

Course Title: (Legal System Of Pakistan)

Final Term Examination

Examination Spring Semester- 2021

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Faculty of: LAW

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(GROUP “B”)

Q: Briefly discuss who cannot sue in tort?

(ANSWER)

Introduction: Every person living in a civilized state has been given certain rights by the law. Infringement of these rights gives rise to another right i.e the right to sue the person who infringed those rights. This right to sue is known as the capacity of an individual where capacity indicates the competence of parties to sue and the liability to be sued. In torts however there are certain persons who can sue but cannot be sued . Certain who cannot sue but can be sued and yet another group which can neither sue, nor be sued. There are certain persons or bodies who cannot sue, whilst there are others who cannot be sued in tort. In a tort there is certain person or bodies who cannot sue, whilst there are others who cannot be sued.

So, the question arises people are restricted from filing a case and also why do certain people are protected from such suits.

General Rule: As a general rule every person who suffers a tort can sue and a person who commits a tort can be sued this general rule is based on equality in law and equal protection in law guaranteed as a fundamental right by Article 21 of Constitution of Pakistan, 1973.

Who can sue: Any rational person including businessman, organization, government and other individuals can sue, provided that, they are of sound mind and are not disqualified by law.

Who cannot sue?: There are some categories of person cannot sue, only subject to certain limitations.

- **An Alien Enemy:** An Alien enemy is the person of enemy nationality or residing in the enemy territory. Such a person doesn't have the right to sue for tort. According to English law , the person cannot maintain the right of sue unless allowed by order in council. Alien enemy residing

in Pakistan can however sue with the permission of the Federal Government u/s 83 of civil procedure code.

- **Illustration:** Situation 1: If A is a convict and want to sue B for injury regarding the property, in that situation he cannot sue the person in the offence of forfeiture of the property.

Situation 2: If A is a convict and want to sue B for injury regarding property or body, he gets the right to sue for both injury to property as well as to the body.

- **Convict:** A convict is a person against whom a judgment of death or imprisonment has been pronounced by the court of law.

According to English law, the person whose sentence is unexpired does not have the right to sue for any damages to his property or for recovery. But this concept was removed by criminal justice act, 1948.

➤ **Bankrupt:** A bankrupt is also under the disability to sue for the act against his property. In this situation, where a tort causes injury to both the person and the property, so the right of action will split between the two. And it is also similar under a disability to sue wrongs in respect of his property for his bankruptcy all his property vests in a trustee.

➤ **Child:** A child cannot sue for injury caused when in its mother womb

Case Law: (1890) 28 LR IR 69

A women was with child, was injured in a railway accident, and the child when born was found to be deformed. The infant claimed 1,030 as damages from the railway company.

➤ **Held:** It was held that the infant child cannot maintain an action.

- **Husband And Wife:** A married women cannot sue for any tort committed by the third person unless her husband joins her a plaintiff. Now with the change in the law by law reform (Husband and Wife) Act 1962 husband and wife can sue each another.

In Pakistan husband & wife can file suit against one another because her husband and wife are considered separate personalities.

- **Unincorporated Association:** Unincorporated association cannot sue in its name. So the companies which are not registered under companies ordinance 1984 or firms which are not registered under companies ordinance 1984 or firm which are not registered under the partnership act 1932 cannot sue.

- **Corporation:** A corporation does not have right to sue for the personal injury as because of its nature it is clear, that a corporation cannot be injured personally but a corporation can sue for the tort affecting its property.

The qualification is :

1. The tort must not be impossible in nature.
2. In the case of defamation, the corporation can sue the other person if, it can prove that the injury has the tendency to cause actual damages.
3. A corporation may sue for a libel or any other wrong affecting its property or business.

In this case, it was held that a corporation has a right to sue, not only for the property but also for its personal reputation.

➤ **An Infant/Minor:** A minor can sue for the tort committed against him, subject to that by his next friend or guardian. But he cannot maintain a remedy for the injury sustained when he was in his mothers womb.

In this case, a pregnant women injured due to a train accident, as a result of which her child was born deformed. The court held that the minor cannot maintain a remedy for the injury sustained when he was in his mother womb. But in a case having similar facts, the supreme court of Canada

provided the remedy to the infant.

- **A foreign State:** In England, a foreign state cannot be sued in any court unless the action is recognized by her majesty.