



CLAT-UG

COMMON LAW ADMISSION TEST

Volume - 3

Legal Aptitude



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LAW OF TORT

LAW OF TORT'S

* Introduction

The word "Tort" is derived from the Latin word "Tortum" which means Twisted or Crooked.

The term Tort is equivalent of the English word "Wrong".

The remedies for Tort lies in the "Civil Law".

Tort = Civil Wrong

Que: What is Civil Wrong?

Ans: Civil Wrong - Committing an injury or violating someone's legal right.

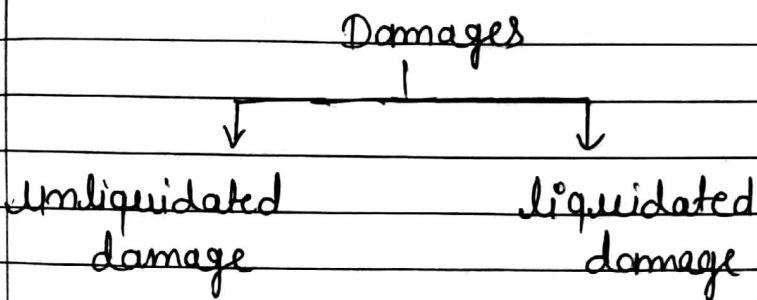
definition -

Tort is a wrongful act other than "Breach of Contract" for which relief may be obtained in the form of damages or an injunction.

Tort means a civil wrong which is not exclusively breach of Contract or breach of trust.

In simple words

A Tort is a Civil Wrong for which you get unliquidated damages.



Que: What is unliquidated damages?

Ans- Unliquidated damages are a type of compensation which awarded as a result of breach and they are determined through court proceeding and not predetermined in contracts.

Unliquidated damage- The money equivalent to the damage suffered (i.e. damage) as a result of the injury.

→ not pre determined.

→ To be decided by the court.

Que: What is liquidated damage?

Ans- liquidated damage is such type of damage whose compensation previously determined or agreed by the parties.

Que: What is an injunction?

Ans- Injunction is an order by court, requiring a person to do or not to do a specific action.

example- your neighbour wants to build a wall blocking the road. you can go to the Court seeking an order of injunction.

- Some important definition by different author.

→ Salmond define-

Tort is a civil wrong for which the remedy is a common law action for unliquidated damage and which is not exclusively the breach of contract or breach of trust or other merely equitable obligation.

→ Fraser define-

Tort is an infringement of right "in rem" of a private individual giving a right of compensation at the suit of the injured party.

ESSENTIAL CONDITION FOR TORT

in sum = In the thing itself

* General Conditions of liability for a tort.
(How tort is committed)

→ Essential Condition for a Tort.

- 1) A wrongful act or omission
- 2) The wrongful act must result in causing legal damage to another.
- 3) The wrongful act must be of such a nature as to give rise to a legal remedy.

Ques. what is wrongful act?

Ans - Wrongful act means any act, omission or misstatement which is violation of law especially the civil law

Wrongful act - Infringing right of another.

it includes - illegal act, acts that are (examples) immoral in nature, Anti-Social activities which results in a civil suit.

2. legal damages.

Not every damage is damage in the eyes of law.

It must be a damage which law recognized such as damage

In other words :- There must be legal injury or in violation of legal right, without it no action lie.

3. Legal remedy -

Damages is the predominantly a remedy

i.e. There are only monetary payments made by defendant for the purpose of compensation to the victim for their injury, loss or pain is a legal remedy

* Important maxims of tort

1. Damnum sine Injuria

Damnum sine Injuria = damage without injury.

Damnum - Damage

Sine - without

Injuria - injury.

In this causing a damage, however substantially to another person is not actionable in law unless there is violation of legal rights.

Therefore, there will be no compensation for the plaintiff unless there is also a violation of legal right

act + loss - injury = Damnum sine Injuria

Defendant's act + plaintiff's loss - plaintiff's injury =
Damnum sine Injuria

* Important Case laws of Damnum sine Injuria -

1. Orlauster v Gummer School Case -

In this case, the defendant was the school master in tentatively opened the school in front of the plaintiff school, causing damage to him.

As due to an increase of competition the plaintiff has to reduce their fees from 30 to 12% per scholar per quarter.

It was held that even though the plaintiff has suffered harm but there was no infringement of legal right, therefore defendant can't be held liable.

2. Ushaben Vs Bhagya Lakshmi Chitra Mandir.

In this case the plaintiff sued the defendants

For permanent injunction as movie "Jai Santoshi MAA" was hurting the religious sentiments as goddess was represented as Jealous in movie.

No compensation was given as there was no violation of the legal right.

2. Injuria Sine Damnum

Injuria Sine Damnum - Injury without Damage

It means infringement of an absolute private right without any actual loss or damage.

Therefore plaintiff will be compensated if his legal right are violated even though there is no actual loss or damage is suffered.

• Important Case laws of Injuria Sine Damnum.

1. Ashby Vs White (Imp. case)

In this case plaintiff was a qualified voter at a parliamentary election, while the defendant was a returning officer.

plaintiff was confined by returning officer due to which plaintiff was not able to cast his vote.

Through the party in the election was the election. Although the plaintiff didn't suffer any loss by such wrongful act.

But the legal right of plaintiff infringed and therefore the defendant was held liable.

3. Mens Rea - Guilty mind.

In the law of tort act must be done with evil motive or wrongful intention because in absence of guilty mind act itself creates no guilt.

Simply means that mind must agree in the Act the act must be done with wrongful intention. But this Rule has two(2) exceptions -

- 1) absolute liabilities.
- 2) strict liabilities.

* Difference between law of tort and crime.

Crime	Tort
1) Crime is wrong against world	Tort is wrong against an individual
2) it's proceeding held in Criminal Court	It's proceeding held in Civil Court.

3. Remedy is in form of punishment

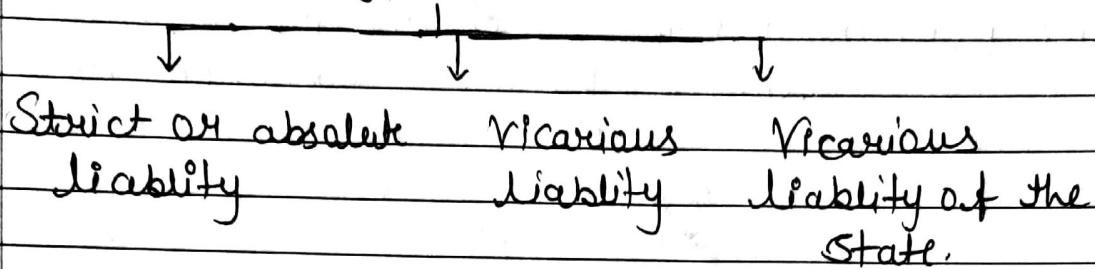
Remedy is in form of damages

4. Criminal proceeding shall apply

Civil proceeding shall apply.

Chapter-3 Kind's of Tortious liability

Types of Tort



* Rule of Strict and absolute liability

Many time it so happens that person made liable for the act, which has not been done by him, or sometime he made all possible effort to avoid such harm but still he made liable.

That it there are rule under absolute and strict liability where the person is liable even where he is at no fault.

This rule is derived from a case law "Raymond Vs Fletcher".

Strict liability

The principle of strict liability evolved in the case of Raymond Vs Fletcher

Case:-

Raymond Vs Fletcher