

TORT MIDTERM TEST

PART "B" Questions and Answers Section (15 Marks)

Q1: Write notes on the following:

- i. **Damnum Sine Injuria.**
- ii. **Volenti non fit injuria.**

ANSWER:

DAMNUM SINE INJURIA:

Damnum sine injuria means damages, monetary loss, to the plaintiff without violation of legal right, not actionable because no injury to legal right.

In Basic words, Damnum sine injuria implies harm without encroachment of any lawful right. Harm without damage isn't noteworthy. Unimportant misfortune of money's worth does not of itself constitute legitimate harm. There are numerous acts which in spite of the fact that destructive are not wrongful within the eyes of law, subsequently don't allow rise to a right of activity in support of the individual who supports the hurt. No one is to be considered an off-base practitioner who simply profits himself of his legitimate rights, in spite of the fact that his activity may result in harm to another.

VOILENTI NON FIT INJURIA:

Volenti non-fit injuria is one such defence which is available for the defendant.

In case an individual gives his assent to doing of an act which leads to him getting harmed, at that point indeed in the event that an harm is caused by the other individual, he cannot claim any harms from that individual since the act was one for which he deliberately agreed. The assent of the offended party acts as a guard and this guard is called volenti non fit injuria which implies to a willing individual no damage happens.

Q2: Define the word "Tort" and how a tort is different from contract.

ANSWER: A tort is an act or exclusion, other than a breach of contract, which gives rise to damage or hurt to another, and sums to a gracious off-base for which courts force risk. In other words, a wrong has been committed and the cure is cash damages to the individual wronged.

In case of a tort, the obligation is one forced by the law and is owed to the community at huge. Within the case of a contract, the obligation is settled by the will and assent of the parties, and it is owed to a clear individual or people. In case of contract, the harms are compensatory and not rebuffing or commendable.

Q3: Briefly discuss who cannot sue in torts?

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ANSWER: As a common rule each individual who endures a tort can sue and an individual who commits a tort can be sued” this common rule is based on uniformity in law and rise to security in law ensured as a crucial right by Article 21 of Structure of Pakistan, 1973.

PERSONAL WHO CANNOT SUE:

ALIEN ENEMY: An alien enemy implies an individual of outsider nationality and incorporates an individual of any nationality who is at war with the state. An alien enemy in Britain cannot sue in English Court but beneath an express permit of the Ruler. Outsider foe dwelling in Pakistan can; be that as it may sue with the authorization of the Federal Government u/s. 83 of gracious strategy code.

CHILD: A child cannot sue for injury caused when in its mother’s womb.

CONVICT: A convict may be an individual against whom judgment of death or penal subjugation has been articulated on any charge of treachery or felony.

HUSBAND AND WIFE: A married ladies cannot sue for any tort committed by the third individual unless her Husband joins her a plaintiff. Presently with the alter within the law by law change (Husband and Wife) Act 1962 husband and wife can sue each another.

BANKRUPTS: A bankrupt is comparable under a disability to sue for wrongs in regard of his property for his insolvency all his property vests in a trustee.

UNINCORPORATED ASSOCIATION: Unincorporated association cannot sue in its title. So the companies which are not enrolled beneath companies’ law 1984 or firms which are not enrolled beneath companies’ ordinance 1984 or firm which are not enlisted beneath the partnership act 1932 cannot sue.

CONCLUSION:

Within the conclusion able to say that it may be a common vital that all people have capacity to sue and are at risk to be sued. It is subject to certain restriction beneath the law of torts. There are a few people who cannot sue but cannot be sued for torts.

PART “A” CASE STUDY (15 Marks)

1. Facts of the Case:

The plaintiff’s and the defendant’s dogs were fighting, the defendant was beating them in order to separate them, and the plaintiff was looking on. The defendant accidentally hit the plaintiff in the eye causing him severe injury. An action brought by the plaintiff against defendant.

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Questions:

- In the situation defendant is liable for his wrongful act or not?
- If the defendant is liable then which plea defendant will take to justify his wrongful act?

ANSWER (1)

Within the circumstance defendant isn't at risk for this act as he really attempted to isolated them but it was happened accidentally.

ANSWER (2):

It falls beneath unavoidable accident of general defenses. The respondent really attempted to separate them and whereas doing so, he inadvertently hit the plaintiff within the eye influencing him some serious wounds. The occurrence was absolutely an unavoidable mishap for which no risk may be claimed. So, the respondent isn't at risk for the wounds lamented by the plaintiff because it was happened accidentally

2. Facts of the Case:

The defendant, who was one of a shooting party, fired at a pheasant. One of the pellets from his gun glanced off the bough of a tree and accidentally wounded the plaintiff, who was engaged in carrying cartridges and game for the party. An action brought by the plaintiff against defendant.

Questions:

- In the situation defendant is liable for his wrongful act or not?
- If the defendant is liable then which plea defendant will take to justify his wrongful act?

ANSWER (1):

The defendant isn't obligated. It was a mishap and plaintiff was doing it deliberately. It also incorporates, an activity in trespass to the individual.

ANSWER (2):

The defendant will take plea to legitimize his act by fulfilling the obligation of establishing the nonappearance of both purposeful and carelessness on his portion. Where the plaintiff is injured by activity coordinated to him by the respondent his case is made

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by illustrating this truth and the responsibility falls upon the litigant to demonstrate that such trespass was completely without his blame.

3. Facts of the Case:

The plaintiff, an infant 17 years old, agreed to be carried in the car of the defendant, who was also 17 years old, at the plaintiff's own risk. The car struck a wall due to the defendant's negligence and the plaintiff was injured. An action brought by the plaintiff against defendant.

Questions:

- In the situation defendant is liable for his wrongful act or not?
- If the defendant is liable then which plea defendant will take to justify his wrongful act?

ANSWER (1):

The defendant isn't obligated for this act of mischance because it is an act of Volenti non fit iniuria/injuria (Latin: "to a willing individual, harm isn't done")

ANSWER (2):

The defendant can legitimize his act by demonstrating that plaintiff had entered into his ride voluntary and expressing that any traveler voyage at his claim chance.

The defendant had too directed plaintiff to be in his car on his possess chance so the litigant is liberated from his risk