tort Law. The Legislature should come up with sufficient and practical rules and theories for computation of quantum of damages. This will lead to a decrease in ambiguities that people come across in various cases regarding the calculation of compensation. Economic analysis has greatly enriched the understanding of damage rules. It reveals that damages serve a complex and multi-faceted role: targeting risk takers, helping victims spread risks and compensating them for their losses. This has also helped us to design tort liability and design rules, which can guide legislators and courts as they design tort liability and damage rules. It is suggested that at present damage awards for serious personal injury and death generally are not sufficiently large to induce potential injurers to take due care and engage in optimal activity levels. While considering the situation in India, it can be seen that all the rules for the purpose of damage calculation are not predominantly utilized.

Suggestion

It is suggested that at present damage awards for serious personal injury and death generally are not sufficiently large to induce potential injuries to take due care and engage in optimal activity levels. If the situation in India is considered then, it will be found that all the rules for the purpose of damage. Calculation is not predominantly utilized. Damages may rise to almost any amount or they may dwindle down to being merely nominal depending upon the scale, standard, method or rule by reference to which the amount of damages is to be recovered in any given case. But one of the basic and important reason of the drawback of this is that the law has not laid down what shall be the measure of damages in actions of torts. The measure is uncertain and vague, depending upon the vast variety of causes, facts and circumstances. In comparison to other laws such as the Hindu law or the Muslim law, 'tort' has the much narrow conception than the tort of the English law. The law of Torts in India is mainly the English law of Torts which itself is based on the principles of the common law of England and has non-foundational basis in our nation. Its origin is linked with the establishment of British courts in India. The punishment

of crimes is deep rooted in these systems that occupy a more prominent place than compensation for wrongs. From the project analysis, it could be stated that this law of tort and the concept of damages were made suitable to the Indian conditions appealing to the principles of justice, equity and good conscience and as amended by the Acts of legislature.

Bibliography

While working on my Torts Project, various sources of information from different places were used and their utility undoubtedly helped me a lot to complete my project on time. Crediting such sources is one of the most important tasks to be done for absolute completion of this project. Thus, mentioning below the sources used during this project work: -

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