AILET

Learn All About The Law of Tort

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Law Of Tort

Law of torts is a system of laws which enables a person who has suffered harm or injury by the acts of another to claim damages in a civil suit. The law of torts in India is based on English Common Law which is the product of judicial decisions. An action of tort is a claim pecuniary compensation in respect of damage suffered as the result of an invasion of a legally protected interest.

The law of torts exists for the purpose of preventing men from hurting another whether in respect of their property, their persons, the reputations or anything else which is theirs.

There is no precise definition of ‘tort’ as it an evolving law therefore it cannot be circumscribed within particular words. The French word ‘tort’ has been derived from the Latin word ‘tortum’ which means ‘to twist’ i.e. which is unlawful or crooked. It is equivalent to the English term ‘wrong’, the Roman term ‘delict’ and the Sanskrit word ‘Jimha’. It literally means ‘breach of duty leading to damage’.

According to the eminent jurist Winfield, “Tortuous liability arises from the breach of a duty primarily fixed by law; this duty is towards persons generally and its breach is redressible by an action for unliquidated damages”. Salmond defined Torts as “It is a civil wrong for which the remedy is common law action for unliquidated damages and which is not exclusively the breach of the contract or the breach of the trust or other merely equitable obligation”.

According to section 2(m) of the Limitation Act 1963, ‘Tort means a civil wrong which is not exclusively a breach of contract or breach of trust’. In the case of a civil wrong the injured party (Plaintiff) institutes, a civil proceeding against the wrongdoer (Defendant) and the main remedy is damages or compensation. In the case of a criminal wrong, the criminal proceedings against the accused are brought by the State and the victim is not compensated but the wrongdoer is punished.

The nature of tort can be best understood by distinguishing it with crime and other civil laws.

Tort and Crime

- Tort is a private wrong i.e. an infringement of the private or civil rights of an individual whereas Crime is a public wrong i.e. a wrong against the public at large or wrong against the State. Tort is comparatively less serious than Crime.
- Law of torts is uncodified whereas Law of crimes is codified.
- In tort, the intention of the wrongdoer is not crucial in all cases. In a crime, the intention of the wrongdoer is usually crucial in determining his liability.
- In tort, the suit has to be filed by the injured party as plaintiff and no one else. The criminal proceedings are not brought by the injured party but by the State.
- The most common remedy of a tort is damages or compensation to the injured party to make good the loss suffered by him. Whenever a crime is committed the wrongdoer is punished for the same so as to deter him and other potential offenders from committing the same wrong.

Tort and Contract

- In tort the duties are primarily fixed by the law and a breach of these duties constitute tort. In a contract, the duties are fixed by the parties themselves.
- A tort is a violation of a right in rem i.e. of a right vested in some determinate person and available against the world at large. A breach of contract is a violation of a right in personam i.e. against some determinate person.
- In a tort the obligation arises independently of any consent i.e. a tort is inflicted against the will and without the consent of the other party. In a contract, the obligation is founded on the consent of the parties.
- In a tort, the motive may be taken into account while deciding a case. In a breach of contract, the defaulting party is bound to incur liability irrespective of the motive or intention.
- In a tort the damages awarded are unliquidated i.e. damages not previously fixed but are decided by the courts. In a breach of contract, the plaintiff is awarded damages which is either already settled between the parties i.e. liquidated damages or the actual damages which can be determined from the relevant facts. The basic principle for the measure of damages in tort as well as in contract is same viz. that there should be restitutio in integram (restoration to the previous position).

- In a tort, period of limitation to file a suit begins from the date when the damage is suffered. In the contract the period of limitation to file a suit commences when the breach of obligation takes place.

Tort and Breach of Trust

Trust is a matter of confidence; it is merely an equitable wrong. In case of a 'breach of trust' by a trustee, the beneficiary can claim compensation which depends upon the loss that the trust property has suffered. Therefore the damages in case of breach of trust is liquidated i.e. they are ascertainable. In case of a tort the damages are unliquidated i.e. they are decided by the court.

Disability to sue and to be sued in India for the wrong of Tort

Ordinarily, all persons are entitled to sue in tort. But there are certain exceptions to this rule viz. a bankrupt, a corporation and a child in the womb. A convict in India, unlike England, may sue and a bankrupt may sue for personal wrongs. A corporation can sue for a libel affecting its property and business. An infant can sue for tort.

There are certain persons who cannot be sued viz. foreign sovereigns and ambassadors, public officials and the State. However the public officials for their private acts can be sued. Similarly the State can be sued for non-sovereign functions. An infant is in general liable for his torts in the same manner as an adult however, where intention, knowledge or malice is an essential ingredient of liability, infancy can be a defence. Similarly a lunatic or drunkard can be made liable. In India a husband is not liable for the torts of his wife.

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