LAW OF TORTS

..........IMPORTANT LEGAL MAXIMS.........

(Constituents of tort )

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INTRODUCTION

- Tort is civil wrong.
- This wrong is different from breach of contract or breach of trust.
- This tort is redressable by an action for unliquidated damages.
CONDITIONS OF LIABILITY IN TORT

There are certain conditions which must exist before person is held liable in tort

These conditions or elements are as follows-

2. Legal Damage.
3. Legal Remedy.
WRONGFUL ACT:

- To determine the liability in tort, it must be proved that the act done by defendant was a wrongful act.
- This wrongful act is done without any lawful justification.
- The act becomes wrongful only when there is violation of legal right of another.
- No violation of legal right, no tort.
- Violation of social, moral, religious duties does not come under the category of torts.
- Therefore, important thing is that, plaintiff has to prove the violation of his legal right by the defendant in tort.
Tortious liability arises by-
- a) an act, or
- b) an omission to do an act.

Doing an act which is prohibited is tort.

Violating another’s legal right is tort.

Violating one’s own legal duty is tort.

Therefore it is said that, where legal rights of another is violated there is, violation of legal duty by the wrongdoer. (in these both cases this act constitute tort.)
LEGAL DAMAGE:

- Damage is the result of wrongdoer’s act.
- Damage and damages are two different things: damage is the harm done to a person by the wrongful act; and Damages means the compensation which is given to the plaintiff for loss suffered by him (for harm, damage caused to plaintiff).
- The action for damages lies for infringement of individual’s legal rights.
- Violation of LEGAL RIGHT of plaintiff is very important.
- Where there is no violation of legal rights of a person, no action in tort will lie (even if he suffers any amount of pecuniary loss).
There may be violation of legal right without legal damage but there cannot be a damage without violation of legal right.
The Real Meaning Of Legal Damage Can Be Illustrated By Two Maxims:

- **Damnum Sine Injuria.**
- **Injuria Sine Damnum.**
DAMNUM SINE INJURIA:

- It means damage without injury.
- Damnum means damage (in the form of money, health comfort)
- Injuria means violation of legal right.
- Sine means without.
- Thus it means, actual harm or loss caused without violation of legal right.
- Above thing is not actionable in law of tort.
Case laws-

- **Gloucester Grammer School Case**
  In this case the plaintiff by setting up his school near the plaintiff’s school had exercised his legal right and therefore no action can lie against him. It was held that, the plaintiff was not entitled for any compensation.

- **Acton Vs. Blandell**
  The defendant had dug a coalmines on his land as a result of this the water going to the well of the plaintiff was interrupted and his well became dry. It was held that the defendants were not liable as they were exercising their legal right on their land.

- **Chesmore Vs. Richards**
  (Plaintiff’s mill and Defendant’s well)

- **Bradford Corporation Vs. Pickles**
Injuria Sine Damnum/Damno

- It means violation of legal right without any damage to the plaintiff.
- Injuria means violation of legal right.
- Sine means without.
- Damnum/Damno means damages in the form of money, health, or happiness.
- Violation of legal right of a person is actionable. It is immaterial whether it caused any real harm or loss to that person or not.
Case laws:

- **Ashby Vs. White** (Parliamentary election case)
  It was held in this case that the defendant by refusing wrongfully to accept plaintiff’s vote in parliamentary election violated the plaintiff’s legal right and was entitled to damages, though plaintiff suffered no loss.

- **Marzetti Vs. Williams**
  In this case, the plaintiff had account in the defendant’s bank and was having sufficient fund in his account. Inspite of this bank refuse to honour his cheque. It was held that the bank was liable to pay damages to the plaintiff, even though he had suffered no actual loss.

- **Bhim Singh Vs. State of J.& K.** (J.& K. Assembly case)
  In this case plaintiff was a MLA of J.& K. Assembly. He was illegally detained by police and so was prevented from exercising his legal right to attend the Assembly. The Supreme Court of India awarded him Rs. 50,000 by way of compensation for violation of his fundamental right guaranteed by Article 21 of the Constitution.
Legal Remedy:

- As we know, tort is civil wrong, for this remedy is an action for unliquidated damages.
- The main and important remedy is an action for damages.
- It is mainly the right to damages which brings wrongful acts within the category of torts.
- The law of tort is said to be a development of maxim ‘Ubi Jus Ibi Remedium’.
Ubi Jus Ibi Remedium:

- It means there is no wrong without remedy.
- Where there is a right there is remedy.
- In simple words, whenever a right is violated the person whose right has been infringed has a remedy against the person who has violated it.
- This maxim also mean that there is no wrong without a remedy.
- This principle has been established for the first time in one of the leading case, i.e. *Ashby Vs. White* (Parliamentary election case)
- In the said case, Holt, C.J. allowed the action on the ground that violation of the plaintiff’s statutory right was an injury, for which he must have a remedy and was actionable without proof of pecuniary damage.
Questions?
....THANK YOU....