

2020

LAW OF TORT



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Unit – 2

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Syllabus

General Condition of Liability in Tort:

Unit-
II

- Wrongful Act
- Legal Damage
- Damnum sine Injuria
- Injuria sine Damnum
- Legal Remedy- Ubi jus ibi remedium
- Mental Element in Tort
- Motive, Intention, Malice and its Kinds
- Trespass

- Mental Element in Tort
- Motive, Intention, Malice and its Kinds

Motive

A motive is a person's state of mind that inspires him to do an act. It usually means the purpose of the act's commission. Motive is generally irrelevant in tort law, just like intention. Motive leads to intention formation, which is the ultimate cause. Motive is the ultimate object with which an act is done, while the immediate purpose is the intention.

The cause that moves individuals to induce a certain action is a motive, in law, especially criminal law. Typically, the legal system allows motive to be proven to make plausible reasons for committing a crime for the accused. However, motive is not essential for a tort action to be maintained. It is not just because the motive is good that a wrongful act becomes legal. Similarly, due to an improper, evil motive or malice, a lawful act does not become wrongful.

The decisions of Lord Halsbury and Lord Watson in *Bradford Corporation v. Pickles* and *Allen V. Flood* may be treated as one of the earliest decisions that settled that motive is irrelevant in tort.

- ***Bradford Corporation v. Pickles [1895] AC 587***

Facts:

The plaintiffs owned land below which were water springs used to supply water to Bradford town for more than 40 years. The defendant owned land over the plaintiffs on a higher level. There was a natural reservoir under the defendant's land and water flowed from that reservoir down to the springs of the plaintiffs. The defendant, however, sank a shaft into his land to alter water flow. This significantly reduced the amount of water flowing into the springs of the plaintiffs. There was sufficient proof to suggest that the defendant was following this course of action, not to give himself any immediate advantage, but merely to deprive the plaintiffs of water. The plaintiffs insisted that this was malicious and that they had the right to an injunction to stop the defendant from acting in this way.

Held:

Lord Halsbury L.C.: It's not a case where the state of mind of the person doing the act can affect the right to do it. If it was a lawful act, however ill the motive might be, he had a right to do it. Motives and intentions in such a question as is now before your lordships seem to me to be absolutely irrelevant.

Lord Watson: No use of property, which would be legal if due to a proper motive, can become illegal because it is prompted by a motive that is improper or even malicious.



- **Allen v. Flood [1898] AC 1**

Facts:

Flood and Walter was a shipwright who was employed on a ship, liable at any time to be discharged. As they had worked for a rival employer, fellow

workers objected to their employment. Allen was a trade union representative on the vessel for the other employees and approached the employers, telling them that the other staff would strike if they did not discharge Flood and Walter. Consequently, the employers discharged Flood and Walter and refused to re-employ them where they would otherwise. Flood and Walter brought the action to induce a contract breach in a malicious way.

Held:

The decision was reversed, finding that Allen had not infringed any Flood and Walter's legal rights. There was no legal right for them to be employed by the employer and Allen did not perform an unlawful act and did not use any unlawful means to obtain the dismissal of the employee. Allen was found to have represented what would happen to the employers if they continued to work with Flood and Walter. He relied on what he believed was going to happen, and he was believed by the employers. This was not regarded as an obstruction or disturbance of any right: it was not the procurement of any infringement of rights. The conduct of Allen was not actionable, although his motive might be malicious or bad.

Indian courts have also spoken about motive non-relevance as well as malice in tort. In Vishnu Basudeo V. T.H.S Pearse[AIR 1949 NAG 364] and Town Area Committee V. Prabhu Dayal[AIR 1975 All 132], the courts held that it is to be seen if the act is lawful, then the motive for the act is of little significance.

To conclude, we could say that a good motive is not to justify otherwise illegal acts, and a bad motive does not make an otherwise legal act wrong.

Exceptions to Rule

There are certain categories of tort where the motive may be an essential element and thus relevant to the determination of liability:

In the case of deceit, malicious prosecution, injurious falsehood and defamation, where the defense of fair comment or privilege is available. The defense of qualified privilege shall be accessible only if it has been published in good faith.

In case of conspiracy, interference with the trade or contractual relations.

In cases of nuisance, causing personal discomfort by an unlawful motive may turn an otherwise lawful act into nuisance (held in the case of *Palmer v. Loder* (1962) CLY 2333).

Intention

A tortious liability may arise if a person causes any injury related to the life, property, reputation, etc. of the victim. According to tort law, the liability may be incurred irrespective of whether the injury was intentionally or accidentally inflicted.

Depending on the intention, a tort can be divided into two broad categories namely:

1. Intentional Tort
2. Unintentional Tort

a) Intentional Tort

Some action must be taken with a purpose to commit an intentional tort, i.e. an intention is must to commit an act. It is essential that there is a mental element.

Garratt v. Dailey, 46 Wash. 2d 197, 279 P.2d 1091 (Wash. 1955)

In 1955, a young boy whose name was Brian pulled a chair from underneath Ruth Garratt as she went to sit down. Ruth fell and broke her hip because of Brian's chair-pulling. Ruth filed a lawsuit against the family of Brian claiming to have acted intentionally, causing her personal injury. Although Brian did not intend to cause injury, the court found that the act resulted in the hip being broken and awarded Ruth \$11,000 in damages. Brian's family appealed on the grounds that children 5 years of age could not be held liable for an intentional tort. The court ruled that children can be held liable and that the intent element is in place if the person knew with certainty that the act carries a risk of injury.

Intentional tort includes:

Battery

When physically applying some force to another person's body in an offensive manner that causes some harm is called battery.

Assault

When one person's act creates an apprehension in another person's mind that such act is likely or intended to cause such harm.

The difference between battery and assault is, in battery, physical contact is mandatory while in assault, physical contact is not mandatory as the purpose is to threaten not to harm.

False Imprisonment

It is the person's unlawful confinement without his will. It is not necessary to place a person behind bars, a mere impossibility of escape from a certain area against the person's will is sufficient to constitute false imprisonment wrong. It includes the use of physical force (actual expression of force is not always required), a physical barrier such as a locked room, invalid use of legal authority. False arrest is the part of false imprisonment that includes police detention of the person without legal authority. Malicious prosecution falls under the category of false imprisonment.

Trespass

It is the intentional, unreasonable invasion of property, land, person or goods. The unreasonable interference can harass or harm the other person, however slight it may be. The owner of the property's legal right is infringed because the misappropriation or exploitation of his right deprives him of his right to enjoy the benefit of the property.

b) Unintentional Tort

The defendant causes injury to the plaintiff in the case of unintentional tort, but without any mala fide intention. It could be called an unexpected accident. This was inadvertently done by the person who caused the injury because he/she was not being careful. Such an individual may be described as negligent or reckless. In the case of unintentional tort, it may

be noted that the injury is caused by the omission of the "duty of care" that a reasonable and prudent man should have considered.

Wilkinson v. Downton (1897) 2 QB 57

The defendant joked that her husband had encountered an accident and had been admitted to a hospital. She was shocked by this news and fell seriously ill. She subsequently sued the defendant for damages under tort. The defendant claimed he never wanted to harm the plaintiff, but only cut a joke. The court dismissed his claim, holding him liable. Here, the court observed that mere intention was not an essential factor in tort. The defendant was aware of the natural and probable consequences of his act which caused the plaintiff to suffer damage. He was therefore liable, whether he intended to do so or not.

The distinction between Motive and Intention

The motive has been described as "the ulterior intent." These two words are often used in popular and even legal usage interchangeably. The ultimate object with which an act is done is the motive, whereas the intention is the immediate purpose. For example, A, steals a loaf of bread from B's bakery shop. A is liable for theft as well as for illegal trespass, though A's motive was to feed his starving child, not to cause loss to B.

Malice

Malice means spite or ill-will in the popular sense. When an act is done with bad intention, called Malice. An act or statement becomes malicious if used for purposes other than those sanctioned by the law authority.

It is possible to discuss the term malice in both legal and popular sense. In the legal sense, it means 'intentional wrongdoing, without a just cause or excuse or a lack of a reasonable or probable cause' and it is known as '*malice in law*'. In the popular sense, it means 'an improper or evil motive' and it is known as '*malice in fact*'.

It emphasizes here that this wonderful act does not become lawful merely because the motive is good. Similarly, a lawful act does not become wrongful because of an improper, bad or evil motive or malice.

In the case of **Town Area Committee v. Prabhu Dayal AIR 1975 All 132**, the court observed that "mere malice cannot disentitle a person from taking recourse of law for getting the wrong undone. It is, therefore, not necessary to investigate whether the action is motivated by malice or not."

Exceptions to the Rule

In the following cases, malice becomes relevant in determining tortious liability:

- When the act is otherwise unlawful and wrongful intention can be gathered from the circumstances of the case.

In **Balak Glass Emporium v. United India Insurance Co. Ltd.**, in a multi-storeyed building, the water from the upper story, under the control of the defendant escaped to the lower floor, occupied by the plaintiff. There was evidence of ill will between the plaintiff and the defendant. It was evidence of ill will between the plaintiff and the defendant. It was found that not only the tap of the upper floor was left fully open, but the outlet of the tank was also closed. There was only one inference that the said act was

done by the defendant, with the wrongful intention, and hence, the plaintiff was held entitled to get damages for the same.

- Malice with respect to the litigant to be demonstrated in torts of deceit, malicious prosecution.
- The presence of malice in cases of defamation negatives good faith and the defendant cannot avoid liability by the defense of qualified privilege in such a case.
- Causing personal discomfort by an unlawful motive may turn a qualified lawful act into a nuisance.
- Malice which results in aggravation of damages.

MALICE IS OF TWO KINDS, EXPRESS MALICE AND MALICE.

Malice, in the law, is of two kinds. 1. Express malice. 2. Implied malice. There is also a statutory malice, or malice aforethought, which may be regarded as a third kind of malice.

1. Express malice is such as is expressed by words or conduct, indicating an intention to commit a crime.

2. Implied malice is such as the law presumes from the intentional commission of an unlawful act, as where one kills another, it is not necessary to show any express malice, as the law will imply from the doing of the unlawful act, such malice as will constitute the crime.

3. Malice aforethought is a wicked purpose or resolve. It is a common statutory and criminal ingredient which distinguishes murder from manslaughter. Thus in a charge of murder, the state must show not only malice, but what in law is called malice aforethought.

Malice includes those motives which are more wicked, but it does not include them all. Thus, there may be anger, hatred or revenge without legal malice. The absence of malice in a criminal act may affect the degree of the offence, that is, it may change the charge of murder to manslaughter, or

may negative the existence of a crime, as in the case where the offence charged is malicious mischief.

Conclusion

By “mental elements”, we mean a person’s ‘intention’ to harm another person by infringing his or her legal rights. Intention means a state of mind where the wrongdoer is fully aware of his actions and their consequences. In addition, he has a desire to achieve these consequences. In criminal law, an essential ingredient of crime is the mental element. Here the mere act of the wrongdoer is not enough to hold him liable for an offense. Another requirement is the presence of a guilty mind.

The underlying principle is that a wrongdoer can not escape liability under the law of tort, simply because he has no intention of causing harm. However, in some cases, an offender may not be held liable (e.g., qualified privileges).

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