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Answer sheet

Answer Question

☆ MEANING OF TORT

Tort is a civil wrong, which includes every wrongful act or an infringement of a right (other than under contract) leading to legal liability. Tort is a law of damages. Damages are of two types, **liquidated and unliquidated** damages. *Ubi jus ibi remedium*– Where there is wrong, there is remedy.

Tort means the violation of legal right vested in other person or in other words, it's a breach of a legal duty which the wrongdoer owed towards the victim. Thus, the presence of legal right and failure to obey the legal duty to protect that right constitute tort.

Tort is a civil wrong but all civil wrongs do not come within the ambit of tort. There are other kind of civil wrongs also, like breach of contract, breach of trust. So whenever a civil wrong is there we must see, whether the wrong is covered by any specific law, if not then it would be covered by law of torts. Where a single action of the wrongdoer results in two or more torts, as well as covered under any of the specific law, provided for recognized category of civil wrong, the victim can get redress either under torts or claim under any other specific law provided therein.

DEFINITION

Salmond: Tort is a civil wrong, independent of contract, and remedy in the form of unliquidated damages.

John Locke: Crime is an ill bargain to the offender.

Winfield: Tortious liability arises from the breach of duty; primarily fixed by law; this duty is towards persons generally; and its breach is redress-able by an action of unliquidated damages.

☆ DIFFERENCE BETWEEN TORT AND CRIME

- According to Blackstone, wrongs are divisible into two sorts or species, private wrongs (tort) and public wrongs (crime). The former are an infringement or deprivation of the private or civil right belonging to individuals, considered as individual and are thereupon termed civil injuries. The later are breach and violation of public rights and duties which affect the whole community therefore harsh action is provided against wrongdoer.
- Since tortious wrong is a civil wrong therefore aggrieved person himself files the case against the wrongdoer. However, in case of an offence, State prosecutes the accused.
- As far as the remedy is concerned, in tort, wrongdoer compensates the victim by paying him damages for the loss suffered due to violation of his legal right. While, in criminal wrongs, wrongdoer is punished by the state. Mostly it consists of corporeal punishment against the accused. But in some exceptional cases as provided U/S 357,

Cr. P. C 1973, a criminal court may also direct the accused to pay compensation to the aggrieved parties in suitable cases. Similarly, in civil law also, detention may be made out as in case of execution of decree under the Civil Procedure Code. As for example, if a person disobeys an injunction of the court, he may be punished with imprisonment in civil proceedings.

Sometimes a single act may result in tort as well as in crime. Under these circumstances, remedies are available concurrently. The wrongdoer may be held punishable for criminal wrong and may also be ordered to pay compensation. For example, A digs a ditch on the public road resulting in inconvenience to the public at large. Here A has committed the crime of public nuisance. If a passerby falls into the ditch, A will be deemed to have committed the tort of private nuisance as well. Thus here A will be liable under civil as well as criminal law.

☆ **SIMILARITIES BETWEEN TORT AND BREACH OF CONTRACT**

- At the most basic level, both contract and tort laws usually deal with a duty that has been breached.
- Damages are awarded in both contract and tort violations. These are monetary payments made by the liable party in order to make up for any losses that result from their breach.

☆ **DIFFERENCE BETWEEN TORT AND BREACH OF CONTRACT**

- In tort, the duty is towards persons generally. In contract, on the other hand, the duty is towards a specific person or persons. That is to say, the privity of contract does

not apply in case of tort because there the duty is not towards any specific individual or individuals but towards persons generally.

- Tort being a private wrong, the party which suffers injury is required to file the suit against the defendant and at any stage of the proceedings may withdraw the suit by entering into any agreement of compromise with the defendant or even without it.
- In a breach of contract, nature of damages is always compensatory. In tort also, generally the nature of damages is compensatory but in cases of injury to person or character, exemplary damages may also be awarded if the facts of the cases reveal malice or fraud.
- Another distinction between tort and breach of contract is that in the former the remedy is an action for unliquidated damages. That is to say, in case of tort the actual damages to be awarded depend upon the discretion of the court and of course depending upon the facts and circumstances of each case. In an action for breach of contract, generally the plaintiff “sues for a predetermined and inelastic sum of money.”
- In a breach of contract, motive of the party breaking the contract is immaterial. In tort also generally motive is irrelevant but sometimes it may be taken into consideration and in such exceptional cases, the evil motive of the defendant, if proved, will tip the scales of liability against him.

★ DISCHARGE OF TORTS

In discharge of tort, the circumstances are such the liability exists but remedy does not exist. The meaning of discharge of tort is coming to an end of tort. It is a process by which tort cease to exist and a wrongdoer is not liable for wrong committed by him.

Following are the modes for discharge of tort.

◇ **Death of the parties:**

The common law maxim '**actio personalis moritur cum persona**' applies here which means personal right of action dies with person. There can be two situations in case of death of parties:

- 1) Death of wronged person against whom the tort is committed.
- 2) Death of wrongdoer who has committed tort.

In case death of wronged person, the legal heir can claim damages from the defendant for proprietary wrong. e.g. if tort was committed against property, in case of nuisance, trespass, negligence, fraud, waste etc. But for the personal tort defendant cannot be sued. Even in case of death of wrongdoer the legal heir of deceased are not liable for personal tort of wrongdoer.

Personal torts are those in which are affecting mind and body of the person. E.g. assault, battery, false imprisonment, defamation etc.

◇ **Accord and satisfaction:**

Accord means an agreement whereby a person agrees to accept some valuable consideration in lieu of right of action that he has against the other. Satisfaction means actual payment of amount of consideration so agreed to when there is an agreement and it is satisfied by its executors, the agreement is termed as accord and satisfaction and it discharged the tort.

The consideration may be treated in money or a compensation which is accepted by a wronged person or his legal heirs and thereby settled the dispute does not proceed in court of law.

When the agreement is executed and satisfaction has been made the agreement is called accord and satisfaction and operates as a bar to the right of action. An accord and satisfaction in favour of one joint tort feisor operates in favour of all when the injury is one and indivisible. Where damages are to be recovered, accord and satisfaction is good plea action for libel and personal injuries.

◇ **Release:**

A release is the giving up or discharging the right of action which a man has or may have against another man. The wronged or aggrieved person gives up the entire claim or discharged right which he has against the wrongdoer. This release should be voluntarily and not by threat, compulsion or force. In England the release is with consideration and writing but it is valid even without consideration and in writing. The injured, wronged person does not proceed in court of law against wrongdoer. A lease executed under mistake, or in ignorance of one's right

or obtained by fraud is not valid. A convenient not to sue one of the two joint tortfeasors, doesn't operate as a release so as to discharge the other.

◇ **Judgment:**

Judgment is the final decision of a court of law. If the matter is decided conclusively and finally by the competent court then for the same cause of action, between the same parties the matter cannot be reargued again and further or fresh suit is debarred.

This principle is based on maxim **Res-Judicata**: u/s.11 of civil procedure Code, 1908, Means thing once decided cannot be reargued, more than one action does not lie on the same cause of action. The doctrine of Res-Judicata rests upon the principle that one should not be vexed twice for the same cause and there should be finality of litigation. The object of the principle is to prevent endless litigation. It also prevents a new investigation so that the same person cannot be harassed again and again in various proceedings upon the same cause of action.

It is based on the maxim **nemo debet bis vexari pro in et eadem causa** means no man should be vexed twice over the same cause of action.

◇ **Law of limitation:**

The law prescribes limit within which an action must be brought for the wrong and if this prescribed period is over, expired, the right of action is barred and remedy ceased to operate law helps those only that is diligent about their right. Delay defeat equity .Law will not help to those who were sleeping over their right for pretty long time.

In England the limitation Act, 1939 as amended by Law Reform Act 1954, fixes time during which action of tort must be brought. On the other hand in India, Indian limitation Act 1963, provides the prescribed period during which existing right can be enforced in the court of law. It does not create nor define any cause of action; the object of the Limitation Act is to enable the parties to file suit within certain period and forbid them from filing suit after that period.

The object of the law of Limitation is to ensure private justice to suppress and perjury and to quicken diligence and to prevent oppression.

◇ **Waiver by Election:**

Where man has more than one remedy for tort and he elect pursue one of those, giving up the others, the other remedies are waived. He cannot pursue them if he fails in the one elected. Waiver is express or implied, express when the person entitled to anything expressly and in terms gives it up in which case it nearly resembles release; implied, when the person entitled to anything does or acquiesces in something else which is inconsistent with that to which he is so entitled.

In short waiver means to give up; the aggrieved or wronged person gave up his right of action against the wrongdoer. For some reason and do not proceed in court of law.

◇ **Acquiescence:**

This shows an inactivity of person. The aggrieved person does not proceed in court of law because of his own incapacity. i.e. .if he has no money to pay court stamp fee or an Advocates fee, or he doesn't have time to go in the court of law and file the suit for compensation. Where a person who knows that he is entitled to enforce the right, neglects to do so for a length of time, the other party may fairly infer that he has waived of abandoned his right. But to deprive man of his legal remedies there must be something more than delay.