AL- AMEEN COLLEGE OF LAW

BANGALORE

LAW OF TORTS – Ist Sem 3 Years and 5th Sem 5 Years B.A; LL. B

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Q. No. 1 What are the general defences available in cases of tortious liability?

General Defences- Introduction

There are some general exceptions to liability in torts which the defendant may plead in defence of his act which has caused damages to the plaintiff.

Normally, when a plaintiff brings an action against the defendant for a particular tort and successfully proves the existence of all essential ingredients of that tort, the defendant is held liable for the same. But there are some general defences available to the defendant which may discharge him from liability if he can successfully plead that his wrongful act falls under any of those defences.

These defences have been termed as general exceptions to the liability in tort.

They are –

1) Volenti non fit injuria or the defence of Consent-

When a person consents to the infliction of some harm upon himself, he has no remedy for that in tort. In case, the plaintiff voluntarily agrees to suffer some harm, he is not allowed to complain about that, and his consent serves as a good defence against him. No man can enforce a right which he has voluntarily waived or given up. Consent to suffer the harm may be express or implied. When you invite somebody to your house, you cannot sue him for trespass, nor can you sue the surgeon after submitting to a surgical operation because you have expressly consented to these acts. Similarly, no action for defamation can be brought by a person who agrees to the publication of a matter defamatory of himself.

Many times, the consent may be implied or inferred from the conduct of the parties. For example, a player in the game of cricket or football is deemed to be agreeing to any hurt which may be likely in the normal course of game. Similarly, a person at a cricket match or a motor race cannot claim damages, if he is hit by the ball or injured by a car coming on the track.

But the act causing the harm must not go beyond the limits of what has been consented. If a surgeon negligently performs an operation, he cannot avoid the liability by pleading the defence of consent.

Case law- Hall v. Brooklands Auto Racing Club – The plaintiff was a spectator at a motor race being held at Brooklands on a track owned by the defendant company. During the race there was a collision between two cars, one of which was thrown among the spectators, thereby injuring the plaintiff. It was held that the plaintiff impliedly took the risk of such injury, the danger being inherent in the sport which any spectator could foresee, the defendant was not liable.

Padmavati v. Dugganaika – While the driver was taking the jeep for filling petrol, two strangers took lift in the jeep. One of the bolts of the right front wheel came off resulting in an accident. The two strangers were thrown out and sustained injuries and one of them died. It was held that neither the driver nor his master could be made liable, because firstly it was a case of sheer accident and secondly the strangers had voluntarily got into the jeep and as such , the principle of volenti non fit injuria was applicable to this case.

The consent must be free- For the defence to be available, it is necessary to show that the plaintiff's consent to the act done by the defendant was free. If the consent of the plaintiff has been obtained by fraud or under compulsion or under some mistaken impression, such consent does not serve as a good defence.

For the maxim to apply, two points have to be proved- i) The plaintiff knows that the risk is there. ii) He, knowing the same, agreed to suffer the harm.

The Act must be lawful- The act to which the plaintiff gives his consent and undertakes to suffer the risk must be lawful and the method of doing it must also be lawful otherwise even consent will not be a good defence for the defendant. No person can give consent to other to commit a crime.

Exceptions to the maxim

Rescue Cases- Rescue cases are exceptions to the maxim of volenti non fit injuria. If the plaintiff voluntarily takes a risk to rescue somebody from the danger created by the wrongful act of the defendant, the maxim will not apply, and he will have the right to bring an action for damages against the defendant.

Haynes v Harwood is a leading case on the point. The defendant's servant left a horse van unattended in a street. A boy threw a stone on the horses and they ran, causing grave danger to women and children on the road. A police constable on duty inside a police station, managed to stop the horses, but himself suffered serious personal injuries. It being a rescue case, the defence of volenti non fit injuria was not accepted and the defendants were held liable.

Unfair Contract Terms Act, 1977 (England)

This rule has now been abolished in case of personal injury or harm resulting from negligence.

Sec 2(1) of the Act provides that a person cannot by reference to any contract term or to a notice given to persons generally or to a particular person exclude or restrict, his liability for death or personal injury resulting from negligence.

(2) Act of God

According to Sir Frederick Pollock, 'Act of God' is an operation of natural forces, so unexpected that no human force or skill could reasonably be expected to anticipate it.

According to Salmond, 'Act of God' includes those acts which a man cannot avoid even by taking reasonable care. Such accidents are the result of natural forces and are unconnected to the agency of man.

The two essential elements of Act of God are-

i) There must be operation of natural forces,

ii) The incident must be extraordinary and not which could be anticipated and reasonably guarded.

Another term for Act of God is 'Vis Major '. It is a Latin term that means superior force. A loss or vis major results from natural causes such as a hurricane, floods, earthquake and without the intervention of human beings.

Nichols v. Marshland is the leading case on the point. Artificial lakes were created by the defendant on his land to store water. There was extraordinary rain that year which could not be reasonably anticipated, as a result of which the embankments of the lake burst out and water began to overflow on plaintiff's land. It was held that the defendant was not liable as the loss was caused by the act of God which could not be anticipated by the defendant.

(3) Inevitable Accident

If a person does a legal act with reasonable care and another person is injured in circumstances which cannot be avoided, no action can be brought against him

Stanley v. Powell- The plaintiffs and the defendants were members of a shooting party. The defendant fired at a bird, but unfortunately the bullet from his gun hit a tree and came back and injured the plaintiff. It was held that the injured to the plaintiff was the consequence of an inevitable accident and therefore, the defendant was not liable.

Distinction between Act of God and Inevitable accident-

1) Act of God is that event which is the result of the natural forces. They are unconnected with any human agency and cannot be avoided with any amount of care or caution taken by human being.
2) Inevitable accident is that event which a man of ordinary common sense cannot avoid, inspite of any amount of reasonable precautions taken in the circumstances.

(4) Private defence

Every person has the right to protect his property or person and for this purpose he can use necessary force. Thus, if he uses necessary force to protect his person or property and causes harm to another person, no action can be brought against him.

But there are two conditions for this-

i) The use of force for self-defence will be justified only when there is imminent threat to the person or property of a man.

ii) The use of force should not be more than the anticipated harm, for example, if a person hits me, I cannot be justified to use sword or gun against him in selfdefence.

(5) Acts of Necessity

This is based on the maxim 'salus populi suprema lex' – The welfare of the people is the supreme law. Greatest good of the greatest number is the main object of this maxim. For this implied consent is presumed on the part of every person of the society. In time of necessity, individual interest is sacrificed.

Therefore, damage caused by acts for preventing greater damage is not actionable even though harm is caused intentionally. Examples of acts of necessity are- to throw water on a house on fire; to forcibly feeding prisoner on hunger strike to save his life.

(6) Mistake

'Ignorance of law is no excuse '. Mistake, whether of fact or of law, is generally no defence to an action for tort. When a person wilfully interferes with the rights of another person, it is no defence to say that he had honestly believed that there was some justification for the same, when in fact, no such justification existed.

There are some exceptions, when the defendant may be able to avoid his liability by showing that he acted under an honest but mistaken belief. Example- for the wrong of malicious prosecution, it is necessary to prove that the defendant had acted maliciously and without reasonable cause and if the prosecution of an innocent man is mistaken, it's not actionable.

(7) Plaintiff himself Wrongdoer

This defence is based on the maxim 'ex turpi causa' that is a plaintiff cannot recover for an act or conduct by reason of being himself a wrongdoer. Eg- If two burglars A and B agree to open a safe by means of explosives, and A so negligently handles the explosive as to injure B, B may not succeed in maintaining an action for negligence against A.

In Pitts v. Hunt, a pillion rider aged 18 years encouraged his friend 16 years old to drive recklessly and dangerously after both had drunk together and met with an accident in which the driver was killed, and the pillion rider suffered serious injuries. The claim for compensation by the pillion rider against the representatives of the deceased, in negligence was dismissed on the ground that he himself was a wrongdoer.

(8) Statutory Authority

The damage resulting from an act, which the legislature authorises or directs to be done, is not actionable even though it would otherwise be a tort. When an act is done under the authority of an Act, it is complete defence and the injured party has no remedy except for claiming such compensation as may have been provided by the statute. Immunity under statutory authority is not only for that harm, which is obvious, but also for that harm which is incidental to the exercise of such authority. Therefore, if a railway line is constructed, there may be interference with private land.

Vaughan v. Taff Valde Rail company- Sparks from an engine of the defendant's railway company, which had been authorized to run the railway, set fire to the plaintiff's trees on the adjoining land. It was held that since the defendants had taken proper care to prevent the emission of sparks, etc. no action can lie for interference with the land for incidental harm, except for payment of such compensation which the Act itself may have provided.

Absolute and Conditional Authority- The statute may give absolute or conditional authority for the doing of an act. In absolute authority even though nuisance or some other harm necessarily results, there is no liability for the same. When the authority given by the statute is conditional, it means that the act authorized can be done provided the same is possible without causing nuisance or some other harm.

(9) Executive Authority

The State and its executive officers are given certain privileges by the Constitution and Statutes passed by legislatures. They can in the exercise of their duties, invade certain rights of the individuals without being liable to any damages. No action can be brought against those authorities for any injury done in exercise of their authority.

But if the public officers do illegal acts or if their authority is improperly exercised, they can be held liable.

(10) Parental and Quasi Parental Authority

Parents and guardians have an authority to scold and control their children. They can also detain the child. The authority of a teacher on his students are like the authority of a father on his son. A teacher can give reasonable punishment to his students and he gets this authority from the parents when they send their child to a school to study.

In **Laxmikant Sripad v. Gera** it was held that the principal of a school has the authority to expel a student from the school.

(11) Exercise of Common Rights

Every person has complete freedom to exercise his common or ordinary rights even though it may cause damage to others. But the restriction is that the rights must be exercised in good faith and in a lawful manner. It includes those cases to which the maxim damnum sine injuria applies. Thus, competition in trade or business is permissible even though it may cause damage to others, provided legal rights of others are not infringed upon and unlawful means have not been used in the competition.

(12) Judicial Acts

The judicial officers, judges, munsifs and magistrates are exempted from any liability for work done by them in discharge of their judicial duties, but he must act in good faith believing himself to have jurisdiction to do the act.

Conclusion- So these are the general defences available to a defendant and if he can prove that the tort which was committed was not solely his fault, but the plaintiff was to some extent responsible for its commission he can escape liability.

Q.No.2 Discuss the concept of Strict liability.

There are situations when a person may be liable for some harm even when he is not negligent in causing the harm, or there is no intention to cause to cause the harm, or sometimes he may even have made some positive efforts to avoid it. Sometimes the law recognizes 'No fault liability' and this was laid down by the House of Lords in Rylands v. Fletcher and also in another case M. C. Mehta v. Union of India (1987) by the Supreme Court of India.

In Rylands v. Fletcher the defendant got a reservoir constructed through independent contractors, over his land for providing water to his mill. There were old disused shafts (long thin pole) under the site of the reservoir which the contractors failed to observe and so did not block them. When the water was filled in the reservoir, it burst through the shafts and flooded the plaintiff's coal mines next to his land. The defendants did not know of the shafts and had not been negligent although the independent contractors had been. The defendant was held liable. According to the rule, if a person brings on his land and keeps there any dangerous thing that is a thing which is likely to do mischief if it escapes, he will be liable for the damage caused by its escape even though he had not been negligent in keeping it there. The liability arises not because there was any fault or negligence on the part of a person, but because he kept some dangerous thing on his land and the same has escaped from there and caused damage. Since the liability arises in such even without negligence on the part of the defendant, it is known as the rule of Strict Liability.

The essential conditions of Strict Liability are:

1) Some dangerous thing must have been brought by a person on his land- The liability for the escape of a thing from one's land arises provided the thing collected was a dangerous thing that is a thing likely to do mischief if it escapes. This rule has been applied to gas, electricity, sewage, explosives etc.
2) Escape- For this rule to apply it is also essential that the thing causing the damage must escape outside the control of the defendant and out of the premises of the defendant.
3) Non- natural use of land- The defendant is also answerable if, in bringing the thing there, he is making a non- natural use of his land. It must be some special use bringing with it increased dangers to others and must not be the ordinary use of the land or such a use as is proper for the general benefit of the community.

<u>Exceptions to the rule</u>

(i) Plaintiff's own default- Damage caused by escape due to the plaintiff's own default was considered to be good defence in Ryland's v. Fletcher itself. If the plaintiff suffers damage by his own interference into the defendant's property, he cannot complain about the damage so caused. In Ponting v. Noakes the plaintiff's horse went into the defendant's land and died after eating the leaves of a poisonous tree there. It was held that the defendant was not liable because the horse had gone to the defendant's land and ate the leaves.

(ii) Act of God- Act of God or Vis major was also considered to be a defence to an action under this rule.

(iii) Consent of the Plaintiff- In case of volenti non fit injuria that is where the plaintiff has consented to the accumulation of the dangerous thing on the defendant's land, the liability under this rule does not arise. Such a consent is implied.

(iv) Act of third party- If the harm has been caused due to the act of a stranger, who is neither the defendant's servant nor the defendant has any control over him, the defendant will not be liable under this rule.

(v) Statutory Authority- An act done under the authority of a statute is a defence to an action for tort. The defence is also available when the action is under the rule in Rylands v. Fletcher. Statutory authority however cannot be pleaded as a defence when there is negligence.

Conclusion- This rule of Strict Liability is applicable as much in India as it is in England. There has however, been recognition of some deviation of this rule. But the Supreme Court has evolved the rule of Absolute Liability by taking a bold and decisive decision in M C Mehta v. Union of India and this liability without fault has been recognized in case of motor vehicle accidents also.

Q. No.3- Discuss with illustrations the liability of a master for the wrongful acts of his servants.

(2) Master and Servant

If a servant does a wrongful act in the course of his employment, the master is liable for it. The servant of course is also liable for it. The liability of the master for act of his servant is based on the maxim 'respondent superior' which means let the principal be liable and it puts the master in the same position as if he had done the act himself. The liability arises even though the servant acted against the express instructions, and for no benefit of his master. For the liability of the master to arise, the following two essentials are to be present-

1) The tort was committed by the servant.
2) The servant committed the tort in the course of his employment.

Who is a Servant – A servant is a person employed by another to do work under the guidance and control of his master? As a general rule, master is liable for the tort of his servant, but he is not liable for the tort of an independent contractor. It, therefore, becomes essential to distinguish between the two.

Difference between Servant and Independent Contractor -A servant is an agent who is subject to the control and supervision of his employer regarding the manner in which the work is to be done. An independent contractor is not subject to any such control.

Example- My car driver is my servant. If he negligently knocks down X, I will be liable for that. But if I hire a taxi for going to the railway station and the taxi driver negligently hits X, I will not be liable towards X because the driver is not my servant but only an independent contractor. The taxi driver alone is liable.

Liability of the employer for the acts of an independent contractor-

An employer is not liable for the torts committed by an independent contractor employed by him. In **Morgan v. Incorporated Central Council** while on a lawful visit to the defendant's premises, the plaintiff fell down from an open lift shaft and got injured. The defendants had entrusted the job of keeping the lift safe and in proper order to certain independent contractors. It was held that the defendants could not be held liable for this act of negligence of the independent contractors.

Liability of Vehicle Owners

There are many cases of accidents caused by mechanics, repairers or owners of workshops during test drive of the vehicles entrusted to them by the owners of the vehicles for repairs.

In B. Govindarajulu v. M.L.A Govindaraja Mudaliar, after a motor lorry was entrusted by its owner for repairs, while an employee of the repair workshop drove it, there was an accident. It was held by Madras High Court that for this accident, the owner of the lorry was not liable vicariously, because the owner of the workshop was an independent contractor and not the servant of the lorry owner.

Devinder Singh v. Mangal Singh- in this case Devinder Singh entrusted his truck for repairs to a workshop. While the truck was being driven by the owner of the workshop, there was an accident which resulted in injuries to a cyclist, Mangal Singh. In an action by the injured cyclist against the owner of the truck, it was held that the owner of the workshop was an independent contractor and therefore the owner of the truck could not be made vicariously liable for the negligence of the owner of the workshop.

Exceptions- The general rule that an employer is not liable for the acts of an independent contractor is subject to some exceptions: -

i) If an employer authorises the doing of an illegal act, or subsequently ratifies the same, he can be made liable for such an act. Since he is a party to the wrongful act along with the independent contractor, he is liable as a joint tortfeasor. ii) An employer is liable for the act of an independent contractor in cases of strict liability. **In Rylands v. Fletcher** the employer could not escape the liability for the damage caused to the plaintiff due to the act of an independent contractor. iii) The liability of the employer also arises for the dangers caused on or near the highway. **In Tarry v. Ashton** the plaintiff was injured by the falling of a lamp overhanging the footway adjoining the defendant's house which was attached by an independent contractor. It was held that the defendant was liable. iv) If the wrong caused to the plaintiff is nuisance, the defendant would be liable irrespective of the fact that the act causing the said damage was done by an independent contractor.

Modern Test: Hire and Fire Rule

The traditional test that is the Control Test is not considered conclusive in every case. Other factors such as who has the power to appoint and who has the power to dismiss him is also considered. In modern times the "hire and fire" test, that is, who has the power to appoint and dismiss the servants is regarded as an important test.

The hospital authority is now held to be liable for negligence of its professional staff.
Cassidy v. Ministry of Health- The hospital authorities were held liable when, due to the negligence of the house surgeon and other staff during post-operation treatment, the plaintiff's hand was rendered useless.

Lending a servant to another person

When A lends his servant X to B, and X commits a tort against C, the question is who is to be considered the master, A or B and whom can C sue for the tort committed by X. The answer to this question depends upon various considerations, the main consideration being as to who of the two masters has the authority to tell the servant not only what to be done by him, but the way in which he is to work.

The Course of Employment

A master, like a principal, is liable for every tort which he actually authorises. The liability of a master is not limited only to the acts which he expressly authorises to be done but he is liable for such torts also which are committed by his servant in the course of employment.
An act is deemed to be done in the course of employment, if it is either (a) a wrongful act authorised by the master or

(b) a wrongful and unauthorised mode of doing some act authorised by the master.
So, a master can be made liable as much for unauthorised acts as for the acts he has authorised. However, for an unauthorised act, the liability arises if it is within the course of employment, that is, it is a wrongful way of doing what has been authorised.

Thus if I authorise a servant to help railway passengers, but he mistakenly causes harm to them, or I authorise a servant to deal with the clients and he deals with them fraudulently, as he is doing the act under the authorisation of the master, but his way of doing it is wrongful, the master can be made liable.
Fraud of Servant- When a servant, while in the course of the performance of his duties as such, commits a fraud, the master would be liable for the same. Theft by servant – Master is liable for the theft of goods by the servant entrusted to the master by a third party.
Mistake of servant- Where a servant having a lawful authority to do some act on behalf of his master makes an erroneous or excessive use of the authority causing loss to the plaintiff, the master will be liable for the same. A servant has an implied authority to protect the property of his master. If a servant, in an attempt to perform such a duty uses excessive force, the act will fall in the course of employment.
Negligence of servant- If a servant is not careful in the performance of his duties and his conduct causes any loss to a third party, the master will be liable for it. Sometimes, a servant may do some act while performing the duties assigned to him by the master, for his own convenience or comfort. The question which arises is how far the act is to be considered within the course of employment.

Century Insurance Co v. Northern Ireland Road Transport Board- In this case, the driver of a petrol lorry while transferring petrol from the lorry to an underground tank struck a match to light a cigarette and threw it on the floor. This resulted in fire and an explosion causing damage to B's property. It was held that though the driver lit the cigarette for

his own comfort, yet it was a negligent method of conducting his work. The act being in the course of employment, A was liable for the driver's negligence.

Authorised limits of time and place

The conduct of servant is within the scope of his employment only during his authorised period of service or a period which is not unreasonably disconnected from authorised period.
Thus, a man paid for working until 6 p.m. who stays on for a few minutes to finish a job will still be within the scope of his employment, but not a man who comes into his employer's premises, without permission during his holidays. The defendant provided a washroom for their clerks. After office hours had ended and preparing to go home, a clerk used the washroom and left a tap running. His act was held to be within the scope of his employment so as to make the defendants liable for the flooding of the adjoining premises.

Detour or Deviation by Servant – The rule in this case is if he was going out of the way, against his master's implied commands when driving on his master's business he will make his master liable, but if he was going to have fun of his own, without being at all on his master's business, the master will not be liable.

Giving lift to a third party- Cases concerning drivers to give lift to third parties are best examples of the acts outside the scope of employment. **In Twine v. Beans Express Ltd** it was held that the act of giving lift by a driver to an unauthorised person in that case fell outside the course of employment. **Position in India-** The trend of the decisions of various High Courts in India appears to have discarded the approach of the decision in Twine's case. When there is no express prohibition, giving lift to an unauthorised person by the driver, makes the master vicariously liable.
In **Mariyam Jacob v. Hemaltal,** the driver of a water tanker, belonging to the state, gave lift to an unauthorised person, there was an accident and the person taking the lift was killed. Since there were no express instructions to the driver, forbidding the giving of lift to strangers, the State was held vicariously liable.

Vicarious Liability of the State

At Common Law, the Crown could not be sued in tort, either for wrong actually authorised by it or committed by its servants, in the course of their employment. Moreover, no action could lie against the head of the department or other superior officials for the acts of their subordinates for relationship between them was not of master and servant but of fellow servants. The individual wrongdoer was personally liable, and he could not take the defence of orders of the Crown, or State necessity. The immunity of the Crown from liability did not exempt the servant from liability. The result was that, whereas an ordinary master was liable vicariously for the wrong done by his servant, the Government was not liable for a tort committed by its servants.

Position in India- Article 300 provides that the Union of India and the State Government can sue or be sued.
A distinction was drawn between the sovereign and non- sovereign functions of the East India Company.

It was held that, if the act was done in the exercise of sovereign functions, the East India Company would not have been liable, but if the function was a non-sovereign one that is, which could have been performed by a private individual without any delegation of power by the Government, the Company would have been liable.

In Vidyavathi v. Lokumal-AIR 1957 Raj 305, the plaintiff's husband died after being hit by a government jeep which was driven rashly and negligently by an employee of the State of Rajasthan. At the time of the accident, the car was being taken from the workshop to the collector's bungalow for his use. In an action against the State of Rajasthan, the State was held liable. The Rajasthan High Court did not find any reason for treating the state differently from an ordinary employer and held the state liable.

In spite of the decision of the Supreme Court in Vidyavathi's case, the position is not very certain and satisfactory. The SC in the case of Kasturi Lal v. State of UP(AIR 1965 SC 1039) has again stated that if the act of the government servant was one which could be considered to be in delegation of sovereign powers, the State would be exempt from liability, otherwise not.
In this case, a partner of a firm of jewellers in Amritsar, Kasturi Lal went to Meerut, reaching there by train in the midnight. He was carrying a lot of gold and silver with him. The police constables on round in the market, through which he was passing, suspected that he was in the possession of stolen property and was taken to the police station. He was kept in the police custody under the provisions of the Criminal Procedure Code and was released on bail the next day. The silver was returned to him, but the gold which was kept in the police storeroom was misappropriated by the Head Constable, Mohd Amir, who later ran way to Pakistan. The plaintiff brought an action against the State of UP. The SC held that, since the negligence of the police officers was in the exercise of statutory powers, which can also be characterised as sovereign powers, the State was not liable for the same.

Kasturi Lal bypassed - Under the circumstances in which the State would have been exempted from liability if Kasturi Lal had been followed, the State has been held liable in respect of loss or damage either to the property or to a person in later cases.

Liability of Electricity Board in case of electrocution

The Courts have taken serious note of negligence on the part of Electricity Boards in not regularly making inspection of supply lines, supervising safety of land and theft from supply lines. In cases where death is caused by electrocution due to falling of live electric post on the passer-by, or even in case of negligence on the part of the consumer, drawing illegal connection by hooking from electric lines, the Electricity Boards have been held liable to pay damages.

Sovereign Immunity is subject to fundamental rights

In Bhim Singh vs State of Jammu and Kashmir, the petitioner, who was an MLA, was wrongfully detained by the police and thus prevented from attending the assembly session. The SC ordered the payment of Rs 50,000 by way of compensation to the petitioner.

In Rudul Sah vs State of Bihar and Saheli vs Commissioner of Police, Delhi, the SC recognised the liability of the State to pay compensation, when the right to life and personal liberty, as guaranteed, under Article 21 of the Constitution had been violated by the officials of the State.

Loss to Property

When the property is in possession of the State officials, there is deemed to be bailment of the property, and the State as the bailee, has been held bound to either return the property or pay compensation for the same.

Conclusion- In a dynamic society where there are so many changes taking place, the application of laws also need to be extended to cover a wider section of the society. Thus, the concept of vicarious liability is being extended to the states also, and the government also is held liable for the tortious acts of its servants.

Q.No.4- Explain the maxims Injuria Sine Damno and Damnum Sine Injuria with case laws.

Injuria Sine Damno is a legal maxim, which means that injury or loss or damage so caused to the plaintiff without suffering any physical injury or damage. It is a Latin term, where 'Injuria' refers to injury 'Sine' refers to without and 'Damno' refers to a property or any physical loss, therefore the term refers to 'injury suffered without actual loss'. Here, in this case, the plaintiff doesn't have to prove the damages so suffered, he only has to prove that there is some legal damage suffered by him, that is the action so brought is actionable *per se.* Like for example, where A roams around B's house without any justification then, in that case, there is a violation of the legal right of B and therefore this maxim is applicable.

This maxim is well explained in the case *Ashby vs. White.* In this case the plaintiff was a qualified voter at a parliamentary election, while the defendant who was a returning officer in election wrongfully refused to take a vote of the plaintiff. Although the plaintiff didn't suffer any loss by such wrongful act as the candidate, he wanted to vote won the election, the legal rights of the plaintiff were infringed and therefore the defendant was held liable.

Another leading case is of *Bhim Singh vs. State of J. & K.* In this case the petitioner was an M.L.A. of J. & K Parliamentary Assembly. While he was going to attend the assembly session, police there wrongfully arrested him. He was not even presented before the magistrate within the stipulated time. The person was wrongfully deprived of his legal right to attend the meeting and moreover his fundamental right i.e. art 21 of the constitution was also violated. It was held that the respondent was responsible, and the petitioner was liable to receive Rs. 50,000 from the defendant.

In case of Injuria Sine Damno the loss suffered is not any physical loss but due to the violation of legal right. Therefore, damages received by the aggrieved party is because of some kind of loss is being suffered, and hence the amount for damages are determined just to compensate the victim. The amount for compensation can even be rs.5. However, where the violation of a legal right is owing to mischievous and malicious act, the number of damages so fixed can be increased as done in case of Bhim Singh's case.

Damnum Sine Injuria

Damnum Sine Injuria is a maxim, which refers to injury which is being suffered by the plaintiff but there is no violation of any legal right of a person. In such circumstances, where there is no violation of the legal right, but the injury, or damage is being suffered by the plaintiff, the plaintiff can't bring an action against the other for the same, as it is not actionable in law, unless there is some infringement of a legal right is present.

Damnum Sine Injuria, the literal meaning of the word refers to loss or damage in terms of money, property or any physical loss without the infringement of any legal right. It is not actionable in law even if the act so did was intentional and was done to cause injury to other but without infringing on the legal right of the person.

This can be better explained in the following case:

Gloucester Grammar School Case-

The defendant was the schoolmaster intentionally opened the school in front of the plaintiff's school, causing damage to him. As due to an increase of competition the plaintiff has to reduce their fees from 40 pence to 12 pence per scholar per quarter. It was held that even though the plaintiff has suffered harm but there was no infringement of any legal right, therefore, the defendant can't be held liable

Mogul Steamship Co v. McGregor Gow and Co-

In this case number of companies trading in steamships, combined their hands with the intention to drive the plaintiff's company out of the tea-carrying company, by reducing and offering

assistance at a reduced price. It was held that the plaintiff has no cause of action as no legal right has been infringed by the other companies.

Ushaben v. Bhagyalaxmi Chitra Mandir-

In this case, the plaintiff pleaded before the court of law to issue a permanent injunction order on the film named, "Jai Santoshi Maa". According to her, the film hurt the religious feelings of the plaintiff. It was observed that hurting of religious sentiments did not result in any legal injury, and also that other than the plaintiff no other person feelings were hurt. Therefore, it was held that the defendant was not liable.

What is the difference between Injuria Sine Damno and Damnum Sine Injuria

The basic difference between the two is in their terms. Injuria Sine Damno is the legal injury so caused to the plaintiff without any damage to physical injury, while in case of Damnum Sine Injuria it refers to the damages suffered physically by the plaintiff but no damage is caused to the legal rights as there is no violation of it. Another point of difference is that the act is actionable in law, so Injuria Sine Damno is actionable per se as there is a violation of legal right, while the other is not as there is no violation of any legal right there.

Q.No.5 What is nuisance? Explain the different kinds of nuisance.

Nuisance as a tort means an unlawful interference with a person's use or enjoyment of land or some right over, or in connection with it. Acts interfering with comfort, health or safety are the examples of it. The interference maybe in anyway, example noise, vibrations, heat, smoke, smell, fumes, water, gas, electricity, excavations or disease producing germs. Nuisance should be distinguished from trespass. Trespass is (i) a direct physical interference, (ii) with the plaintiff's possession of land, (iii) through some material or tangible object.

Both nuisance and trespass are similar in so far as in either case the plaintiff must show his possession of land. If interference is direct, the wrong is trespass, if it is consequential, it amounts to nuisance. Planting a tree on another's land is trespass. But when a person plants a tree on his own land and the roots or branches project into or over the land of another person, that is nuisance. To throw stones upon the neighbour's premises is a wrong of trespass, to allow stones from a damaged wall to fall upon those premises is nuisance.

Trespass is interference with a person's possession of land. In nuisance, there is interference with a person's use or enjoyment of land. Such interference with the use or enjoyment could be there without any interference with the possession for example by creating offensive smell or noise on his own land can cause nuisance to his neighbour.

In trespass interference is always through some material or tangible objects. Nuisance can be committed through intangible objects also like vibrations, gas, noise, smoke, electricity, etc. A trespass is actionable per se (by itself) but in an action for nuisance, special damage has got to be proved.

Kinds of Nuisance

Nuisance is of two kinds-

Public Nuisance- Public nuisance is a crime whereas private nuisance is a civil wrong. Public nuisance is interference with the right of public in general and is punishable as an offence. Obstructing a public way by digging a hole or constructing structures on it are examples of public nuisance. To avoid multiple cases being filed in courts, the law makes public nuisance only an offence punishable under criminal law. In certain cases, when any person suffers some special or particular damage, different from what is inflicted upon public as a whole, a civil right of action is available to the person injured.

Private Nuisance or Tort of Nuisance- To constitute the tort of nuisance, the essential ingredients are:

1) Unreasonable interference- Interference may cause damage to the plaintiff's property or may cause personal discomfort to the plaintiff in the enjoyment of property. Every interference is not a nuisance. To constitute nuisance, the interference should be unreasonable. For the purpose of nuisance, it has to be seen as to what is reasonable according to the ordinary usages of people living in the society, or more correctly in particular society. An unreasonable activity cannot be excused on the ground that reasonable care had been taken to prevent it from becoming a nuisance.
   In Radhay Shyam v.Gur Prasad a suit was filed against the defendant for a permanent injunction to restrain them from installing and running a flour mill in their premises, as it would cause nuisance to the plaintiffs who were occupying the first floor of the same premises due to the noise of the flour mill. It was held that the mill interfered with the physical comfort of the plaintiffs and it amounted to nuisance and the plaintiffs were entitled to an injunction against the defendants.
   Sensitive Plaintiff- An act which is otherwise reasonable does not become unreasonable and actionable when the damage, even though substantial, is caused solely due to sensitiveness of the plaintiff or the use to which he puts his property.
2) Interference with the use or enjoyment of land- Interference may cause either (i) injury to the property itself, or (ii) injury to comfort or health of occupants of certain property.

   Injury to Property- An unauthorized interference with the use of the property of another person through some object, tangible or intangible, which causes damage to the property, is actionable as nuisance. It can be by allowing the branches of a tree overhang on the land of another person, or the escape of water, gas, smoke etc. on to the neighbour's land.

Injury to comfort or health- Substantial interference with the comfort and convenience I using the premises is actionable as nuisance. Attraction of large and noisy crowd outside a club kept open till 3 a.m. is an example of nuisance.

Damage- Unlike trespass, which is actionable per se (by itself) actual damage is required to be proved in an action for nuisance. In the case of public nuisance, the plaintiff can bring an action in tort only when he proves a special damage to him. In private nuisance, although damage is one of the essentials, the law will often presume it.

Conclusion- The concept of nuisance relates to the day to day activities of an individual. The laws made against nuisance are almost uncodified except the criminal the aspect of public nuisance. The Courts in our country have relied heavily on the English judgements to understand and develop the concept of this tort. However, it has also amended and modified various aspects of interpretation depending upon its own geographical, cultural and economic diversity in order to strive for providing justice to almost each of its people and maintain justice, equity and good conscience in the society.

Q. No.6 Discuss the tort of negligence with the help of decided cases.

Negligence- The jurisprudential concept of negligence defies any precise definition. The Apex Court in Jacob Mathew vs state of Punjab has observed that negligence is the breach of duty caused by the omission to do something which a reasonable man, guided by those considerations which ordinarily regulate the conduct of human affairs would do or doing something which a prudent man would not do, towards a person to whom the defendant owes the duty of observing ordinary care and skill, by which neglect the plaintiff has suffered injury to his person or property.

Negligence as a tort and crime – The term negligence is used for the purpose of attaching the defendant with liability under the civil law and at times under the criminal law. Generally, it is the amount of damages which determines the extent of liability in tort, but in criminal law it is not the damages but the amount and degree of negligence that determines liability.

In order to hold that the existence of criminal rashness or criminal negligence was there, it shall have to be proved that the rashness was of such a degree as to amount to taking risk knowing that, the risk was of such a degree that injury was most likely imminent.

Negligence has two meanings in law of torts-

1) Negligence as a mode of committing certain torts example- negligently or carelessly committing trespass, nuisance or defamation. In this context, it denotes the mental element.

2) Negligence is considered as a separate tort. It means a conduct which creates a risk of causing damage, rather than a state of mind. The House of Lords in Donoghue vs Stevenson treats negligence where there is a duty to take care, as a specific tort in itself, and not simply as an element in some more complex relationship or in some specialised breach of duty.

Essentials of Negligence

In an action for negligence, the plaintiff has to prove the following essentials-

1) The defendant owed duty of care to the plaintiff,
2) The defendant made a breach of that duty
3) The plaintiff suffered damage because of that.

1) Duty of care to the plaintiff- It means a legal duty rather than a moral religious or social duty. The plaintiff must establish that the defendant owed to him a specific legal duty to take care, of which he has made a breach. Lord Atkin propounded the rule in Donoghue versus Stevenson and said you must take reasonable care to avoid acts or omissions which you can reasonably foresee would be likely to injure your neighbour.

In this case, A purchased a bottle of ginger beer from a retailer for the appellant, a lady friend. Some of the contents were poured into a tumbler and she consumed it. When the rest of the ginger beer was poured into her tumbler, the decomposed body of a snail came out. The appellant alleged that she seriously suffered in her health because of the contaminated drink. She brought an action against the manufacture for damage.

One of the defences pleaded by the defendant was that he did not owe any duty of care towards the plaintiff. It was held that the manufacturer owed a duty to take care that the bottle did not any harmful matter and he would be liable on the breach of the duty. Another defence by the defendant was that the plaintiff was a stranger to the contract and her action was therefore not maintainable.

2) Duty depends on reasonable foreseeability of injury- Whether the defendant owes a duty to the plaintiff or not depends on reasonable foreseeability of the injury to the plaintiff. If at the time of the act or omission, the defendant could reasonably foresee injury to the plaintiff, he owes a duty to prevent that injury and failure to do that makes him liable. To decide the guilt of a person, we have to determine what a reasonable man would have foreseen. In the case of S.Dhanaveni V. State of Tamil Nadu, the deceased slipped into a pit filled with rain water in the night. He caught hold of a nearby electric pole to avoid falling. Due to leakage of electricity in the pole he was electrocuted. The respondent who maintained the electric pole was considered negligent and was held liable for the death of the person.

<u>No liability when injury not foreseeable</u>- In Cates v. Mongini Bros the plaintiff, a lady visitor to a restaurant was injured by the falling of a ceiling fan on her. The reason for the falling of the fan was a latent (hidden, not seen) defect in the metal of the suspension rod of the fan which could not have been seen by a reasonable man. In an action against the restaurant owner, it was held that since the harm could not be seen, they were not negligible and therefore not liable for the loss to the lady plaintiff.

<u>Reasonable foreseeability does not mean remote possibility –</u> To establish negligence it is not enough to prove that the injury was foreseeable, but a reasonable likelihood of the injury has to be shown because foreseeability does not include any idea of likelihood at all. The duty is to guard against probabilities rather than bare possibilities.

Bolton v. Stone- The defendants were the committee and members of a cricket club. A batsman hit a ball whish went over a fence seven feet high and seventeen feet above the cricket pitch and injured the plaintiff on the adjoining highway. The ground had been used for about ninety years and during the last thirty years, the ball had been hit in the highway on about six occasions, but no one had been injured. The House of Lords held that there was no liability as the chance of a person being hit in a long time was very small.

2) Breach of duty- Breach of duty means non-observance of due care which is required in a particular situation. It is said that the standard of care required is that of a reasonable man

or of an ordinary prudent man and if the defendant acted like an ordinary prudent man there is no negligence.

Standard of care required- The law requires taking of two points into consideration to determine the standard of care required.

(a) The importance of the object to be attained- The care required is that of a reasonable man under certain circumstances and law permits taking chance of some measure of risk so that in public interest various kinds of activities should go on. A balance has therefore to be maintained between the importance and usefulness of an act and the risk created thereby. Thus, a certain speed may not be negligence for a fire engine, but the same speed may be an act of negligence for another vehicle.

(b) The magnitude of risk- The degree of care required differs according to each situation. What may be a careful act in one situation may be a negligent one in another. Thus, the driver of a vehicle should take greater care when it is raining, and greater care is also required when while transporting inflammable and explosive materials than in transporting ordinary goods.

Glasgow Corp v. Taylor- In this case poisonous berries were grown in a public garden under the control of the Corporation. The berries looked like cherries and were attractive to look at for children. A child aged seven, ate those berries and died. It was found that there was no fencing around the tree, and no notice was there warning about the poisonous fruit. The court held the defendants liable.

(c) The amount of consideration for which services etc are offered- The degree of care depends on the kind of services offered by the defendant and the consideration charged from the plaintiff. A patient admitted to a luxury hospital for about Rs.3000 or 5000 a day would be justified in demanding higher and sophisticated degree of care, comfort, convenience and recovery than just sterilization from infection as could be expected in the general ward of a hospital.

3)Damage- It is also necessary that the defendant's breach of duty must cause damage to the plaintiff. The plaintiff has also to show that the damage thus caused is not too remote a consequence of the defendant's negligence.

There are two defences a defendant can use if they are found liable

The first is that the claimant accepted there was a risk of injury or loss, in which case the defendant will not be liable. Medical practitioners and hospitals, for example, often use the "consent form" that patients are required to sign before a procedure or operation. Other industries use contracts describing that the procedure is not guaranteed to produce the required result but is the best that can be offered. If a purchaser signs such a document, he is unlikely to succeed in a claim

The second defence is contributory negligence. If the claimant can be shown to have been aware of the risk but declined to take appropriate precautions, then any award may be reduced.

The practical application of negligence law in a business is proper and careful management, attention to actions that may cause damage to third parties and, secondly, proper and full insurance against a failing that may result in a claim.

Q.No.7 What is defamation and discuss the defences available in an action for tort of defamation.

Defamation is injury to the reputation of a person. If a person injures the reputation of another, he does so at his own risk, as in the case of an interference with the property. A man's reputation is his property and if possible, more valuable than other property.

Libel and Slander-

English Law- Slander Is the publication of statement in a transient form, examples of it may be spoken by words or gestures.

Libel is representation made in some permanent form example writing, printing, effigy or statue. Libel is addressed to the eye and slander to the ear.

Indian Law- Under English criminal law a distinction is made between libel and slander. Libel is considered a crime, but slander is not. Slander is only a civil wrong In England. In India the criminal law does not make any such distinction between libel and slander and both are criminal offences under section 499 IPC. Under English law libel is actionable per se but in case of slander except in certain cases proof of special damage is required but In India there is no such distinction.

In D.P. Choudhary v. Manjulata, there was a publication of statement in local daily in Jodhpur that Manjulata went out of her house the previous night on the pretext of attending night classes and ran away with a boy named Kamlesh. The news item wasn't true and had been published irresponsibly and without any justification. The statement being defamatory the defendants were held liable.

Defamation-

The statement must be defamatory- Defamatory statement is one which tends to injure the reputation of the plaintiff. Defamation is the publication of a statement which tends to lower a person in the estimation of right-thinking members of society. Generally which tense to make them avoid that person. The statement could be made in different ways, for instance it may be oral, in writing, printed or by the exhibition of a picture, statue or effigy, or by some conduct. The essence of defamation is injury to a person's character or reputation.

In S.N.M Abdi v. Prafulla Kumar Mohanta an article published in the Illustrated Weekly of India made certain allegations of misuse of man and muscle power by deposed Chief Minister of Assam, Prafulla Kumar Mohanta. The article was held to be defamatory in nature and damages amounting to 5 lakhs was awarded.

The Innuendo- A statement may be prima facie defamatory and that is so when its natural and obvious meaning leads to that conclusion. Sometimes the statement may prima facie be innocent but because of some latent or secondary meaning, it may be considered to be defamatory.

When the natural and ordinary meaning is not defamatory, but the plaintiff wants to bring an action for defamation, he must prove the latent or the secondary meaning, that

is the innuendo, which makes the statement defamatory. Example- X is an honest man and he never stole my watch.

Intention to defame is not necessary- When the words are considered to be defamatory by the persons to whom the statement is published, there is defamation even though the person making the statement believed it to be innocent. It is immaterial that the defendant did not know of the facts because if which a statement is considered to be defamatory. In Morrison v. Ritchie and Co, the defendants in good faith published a mistaken statement that the plaintiff had given birth to twins. The plaintiff had been married only two months back. Even though the defendants were ignorant of this fact, they were held liable.

2) The statement must refer to the plaintiff- In an action for defamation, the plaintiff has to prove, that the statement of which he complains referred to him. It is immaterial that the statement of which he complained did not intend to defame the plaintiff. If the person to whom the statement was published could reasonably infer that the statement referred to the plaintiff, the defendant is nevertheless liable.

3) The statement must be published- Publication means making the defamatory matter known to some person other than the person defamed, and unless that is done, no civil action for defamation lies. Communication to the plaintiff himself is not enough because defamation is injury to the reputation and reputation consists in the estimation in which others hold him and not a man's own opinion of himself. Example- Dictating a letter to one's typist is enough publication.

The defences to an action for defamation are:

1) Justification or Truth- In a civil action for defamation, truth of the defamatory matter is complete defence. Under criminal law, merely proving that the statement was true is no defence. First exception to sec 499 requires that besides being true, the imputation must be shown to have been made for public good. Under the civil law merely proving that the statement was true is a good defence.

   The defence is available even though the publication is made maliciously. If the defendant is not able to prove the truth of the facts, the defence cannot be availed. In Radheshyam Tiwari v. Eknath the defendant who was editor, printer and publisher of a newspaper published a series of articles against the plaintiff, a Block Development Officer alleging that the plaintiff had issued false certificates, accepted bribe and adopted corrupt and illegal means in various matters. In an action for defamation, the defendant could not prove that the facts published by him were true and therefore he was held liable.
2) Fair Comment- Making fair comment on matters of public interest is a defence to an action for defamation. For this defence to be available, the following essentials are required:
   It must be a comment that is an expression of opinion rather than assertion of fact;
   The comment must be fair; and
   The matter commented upon must be of public interest.
   i) Comment - Means an expression of opinion on certain facts. It should be distinguished from making a statement a fact. A fair comment is a defence by itself whereas if it is a statement of fact, that can be excused only if justification or privilege is proved regarding that. Whether a statement is a

fact or a comment on certain facts depends on the language used or the context in which that is stated.

ii) The comment must be fair: The comment cannot be fair when it is based upon untrue facts. A comment based upon invented and untrue facts is not fair. If in a newspaper there is publication of a statement of facts making serious allegations of dishonesty and corruption against the plaintiff, and the defendant is unable to prove the truth of such facts, the plea of a fair comment, which is based upon those untrue facts will also fail.

The matter commented upon must be of public interest -Administration of government departments, public companies, courts, conduct of public men like ministers or officers of State, public institutions and local authorities, pictures, textbooks, etcetera are considered to be matter of public interest.

Privileges -There are certain occasions when the law recognises that the right of free speech outweighs the plaintiffs right to reputation, the law treats such occasions to be Privileged and a defamatory statement made on such occasion is not actionable. Privilege is of two kinds Absolute and Qualified.

Absolute Privilege- In matters of absolute privilege, no action lies for the defamatory statement even though the statement is false or has been made maliciously. In such cases the public interest demands that an individual's right to reputation should give way to the freedom of speech. Absolute privilege is recognized in the following cases-

i) Parliamentary proceedings - Article 105(2) Of our constitution provides that statements made by a member of either House of Parliament in Parliament and the publication by or under the Authority of either House of Parliament of any report , paper ,votes or proceeding ,cannot be questioned in a court of law. A similar privilege exists in respect of State Legislatures according to article 194(2)

Judicial Proceedings - No action for libel or slander lies, whether against judges , counsels, witnesses or parties for words written or spoken in the course of any proceedings before any court recognized by law even though the words written or spoken were said maliciously without any justification or excuse and from personal ill will and anger against the person defamed. Such a privilege also extends to proceedings of the tribunals possessing similar attributes. Protection to the judicial officers In India has also been granted by the Judicial Officers Protection Act 1850.

Qualified Privilege- In certain cases the defence of qualified privilege is also available. Unlike the difference of absolute privilege, in this case it is necessary that the statement must have been made without malice. For this defence to be available it is also necessary that there must be location for making the statement. To avail this defence the defendant has to prove the following two points-

1) The statement was made on a privileged occasion that is it was in discharge of duty or protection of interest or it is a fair report of parliamentary, judicial or other public proceedings. The occasion when there is a qualified privilege to make defamatory statement without malice are either when there is existence of a legal, social or moral duty to make such a statement, or existence of some interest for the protection of which the statement is made. Sec 499 IPC also contains such privilege in its ninth exception.

Example- A, a shopkeeper, says to B, who manages his business, “Sell nothing to Z unless he pays you ready money, for I have no opinion of his honesty.” A is within the exception, if he has made his comment on Z in good faith for the protection of his own interests. A former employee has a moral duty 2 state a servant character a person who is going to employ the servant. The person receiving the information has also interest in the information. The occasion there for is privileged.

2) The statement should be made without malice –
In the matters of qualified privilege, exemption from liability for making defamatory statements is granted if the statement was made without malice. The presence of malice destroys this defence. The malice in relation to qualified privilege means an evil motive.

Conclusion:

Defamation is tort resulting from an injury to one’s reputation. It is the act of harming the reputation of another by making a false statement to third person. Defamation is an invasion of the interest in reputation. The law of defamation is supposed to protect people’s reputation from unfair attack. In practice its main effect is to hinder free speech and protect powerful people from scrutiny. Defamation law allows people to sue those who say or publish false and malicious comments

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Q. No. 8 Salient features of Consumer Protection Act

Consumer Protection Act has been implemented (1986) or we can say brought into existence to protect the rights of a consumer. It protects the consumer from exploitation that is practised in business, to make profits which in turn harm the wellbeing of the consumer and society.

This Act helps to educate the consumer on the rights and responsibilities of being a consumer and how to seek help or justice when faced with exploitation as a consumer. It teaches the consumer to make right choices and know what is right and what is wrong.

Who is a consumer according to the Consumer Protection Act, 1986? A consumer is one that buys good for consumption and not for the resale or commercial purpose. The consumer also hires service for consideration.

Practices to be followed by Business under Consumer Protection Act

- If any defect is found the seller should remove the mentioned defect from the whole batch or the goods affected. For example, there have been cases where a car manufacturing unit found a defect in parts of the vehicle, and usually they remove the defect from every unit, or they call of the unit.
- They should replace the defective product with a non- defective product and that product should be of similar configuration or should be the same as the product purchased.

Redressal: Three Tier System Under Consumer Act

District Forum: These fora are set by the district of the state concerned in each district wherein it consists of President and two members of which one should be a woman and is appointed by the State Government. In this, the complaining party should not make a complaint more than 20 Lacs and once the complaint is filed the goods are sent for testing and if they found defective the accused party should compensate and if the party is dissatisfied can make an appeal with state commission within 30 days

State Commission: This is set up by each state It consists of President and two members. Complains should be at least 20 lacs and exceed not more than 1 crore. The goods are sent for testing and if found defective are asked for replacement or compensation. If not satisfied can make an appeal within 30 days in front of the National Commission.

National Commission: Consist of President and 4 members. The complaint must exceed an amount of 1 crore. The goods are sent for testing and if found defective are asked for replacement or compensation.

Consumer Protection Act- 2019

A new recently introduce legislation with regard to consumers has replaced the three-decade old Consumer Protection Act 1986. The new act proposes a number of measures and tightens the existing rules to further safeguard consumer rights. Introduction of central regulator, strict penalties for misleading advertisements and guidelines for e-commerce and electronic service are some of the key highlights. This act received the assent of the President on 9th August 2019.

The changes brought about by the new Act can be compared as follows-

1) Regulator- There is no separate regulator under the Consumer Protection Act 1986. Under the act of 2019 a central consumer protection authority to the formed.
2) Consumer Court- a complaint could be filed in a consumer court where the seller i.e. defendant's office is located. Under the Consumer Protection Act 2019 a complaint can be filed in cancel quote where the complaint resides or works.
3) Product liability -There is no provision under the act of 1986 and a consumer could approach a civil court but not a consumer court. Under the New Act a consumer can seek compensation for harm caused by a product or service.
4) Pecuniary Jurisdiction- Under the Consumer protection Act 1986 the jurisdiction of the district forum was up to 20 lakhs, the State Commission from 20 lakhs to 1 crore and the National Commission above 1 crore. Under the new act jurisdiction of the district forum. Under the new Act of 2019 the pecuniary

jurisdiction of the district forum has gone up to 1 crore, the State Commission from 1 crore to 10 crores and the National Commission above 10 crores.

5) E- Commerce- There is no provision for e-commerce under the but, all rules of direct selling extended to e-commerce also under the new Act of 2019.
6) Mediation Cells- Under the old Act there is no legal provision for mediation but, the new Act provides for settlement through mediation.

Q.No.9

Discuss the Principle of Remoteness of Damage

The Problem of Remoteness of Damage- After the commission of a tort, the question of defendant's liability arises. The consequences of a wrongful act maybe endless or there maybe consequences of consequences. For example, a cyclist negligently hits a pedestrian who was carrying a bomb in his pocket. When the pedestrian falls down the bomb explodes. The pedestrian and four other persons going on the road die and twenty other people are seriously injured due to the explosion. A building nearby catches fire due to the same explosion and some women and children are seriously injured. The question is, can the cyclist be liable for all these consequences.

He is liable only for those consequences which are not too remote from his conduct. No defendant can be made liable ad infinitum for all the consequences which follow his wrongful act. On practical grounds, a line must be drawn somewhere and certain kinds or types of losses, though a direct result of the defendant's conduct may remain uncompensated.

Remote and Proximate Damage- The point to be taken into consideration is to see whether the damage is too remote a consequence of the wrongful act or not. If that is too remote, the defendant is not liable. But if the act and the consequences are so connected that they are not too remote but are proximate the defendant will be liable for the consequences. There are two main tests to determine whether the damage is remote or not.

1) The test of reasonable foresight- According to this test if the consequences of a wrongful act could have been foreseen by a reasonable man, they are not to remote. If, on other hand a reasonable man would not have foreseen the consequences they are too remote.

   The Wagon Mound Case- Overseas Tankship (U.K) Ltd v. Morts Dock and Engg Co. Ltd. In this case the Wagon Mound, an oil burning vessel was chartered by the appellants, Overseas Tankship Limited, and was taking fuel oil at Sydney port. At a distance of about 600 feet, the respondents Morts Dock Company, owned a wharf, where the repairs of a ship including some welding operations were going on. Due to the negligence of the appellant's servants a large quantity of oil was spilt on the water and after some time spread on the water till the respondent's wharf. About 60 hours later hot metal from the respondent's wharf fell on floating cotton waste, which ignited the fuel oil on the waters and the fire caused great damage to the wharf and equipment. It was also found that the appellants could not foresee

that the oil so spilt would catch fire. The trial court applied the rule of directness and held the Overseas Tankship Ltd. liable. The supreme court also held the company liable. On appeal the Privy Council reversed the decision of the Supreme Court.

2) The Test of Directness- According to the test of directness, a person is liable for all the direct consequences of his wrongful act, whether he could have foreseen them or not, because consequences which follow a wrongful act are not too remote. If the defendant could foresee any damage to the plaintiff then he is liable not merely for those consequences which he could have foreseen, but for all the direct consequences of his wrongful act.

This test was applied in Re Polemis and Furness, Withy and Co. Ltd (1921) 3 KB. 560

In this case the defendants chartered (hired) a ship. The cargo to be carried included some quantity of benzene (chemicals) and petrol tins. Due to leakage in those tins, some of their contents collected at the bottom of the ship. Because of the negligence of the defendant's servants, a plank fell into it, a spark was caused and consequently the ship was totally destroyed by fire. The owners of the ship were entitled to recover the loss- nearly two lakh pounds that being the direct consequence of the wrongful act although such a loss could not have been reasonably foreseen.

Q. no. 10 Explain the Salient Features of The Motor Vehicles Act

The Motor Vehicles Act, 1988: Salient Features

The Motor Vehicles Act, 1988 is a comprehensive enactment in respect to various matters relating to traffic safety on the roads and minimization of road accidents. This Act makes the insurance of motor vehicles compulsory. The owner of every motor vehicle is bound to insure his vehicle against third party risk.

The policy must be against any liability incurred by the insured in respect of death or bodily injury to any person or damage to any property of a third party. According to this section the policy does not require covering the liability of death or injuries arising to the employees in the course of employment except to the extent of liability under Workmen Compensation Act (Sec. 147).

The insurer can be made a party to the proceedings of the Motor Accident Claims Tribunal. (Sec. 149).

When a cover note issued by an insurer is not followed by a policy within the prescribed time, the insurer is bound to notify the fact to the concerned Registering Authority. (Sec. 147)

A claimant is entitled to compensation of Rs.50,000 in cases of death or Rs.25,000 in the cases of injury without burden of proof of fault on the part of the vehicle owner. (Sec. 140-No fault liability).

A claimant may also seek compensation on the basis of the structured formula prescribed in the Act. (Sec. 163 A)

A claimant may at his option, approach the Tribunal having jurisdiction over the area

i) in which the accident occurred, ii) where he resides, iii) carries on business or iv) where the defendant resides. (Sec. 166)

For victims of hit and run cases i.e. where the identity of the vehicle cannot be ascertained the insurers are liable to pay the stipulated compensation. (Sec. 161)

The Tribunal may direct payment of interest on the award at the rates and from the date specified by it. (Sec. 171)

The Tribunal shall arrange to deliver copies of the award to the parties concerned within a period of fifteen days from the date of award. (Sec. 168)

The person liable to satisfy the award shall do so within thirty days of announcement of the award. (Sec. 168)

Chapter 11 (Section 145 to 164) provides for compulsory third-party insurance, which is required to be taken by every vehicle owner. It has been specified in Section 146(1) that no person shall use or allow using a motor vehicle in public place unless there is in force a policy of insurance complying with the requirement of this chapter.[3] Contravention of the provisions of section 146 is an offence and is punishable with imprisonment which may extend to three months or with fine which may extend to one thousand rupees or with both (section 196).Section 147 provides for the requirement of policy and limit of liability. Every vehicle owner is required to take a policy covering against any liability which may be incurred by him in respect of death or bodily injury including owner of goods or his authorized representative carried in the vehicle or damage to the property of third party and also death or bodily injury to any passenger of a public service vehicle. According to this section the policy does not require covering the liability of death or injuries arising to the employees in the course of employment except to the extent of liability under Workmen Compensation Act. Under Section 149 the insurers have been statutorily liable to satisfy the judgment and award against the person insured in respect of third-party risk.

Insurance Companies have been allowed no other defence except the following: –

(1) Use of vehicle for hire and reward does not permit to ply such vehicle.

(2) For organizing racing and speed testing;

(3) Use of transport vehicle not allowed by permit.

(4) Driver not holding valid driving license or have been disqualified for holding such license.

(5) Policy taken is void as the same is obtained by non-disclosure of material fact.

Section152. Settlement between insurers and insured persons.

(1) No settlement made by an insurer in respect of any claim which might be made by a third party in respect of any liability of the nature referred to in clause (b) of sub-section (1) of section 147 shall be valid unless such third party is a party to the settlement.

(2) Where a person who is insured under a policy issued for the purposes of this Chapter has become insolvent, or where, if such insured person is a company, a winding up order has been made or a resolution for a voluntary winding up has been passed with respect to the company, no agreement made between the insurer and the insured person after the liability has been incurred to a third party and after the commencement of the insolvency or winding up, as the case may be, nor any waiver, assignment or other disposition made by or payment made to the insured person after the commencement aforesaid shall be effective to defeat the rights transferred to the third party under this Chapter, but those rights shall be the same as if no such agreement, waiver, assignment or disposition or payment has been made.

Legal defence available to the Insurance Companies towards third party:

The Insurance Company cannot avoid the liability except on the grounds and not any other ground, which have been provided in Section 149(2). In recent time, Supreme Court while dealing with the provisions of Motor Vehicle Act has held that even if the defence has been pleaded and proved by the Insurance Company, they are not absolve from liability to make payment to the third party but can receive such amount from the owner insured. The courts one after one have held that the burden of proving availability of defence is on Insurance Company and Insurance Company has not only to lead evidence as to breach of condition of policy or violation of provisions of Section 149(2) but has to prove also that such act happens with the connivance or knowledge of the owner. If knowledge or connivance has not been proved, the Insurance Company shall remain liable even if defence is available.

Driving License:

Earlier not holding a valid driving license was a good defence to the Insurance Company to avoid liability. It was been held by the Supreme Court that the Insurance Company is not liable for claim if driver is not holding effective & valid driving licence. It has also been held that the learner's licence absolves the insurance Company from liability, but later Supreme Court in order to give purposeful meaning

to the Act have made this defence very difficult. In Sohan Lal Passi's v. P. Sesh Reddy it has been held for the first time by the Supreme Court that the breach of condition should be with the knowledge of the owner. If owner's knowledge with reference to fake driving licence held by driver is not proved by the Insurance Company, such defence, which was otherwise available, can not absolve insurer from the liability. Recently in a dynamic judgment in case of Swaran Singh, the Supreme Court has almost taken away the said right by holding;

"(i) Proving breach of condition or not holding driving licence or holding fake licence or carrying gratuitous passenger would not absolve the Insurance Company until it is proved that the said breach was with the knowledge of owner.

(ii) Learner's licence is a licence and will not absolve Insurance Company from liability.

(iii) The breach of the conditions of the policy even within the scope of Section 149(2) should be material one which must have been effect cause of accident and thereby absolving requirement of driving licence to those accidents with standing vehicle, fire or murder during the course of use of vehicle."

This judgment has created a landmark history and is a message to the Government to remove such defence from the legislation as the victim has to be given compensation.

However, if there is a breach in the condition of policy, the insurer can recover the money from the insured. In a recent judgment of the Supreme Court, it was held that the insurer and the insured are bound by the conditions enumerated in the policy and the insurer is not liable to the insured if there is violation of any policy condition. But the insurer who is made statutorily liable to pay compensation to third parties on account of the certificate of insurance issued shall be entitled to recover from the insured the amount paid to the third parties, if there was any breach of policy conditions on account of the vehicle being driven without a valid driving licence.

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1) Write a short note on malicious prosecution.

A malicious prosecution is defined as "a judicial proceeding instituted by one person against another, from wrongful or improper motive and without probable cause to sustain it". The Apex Court in West Bengal State Electricity Board v. Dilip Kumar Ray explained that there are two essential elements for constituting a malicious prosecution-
That no probable cause existed for instituting the prosecution or suit complained of; and
That such prosecution or suit terminated in some way favourably to the defendant therein.

In this case, the respondent an employee of the Board was suspended, and disciplinary proceedings were instituted against him. A FIR was lodged against him alleging misconduct and Commission of various offences. Since no charge sheet was issued for four months the respondent had approached the High Court for quashing the disciplinary proceedings. However, on the intervention of the Court, charge sheet was issued, and an inquiry was held. But the Board resolved not to continue the case further and the order of suspension of the respondent were quashed. Subsequent to it the respondent filed a case in the Court of Assistant District Judge claiming damages for the institution of disciplinary proceedings by the Board and also the newspaper which published the news. The trial court held that the plaintiff was entitled to damages for harassment and for loss of his reputation.

Malicious prosecution consists in instituting unsuccessful criminal proceedings maliciously and without reasonable and probable cause. When such prosecution causes actual damage to the party prosecuted, it is a tort for which he can bring an action. The plaintiff has to prove the following in a suit for damages for malicious prosecution –

1) That he was prosecuted by the defendant
2) The prosecution was instituted without any reasonable and probable cause
3) the defendant acted maliciously and not with the intention of carrying the law into effect
4) the proceedings complained of terminated in favour of the present plaintiff
5) the plaintiff suffered damage as a result of the prosecution.

Or

A driver of the defendant's omnibus had printed instructions not to race with or obstruct other omnibuses. In disobedience to this order he obstructed the plaintiff's bus and caused a collision which damaged it. What is the liability?

The principle is the foundation of the tort of vicarious liability where the master is liable for the acts of the servant. Sometimes the employer forbids his servant from doing certain acts. It does not necessarily mean that an act done not following the orders of the employer is outside the scope of employment. If prohibition were to be a defence, every employer would escape liability by issuing orders to his servant forbidding them from committing any tort.

In this case the driver had been engaged to drive and his act was a negligent mode of driving and it is held to be within the course of employment, inspite of the express prohibition. The defendant company is liable.

2) Write a note on nervous shock.

This branch of law is of comparatively of recent origin. It provides relief when a person may get physical injury not by any stick, bullet or sword but merely by a nervous shock through what he has seen or heard. Injury caused by nervous shock, without there being any physical impact has been recognized. The law now takes

cognizance of the fact that an action will lie for injury by shock sustained through the medium of the eye or he ear, without direct contact.

3) Hambrook v. stokes Bros- After leaving her children in a narrow street, a lady saw a lorry going very fast in the street. She was frightened about the safety of her children. When someone on the street informed her that a child had been injured who resembled her child, she suffered from nervous shock which resulted in her death. The defendants were held liable.
4) Contributory Negligence- When the plaintiff by his own want of care contributed to the damage caused by the negligence or wrongful conduct of the defendant, he is considered to be guilty of contributory negligence.
5) Composite Negligence- When the negligence of two or more persons results in the same damage, there is said to be composite negligence and the persons responsible for causing such damage are known as Composite Tortfeasors and their liability is joint and several.

Or

John walks across Jack's field without his permission causing no damage. Has he committed any wrongful act? Decide.

In this case the principle involved is the tort of trespass to land and as such trespass is actionable per se, and the plaintiff need not prove any damage for an action of trespass. Every invasion of property even if it is very small, is a trespass. Use of force or unlawful intention on the part of the defendant are required. Therefore, applying the principles of trespass to land under the law of torts, John has committed the wrong of trespass as he did not take the permission of Jack when he walked across his land. Even though no damage was caused, he is still liable.

3) What is the difference between Tort and Crime and Tort and Contract

Tort and Crime- Wrongs which are less serious in nature are considered to be private wrongs and are known as civil wrongs, whereas more serious wrongs have been considered to be public wrongs and known as crimes.

Since tort is considered to be a private wrong, the injured party himself has to file a suit as a plaintiff. In the case of a crime, the criminal wrong is considered to be a public wrong, that is a wrong against the public at large or wrong against the State.

In the case of tort, the ends of justice are met by awarding compensation to the injured party. In the case of crime, the wrongdoer is punished.

Tort and Contract distinguished

A breach of contract results from the breach of duty undertaken by the parties themselves. A tort on the other hand results from the breach of such duties which are not undertaken by the parties themselves, but which are imposed by law.

In a contract, the duty is based on the privity contract and each party owes duty only to the other contracting party. Duties imposed under law of torts are not towards any specific individual or individuals, but they are towards the world at large.

Damages is the main remedy both in an action for the breach of contract as well as in action for tort.

In a breach of contract, the damages may be liquidated, but in an action for tort, the damages are unliquidated.

When the damages are predetermined, then it is liquidated damages. When the damages are not decided before, but the court is at liberty to award such sum as it considers just, it is unliquidated damages.

Or

The Plaintiff resided in a house next to a Roman Catholic Chapel of which the defendant was the priest and the Chapel bell was ringing very loud all hours of the day and night. Decide.

This case is based on the principle of nuisance which as a tort means an unlawful interference with a person's use or enjoyment of land, or some right over or in connection with it. Acts interfering with comfort, health or safety are some examples of nuisance. The interference may be by noise, vibrations, heat, smoke, smell, fumes, water, electricity, etc.

Applying this principle of torts in the present case it can be said that the continuous ringing of the Chapel bell was interfering with the plaintiff's right to some peace and the continuous ringing would effect the health of the plaintiff as it is unreasonable interference with the use of enjoyment land. A balance has to be maintained between the right of the occupier to do what he likes with his own land and the right of the neighbour not to be interfered with. Hence the defendant is liable.

4) What is Assault and Battery.

Assault- An assault is an unlawful laying of hands on another person or an attempt or offer to do a corporal (physical) hurt to another, along with an apparent present ability and intention to do the act. The intention as well as the act makes an assault. Actual contact is not necessary in an assault, though it is necessary in battery. Showing a fist or threatening with a stick, when near enough to be able to hit, is an assault. If a sword is shown at such a distance, that it would be impossible to hurt any person, it would not be an assault.
Battery- A battery is the actual and unwarrantable striking of another person, or touching him in a rude, angry, revengeful manner, example pouring water on a person or spitting in his face. In an action for battery,

a) the plaintiff must prove the use of force to him, either to his body or by bringing an object into contact with his body, and that the use of force was intentional.
b) That the use of force was intentional.

Without lawful justification- It is essential that the use of force should be intentional and without any lawful justification. In P. Kader v. K.A. Alagarswami the Madras High Court held that putting handcuffs on an undertrial prisoner and then chaining him like a dangerous animal with a neighbouring window in hospital during his medical treatment is an unjustifiable use of force and the police officer responsible for the same is liable for trespass to the person.

Or

Mr. B was beating two dogs in order to separate them. Mr. X was watching them and was standing behind Mr. B. While doing so, Mr. B accidently hit the eye of Mr. X and caused severe injury. Can Mr. X claim compensation from Mr. B?

The principle involved in this problem is of inevitable accident which is one of the defences under the law of torts. It is a defence if the defendant can show that he neither intended to injure the plaintiff nor could he avoid the injury by taking reasonable care.

In the given case applying this defence, we can say that the injury to the plaintiff is a result of pure accident for which no action can lie and therefore Mr. X cannot claim compensation from Mr. B.

5) Mental elements in tortious liability.

Mental element is an essential element in most of the forms of crime. Generally, under criminal law, mere act of a person is not enough to make him liable. Mensrea or a guilty mind is also required. In many of the branches of Law of Torts, like assault, battery, false imprisonment etc, the state of mind of a person is relevant to ascertain his liability. We may have to see whether a particular wrongful act was done intentionally or maliciously.

Malice in Law - Malice, in its legal sense, thus means malice such as may be assumed from the doing of a wrongful act intentionally, but without just cause of excuse, or for want of reasonable or probable cause. Malice, in law, simply means a wrongful intention which is presumed in case of an unlawful act, rather than a bad motive or feeling of ill will.

For example, in an action for defamation, it may be mentioned that the alleged statement was published falsely and maliciously. Here, it simply means that the statement is false and is also made without lawful justification.

Malice in fact or Evil Motive - In its popular sense or as malice in fact or actual malice, it means an evil motive for a wrongful act. When the defendant does a wrongful act with a feeling of spite, or ill will, the act is said to be done maliciously. Motive means an ulterior (secondary, unexpressed, hidden) reason for the conduct. It is different from intention which relates to the wrongful act itself. The immediate intention of a person may be to commit theft, the motive for the theft may be to buy food for his children or to help a poor man.

As a general rule, motive is not relevant to determine a person's liability in the Law of Torts.

A wrongful act does not become lawful, merely because the motive is good.
Similarly, a lawful act does not become wrongful because of a bad motive or malice.

‘Malice in Law’ means an act done wrongfully and without reasonable and probable cause.

‘Malice in fact’ means improper motive. Motive in this sense is relevant in the tort of malicious prosecution.

Or

Due to heavy rainfall the wall of the defendant’s house collapsed resulting in death of plaintiff’s child. In an action for damages, the defendant pleaded the defence of act of God. Can he succeed? Decide.

The question whether the principle of Act of God under the general defences be applied here. In the case of this defence the resulting loss arises out of the working of natural forces like exceptionally heavy rainfall, storms, tides and volcanoes. Heavy rainfall during the rainy season was not something extraordinary but only such as should have been anticipated and precautions taken to avoid any loss. The defendant cannot take the plea of act of God and cannot escape his liability. He will be held liable.

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