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# Law of Tort



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## Unit – 2

### Part – 1

# Syllabus

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## **Wrongful Act**

### **Wrongful act or omission:-**

The first essential ingredient in constituting a tort is that a person must have committed a wrongful act or omission that is, he must have done some act which he was not expected to do, or, he must have omitted to do something which he was supposed to do. There must have been breach of duty which has been fixed by law itself. If a person does not observe that duty like a reasonable and prudent person or breaks it intentionally, he is deemed to have committed a wrongful act. In order to make a person liable for a tort he must have done some legal wrong that is, violates the legal right of another person for example, violation of right to property, right of bodily safety, right of good reputation. A wrongful act may be positive act or an omission which can be committed by a person either negligently or intentionally or even by committing a breach of strict duty for example, driving a vehicle at an excessive speed.

The wrongful act or a wrongful omission must be one recognized by law. If there is a mere moral or social wrong, there cannot be a liability for the same. for example, if somebody fails to help a starving man or save a drowning child. But, where legal duty to perform is involved and the same is not performed it would amount to wrongful act. In *Municipal Corporation of Delhi Verses Subhagwati*, where the Municipal Corporation, having control of a clock tower in the heart of the city does not keep it in proper repairs and the falling of the same results in the death of number of persons, the Corporation would be liable for its omission to take care. Similarly failure to provide safe system would, also amount to omission, [*General Cleaning Corporation Limited Verses Christmas*,

- **Legal Damage**
- **Damnum sine Injuria**
- **Injuria sine Damnum**

### **Legal Damage**

The second important ingredient in constituting a tort is legal damage. In order to prove an action for tort, the plaintiff has to prove that there was a wrongful act, an act or omission which caused breach of a legal duty or the violation of a legal right vested in the plaintiff. So, there must be violation of a legal right of a person and if it is not, there can be no action under law of torts. If there has been violation of a legal right, the same is actionable whether the plaintiff has suffered any loss or not. This is expressed by the maxim, "Injuria sine damnum 'Injuria' refers to infringement of a legal right and the term 'damnum' means substantial harm, loss or damage. The term 'sine' means without.

However, if there is no violation of a legal right, no action can lie in a court despite of the loss, harm or damage to the plaintiff caused by the defendant. This is expressed by the maxim 'Damnum sine injuria' The detailed discussion of these two maxims is as follows.

### **Injuria Sine Damno and Damnum Sine Injuria**

#### **Injuria sine damnum**

This maxim means infringement or violation of a legal private right of a person even if there is no actual loss or damage. In such a case the person whose right is infringed has a good cause of action. It is not necessary for him to prove any special damage. The infringement of private right is actionable per se. What is required to show is the violation of a right in which case the law will presume damage. Thus, in cases of assault, battery, false imprisonment, libel etc., the mere wrongful act is actionable without proof of special damage. The- court is bound to award to the plaintiff at least nominal damages if no actual damage is proved. Thus, this maxim provides for,

1. infringement of a legal right of a person.
2. No actual loss or damage is required to prove.
3. infringement of a private right is actionable per se

In **Ashby Verses White**, the plaintiff was a qualified voter at a Parliamentary election, but defendant, a returning officer, wrongfully refused to take plaintiff's vote. No loss was suffered by such refusal because the candidate for whom he wanted to vote won the election. Plaintiff succeeded in his action. Lord Holt, C.J., observed as follows, "If the plaintiff has a right he must of necessity have a means to vindicate and maintain it, and a remedy if he is injured in the exercise or enjoyment of it, and indeed it is a vain thing to imagine a right without a remedy, for want of right and want of remedy are reciprocal". "Every injury imports a damage, though it does not cost a party one penny and it is impossible to prove the contrary, for the damage is not merely pecuniary, but an injury imports a damage, when a man is thereby hindered of his right. As in an action for slanderous words, though a man does not lose a penny by reason of the speaking of them, yet he shall have an action. So, if a man gives another a cuff on his ear, though it costs him nothing, not so much as a little diachylon (plaster), yet he shall have his action. So, a man shall have an action against another for riding over his ground, though it does him no damage, for it is an invasion of the property and the other has no right to come there."

In **Municipal Board of Agra Verses Asharfi Lal**, the facts are, the Plaintiff (Asharfi Lal) was entitled to be entered as an elector upon the electoral roll. His name was wrongfully omitted from the electoral roll and he was deprived of his right to vote. It was held by the court that if any duly qualified citizen or person entitled to be on the electoral roll of a constituency is omitted from such roll so as to be deprived of his right to vote, he has suffered a legal wrong, he has been deprived of a right recognised by law and he has against the person so depriving him, a remedy, that is, an action lies against a person depriving him of his right.

Similarly, in **Bhim Singh Verses State of J&K, the petitioner**, an M.L.A. of Jammu & Kashmir Assembly, was wrongfully detained by the police while he was going to attend the Assembly session. Thus, he was deprived of his fundamental right to personal liberty and constitutional right to attend the Assembly session. The court awarded exemplary damages of Rs. Fifty thousand by way of consequential relief.

An action will lie against a banker, having sufficient funds in his hands belonging to the customer, for refusing to honour his cheque, although the customer has not thereby sustained any actual loss or damage, *Marzetti Verses Williams Bank*

## **Damnum sine injuria**

Damnum sine injuria means an actual and substantial loss without infringement of any legal right. In such a case no action lies. There are many harms of which loss takes no account and mere loss of money's worth does not by itself constitute a legal damage. The essential requirement is the violation of a legal right.

There are many forms of harm of which the law takes no account,

- (1) Loss inflicted on individual traders by competition in trade,
- (2) Where the damage is done by a man acting under necessity to prevent a greater evil,
- (3) Damage caused by defamatory statements made on a privileged occasion,
- (4) Where the harm is too trivial, too indefinite or too difficult of proof,
- (5) Where the harm done may be of such a nature that a criminal prosecution is more appropriate for example, in case of public nuisance or causing of death,
- (6) There is no right of action for damages for contempt of court.

**Gloucester Grammer School Case**, Hen. The defendant, a schoolmaster, set up a rival school to that of the plaintiff. Because of the competition, the plaintiff had to reduce their fees. Held, the plaintiff had no remedy for the loss suffered by them. Hanker J. said "Damnum may be absque injuria as if I have a mill and my neighbour builds another mill whereby the profits of my mill is diminished... but if a miller disturbs the water from going to my mill, or does any nuisance of the like sort, I shall have such action as the law gives."

**Chesmore Verses Richards**, The plaintiff, a mill owner was using water for over 60 years from a stream which was chiefly supplied by the percolating underground water. The defendants dug a well on their land deep enough to stop the larger volume of water going to plaintiff's stream. Held, that the plaintiff has no right of action since it was a case of damnum sine injuria.

**Bradford Corporation (Mayor of) Verses Pickles**, In this case, the defendant was annoyed when Bradford Corporation refused to purchase his land in connection with the scheme of water

supply for the inhabitants of the town. In the revenge the defendant sank a shaft over his land intentionally and intercepted the underground water which was flowing to the reservoir of the plaintiffs. Held, that the plaintiffs have no cause since the defendant was exercising his lawful right although the motive was to coerce the plaintiff to buy his land. The House of Lords approved the ruling in *Chesmore Verses Richards*.

*Moghul Steamship Company Verses McGregor, Gow and Company*, A number of steamship companies acting in combination agreed to regulate the cargoes and freight charges between China and Europe. A general rebate of 5 per cent was allowed to all suppliers who shipped with the members of the combination. As a result of this action, the plaintiffs had to bring down their rates to that level which was unremunerative to them. 'Held, that there was no cause of action as the defendants had acted with lawful means to increase their trade and profits. No legal injury was caused and the case fell within the maxim *damnum sine injuria*.

**Dickson Verses Renter's Telegraph Company**, 'A' sent a telegram to 'B' for the shipment of certain goods. The telegraph company mistaking the registered address of 'C' for that of 'B', delivered the telegram to 'C'. 'C', acting on the telegram sent the goods to 'A' who refused to accept the goods stating that he had ordered the goods not from 'C' but from 'B'. 'C' sued the Telegraph Company for damages for the loss suffered by him. Held, that 'C' had no cause of action against the company for the company did not owe any duty of care to 'C' and no legal rights to 'C' could, therefore, be said to have been infringed.

**Rogers Verses Rajendera Dutt**. The plaintiff owned a tug which was employed for towing the ships in charge of Government Pilots in Hoogly. The plaintiff demanded exorbitant price for towing the ship. Consequently, the Superintendent of Marine issued an order prohibiting the use of that tug in future whereby the owner was deprived of the profits. Held, that they had no legal right to have their tug employed by the Government.

**Town Area Committee Verses Prabhu Dayal**, A legal act, though motivated by malice, will not make the defendant liable. The plaintiff can

get compensation only if he proves to have suffered injury because of an illegal act of the defendant. The plaintiff constructed 16 shops on the old foundations of a building, without giving a notice of intention to erect a building under section 178 of the Uttar. Pradesh

Municipalities Act and without obtaining necessary sanction required under section 108 of that Act. The defendants (Town Area Committee) demolished this construction. In an action against the defendant to claim compensation for the demolition the plaintiff alleged that the action of the defendants was illegal as it was malafide, the municipal commissioner being an enemy of his. It was held that the defendants were not liable as no "injuria" (violation of a legal right) could be proved because if a person constructs a building illegally, the demolition of such building by the municipal authorities would not amount to causing "injuria" to the owner of the property. In *Acton Verses Blundell*, the defendants by digging a coalpit intercepted the water which affected the plaintiff's well, less than 20 years old, at a distance of about one mile. Held, they were not liable. It was observed, "The person who owns the surface may dig therein and apply all that is there found to his own purposes, at his free will and pleasure, and that in the exercise of such rights he intercepts or drains off the water collected from underground springs in the neighbour's well, this inconvenience to his neighbour falls within description *damnum absque injuria* which cannot become the ground of action."

### **Distinction between Injuria sine damnum and Damnum sine injuria**

**First** on the basis of meaning, *Injuria sine damnum* means violation of a legal right without actual loss or damages where as *Damnum sine injuria* means actual or substantial Damages without infringement of a legal right.

**Second** on the basis of action,

*Injuria sine damnum* is always actionable where as *Damnum sine injuria* is never actionable.

**Third** on the basis of nature of wrong, *Injuria sine damnum* contemplates legal wrongs where there is a remedy where as *Damnum sine injuria* contemplates only moral wrongs without any remedy.

**Fourth** on the basis of act of defendant, In *Injuria sine damnum* defendant acts illegally to violate legal right of the plaintiff where as In *Damnum sine injuria* defendant acts legally and thereby causes harm to the plaintiff

- Legal Remedy- Ubi jus ibi remedium

## Introduction

It is a Latin maxim which means that where there is a wrong, there is a remedy. If any wrong is committed then the law provides a remedy for that. The maxim can be phrased as that any person will not suffer a wrong without a remedy, it means that once it is proved that the right was breached then equity will provide a suitable remedy. This principle also underlines the fact that no wrong should be allowed to go without any compensation if it can be redressed by a court of law. The law presumes that there is no right without a remedy; and if all remedies are gone to enforce a right, the right in point of law ceases to exist.

Justice Pollock said that right and wrong are contrary to each other. Right actions are those which are prescribed by moral rules, wrong actions are those which are not prescribed by moral rules or which are prohibited by law. In case of legal action, anything which is wrong is not recognized by laws. It is presumed that whenever a wrong is committed it means that legal duties have been omitted. Hence the existence of duty involves a right then it also provides the possibility of wrong. Duty, right and wrong are not separate but they are the different legal aspects of the same rules and events. Sometimes it happens that there may be both duties and wrong, and the wrong does not happen only when duty is truly justified. If there exists a duty to do something and if it is properly done then it is said that the duty is discharged and the man who was legally bound is now freed.

## Development of Ubi jus ibi remedium

The law of tort is said to be the development of the maxim Ubi jus ibi remedium. The word “jus” means legal authority to do something or to demand something. The word “remedium” means that the person has the right of action in the court of law. The literal meaning of the maxim is where there is a wrong there is a remedy.

The circuit court of appeals of the United States of America in the case of *Leo feist v. young* observed that “it is an elementary maxim of the equity of jurisprudence and there is no wrong without a remedy”.

This maxim also says that there is no remedy without any wrong and the persons whose right is being violated has a right to stand before the court of law. This principle also states that if the rights are available to a person then it is required to be maintained by that person only and remedy is available only when he is injured in the exercise of duty or enjoyment of it; It is useless to imagine and think a right without a remedy. It is necessary to keep in mind that both rights violated and the remedy sought or to be obtained should be legal. There are many moral and political wrong but are not actionable or it does not give many sufficient reasons to take legal action as they are not recognized by law. The maxim does not mean that there is a legal remedy for each and every wrong committed.

For example, a contract which was required to be made on stamped paper may be made orally; in such circumstances, irrecoverable harm may be caused to other person and yet no legal remedy is available.

Thus, the maxim does not mean that there is a remedy for every possible wrong. It is appropriately said by Justice Stephen that maxim would be correctly stated if maxim were to be reversed to say that “where there is no legal remedy, there is no legal wrong.

### **Where there is a right, there is a remedy**

Law of equity highlights the facts that if there is a breach of right then the right which is breached is incomplete without availability of proper remedy. The common laws were restricted to a limited number of remedies until the concept of law of equity was developed. In case of breach of rights, there are only a few writs which can be filed and if in any case the suit is not covered under the writs then the suit will be dismissed. There are so many rights available but no remedy is available in case of its breach. To remove this deficiency the concept of a court of chancery came into existence and have the jurisdiction to decide matters relating to equity and justice.

## Essentials of Ubi jus ibi remedium

The maxim ubi jus ibi remedium can be applied only where the right exists and that right should be recognized by the court of law;

A wrongful act must have been done which violates the legal rights of a person clearly.

This maxim can be used only when sufficient relief has not been provided by the court to the person who sustained the injury.

This maxim is applicable if any legal injury had been caused to any person, if no legal injury has been caused then the maxim damnum sine injuria will be used which means damage without any legal injury.

## Limitations of ubi jus ibi remedium

- The maxim ubi jus ibi remedium does not apply to moral and political wrong which are not actionable.
- This maxim is not applied to those cases in which proper remedy is given in case of breach of right under common law.
- If there is no legal damage which has been caused to any person then this maxim will not be applicable.
- No remedies are available in case of breach of marriage vows or personal commitment as these all are the promises made without consideration and are based on trust.
- This maxim is also not applicable in case of public nuisance unless and until a plaintiff shows that he suffered more injury than other members or peoples of the society.
- This maxim is not applicable where the plaintiff is negligent or there is negligence on the part of the plaintiff.

## Case laws on ubi jus ibi remedium

**Sardar Amarjit Singh Kalra v. Promod Gupta & Ors.**, the court held that the principle of ubi jus ibi remedium is recognized as a basic principle of the theory or philosophy of law. The Supreme Court also held that it is the duty of the courts to protect and maintain the right of parties and help them instead of denying them relief.

**In Ashby vs White**, the plaintiff was a qualified voter and he was detained from giving a vote in a parliamentary election by the defendant who was a police officer. The party to whom he wanted to vote had won the election and the plaintiff filed a suit against the defendant stating that he was detained from giving a vote and his right to vote was infringed and also claimed a

certain amount of compensation for the damage caused to him. The defendant in his defence said that the party to whom he wanted to vote had won the election and therefore no damage and injury was caused to him.

The court held that no damage or injury was caused as the candidate for whom the plaintiff wanted to vote had won the election but his right to vote was violated. To restrain a person from giving vote is a civil wrong and therefore the plaintiff had the right to seek remedy from the court of law. The maxim *ubi jus ibi remedium* was applied in this case and the plaintiff was awarded some amount of compensation.

**In D.K. Basu v. State of West Bengal, Mr. D.K. Basu** who was working as the executive chairman in legal aid services, West Bengal, a non-political organization registered on 26-08-1986 under the Societies Registration Act. He wrote a letter addressing the Chief justice of India telling him about certain news that was published in newspapers namely the Indian Express and The Telegraph regarding the death of a person in police lockups and custody.

After hearing this case Supreme Court issued some guidelines which need to be followed during the arrest of an accused person. The court further said that a mere declaration of violence in police custody or judicial custody is a legal wrong and does not provide any remedy to the victim or family of victim on the death of the victim. Only giving punishment to the victim is not sufficient. To file a civil suit for compensation is a long process and compensation should be provided to the person who sustained injury. The quantum of compensation should be decided considering the circumstances of the case.

**In Bhim Singh v. State of Jammu & Kashmir**, the petitioner was MLA of Jammu and Kashmir parliamentary assembly. While he was on his way to attend the parliamentary session he was wrongfully arrested by a police officer and he was restrained from attending the parliamentary session. He was not presented before the magistrate in time and he had a legal right to attend the meeting. His fundamental right under Article 21 of the Constitution was also violated. At last Supreme Court held that the defendants were responsible and awarded Rs.50,000 as compensation to the petitioner for the infringement of his fundamental right.

**In Maretti v. William**, the defendant was the owner of the bank, and the plaintiff's fund was deposited in the defendant's bank. The plaintiff had sufficient balance in his account in spite of that the defendant refused to honour cheque to him. The court held that the defendant is liable for the loss caused to the plaintiff. The maxim *ubi jus ibi remedium* was applied as the plaintiff's legal right was violated and defendants were liable to pay damages.

**In Shivkumar Chadha v. Municipal Corporation of Delhi**, the Supreme court held that where statutory enactments does not provide any remedy but only creates rights and liabilities, if any person complains of his rights being violated or wrongly affected such person can approach the civil court on the basis of the principle of legislation that where there is a right, there is a remedy.

In the case of **C.Veera Thevar vs The Secretary To Government**, the court held that there is no wrong without a remedy. The laws say that in every case where a person is wronged and caused injury then should be provided. Mere declaration of invalidity or death in lockup does not provide any remedy to a person whose fundamental right is violated.

## Conclusion

Equity courts are the court of justice. The person whose rights are violated has a right to stand before the court of law. This maxim does not say that there is a remedy for every wrong. There are many political and moral rights which are recognized by law and the law does not provide a remedy for that. The basic idea behind *ubi jus ibi remedium* is that no wrong will be unredressed if it can be remedied by the court. The maxim is generally true as no right exists without a remedy. The maxim is accepted by the law of torts and provides a remedy in each and every case as this doctrine of common law in England provides a remedy for each and every wrong.

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