BLOGS

Notes on Tort Law- Introduction, Definitions of Tort Law

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In this post on Notes on Tort Law, we shall cover the very basics of the Law of Torts, to aid your preparation for the legal aptitude section in the exams.

Introduction

Tort originates from the Latin word **'tortum'** for wrong or injury. It is a breach of a general duty towards others, not to be confused with a breach of contract, which is a duty towards a specific person.

A tort is defined as a **civil wrong**. The difference between civil law and criminal law is essential for the understanding of torts. Criminal law deals with acts called crimes that cause damage to an individual as well as a society at large, for e.g., murder or rape. Civil law deals with acts that cause harm to individuals, but not the society, for e.g. causing nuisance.

In civil wrongs, the aggrieved receive compensation from the accused, while for crimes, the accused is punished through imprisonment or fine. This fine is not paid to the victim but to the Government.

Types of Torts

Torts can be broadly classified into three categories:

1. Intentional Torts: Actions deliberately carried out to cause harm, such as assault, battery, or defamation.
2. Negligence: Failing to exercise reasonable care, leading to unintentional harm, such as in car accidents or medical malpractice.
3. Strict Liability: Liability imposed without proof of fault, as in cases involving hazardous activities or defective products.

Essential Elements of a Tort

1. A wrongful act or omission– A person accused of committing a tort should have done an act or refrained from doing an act that was expected from them. If they had a legal duty to do and act, they can be made liable if they fail to perform it.

2. Existence of a Legal Right- The plaintiff must have a legal right which could not be fulfilled because of the action of the defendant.

3. Resulting in legal damage- This particular act or omission should have caused some damage to the complainant, or resulted in an infringement of their rights.

Definition of Torts

There are several famous definitions of torts; however, **Sir Fredrick Pollock's** definition captures the essence of torts and its distinction from contracts most clearly. He defines torts as ***"An act or omission (not merely the breach of a duty arising out of personal relations, or undertaken by a contract which is related to harm suffered by a determinate person, giving rise to a civil remedy which is not an action of contract."***

According to **Salmond**, ***"Tort is a civil wrong for which the remedy is a common law action for unliquidated damages, and which is not exclusively the breach of contract, or, the breach of trust, or, other merely equitable obligation."***

Definitions of Important Terms

- A tortfeasor is a person who commits a tort. When multiple people commit a tort, they are called joint tortfeasors.
- A tortious act is a wrongdoing for which the persons committing such an act can be sued.
- A Plaintiff is the person who has been wronged and defendant is the person who has been accused of the wrongdoing.

Injury and Damage

In the context of tort law, the terms injury and damage are often used interchangeably, but they have distinct legal meanings. Without these two important concepts, it is almost impossible to

properly understand the law of torts. These are:

1. Damnum Sine Injuria (Damage without injury)

When a person's rights have been violated without an actual loss or physical injury, such damage is called damnum sine injuria. A famous example of such an injury is ***Ashby v. White***, where Mr. Ashby was prevented from voting by Mr. White. He was granted compensation because his legal right was infringed, even though there were no damages. Similar case in Indian context is ***Bhim Singh v State of J&K***.

2. Injuria Sine Damnum (Injury without Damage)

When a person suffers physical damage without the infringement of a legal right, it is known as injuria sine damnum. Such damages are not a cause for action under tort law. These are moral wrongs which do not cause objection in the eyes of the law.

An example of this can be the ***Gloucester Grammar School case***, where the school filed a case against the defendant demanding compensation for opening a new school near them, thereby reducing their income. It was held that the act of opening a new school is not an actionable wrong.

Therefore, now we know that only legal damages are actionable under the law of torts.

Difference between Tort, Crime and Breach of Contract

- A crime is an illegal act, that harms the society as well as an individual, while tort is a wrongful act causing damage to an individual.
- A breach of contract is failure to carry out a duty undertaken by signing a contract.
- Crime violates the public rights of an individual while torts and breach of contract harm the individual rights of a person.
- Compensation is received by the aggrieved for breach of contract or commission of Tort, while in case of crimes, an accused is mostly sentenced for committing the crime.
- In cases of Torts, damages are not fixed, and are known as unliquidated damages, while in case of breach of contracts, damages are usually fixed according to the terms of a contract.
- Punishment for crimes is fixed according to the Indian Penal Code or any other Act that the crime is defined under.

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