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LAW OF TORTS

Authored by:

Mr. K R Nagendra

&

Mr. Rakshit K N

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Textual & Reference Books:-

1. Winfield : Law of Torts
2. Salmond : Law of Torts.
3. Winfield : Cases on the Law of Torts.
4. Ratanlal : Law of Torts.
5. Ramaswamy Iyer : Law of Torts.
6. C.Kameswara Rao : Anand and Sastry's Law of Torts.

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INTRODUCTION

The 'Law of Torts' is a fascinating subject to the student of law. It is in this area that he finds a plethora of decided cases with reasons most appreciable and illuminative, the judges either treading the virgin soil enunciating a fundamental principle hitherto unknown in the legal world, or, applying with a lucid exposition, a known rule to a case on hand rendering their decision with the utmost dexterity of a matured craftsman. Equity, justice and good conscience seem to be the 'guiding star' in a majority of these decisions.

Indian courts, being rocked in the cradle of Anglo-Saxon jurisprudence, have closely followed the English pattern and have contributed for the development of this field of law.

Although over the years, much of the law is, from time to time, codified, 'Negligence', 'Nuisance', 'Defamation', 'Deceit' etc., are the horizons where the case-law is assuming importance and prominence. There seems to be a race between codification which has a tendency to shrink the subject, and the ever-enlarging modern challenges, emanating from scientific and technological advancement, widening the scope for traversing into areas unknown.

A word is to be said to the student, who desires to grasp the subject without experiencing any serious gymnastic acrobats. He must under each topic first read and digest the principle of law and later take-up the cases. While reading the cases the situations & circumstances must be picturised. The leading cases must be fixed-up in the mind, under each topic. The names of the cases are to be read, re-read and recapitulated, until some amount of familiarity is developed.

Attempt is made in the Text to explain lucidly all the leading cases with the facts, (arguments for and against) and the decisions with reasons thereof. Clarity and brevity are maintained without sacrificing the necessary explanation.

The line is clear. You are welcome to tread along.

But, be sure you commit no tort (of negligence!).

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LAW OF TORTS – SYLLABUS

1. Definition of tortious liability – Nature.
2. General Defences : Volenti non fit injuria – Invitable accident, Act of God, Necessity, Private defence, Statutory Authority.
3. Capacity : -

   Who can sue & who cannot be sued – State – Corporaions –Act of State –Joint tort – feasors.
4. Vicarious Liability – Master & Servant – Parent & Children.
5. Remoteness of Damages.
6. Trespass to person

   - Assault – battery – false imprisonment.
7. Defamation – Definition – Libel – Slander – Essentials – Defences.
8. Nuisance: Public & Private – Definition.

   Scope – Nuisance to Highways – Defences.
9. Malicious Prosecution – Essentials – Defences.

   False imprisonment distinguished – Maintenance & Champerty.
10. Negligence - Essentials –

    1. Standard of care.

    2. Nervous Shock.

3. Contributory Negligence.

11. Rule in Ryland V. Fletcher.

- Exceptions.

12. Scienter Rule.

13. Trespass – to land.

Remedies – Trespass ab initio – Defences.

14. Conversion: Definition – essentials –

15. Deceit – negligent mis-statements.

16. Death in Relation to Torts.

17. Types of damages –

18. Invitee, Licensee, Trespasser

19. Conspiracy.

20. Passing off

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QUESTIONS – BANK

1. Define "Tortious Liability". Explain its ingredients. Distinguish Tort from Crime and Breach of Contract.

2. a) Discuss the relevance of Malice or Motive in the Law of Torts. Refer to Bradford Corporation V. Pickles & Allen V. Flood.

   b) Explain with illustrations:

      Damnum Sine Injuria

      Injuria Sine Damno.

3. a) Discuss "Volenti non fit injuria". Refer to exceptions.
   b) State & Explain briefly the general defences available for a tortious act.

4. What is "Vicarious Liability"?

   Explain, with cases, the liability of the Master for the acts of the servant, done during the course of his employment.

5. What rules govern the determination of the remoteness of damages?

   Refer to i) Scott V. Shepherd. ii) The Wagon Mound Case.

6. a) Define and distinguish Assault from Battery. Give illustrations.
   b) What are the ingredients of "False Imprisonment"? Refer to Cases.

7. Define Defamation. Distinguish Slander from Libel. When is slander actionable per se?

8. Explain Justification 'Fair Comment', Absolute & qualified privileges as defences open to action for defamation.

9. What is Nuisance? Distinguish Private from Public Nuisance.

10. Distinguish between:

    a) Malicious Prosecution & False Imprisonment.

    b) Maintenance & Champerty.

11. Discuss the doctrine of "Standard of Care". Refer to Donoughue V. Stevenson and bring out the essentials of Negligence. What are the Defences?

12. What is "Nervous Shock"?

    Explain, with Cases, what essentials should be established to succeed in an action for "Nervous Shock".

13. Discuss contributory Negligence as a defence, with cases.

14. Discuss Ryland V.Fletcher. Refer to exceptions.

15. What is trespass to land? Explain the remedies available.

16. What is Conversion? Bring out its essentials with reference to decided Cases.

17. Discuss the responsibility if the Owner of a premises to an Invitee, Licensee & trespasser.

18. Define "Deceit" or Negligent mis-statements. What are its essentials?

    Refer to Derry V. Peek.

    Hadley Byrne & Co.V. Heller & Partners.

19. Write Short Notes on:

    1. Distress Damage feasant.
    2. Inevitable Accident.
    3. Act of God.
    4. Joint Tortfeasors.
    5. Scienter Rule.
    6. Trespass ab initio.
    7. Passing off.
    8. Novus actus interveniens.
    9. Conspiracy.
    10. Innuedo.
    11. Res ipsa loquitur.
    12. Contemptuous & Exemplary damages.
    13. Act of State.
    14. Jus tertii.
    15. Reasonable Man.
    16. Rolled up plea.

20. State the facts & the decision in :

1. Haynes V. Harwood.
2. Rose V. Ford.
3. Yousoupoff V. Metro Goldwyn Mayor Pictures.
4. Cassidy V.Daily Mirror.
5. Bolton V. Stone.
6. Ashby V. White.
7. Bouhill V. Young.
8. Grant V Austrdian Kintting Mills.
9. Dann V Hamilton.
10. Jones V Boyce.
11. Mayor of Bradford V. Pickles.
12. Christie V Davey.
13. Allen V. Flood.
14. Tarry V. Ashton.
15. Noble V.Harrison.
16. Byrne V. Boadle.
17. Six Carpenters Case.
18. Armory V. Delamorie.
19. Moghul Steamship Co. V. Magregor Gow & Co.
20. Gloucestor grammar School Case.

Additional Questions :-

21. Explain the extent to which 'actio personalis moritur cum persona' (Personal cause of action dies with the person) is applicable to actions in the law of torts. Refer to leading cases.

22. Discuss the Liability of the State for tortious obligations. Refer to State of Rajastan V. Vidyavati & Kasturlal V.State of U.P.

23. Write a note on who can sue and who cannot be sued for tortious obligations.

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TEXT

Sn.1(1) : Definition and Meaning of Tortious Liability :

The word "Tort" is a derivative of "Tortum" which means "to twist". What is twisted is the conduct of the wrong-doer, called the defendant. Such a twist causes a legal injury to the plaintiff and it is with in the province of the courts to provide for a remedy to him in the law of Torts.

"Tortious liability arises from a breach of duty fixed by law. This duty is towards persons generally and its breach is redressible by an action for unliquidated damages" (Winfield).

This definition has three important features:-

(1) The duty is primarily fixed by law. Law provides for legal rights and legal duties. In fact, one man's rights are another man's duties. Such legal rights are numerous in number; as for example, everyone has a right to his reputation, right to property, right to his person etc. On every other man duties are imposed by law, such duties are numerous in number; Eg. Not to assault others, not to commit Nuisance, not to slander others, not to deceive others, not to trespass on other's land, not to defame others etc. The violation of such a legal duty gives rise to a tortious liability.

(2) The legal duty is towards persons generally: The legal duty, for example, not to slander means not only that slander should not be committed against X or Y but in tort the duty is considered general, i.e., it is with reference to all persons in the world (in rem). Hence nobody should slander, assault, libel, or commit trespass or Nuisance.

(3) Unliquidated Damages:- Damages are divided into liquidated and unliquidated. Liquidated means the amount is pre-estimated and fixed by the parties themselves as in Contract. (Sn.73 of Contract Act.) Damages are unliquidated, when the court, in its discretion, awards compensation. In fact, according to Winfield action for unliquidated damages, is the basis of tortious liability. It may be noted that there are other remedies as well. Eg. Self-defence, temporary or permanent injunction, action for specific restitution of land and chattles, or abatement of nuisance etc.

Theories of tortious liability:-

In regard to foundation of tortious liability there are two theories. One is the wider theory and the other is the pigeonhole theory. According to the first, all injuries done to a person are torts, and hence liability arises unless there is some justification recognized by law. According to the second, there is a definite number of torts like assault, conspiracy, deceit, Nuisance etc., and outside that no liability arises. The first is supported by Pollock and Winfield and the second is supported by Salmond.)

Sn.1(2) : TORTS DISTINCT FROM BREACH OF CONTRACT :

Torts	Breach of Contract
1. In tort, there is an infliction of an injury without the consent of the person. In fact, consent of the plaintiff negatives liability under "Volenti non fit injuria", subject to certain exceptions. Eg. Rescue cases (Haynes vs. Harwood).	1. Consent is the basic essential of all contractual obligations. In fact, if there is no consent, there is no contract at all.
2. There is not privity between the parties. Ex: Donoghue V. Stevenson the manufacturer of ginger-beer was held liable for negligence to the ultimate consumer. (Legal neighbor) Another leading case is Grant V. Australian Knitting Mills Ltd.	2. There is privity of contract between the parties, who are called the contracting parties.
3. In the law of torts, there is a specific violation of a right in rem (right against all the persons in the world). Right to personal safety, right to reputation, right to property etc., are examples.	3. In case of a contract, the breach is due to the violation of a right in personam (a personal right). Eg. Vendor's breach of contract to sell.

Though the above distinctions are madeout, it cannot be disputed that there are cases where torts & breach of contract overlap eg. A surgeon negligently

operating P's minor son. There is a contract between the surgeon and the father of the minor son; but there is a tort of negligence by the surgeon in relation to the boy.

Sn.1(3) : TORTS DISTINCT FROM CRIME :

Torts	Crime
1. In torts, there is an infringement of a civil right or a private right of the party.	iii) In Crime, there is an infringement of a public right affecting the whole community.
2. In torts, the wrong-doer (tort-feasor) should pay compensation to the plaintiff according to the decision of the court.	iv) In crime, the criminal is punished by the State in the interests of the society. Punishment may be death imprisonment or fine as the case may be.
3. In tort, the affected or injured party may sue.	v) In crime, the State is under a duty to institute criminal proceedings against the Accused.
4. The right to sue or to be sued survives to the successor. Rose V. Ford.	vi) The legal action dies with the person in crimes subject to certain exceptions. The maxim is 'Actio personalis moritor cum persona'.

Sn.1(4) : REASONABLE MAN EXPLAINED :

The reasonable man has a reference to the "Standard of care" fixed by law in cases of negligence or in other tortious obligations. A reasonable man is a person who exhibits a reasonable conduct which is the behavior of an ordinary prudent man in a given set of circumstances. This is an abstract standard. As Lord Bowen rightly stated "he is a man of the Clamphan omnibus". "He is not a person who is having the courage of Achilles or the wisdom of Ulysis or the strength of Hercules", But he is a person who by experience conducts himself according to the circumstances, as an ordinary prudent man. He shows a degree of skill, ability or competence which is general in the discharge of functions. He is neither a perfect citizen nor a "Paragon of circumspection".

As Winfield pointed out, the reasonable man's standard is a guidance to show how a person himself regulates his conduct. A driver should have the capacity to drive as as ordinary prudent driver. He need show his skill of a Surgeon, an

advocate, an architect or an engineer. He must show his skill in his own work or profession. In fact, "a reasonable man is a judicial standard or yardstick which attempts to reach exactness. This is because complete exactness may not be reached". Hence, the judge first decides what a reasonable man does and then proceeds to find out whether in the circumstances of the case, the defendant has acted like a reasonable man. Conflicts do arise as it is not possible to specify reasonableness in all its exactness, or with specifications.

Reasonableness can be best explained in cases of negligence. Negligence is in fact the omission to do something which an ordinary prudent man would not do in the circumstances. Hence, the reasonable man is a man who uses his ordinary care and skill.

In Daly Vs. Liverpool Corporation it was held that in deciding whether a 70 year old woman was negligent in crossing a road, the standard was that of an ordinary prudent woman of her age in the circumstances, and not a hypothetical pedestrian.

The standard of conduct is almost settled since the case of Vaughan Vs. Manlove. The defendant D's haystock caught fire and caused damage to P's cottages. D was held liable as he had not acted like a prudent man; In the Wagon Mound case (No.1) the test of "reasonable foresight" was applied and the defendants were held not liable. In fine, a reasonable man is a legal standard invented by the courts.

Sn.2(1) : MOTIVE AND MALICE EXPLAINED :

The general rule is that motive is irrelevant is torts. Motive denotes 'the reason for the conduct' of an individual. Thus, if the act is unlawful then good motive will not exonerate it. If the conduct is lawful then a bad motive will not make him liable. The fact that motive is irrelevant is evident from the leading case: Mayor of Broadford Corporation Vs. Pickles. Here, the corporation refused to purchase the land which belonged to Pickles, for the purpose of the water supply scheme. In revenge, he sunk a shaft on his land. In consequence, the water of the corporation became discolored and diminished. The Corporation sued Pickles. It was held that Pickles was not liable. The judge said "we are to take the man's act into consideration, not the motive behind it". In another case, Allen Vs. Flood this was re-stated. In this case, P was appointed by A to make repairs to the ship and this was terminable at will. D, belonging to an union objected to the appointment and threatened to go on strike if P is not removed. A dismissed 'P'. P sued D. Held, the motive of D may be bad but not unlawful and hence not liable. This shows that if the act is lawful, mere bad motive will not make the act tortious'.

Exceptions to the rule that motive is irrelevant :

i) Malicious Prosecution.

ii) Conspiracy.

iii) Deceit or Negligent Misstatements.

iv) Some circumstance in Nuisance. (Christie V Davey)

Sn.2(2) : INJURIA SINE DAMNO AND DAMNUM SINE INJURIA EXPLAINED :

'Damnum' is a damage in a substantial sense of the term, involving economic loss or loss of comfort, service, health, or the like. 'Injuria' is legal injury and hence tortious.

Injuria sine Damno means "legal injury, without damage". There is an infringement of a legal right, but no substantial damage or loss. The plaintiff has a cause of action under Section 42 of the Specific Relief Act.

1. ASHBY Vs. WHITE :

The defendant, a returning officer, refused to register P's vote duly tendered. Held that the plaintiff had a legal right to vote and that there was a legal injury to him. Defendant was held liable. The Court observed "every injury imports a damage, though it may not cost a farthing to the party".

2. MERZETTE Vs. WILLIAM (BANK CASE):

In this case without any excuse the Banker refused to honour the cheque presented by a customer. HELD: that the Banker was liable to the drawer. Compensation was paid by the Bank.

'Damnum Sine Injuria' means actual and substantial loss without the infringement of the legal right. The infringement of the legal right. The actual loss sustained by the plaintiff may be substantial enough, but as no legal injury has been done to him no compensation can be recovered.

1. CHESEMORE Vs. RICHARDS :

The defendant dug a well on his own soil. In consequence the adjoining owner's stream of water dried up and the mill was closed down. He sustained heavy economic loss. HELD: No Compensation. There was no legal injury, but only economic loss.

2. GLOUCESTOR GRAMMER SCHOOL :

A teacher who was illegally terminated by Gloucestor School opened a school opposite to it. The pupils, who loved the teacher joined his school in large numbers. Thereupon the Gloucestor School was closed. HELD: No compensation. Reason: Business competition, and the teacher has not infringed any legal right of the Gloucestor School.

3. MOGHUL STEAMSHIP CO., Vs. MCGREGOR :

A.B.C.D. four ship owners joined together and offered special terms to the consignors to book cargo. In consequence, P, a prosperous steamship Company suffered substantial loss, which sued ABC and D for compensation. HELD: Not liable. (Business competition and no legal injury to P.)

4. DICKENSON'S CASE :

A sent a telegram to B to send goods. The telegram was wrongly delivered by the Post Office to C. C sent the goods to A. A refused to take the goods.

HELD: No compensation.

Sn.3(1) : GENERAL DEFENCES : NATURE AND SCOPE

A defence is a plea put forth by the defendant against the claims of the plaintiff. The following are the defences open to a defendant in an action for tortious liability.

1. Volenti non-fit injuria;
2. Inevitable accident;
3. Act of God;
4. Private defence;
5. Necessity; and
6. Statutory authority.

Sn.3(2) : Volenti non-fit Injuria:

This means that "if the suffering is willing, no injury is done". Accordingly harm or even grievous hurt may be inflicted on a person for which he has no remedy if he has consented to take the risk. To this group belong injuries sustained in lawful games or sports or surgical operations. The origin of this can be traced to the writings of Aristotle. Roman Jurists had recognized it. Later Bracton explained

it in his De Legibus Angliae. The modern meaning is confined to the injuries sustained by persons. Here the risk to which a person gives his consent is "the risk of an operation being unsuccessful". Similarly, in respect of injuries sustained in Football, Cricket, Volleyball etc., no player wishes to be injured but, if he is injured in a legal incident then, there is no injury because he has consented to the legal risk which is natural in such sports or events. The consent is not merely to the physical risk, but to the legal risk as well.

Consent may be express or implied.

This maxim is subject to a number of exceptions:-

1. The game or sports or the operations must not be one which is banned by law. Football, Cricket, Hockey etc., are lawful games. However, Boxing with open fists, duel with poisonous swords are legally prohibited. Similarly notoriously dangerous processes in Cinema shootings. In such cases the maxim does not apply. The injury may be sustained by the persons who are participating in the games or by the spectators or by third parties.

2. Consent: - The consent must be free and voluntary. If consent is obtained by fraud it is no consent and the maxim does not apply. In a case a music teacher obtained the consent from his pupil fraudulently and seduced her. Held: Music teacher was liable.

3. Knowledge does not necessarily imply consent. The test of consent is objective, for the rule is not Scienti (knowledge), but volunti non-fit injuria. This is evident from two leading cases:

(a) THOMAS Vs. QUARTER MAINE :

In this case, Thomas, who was working in a Brewery, removed the top of a boiling vat. But the lid came off suddenly and he fell into a vat containing scalding liquid and was injured. It was held that the damage was accidental to the legal act and the defendant was not liable. The error was corrected in the leading case.

(b) SMITH Vs . BAKER :

In this case a crane was jibbing from one place to another. The plaintiff had no notice of it. But, he had the knowledge of jibbing work being carried on by d. He knew the possible risk involved, but was not warned as to when the jibbing work commenced. A stone glanced off from the crane and hit p who was injured. The House of Lords held that D was liable. "Mere knowledge" was not sufficient According to the court.

4. NEGLIGENCE:- Cases of negligence are exceptions to the rule. In Dann Vs. Hamilton, P a lady passenger had knowledge that D who was driving a car was under the influence of drink. There was an accident due to negligence of the driving and P was injured. HELD: D liable.

5. RESCUE CASES:- In respect of circumstances where a person goes out to rescue another, the maxim does not apply. The leading case is HAYNES Vs. HARWOOD. In this case a police-man P darted out from a police station to stop a van, run by horses without a driver, in a crowded on the highway and the horses had bolted. The police-man went to rescue and to stop the horses but was seriously injured in this process. HELD: D liable.

Sn. 3(3) : INEVITABLE ACCIDENT:

Accidents are of two kinds: Act of God (Vis Major) and Inevitable Accident. In act of God there is the operation of natural forces 'so unexpected that no human foresight or skill could reasonably be expected to anticipate'. An inevitable accident is an accident which is not avoidable by any such precautions as a reasonable man doing such an act then and there could be expected to take (Pollock). This is not a case of a catastrophe, but not against fantastic possibilities. Inevitable accident is a defense recognized in law. Hence, the defendant may set up a plea and prove that the act was beyond the reasonable man and hence no liability would arise.

EG: (a) Nitroglycerin Case: In this case Nitroglycerine packed in a box was sent through a common carrier. As there was some leakage, the servants of the carrier opened the box in the premises of p with a view to preventing the leakage. There was an explosion resulting in the damage to the premises of p. P sued for damages. It was held that the defendant had taken all precautions and that he was not negligent. The defendant did not know the contents of the box. Hence there was no knowledge also. The accident was beyond the standard of a reasonable man. Hence the defendants were held not liable.

(b) FIGHTING DOGS CASE:- In this case the dogs of P and D were fighting. D was beating to separate them. P was the onlooker. Accidentally D hit P in the eye resulting in a serious injury. It was held that D was not liable as there was no negligence. The hit was inevitable and could not be prevented by D.

(c) Dog and Motor-car Case:- The dog which was quiet and docile had been put by D in his motor car which had been parked on the road side. P was walking along-side the road. The dog jumped, barked and smashed the window glass pane. A splinter entered the eye of P causing injury, Held, this was inevitable accident and D was not liable.

Sn.3(4) : Act of God:

(Vis Major) These are circumstances when the injury is directly due to certain natural causes. There would be no human intervention, and no human foresight could visualise the act thereof. In such cases the primary reason is traced to nature or God. No liability arises.

NICHOLS Vs. MARSLAND:- The natural stream had been dammed up. An extraordinary rainfall came and broke the embankments and water escaped and destroyed 4 country bridges for which 'the plaintiff sued D. D put forward act of God and the court held that d was not liable. Such a rainfall was an extraordinary act of nature which nobody could reasonably expect to happen.

Act of God is a question of fact and must be established. In Greenock Corporation Vs. Caledonian Railways, the corporation built a paddling pool for children by deviating the natural flow of the stream of water. Owing to extraordinary rainfall, the stream overflowed. Water entered the property of P and damaged it. It was held that though rainfall was an act of God, the deviation of the stream was a human intervention and hence the corporation was liable. The contention of act of God as a defense was rejected.

Lightning, earthquake, cloudburst, tempest, hurricane, snowfall, frost etc., are acts of God. In Noble Vs. Harrison, a branch of a tree fell on a car and the car was smashed. It was an act of God and hence the owner of the tree was not liable. In another case, a Tiger had been tied, in the premises of a circus, with iron chains. A lightning struck the chain. As a result the chain was cut off and the tiger escaped. It went to the nearby village and ate away two persons. This was an act of God and the circus owner was held not liable.

Sn.3(5) : NERVOUS SHOCK:

Nervous shock is a personal injury and hence damages may be recovered. "True nervous shock is as much a physical injury as a broken bone or a torn flesh". Two things are to be established:

1. The defendant must owe a duty to the plaintiff.
2. The plaintiff must be within the area of potential danger or dangerous zone created by the defendant.

If one of these is not established then the plaintiff fails. The leading cases are:

1. Bourshill VS. Young (Fisher-Woman's case)

2. Wilkinson VS. Downton (Greay hair case)

3. King VS. Phillips (car backing case)

4. Hambrook VS. Stokes (Unattended Lorry case)

5. Owens FS. Liver pool Corporation (Mourner's case)

6. Dulieu VS. White. (Horse Van running to a public house)

7. Chadwick VS. British Rly. Board (Rescuer in Rail disaster)

1. In Bourshill VS. Young: The facts were as follows:

P, a fisherwoman, got down from a tramcar, where the driver was helping her putting a basket on her head. Y a motor-cyclist negligently collided on the main road, against a car and died. P did not see the accident but only heard the collision. The body of Y was removed. The tramcar proceeded on its way. P while crossing the road saw the blood on the road and suffered a nervous shock. She later gave birth to a still born baby and sued Y's representatives for nervous shock.

HELD: Not liable, reasons: (1) Y did not owe a duty to the fisherwomen, (2) It is no doubt true, she was within the danger zone created by Y. But, as both conditions are not fulfilled, P failed.

2. KING VS PHILLIPS:

D was negligently backing his car. He dashed against a tricycle raider boy. Both the boy and the tricycle were damaged. The boy's mother heard the screaming of the by and suffered a nervous shock. Held: not liable.

3. OWENS VS. LIVERPOOL CORPORATION:

D, as a practical joke, reported to W, that W's husband was smashed in an accident. On hearing this W suffered a shock and later her hairs turned grey.

Held: D liable.

Reasons:

1. D had a duty to W. By giving false news, he has committed a breach.

2. W is within the danger zone created by D.

Sn.4 : STRICT LIABILITY:

The principle of strict liability h as its origin in the leading case of Ryland Vs. Fletcher. In this case B, a mill owner employed independent contractors who were competent, to construct a water reservoir for the purpose of his mill. In the course of construction the contractors came across some old shafts and passages on B's land. They did not block them up, but completed the construction. When the reservoir was filled with water, it burst through the shaft and flooded the mines of A. A. Sued B. The court held that B was liable on the ground of "strict liability". Blackburn J held "we think that, the true rule of law is that the persons who for his own purposes brings on his lands and collects and keeps there anything likely to do mischief if it escapes, must keep it in at his peril and if he does not do is prima facie answerable for all the damage which is the natural consequence of its escape". This is the rule in Ryland VS. Fletcher. In this case B was not negligent although the contractors were negligent. Still under the rule of strict liability A was liable.

Scope of the Rule:

This decision laid down a new principle which became the subject matter of great importance in later years. It is considered as a starting point of the liability wider than what it was before the decision of the Court. This rule has been extended to a large number of cases. Eg. Escape of fire, gas, explosives, electricity, oil, vibrations, bad fumes etc. Here escape is necessary otherwise there is no liability. To apply the rule there must be personal injury sustained by the plaintiff. In Shiffman's case the plaintiff was injured as he was struck by a falling flag pole belonging to defendants. The rule was applied and D was held liable. If the flooding is due to natural cause, as in the case of gravitation then the defendant will not be liable. Growing tree is a natural user of soil. But, if the person grows poisonous trees and the neighbour's horse happens to eat the leaves over the compound and dies, the court held that the defendant was liable.

The question is whether the things are dangerous or not, Justice Blackburn has stated that if anything is stored which is likely to do mischief then the liability arises. Normally water is not dangerous. But, in Ryland's Vs. Fletcher, that was the main thing for the injury. Hence, the thing here need not be dangerous by itself.

Exceptions:

1. Consent of the Plaintiff:- If the plaintiff has given his consent the strict liability rule will not apply but 'volenti non-fit injuria' applies. Hence the defendant will not be liable. In a leading case, Peters Vs. Prince of Wales Theatre, A took a lease of a theatre which had been fixed with pipes with running water to be used in case of fire hazard. Due to frost there was leakage in the pipes resulting in the damage to the property of P. P sued D the owner. The court held D not liable as there was consent of the plaintiff.

2. Common Benefits:- If a source of danger is for the common benefit of both the plaintiff and the defendant, the defendant is not liable if there is no escape. In Carstairs Vs. Taylor, B was in the first floor and A was in the ground floor as a tenant. Water from the roof collected in a box and was discharged out through a pipe. A rat gnawed a hole in the box and water leaked out and damaged the goods of A. Held B not liable. The reason was that the arrangement was for the common benefit of both the parties.

3. Act of stranger :- If the escape of a thing is due to the act of a stranger then the rule will not apply. In Richards Vs. Lothian, a stranger deliberately blocked up the waste pipe of a lavatory fixed in the premises of D. This caused flooding of the premises of p. P sued D. Held, the defendant D was not liable as the act was due to a stranger.

4. Statutory authority:- Sometimes the law made by Parliament or State Legislature excludes strict liability. In Green Vs. Chelsea water Works Company, the Parliament had authorised the company to lay the main pipes. The pipes burst flooding the premises of P. It was held that the company was not liable. Of course, the act should not be due to the negligence of the defendant.

5. ACT OF GOD:- It is a general defence and may be set up to establish that the escape was due to some natural cause which was beyond the control of the defendant.

6. DEFAULT OF THE PLAINTIFF:- If the injury is due to the default of the plaintiff then there is no compensation. In a decided case the plaintiff teased a Chimpanji in a Zoo and the animal caused injury by biting the hand of the plaintiff. Held the plaintiff alone was responsible and the defendant was not liable.

The modern law has extended this principle of liability to various circumstances and situations. Escape of sparks from railway engine, escape of fire from one house to another have been dealt with at length. In recent years the

liability is extended to nuclear installations where radioactive substances cause hazards to individuals.

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Sn.5 : SCIENTER ACTION :

Means "Action when there is knowledge". This is the principle applied in respect of animals.

Animals are broadly classified into two categories.

1. Ferrae naturae.

2. Mensuetae naturae.

Ferrae Naturae means ferocious animals which are by nature ferocious. The law relating to this, under the extended meaning of Ryland Vs. Fletcher, is that the very bringing and keeping of such animal is prohibited. Mensuetae naturae means domestic animals which are by nature docile and obedient. But, they may have a tendency to become ferocious under some circumstances. The owner may or may not know the dangerous propensity of the animals. If he does not know the propensity, he is not liable in tort. However if it is possible to establish that the defendant had the knowledge of the dangerous propensity of the animal, the defendant becomes liable under "Scienter Action".

In respect of ferocious animals like Lion, Tiger and Chimpanjee, the very bringing is prohibited because the experience of human beings shows that these animals are by nature, dangerous to human society. But, mensuete maturae, animals like Dogs, Cats, Cows, Bullocks, Donkeys, Horses, etc. are not by themselves dangerous to human society. But the domestic animals may develop a propensity to cause harm or injury and the owner is liable if he has the knowledge of this propensity. In a number of cases decided, the Courts have held that in order to constitute a tortious liability it must be established:-

1) That the animal was savagery.

2) That the defendant knew or had knowledge of the tendency of his animal.

In Hudson Vs. Roberts: The bull of Roberts gored Hudson on seeing in his hands a red hand-kerchief. Held defendant liable as (1) the animal had so attacked many times previously (2) that defendant had knowledge of it.

In Jackson Vs. Smithson: The facts were that one person by name Catherine was attacked by a ram, which goaded her and threw her down. Held: Defendant liable as he had knowledge of the propensity of the animal.

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Sn. 6(1) VICARIOUS LIABILITY:

This concept makes one man liable for the acts of another because of certain relationship like Master and Servant, Parent and Children etc. Originally it came from "Oui facit per alienum facit per se" (He who does an act through the instrumentality of another does it himself). This rule was inadequate to explain the reason. Later the "General command theory" was put forward and then "particular command theory". None of these was satisfactory and the modern theory is that the master is liable because he is a "Substantial fellow or authority". As Winfield points out this theory is based on "Social convenience and rough justice".

Course of Employment: The master is liable for the acts of the servant, if the acts are within the course of his employment otherwise, he will not be liable.

The course of employment means (i) doing an authorised act (ii) Doing an authorised act in an unauthorised manner and (iii) Doing acts incidental thereto.

The act of the servant must fall into any one of the above, then only the master becomes liable. Broadly speaking the master is liable for carelessness, mistake, willful wrong doing of the servant. Sometimes he is liable for the criminal acts of the servant.

Meaning of Servant:-

The servant is a person who works according to the instructions of the master. The master can, not only order to do an act but he can also control how it should be done. The servant works under the thumb of the master. The master has full powers to control the acts of the servant. He has the powers of removal also. He is different from an independent contractor who undertakes to do a piece of job according to the requirements of the employer. The independent contractor is not under the control of the employer. Hence the employer is not liable for the acts of the independent contractor.

1) Carelessness of the servant: This is the commonest kind of wrong which is generally due to the negligence of the servant. The intention of the servant is not material. If the servant is acting in the course of his employment then the master becomes liable; but if the servant is on a Frolic of his own then the master is not

liable. If a driver deviates from the proper route and goes on his own journey for his purposes then the master is not liable. The leading case is: Century Insurance Co. Vs. Northern Ireland Road Transport. In this case the driver of a petrol lorry was transferring petrol from the lorry to the tank. He negligently struck a match to light a cigarette and threw it on the floor. This caused a conflagration and an explosion. The property of p was damaged. The defendants were held liable for the careless act of the driver, as the act had been done in the course of his employment. "Lighting a cigarette was an act of the servant for his comfort and convenience". The act was innocent, but was a negligent act of the servant, and hence the matter was liable.

(2) Mistake of the servant: Here the servant is a misguided enthusiast. The leading case is: Bayley Vs. Manchester Railway. The porter of the defendant Railway Co. violently pulled out from a train P who had a ticket to go to some destination. In fact, the porter had mistakenly taken P to be going in a wrong train. P sued and the railway authority (master) was held liable. In another case the servant of D suspected that sugar was pilfered by a boy from the wagon and he struck the boy, the boy fell and wheel of the wagon went over his foot. D was held liable. In another case a petrol bunk servant under a mistake, assaulted a car owner P who had taken petrol. The servant did not know that P had already paid for the petrol. The master was held liable for the act of the servant.

3) Willful wrong of the servant: Here there are two rules:

(i) The act is still in the course of employment even if it is forbidden by the master.

(ii) It is not outside his employment if he intends to benefit himself, though not his master.

In Limpus Vs. London General Omni-Bus Company, the driver had printed instructions not to race with or obstruct other buses. The driver did not observe this and caused a collision. His master was held liable because this was an unauthorised manner of doing an authorised act.

The Beard V. London Omnibus the driver brought the bus to a terminus and went out for breakfast. In the meanwhile the conductor drove the bus to bring to the other side to help the passengers to get into the bus for the next journey. In so doing he dashed against and caused injury to P. P sued. It was held that the master was not liable as the conductor was not in the course of his employment when he was driving the bus. In another case the driver had printed instructions not to give lift to any unautorised person. The driver violated it, gave lift to P and there was a

collision resulting in the death of P. It was held that the master was not liable for the act of the driver.

In Lloyd's Case D was a firm of solicitors. It had employed a clerk to do its work. P a widow was the owner of some cottages. She went for professional advise and the clerk asked her to execute documents in his favour, which she did. Here he had conveyed cottages to himself. The court held that D the master was liable for the willful wrong doing of the servant clerk.

4) Criminal acts of the servant: The general rule is that only in some cases master is liable. In Morris VS. Martin, P gave her a furcoat for dry cleaning to X who handed it over to D. The servant of D sold it away. It was held that under the circumstances D was liable for the criminal act of the servant. The master is not liable except in some cases where the act amounts to fraud or theft or assault.

The other leading cases : 1) Crook VS. Durbyshire
2) Blanton VS. National Coal Board.
3) Dyer VS. Manday.

Sn.6(2) : INDEPENDENT CONTRACTOR:

The independent contractor is a person appointed by the employer to turn a piece of job. He is different from a servant inasmuch as the servant is a person who works under the control and supervision of the master. Far the acts of the independent contractor, the general rule is that the employer is not liable.

According to Winfield the question is always whether the damage is caused due to the employer's breach of duty. The duties of the employer are divided into delegable and non-delegable. This means, the non-delegable functions must be performed by the employer himself. But if he delegates such a function to an independent contractor, the employer himself becomes liable.

There are a number of non-delegable duties:-

i) Delegation may be a breach of duty itself and the employer may be negligent in giving instructions or information to the independent contractor. In a case a gas company had no authority to interfere on the Highways. Independent contractor was appointed to open trenches thereon. The contractor's servants negligently left a heap of stone over which the plaintiff fell and was injured. Held the employer was liable.

ii) Obligations of the employer are to provide, a competent staff of men, adequate material and a proper system of effective supervision.

iii) Operations on or adjoining the highways: In Tarry Vs. Ashton there was a over-hanging lamp of D on the foot way. D Appointed Independent contractor to repair who did it negligently. The lamp fell on p a passerby. It was held that the employer was liable. In Grey VS. Pullon - The defendant D had statutory authority to make a drain from his house to a sewer across the road. He appointed independent contractor to cut trenches, who did it but negligently filled it up. The plaintiff P a passenger, was injured. D was held liable.

iv) Case of strict liability: The rule in Ryland Vs. Fletcher is applicable in respect of bringing and storing of items which cause injury. In such case the employer is liable.

v) Cases of statutory authority:- The recent enactments have fixed the liability of the employer under the Factories Act, Workmen's Compensation Act etc. Subject to the conditions mentioned in those Acts the employer is not liable. In Padbury's case D employed a sub-contractor to put casements to the windows. In so putting an iron tool which had been kept by the servant on the window sill, fell and injured p in the street. P sued D. The court held D was not liable as the tool was not placed in the ordinary course of doing work. There was only a collateral negligence of D.

When the employer personally interferes and gives directions to the independent contractor the employer becomes personally liable.

Sn.6(3) : JOINT TORT FEASORS

When two or more breaches of legal duty by different persons result in a single injury to the plaintiff - P, then the two or more persons are called Joint Tort Feasors. According to Lord Justice Bankes "persons are said to be joint tort feasors when their separate shares in the commission of tort are in furtherance of a common design". In Brook Vs. Bool: Two men were searching for a gas leak. Each applied naked light to the gas pipe in turn and one of them caused explosion. They were held to be joint tort feasors. This is different from a case where two ships negligently collided and later dashed against another vessel negligently. This is also different from a tort committed by child through the directions given by the parents.

THE CONTRIBUTION: Both the joint tort-feasors are liable in tort. But, the plaintiff can claim the amount in full from one of them. Question arises in such cases whether one tort-feasor may claim indemnification from the other. In Merry-weather Vs. Nixon A and B jointly damaged the machinery in C's mill. C sued them jointly and got compensation which he recovered from A. Now A sued B for half, the amount which he had paid. It was held that A could not recover from B. This

decision has been reversed by the Parliament in England in the Law Reforms Act. According to this one tort-feasor can recover his contribution from the other tort-feasor. Hence he is entitled to be indemnified.

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Sn.7(1) : Defamation :

Defamation is the publication of a statement which tends to lower a person in the estimation of right thinking members of society generally, or, which tends to make him shun or avoid that person (Winfield).

This definition is wider than those, which define, to mean the publication of a statement which tends to bring a person into hatred contempt or ridicule. Imputations of insecurity or insolvency etc. which may arouse only sympathy or pity in the minds or reasonable people, are also covered by the above definition. Publication is an essential requisite. Whether a statement tends to lower a person's reputation is decided by the standard of a reasonable man.

Publication is an essential requisite. Whether a statement tends to lower a person's reputation is decided by the standard of a reasonable man.

Publication means publishing a particular item of news or information to a person, other than the person to whom it is addressed.

1. If a writes to B, defaming B and sends the letter by registered post, there is no publication and therefore A is not liable.

2. If A writes a post-card defaming B, and sends by post, there is publication if an inquisitive postman reads and publishes the news. A is liable in such a case.

3. If A dictates to his steno defaming B and if the steno published it there is publication. However, different opinions have been expressed by the English Courts.

Sn.7(2) : Differences between Slander and Libel:

LIBEL	SLANDER
1. The statement must be in a permanent form. Broadcasting of words comes under libel. Pictures, statues, effigy, writing in any form, printing marks of signs, skywriting	1. Slander is in a temporary form. It is in significant words of gestures. Manual languages of the deaf and dumb, mimicry, and gesticulations etc., are examples.

by aeroplane come under libel.

2. Libel is generally addressed to the eye.	2. Slander is addressed generally to the ear.
3. Libel is actionable per se (by itself).	3. Slander is not actionable per se. Hence, special damage must be proved i.e., (Economic or social loss) must be proved.
4. Libel tends to provoke breach of peace. It is a crime as well as tort.	4. Salnder is not a crime, however in some occasions words may be seditious or blas phemous & hence may become a crime Sn.499. I.P.C.

Sn.7(3) : SLANDER IS NOT ACTIONABLE PER SE:

This means that in cases of Slander special damage must be proved. Libel is actionable per se. As libel will be in a permanent form, it is likely to do more harm to the plaintiff. Special damage means actual damage sustained by the plaintiff. The plaintiff must prove loss of money or some temporal or material advantage estimable in money which he has lost. Mere loss of society or consortium of one's friends is not sufficient. If a person is excluded from a dinner party, because of Slander he sustain a loss material and temporal Hence, there is special damage and compensation can be recovered. If have is no special damage, there will be no compensation in slander. Hence, the general rule that Slander is not actionable per se. But, this is subject to the following exceptions:-

1. Imputation of Criminal offences punishable in Character. Cases: Helling–Vs- Mitchell:-

M was a hotel owner. H was a hair dresser. M said to H "you were with a crowd last night". "I cannot have you here. You are to be turned out" The court held that the words did not amount to an imputation of an offence.

JACKSON VS ADAMS: D told P "who stole the parish bell ropes; You rascal". As the possession of bell ropes was with P stealing by P is not possible and hence, there is no imputation of an offence.

2. Imputation of contagious diseases, Infectious disease which are likely to make others avoid the company of the plaintiff.

3. Imputation of unchastity or Adultery to a woman.

4. Imputation of unfitness, dishonesty or inefficiency in a profession, trade or business . Imputation of ignorance of law to a lawyer or incompetence to a surgeon, or cheating to a trader or insolvency to a businessman are examples;

Cases: Bull Vs. Vasquez:- B was an M . P and was in army service. He had come back on leave. V said of him that B was sent home for taking much drinks. Compensation was granted. There was imputation of drunkenness.

Sn.7(4) Defences open to the defendant are :-

1. JUSTFICATION: Truth or justification is a very good and complete defence. Defamation is the Injury to man's reputation and if there is truth about the statement, then there is no defamation. The person is not lowered, but is reduced to the proper level!

The substance of the statement must be true, not merely a part of it. "How, a lawyer treats his clients" was an article which dealt with how a particular lawyer was treating his client. Held; the article was in-sufficient to justify the heading (Bishop Vs. Lautiar).

2. FAIR COMMENT: The comment must be on a matter of public interest. Honest criticism is essential for the efficient working of democratic public institutions. The Government and its institutions may be criticised.

Contents of fair comment:

1. The matter commented must be of public interest. The matter commented must be of public interest. The Government and its various wings and establishment and public institution may be criticised. Novelists, Dramatists, Musicians, actors etc. may also be criticised.

2. Fair comment must be an expression of an opinion and not an assertion of facts. Plantiff was advertising in papers as a specialist in E.N.T. The defendant commented about him as "a quack of the rankest species" Held: That it is was a comment. The court always looks to the merit of the comments.

3. The comment must be fair; Mere violence in criticism by itself will not make the statements unfair.

4. Comment must not be malicious. Even fictitious names may be used. That by itself will not render the statement unfair.

INNUENDO: In case of defamation one question that may come up for consideration would be the actual meaning of the words used. Sometimes words

may have double meanings (Pun) or may be ambiguous but courts will be interested in finding out the exact meaning that is to be attributed under the circumstances. It is for this reason that the court invokes the concept of innuendo i.e. to find out the inner meaning of the words used be the author of the defamatory words.

1) In Mrs. Cassidy Vs. Daily Mirror: The facts were that the defendant published in his newspaper that 'Mr. Cassidy and Miss. K are engaged'. In fact Mr. Cassidy had married Mrs. Cassidy. The wife Mrs. C sued the publishers. Her contention was that seeing the news item, her friends in the women club and elsewhere shunned her company and look inner meaning of the court therefore looked into the inner meaning of the publication. In effect, it means that Mrs. C was not a legally wedded wife of Mr. C. i.e. she was a kept mistress of Mr. C The court awarded compensation.

2) Fry & Co. Case (Chocolate case) In this case, P was a golf player. He was an amateur who became very popular. The defendant company D, published his photo with a chocolate protruding from his packet, inscribed Fry & Co. Chocolates. The Golf club felt that the plaintiff had violated the club rules. P sued the company for compensation. Court applied the principle of innuendo and held sells his name meaning was that if by would be dismissed from the golf club. Hence D was held liable.

3) PRIVILEGES: Privileges are of two kinds, absolute and qualified.

MEANING OF PRIVILEGES: They are occasions on which there ought to be no liability for defamation. This is because the public interest weighs the plaintiff right to his reputation.

Privileges are absolute when the communications is of paramount importance. Such occasions are protected, however malicious or outrageous they may be. The defendant may make statement even if they are false.

PART: I

1) Statements, made in Parliament or Legislature.

2) Reports, papers etc. Of either house of legislature.

3) Judicial proceedings.

4) Communication between one officer and a foreign officer.

5) Communication between one officer and a foreign officer.

Statements are qualified when he makes the statement honestly even though they are false.

1. Fair and accurate reports of parliamentary debated, and proceedings.
2. Fair and accurate reports published in newspapers. Similarly broadcasting.
3. Statement made in pursuance of duties. A reports to B, about the conduct of C. If it is A's duty to report and if he is to protect the interest of B, he may make statements about C.
4. Where A and B are having a common interest to be protected. Statements made about the plaintiff P between A & B themselves are protected.
5. Statements made in self-protection and self-defence to procure a redress of public grievances are protected.

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Sn.8: Trespass to Person:

Assault and Battery are two forms of Trespass to person.

Battery is the international application of force to another person. Assault is an action of defendant which causes to the plaintiff a reasonable apprehension of the infliction of a battery on him by the defendant (Winfield).

To throw water at a person is assault it is battery is a drop falls on him. Pulling away the chair when a person is about to sit is assault. It becomes battery when he touches the ground. Similarly, flashing light with a mirror is assault. It is battery when the rays impinge on the plaintiff.

The word Force has a defined scope in the context of assault and battery; infliction of light , heat , electricity, gas, odour and similar things which may be applied to such a degree as to cause injury or personal discomfort, amounts to force as required in battery. As chief Justice Holt, rightly says "The least touching of another in anger is a battery (Cole. Vs. Turner). Hence spitting a man on his face is assault but if any drops fall on him it is battery.

1. Pointing a loaded pistol is assault. Pointing an unloaded pistol is no assault.

In R. Vs. St. George: It was held that pointing an unloaded pistol at dangerously close quarters was assault. There was a reasonable apprehension of the impact of the gun. Hence it was assault.

2. In Stephens Vs. Myers: P as a chairman was in meeting. D, a member became vociferous. Resolution was passed to remove him from the meeting. Thereupon D moved with closed fist towards the Chairman, but was stopped by a person who was sitting next to D. Held that there was assault.

When a person standing on a Railway station platform shows his fist to the plaintiff who is in a moving train, there is no assault. Awakening a pupil in a class room by another student while the class is going on, is battery. But if the teacher wakes hip up there is no battery. Similarly in the case of Sermons, to touch a person with the least Force, to call attention, is no battery, if this is done by the Bishop.

There is hundreds of assault and battery in the day to day affairs of human beings. But became of the good humour of mankind they do not go to the Courts. Perhaps the other reason is (De minimis non-curet lex) law does not take congisance of trifles.

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Sn.9 : FALSE IMPRISONMENT:

False imprisonment is the infliction, of bodily restraint which is not expressly or impliedly authorised by law. False means erroneous (wrong). There is the restraint of a man's liberty. The person cannot freely go about at his own will.

1. Knowledge of the plaintiff about his imprisonment is not essential.

Meerings case: Defendant suspected M of Stealing a keg of Varnish. He asked two police-men who went to M and brought him to the defendant. M was put in a waiting room and the police were standing outside. Held: Though the plaintiff did not know that the police were outside, this amounted to false imprisonment.

In Bird Vs. Jones:

The defendant wrongfully covered part of the road on a bridge, put certain seats for spectators to see the regatta show, on the river. P climbed over the fence without paying. Held: D not liable because the restraint was not complete.

Sn.9(2) : Malicious Prosecution:

In malicious prosecution the plaintiff must prove:

1. That the defendant prosecuted him in a criminal court.

2. That the prosecution ended in favour of the plaintiff i.e. he was acquitted.

3. That the prosecution lacked reasonable and probable cause.
4. That the defendant acted maliciously.
5. That damage resulted to the plaintiff.

1. There must be a prosecution by the defendant complaining against the plaintiff.
2. The plaintiff must prove that there was acquittal or discharge .If the plaintiff, is convicted then he cannot sue for malicious prosecution.
3. There must be a lack of reasonable and probable cause. In other words, it must be proved that the time the charge was made there was no reasonable clause for the prosecution to proceed further.
4. Malice: This must be proved by the plaintiff.
5. The damage must be proved, that is, the damage of man's fame, or the safety of his person, or the security of his property. There is a moral stigma attached.

E. G.: D prosecutes P for forgery, but P is acquitted, thereupon, P may sue D for Malicious prosecution.

In Wyatt V White, D noticed in P's godown some sacks which had D's markings. He prosecuted P. But P was held not liable. Thereupon, P sued D, for malicious prosecution. Held, there was reasonable cause for the prosecution to proceed further.

Damage to the plaintiff must be proved. Merely because there was an acquittal, the plaintiff will not succeed in a suit for malicious prosecution. Plaintiff must show that he suffered damaged to his person, property or reputation.

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Sn.9 (2) : Maintenance and Champerty :

Maintenance means aiding or assisting a party to a case in civil proceedings, by pecuniary or other means, without any legal justification. This is the case of an intermeddler who acts without any legal right. In common law (in England) this is a tort as well as a crime.

Champerty is a form of maintenance but with an agreement to share the proceeds of the gains of the civil proceedings. Here 'C' enters into an agreement

with P to bear the cost in a suit between P & D. 'C' is not having any legal right. He has no common interest, with P. Hence, C is liable for Champerty.

The object of law is to prevent litigious tendency in public interest.

Position in India:

The above English rules are not specifically applied in India.

Assistance given to a person to protect his right and to prevent any oppression is valid, if not opposed to public policy. The court always looks to the bonafides of the parties. If the agreements are found to be unconscionable or with Malafides or with improper motives, or contrary to public policy, they are bad.

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Sn.10. : Definition:

Deceit is false statement of fact made by A, knowingly or recklessly, with intent that it shall be acted upon by B, who does act upon it and, thereby, suffers damage (Winfield).

In Pasley Vs. Freeman:- The principle of Deceit was extended from contracts to torts. The defendant assured that X was trustworthy to give a credit of some money. It was false, P sued. Held: Deceit.

Essential of Deceit:-

1. Representations as fact, of that which is false.
2. Knowledge or Recklessness that it is false.
3. Intention that the plaintiff could act upon the statments.
4. The Plaintiff should sustain damage.

1. False Statement of Fact: By silent representations: A cow with some infection or disease was sold in the market. P sued D. Held: D is not liable if he did not know the disease at the time of selling. In a case the Court held that mere silence did not amount to deceit.
2. Promises: Mere promise will not amount to deceit. Scores of promises are made which are never kept up.

3. Misstatement of fact: The Edgington Vs. Fitmaurice, the company raised debenture. It stated in the prospectus that the debentures money was to be utilised to purchase vans. But in reality the money was used to pay off outstanding loans. Held: Deceit.

4. Opinions: Mere opinions do not amount to deceit. These must have been made with knowledge that the statement is false, or, the statement must have been made with carelessness, or recklessness.

Derry Vs. Peek:- Directors issued a prospectus stating that the company had powers to use steam in propelling their trams. In fact that grant to use steam was subject to the consent of a Board of Trade. Company had believed that the consent of Board was a mere formality. But the Board refused to give its consent. Held: No Deceit. There was an honest mistake in viewing that the consent of Board was a formal procedure. A false statement made carelessly and without reason to believe to be not true was "true fraud". This decision is criticised by Judges and jurists.

Candler Vs. Crane:- The defendant, an Accountant, prepared accounts of the company and induced the plaintiff to invest money. B invested money. The Company had given a misleading picture, but the court held that it was a mere careless misstatment. Hence P failed. It was held that mere careless statements were not actionable unless there was a contractual or Fiduciary relationship.

Nocton Vs. Lord Ashburton:- The error in Derry Vs. Peak was exposed in this case. Here circumstances showed a duty to be careful. In the particular circumstances of Derry-Vs.-Peek there was no duty to be careful. In this case, Solicitor, negligently but without any fraud induced his client to release part of Mortgage security. Security became insufficient and the plaintiff suffered. He sued the solicitor. Solicitor was held liable.

Exceptions:- Derry Vs. Peak is not applicable in:

1. Statutory exceptions as in Companies Act. Eg: in respect of prospectus, liability of directors and auditors is fixed.

2. Cases of Estoppel.

3. Cases where there is a contractual duty to take care.

4. Cases where there is an Implied warranty of another in agency.

Rule in Hadley Byrne: As regards liability for careless statements the leading cases is:

Hadley Byrne and Co., Ltd., Vs. Heller & Partners Ltd.,

P, and advertising agency, wanted to know the trust worthiness of Easipower company. It asked its bankers about this. The Bankers referred to Easipower Company's bankers "Heller and Partners Ltd." who gave favorable reports. They had written as: "Confidential. For your private use. Without responsibility on the bank or its officials". This was passed on to Hadley Byrne, who relied on and allowed credits and suffered heavily when Easipower Company went into liquidation.

Held: The Bank was not liable: The bank did not know to whom the information would be passed on. Further, it had taken on responsibility whatsoever. Hence, not liable. There was no deliberate misstatement to make it deceit.

Sn.11(1) : CONVERSION:

Conversion is any act in relation to the goods of a person which constitutes an unjustifiable denial of his title to them.

Essentials:- 1. Wrongfully taking possession of the goods.

2. Abusing possession of them.

3. Denying title or asserting one's right.

1. Taking possession:-

If a snatches the hat of B with intention to steal it, it amounts to conversion. In Fouldes V. Willouby A and his horses embarked on B's boat. A dispute arose between A & B. B put the horse on the shore and went to the other side with A. A claimed that B had committed conversion. Held: No. Conversion. In Richardson V Atkinson, D drew out some quantity of wine from the cask of P, but added water to fill up the cask. Held, D was liable for conversion.

2. Abusing possession:-

A person may be in possession of goods of another as a Bailee, Pawnee, trustee etc. If he abuses his possession by selling or otherwise disposing of, he is liable for conversion. If A makes omelette out of eggs given by B for custody, there is conversion. If a bailee abuses his possession Eg: Carrier, using customer's goods for himself, there is conversion.

3. Denying Title:-

Denial of title of plaintiff amounts to conversion. A let out his land to B. B had dumped some material. C bought the land from A used up part of the materials. Held: C liable for conversion.

Sn.11 (2) : "Finding is Keeping- is a dangerous half-truth"

The finder of goods has every right against all person in the world except the real owner. However, if the owner is not traced or if the owner makes no claim, question arises as to the rights of the finder of goods.

1. In Armory Vs. Delamarie, a chimney sweeper found a jewel when he was sweeping. He gave it to S servant of goldsmith for valuation. S refused to return the same. Held: Chimney sweeper was entitled. He had a better title than S.

2. In Water Co. Vs. Sharman, P appointed D to clean his pool. While cleaning, D found two gold rings. The owner could not be traced. Held: P was entitled. Reason: For things found on land, the presumption is the owner is entitled, as he has the custody over it.

3. In Bridges Vs. Hawkesworth: P found currency notes on the floor of D's shop. The owner could not be traced. Held: P was entitled to the notes. Reason: D was never in the custody of the currency notes, before they were found.

Hence the law relating to finding is that "The finder has a better title than all others, except the real owner".

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Sn. 12 : Liability of Occupiers:

The duty of the occupier in tort depends on whether the plaintiff is an invites, or a licensee or a trespasser.

Invitee:- Invitee is a person who comes on the premises on business, with the consent of the occupier, having some " common interest" with him.

A person who enters a shop with a view to doing business is an invitee. A passenger who uses the railways, a cleaner invited to clean windows; children in a Circus show are invitees.

The occupier's duty is expressed in Indemaur Vs. Dames: X had employed P, a journeyman as gas-fitter. He had directed him to test burners in the sugar refinery. While doing the test, P fell into an unfenced shaft and was injured. Held: X liable.

The occupier should use reasonable care to prevent damage from unusual danger which he knows or ought to know.

A railway company is liable to the users. P went to the station to receive his daughter, but slipped on an oily patch and sustained injuries. As he was an invitee the company was held liable. (Stowell's case).

A Mother who visited her son in the hospital where he was an in-patient, fell on a mat and sustained injuries. Held: She could recover compensation.

Licencee:- He is a person who enters for his own purpose under an express or implied consent of the occupier. The occupier must warm him of any concealed danger or trap which the occupier knows or ought to know. A guest who is asked to take dinner or to stay for a day is a licensee.

Fairman's Case: In D's house, P had come for a function. She caught her heels while coming down the staircase, fell and was injured. Held D not liable. P was a licensee and that there was no hidden danger.

A licensee enters and takes just as he finds the premises. He must take his own precautions. However, if there is any hidden trap, the occupier becomes liable.

Tres passers:- He is a person who wrongfully enters on the land of the occupier, having, neither right nor permission to be there.

The occupier has no duty to take care. The trespasser comes at his own risk. However, if there is any willful act harming him, the occupier becomes liable.

1) A person entered the premises of a railway company without permission and fell into a reservoir in the dark. Held: The Company was not liable.

2) Police P entered the premises of D in the dark to see whether everything was alright, but fell into a saw pit and was injured. The door was half opened in the night and hence the police had entered. Held: In the circumstances he was a trespasser and hence, owner not liable (Bates Case). This has been criticised to be wrong. The reason is, the police is entering the premises to protect. Hence, he is not a trespasser.

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Sn.13 : Nuisance:

Nuisance is unlawful interference with a person's use or enjoyment of land or some right ever or in connection with it (Winfield).

The main principle, is "use your property so as not to interfere with that of others" (Sic utere tu et alienum non laedas).

Nuisance is of two kinds. Private and public. Public Nuisance is a crime. It materially affects the peace comfort and convenience of the people at large.

Ex.: Obstructing public high ways, carrying on a prohibited trade etc.

PUBLIC NUISANCE	PRIVATE NUISANCE
1. A public right is violated.	1. Private right is violated.
2. It is a crime.	2. It is not a crime but tort only.
3. Special damage, is necessary to recover compensation. Ex.: Unauthorised cutting of road for drainage purposes. Here the public cannot sue if there is no special damage. But if a person is injured he is entitled because he has incurred a specaila damage. Ex: Ross Vs. Miles. D caused obstruction on the river. P incurred damage in transporting cargo. Held this was sufficient special damage to recover compensation.	3. Special damage need not be proved. But there must be an unlawful interference. St. Helen Smelting Co. Vs. Tipping and Copper Smithy Co., the fumes of D's company were injurious to the trees of P's estate. Held D liable. Other examples: Excessive playing on piano, or tuning Radio, or obstructing right to light or air or access to water etc.
4. To be filed through Advocate General.	4. Suit may be filed by the Plaintiff.

Essential of Nuisance:-

1) There must be an unlawful interference. The standard of liability has been discussed in a number of cases.

1. Robinson Vs. Kilvert.

2. Heath Vs. Brighton.

3. The Wagon Mound Case.

The Defendant is liable for the interference but no liable in respect of abnormal sensitiveness.

1) Robinson Vs. Kilvert:

D was in the ground floor manufacturing paper boxes. Just above D's room, P had stored sensitive paper. Due to heat used by D to make boxes, the paper got spoiled. P used D. Held P was abnormally sensitive in the circumstances. Hence, D was not liable.

2) Heath Vs Brighton:

D's power station was making a buzzing noise. The church complained that it affected the sermon. Held, as the noise never affected the attendance for sermons, there was no nuisance.

3) Wagon Mound Case:

Oil stored in this vessel escaped and spread to over 600 feet away, where another ship P had been embarked. Welding operations which were going on continued on ship P. The people there took care to test the oil but continued welding work. Fire broke out and the ship was damaged. Held: Not liable.

2) Malice: The question is whether bad intention of the Defendant is necessary, For Nuisance, Malice is no essential. This has been answered in the leading cases:

1. Christie Vs. Davey:

D became angry with the music lesson given by P a music teacher. P was living in a residence separated from D by a thin wall. D interfered with music lessons by whistling, shrieking, beating trays, drums etc. Held: That an injunction could be given to D.

2. Hollywood Silver Fox Vs. Emmett:

D intentionally fired guns and scared the silver vixen during their breeding time, and caused great damage. P the owner used for nuisance. Held: There was

motive, compensation must be paid. Hence, malice is not essential but it is necessary to get more compensation.

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Sn.14 (1) : Liability of the State:

The State is a legal person and is vicariously liable for the tortious acts of its servants done during the course of their employment. The injured party may use the State and recover compensation.

Historical sketch: In England, at common law the rule was that "the king can do no wrong" and the king or his servants could no be used. This position was changed under the Crown Proceedings Act 1947. The Crown is liable to the injured party for the forts committed by the servants of the Crown in the course of their employment.

In India, the Constitution of India in Art. 300, lays down that the State may use and be used. Before the constitution, the Secretary of State was liable for tortious acts. (Govt. of India Act 1935)

Leading cases:

1. Penisular & Oriental Steam Navigation Co. Vs. Secretary of State (1861):

The servant of P, was travelling in a coach through the Govt's dockyard. Due to the negligence of D's servants, a heavy piece of iron carried by them fell and the horse of the coach was injured. P sued D. It was held that the maintenance of dockyard was a non-sovereign function, and hence, the Secretary of State was liable.

2. Rup Ram V State of Punjab: P, a motor cyclist was seriously injured when the driver of P. W. D. Truck dashed against him. It was held that Govt. was liable. (The Govt's. Argument that at the time of the accident, the driver was carrying materials for the construction of a bridge and that this was a Sovereign function and hence, the state was no liable, was rejected by the court).

3. State of Rajastan V Mrs. Vidyawati: Vidyawati's husband died of an accident caused by the Govt. driver, who has driving negligently the Govt. Jeep from the garage to the collectors office. Vidyawati sued the Govt. for compensation. Held, State liable.

4. Kasturlal V State of U.P.: A was arrested on suspicion of having stolen Gold. Gold seized from him, was deposited in police Malkhana. A was acquitted. In the

meanwhile, the Head Constable had stolen the gold and escaped to Pakistan. 'A' used the Govt. for the return of the gold or for compensation. Gajendragadkar J, held, that the State was no liable.

Reasons:

i) The Police Officers were acting within their statutory powers.

ii) The Authority of the police in keeping the property (gold) was 'Sovereign function'.

Held, Govt. not liable for the act done in the exercise of sovereign function.

Comment: This decision is not satisfactory as the concept of Sovereign function is extended beyond limits. The Supreme Court itself has suggested that the remedy is to make suitable law to give protection to individuals in such cases. No such law has been made so far.

Sn.14 (2) : Act of State:

This is an exercise of power by the Executive, as a matter of policy, in its relation with another State or aliens. In such a circumstances, the State claims immunity from the jurisdiction of the court, to decide. Such an cat of the representative of the State may have the authority of the State or the State may ratify such an act.

Secretary of State V. Kamachi Bai Saheba.

The Rajah of Tanjore, an independent sovereign, died leaving no male heirs. The East India Company declared that as there were no male heirs, the Raj lapsed to the British Govt. The widow Kamachi Bai used the company. The Privy Council held that it was an 'Act of State' and hence, there was immunity. Hence, she failed.

Buron V. Denman: P used D, the captain of the British Navy for releasing the slaves and burning their camps belonging to P. This act of D was ratified by the British Govt. Held, this was an act of State, and, hence, P failed.

Exception: There is one exception. There is no act of State between a Sovereign State and its own subjects.

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Sn.15 : Remoteness of Damage:

In law, the damage must be direct and the natural result or consequence of the act of the defendant. Otherwise, the plaintiff will not succeed. This is "Injure non remota causa sed proxima spectatur" (In law, the immediate, not the remote cause of any event that is to be considered). The reason for this is that the defendant is presumed to have intended the natural consequences, but not the remote damage. It means then that the defendants act must be the 'Causa Causans' or the proximate (near) cause.

Novus actus interveniens: (new act intervening)

The act and the consequences are to be connected directly and the defendant will not be liable for Novus actus interveniens and the consequences thereof.

In Scott V Shepherd (Squib case):

D threw a lighted squib into a crowd. It fell on X, who threw it farther. It fell on Y who threw it away. If fell on P, exploded and blinded one eye. Held, D was liable to P. Though X & Y, had intervened, D's act was the 'Causa Causans'. The Defendant pleaded novus actus interveniens but the court rejected this defence. In Haynes V. Harwood, the unattended horse van of D started running as some boys had thrown stones at the horse. The policeman who attempted to stop the hose was injured. Held, D liable. The contention that the throwing of stones was an intervening cause and hence D was not liable, was rejected by the court.

Two tests to find out direct damage:-

i) The test of reasonable foresight.

ii) The test of directness.

The test of reasonable foresight means that the liability of the defendant extends only to those consequences, which could have been foreseen by a reasonable man. This theory was rejected in 1921 and the second theory was applied in Re Polemis & Furnace Ltd. In this case, D chartered P's vessel to carry a cargo which included petrol. Some cases were leaking and there were vapours of petrol. D's servants while shifting cargo, negligently knocked at a plank which fell rubbing the wood and got ignited. As a result the entire vessel caught fire & was destroyed. Held D was liable. It was due to the negligence of D's servants that the fire had broken out and hence D was liable for all the consequences, even though those could not reasonably have been anticipated.

This theory was rejected in the Wagon Mound Case 1960. There is a return to the old reasonable foresight test.

The Wagon Mound, and oil-ranker vessel, was chartered by D and had been moored at Sydney (Australia) harbour. At a distance of about 600ft. P had a wharf, where repairs of a ship were going on. Due to the negligence of D's servants, oil spilt from the Wagon Mound, Spread over to the wharf, where P was making some welding operations. P's manager stopped his welding work, enquired D whether he could safely continue the welding. D assured no danger. P's manager himself believed that the oil was non-inflammatory on water, and continued welding work. Two days later molten metal from the Wagon Mound fell on cotton waste, ignited and caused a great damage to the wharf and the equipment.

Both the trial court and the Supreme Court (of Australia) applied the rule of directness (Re Polemis rule) and held that Wagon Mound was liable.

On appeal to the Privy Council in England, the Court reversed the lower courts' decision and held that D (Wagon Mound) was not liable.

The Court applied the test of reasonable foresight and rejected the direct rule theory. It overruled Re Polemis case. It said 'After the event a fool is wise. But, it is not the hindsight of a fool; it is the foresight of reasonable man which alone can determine responsibility'. What the reasonable ought to foresee, corresponds with the common conscience of mankind and hence, the test of reasonable foreseeability must be applied. Judged from this, D is not liable.

This decision has been approved in recent cases like Hughes V Lord Advocate (1963) etc.

Sn.16 (1) : Contributory Negligence:

This is a defence open to the defendant, in an action for negligence. This is based on the principle that no doubt, the defendant is, in fact negligent. But the plaintiff also has contributed his negligence, and hence, the plaintiff should not be allowed to make advantage of his own tort of negligence. The maxim is "in pari delicto potior est conditio defendatis" (If both partied are equally to blame, the condition of the defendant is to be preferred). Both are authors responsible for the injury. Of course, the burden of proof lies on the defendant to establish contributory negligence of the plaintiff.

The question in each case is: who caused the accident? (Winfield)

i) If it were the defendant, the plaintiff can recover damages in spite of his own negligence (Rule of last opportunity: Davies V. Mann).

ii) If it were the plaintiff, he cannot recover damages in spite of defendant's negligence (Butterfield V. Farrestor).

iii) If it were both the plaintiff and defendant, the plaintiff cannot recover.

Davies V. Mann: P had tied the forefeet of his donkey and had let loose on the highway. D who was going at smartish pace in his wagon (horse driven), ran over and killed the donkey. P sued D. It was held that D had the last opportunity to avoid the accident. Hence, D was liable.

Butterfield V. Forrestor : D wrongfully obstructed the highway by putting a pole across the road. P who was riding violently saw the pole from a distance of about 100ft. away, but came against the pole and was thrown over by the pole and was injured. It was held that D was not liable. The reason: If P had exercised due care, he could have avoided the accident. This decision has been modified later in Davies V. Mann.

Rule of last opportunity: This is the rule now in operation.

In British India Electric Co. V. Loach, the rule was applied to constructive last opportunity. In this case, P, a wagon driver was driving negligently on the level crossing. D's driver who was driving a tram came to a fast speed, saw the wagon on the tramline, applied the brakes. But, as the brakes failed, he dashed against P & P was killed. P's representatives sued D.

It was found that the brakes were defective and hence D had the last opportunity. If the brakes were in order, he could have averted the accident.

As this rule is also not free from doubt, the parliament enacted in England and Law Reforms Act 1945. It provides that when both P & D are at fault, the claim of P will not be defeated, but would be reduced to such extent as the court thinks just and equitable.

Sn.16 (2) : Alternate Danger doctrine: Jones V. Boyce.

This is also called as the dilemma principle. Such a situation arises, when the plaintiff, P is put in a position of imminent personal danger by the wrongdoing of the defendant. In order to avoid the danger, P suffers injury. In such cases, D is liable.

Jones V. Boyce: D, a coach-driver, was driving with P, so negligently that P was alarmed. Going down the hill, that coach's coupling gave way & it struck a post & was about to be turned down. P, to save himself jumped out and was injured. He sued D. Held, D liable.

If P had not jumped out, he would not have been injured, as the coach came to rest later without trouble. Even then D was liable, because he had created a dilemma to P.

Sn.16 (3): Res ipsa loquitur: (The thing itself speaks)

This is part of the rule of evidence. In cases of negligence, the burden of proving negligence is on the plaintiff, but 'Res ipsa loquitur' is an exception. This is a case where the event "tells its own story" clearly and speaks to the negligence of the defendant. Hence, the burden proving is shifted to the defendant to disprove. Eg. The presence of a pair of scissors in the stomach of a patient P, 2 days after the operation is over, or the presence of a stone in a loaf of bread, tells its own story. The court presumes the negligence of D.

Byrne V. Boadle: A barrel of flour rolled out of an open doorway of the upper floor of the godown of D, and fell on P who was going on the street. The burden was on D to prove that he was no negligent. Held, D liable.

Sn.17 (1) : Trespass ab initio:

Trespass to land is the unjustifiable interference with the possession of land. Trespass ab initio means trespass from the beginning. This is a circumstance where the entry of a person on the land of another is lawful, but, if the person stays there and abuses his authority he becomes a trespasser ab initio. It is important that the person must abuse his possession by going some positive act and not by a mere omission.

Six Carpenters case: Six Carpenters entered an inn (hotel), ate took bread and wine. They quarreled about the rates and then did not pay as per the demand. The hotel owner P sued them for trespass ab initio. Held: not liable for trespass ab initio. The reason is that not paying is an "omission". To constitute Trespass ab initio, there must be a positive act.

A carpenter or an electrician who lawfully enters to do some repairs, if he does some positive act (damaging the property, stealing some materials etc.) he becomes liable for Trespass ab initio.

Chik Fashions V Jones: In this case, the police entered the premises of P, searched for some items but did not find any. However certain other documents were seized. P sued police. Held, there was no trespass ab initio.

Sn.17 (2) : Distress damage feasant.

This is an extra-judicial remedy. A person in possession of land, may distress (mean detain), a feasant for the damage it has done, He has the authority to seize and detain the animal, until compensation is paid to him. He may release the animal after such a compensation is paid.

'feasant' means animal or chattel. Examples are the stray animals. Cow, ox, horse or a road engine.

The animal is to be detained when it is creating a trespass. It should not be seized by a "hot chase".

The person who detains must take care of the animal as a reasonable man. He must provide proper food, shelter water etc. to the detained animal. He has no right to sell or to use the animal.

When compensation is paid, he should release the detained animal or chattel.

Sn.17 (3) : Exemplary damages:

'Damages' means money compensation for the damage suffered. There are different types of damages:

i) contemptuous ii) nominal iii) compensatory and iv) exemplary damages.

Where it is not possible to calculate the compensation in terms of money, the court may take into account the conduct, motive and other circumstances and award aggravated (high) damages. This is exemplary. The idea is to make the wrongdoer an example. The nature of it is to deter and to punish such persons. The amount awarded is much more than the loss suffered.

In Huckle V. Money, D, a government servant entered the house of P under a nameless search warrant and made the search. P sued D. Held D liable. As entering without proper authority amounted to an attack on the liberty of P, the court awarded exemplary damages.

In Merzette V. William, the bank D, had without reason, refused to honour a cheque. P the drawer sued D. Held D liable to pay exemplary damages.

Sn.17 (4) : Contemptuous damages:

'Damages' means compensation. There are different types of damages. [As in 17(3)]

It is 'contemptuous damages', when the court finds that the plaintiff should not have brought an action, as the matter was so "trifling". The court forms a low opinion of the plaintiff, but, to protect his right, it awards on rupee or some small amount. This is called contemptuous damages.

Cases of trespass on land, trespass to person are examples.

The rule is 'De minimis non curet lex' (Law does not take cognisance of trifles).

Sn.17 (5) : Death in Relation to Tort: Case of Rose V. Ford.

The general rule in common law is 'Action personalis moritur cum persona' (Personal cause of action, dies with the person). This has been abolished in England by the Law Reforms Act 1934.

The position in civil cases is that the right or liability survives, to the successor. Hence, on the death of the injured person, his legal representatives may continue the suit. Similarly, if the defendant dies pending the case, his legal representatives become liable.

The leading case is Rose V. Ford.

G a girl of 23, was severely injured by an accident caused negligently by D. She was admitted to the hospital and treated. After two days, her legs were amputated. 4 days later she died. Her mother sued D on i) Loss of service ii) Pain and suffering iii) Diminition in the expectation of life.

Held, the father P, had a right to sue. D was held liable on all the above three counts. Compensation was awarded under each count.

Sn.17 (6) : Passing off:

If a person disposes of his goods, as those of another person without legal justification there is passing off.

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