

UNIT – I

Evolution, Nature & Mental Elements of Torts

Law of Torts • Foundational Concepts

Core Foundations

What We Will Cover

01

Evolution of Law of Torts

Historical development from English common law

02

Nature & Scope

What tort law covers and its character

03

Meaning of Tort

Definition and essential features

04

Tort vs Contract & Crime

Key distinctions explained

05

Ubi Jus Ibi Remedium

Development of the maxim

06

Mental Elements

Intention, Motive, Malice in Law & Fact

Historical Development

1

Early English Law

Developed through writs — Writ of Trespass (direct injury) and Writ of Trespass on the Case (indirect injury).

2

Common Law Growth

Judges created new remedies case by case. Tort law remained largely uncoded and judge-made.

3

Reception in India

English common law principles of torts were applied in India by courts under the doctrine of justice, equity and good conscience.

4

Modern Position

Still largely uncoded in India. Some statutes (e.g., Motor Vehicles Act, Consumer Protection Act) deal with specific tortious liability.

Character of the Law of Torts

Civil Wrong

Tort is a civil wrong (as opposed to criminal). The primary remedy is damages (compensation).

Uncodified

In India, the general law of torts is not codified. It is based on English common law principles adapted by Indian courts.

Violation of Right

It involves violation of a legal right vested in the plaintiff by the defendant (*injuria sine damno* is actionable).

Wide Scope

Covers negligence, nuisance, defamation, trespass, strict liability, vicarious liability, and many other wrongs.

Definition & Essential Features

A tort is a civil wrong, other than a breach of contract, for which the remedy is a common law action for **unliquidated damages**. It is an infringement of a right in rem (available against the world at large).

Civil Wrong

Gives rise to a civil action, not criminal prosecution (though the same act may be both).

Other than Breach of Contract

Liability does not arise from a contractual relationship between the parties.

Unliquidated Damages

Compensation is assessed by the court; not a fixed pre-agreed sum.

Right in Rem

The duty is owed to persons generally, not to a specific person only.

Key Differences

Point of Distinction	Tort	Contract
Nature of Duty	Duty fixed by law (right in rem)	Duty fixed by parties (right in personam)
Privity	No privity required	Privity of contract essential
Consent	Usually no consent of plaintiff	Based on consent of parties
Damages	Unliquidated (court assesses)	Often liquidated or measurable
Intention	May or may not be intentional	Breach may be intentional or not

Key Differences

Point of Distinction	Tort	Crime
Parties	Private individual (plaintiff)	State (prosecution)
Object	Compensation to victim	Punishment & deterrence
Standard of Proof	Preponderance of probabilities	Beyond reasonable doubt
Compromise	Can be compromised	Generally not compoundable
Same Act	May also be a crime	May also give rise to tort

Where there is a Right, there is a Remedy

Ubi jus ibi remedium means “where there is a right, there is a remedy”. If a legal right is violated, the law provides a remedy. This maxim is foundational to the development of tort law — courts created new remedies when rights were invaded.

Development

English courts used this principle to expand the categories of actionable wrongs beyond the old rigid writs.

Injuria sine damno

Violation of a legal right without actual damage is still actionable (e.g., *Ashby v. White*).

Damnum sine injuria

Damage without violation of a legal right is not actionable (e.g., *Gloucester Grammar School case*).

Modern Relevance

Supports the idea that every infringement of a legal right should have a corresponding legal remedy.

Intention, Motive & Malice

In tort law, liability often depends on the defendant's state of mind. The three key mental elements are Intention, Motive, and Malice. Their relevance varies according to the specific tort.

Intention

Desire to bring about a particular consequence, or knowledge that the consequence is substantially certain.

Motive

The reason or ulterior purpose behind the act. Generally irrelevant in tort law.

Malice

Ill-will or improper motive. Important distinction between malice in fact and malice in law.

Detailed Understanding

Intention

Intention means the defendant desired the consequences of his act, or knew that they were substantially certain to follow.

Relevant in:

- Trespass
- Battery
- Assault
- False imprisonment
- Deceit

In negligence, intention is not required — carelessness is enough.

Motive

Motive is the underlying reason why the defendant acted.

General Rule:

Motive is irrelevant in tort law. A lawful act does not become unlawful merely because of a bad motive.

Exception:

In some torts (e.g., malicious prosecution, conspiracy), improper motive is an essential element.

Two Distinct Concepts

Malice in Fact

Also called express malice or actual malice.

It means ill-will, spite, or a desire to harm the plaintiff.

Relevant in:

- Malicious prosecution
- Defamation (to rebut fair comment / qualified privilege)
- Conspiracy

Proof of spite can defeat certain defences.

Malice in Law

Also called implied malice.

It means a wrongful act done intentionally without just cause or excuse.

The act itself is unlawful; the defendant's feelings are irrelevant.

Classic illustration:

Bradford Corporation v. Pickles — a lawful act does not become unlawful merely because of malicious motive.

IMPORTANT CASE LAWS

Landmark Decisions

Ashby v. White (1703)

Injuria sine damno — violation of a legal right (right to vote) is actionable even without actual damage.

Gloucester Grammar School Case

Damnum sine injuria — mere financial loss without violation of a legal right is not actionable.

Bradford Corpn. v. Pickles (1895)

A lawful act does not become unlawful merely because it is done with a malicious motive.

Allen v. Flood (1898)

Motive is generally irrelevant; an act which is lawful does not become unlawful due to bad motive.

Town Area Committee v. Prabhu Dayal

Indian application of damnum sine injuria principle.

Ubi jus ibi remedium

Maxim applied by courts to expand remedies wherever a legal right is infringed.

KEY TAKEAWAYS

Summary of Unit-I

- 01 Tort is a Civil Wrong**
Primarily concerned with compensation through unliquidated damages for violation of rights in rem.
- 02 Distinct from Contract & Crime**
No privity needed (unlike contract); aims at compensation (unlike crime which aims at punishment).
- 03 Ubi Jus Ibi Remedium**
Where there is a legal right, there is a remedy. Foundation for expansion of tort remedies.
- 04 Injuria vs Damnum**
Injuria sine damno is actionable; damnum sine injuria is not.
- 05 Mental Elements**
Intention is relevant in intentional torts; motive is generally irrelevant; malice has two meanings (in fact & in law).

Thank You

“Where there is a right, there is a remedy.”

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