NOTES

What is a Tort? A Simple Introduction for CLAT PG Aspirants

Shruti chauhan · 28 Jul 2026

Imagine your neighbour builds a wall that blocks sunlight from your garden, or a doctor operates on you carelessly and leaves you worse off. In everyday life, you'd just call these "wrongs." In law, if these wrongs don't come from a broken contract or a crime, they usually fall under something called **Tort Law**.

Let's break it down slowly.

So, What Exactly is a Tort?

The word "tort" comes from the Latin word *tortum*, meaning "twisted" or "wrong." In legal terms, a **tort is a civil wrong,** i.e. one person's careless or wrongful act injures another person's legal rights, and the injured person can go to court and claim **damages** (money as compensation).

Different jurists have tried to capture the idea in their own words. Here are the ones most commonly asked about:

- Salmond: A tort is a civil wrong for which the remedy is a common law action for unliquidated damages, and which is not exclusively a breach of contract, trust, or other merely equitable obligation. (Examiner's Favourite)
- Winfield: Tortious liability arises from the breach of a duty primarily fixed by law; this duty is towards persons generally, and its breach is redressable by an action for unliquidated damages. (Examiner's Favourite)
- Fraser: A tort is an infringement of a right in rem (a right vested in a person and available against the world at large) of a private individual, giving a right of compensation at the suit of the injured party.
- Underhill: A tort is a wrong that consists of an act or omission by a person (the wrongdoer) causing injury to another, in violation of a legal duty imposed by law, and independent of contract, entitling the injured party to sue for unliquidated damages, or sometimes an

injunction.

- Pollock: Sir Frederick Pollock avoided a fixed definition, but described tort as an act done wrongfully, causing damage to someone, without lawful excuse – where the law creates a right and imposes a duty independent of any special agreement between the parties.

Simple way to remember it: All these definitions circle around the same three ideas:

(1) it's a *civil* wrong,

(2) the duty comes from *law*, not agreement, and

(3) the remedy is usually *unliquidated damages* decided by the court.

In simple words: **a tort is a wrong the law recognises even though no agreement was broken and no crime was committed** and the court decides the compensation instead of it being fixed in advance.

The Three Things That Make a Tort

For something to count as a tort, three ingredients are usually needed:

1. A wrongful act or omission – the person did something they shouldn't have, or failed to do something they should have.
2. Legal injury – someone's legal right was actually violated (not just their feelings hurt).
3. A legal remedy available – the court can award damages for it.

Damnum Sine Injuria vs. Injuria Sine Damnum

Damnum Sine Injuria (damage without legal injury): You can suffer real damage even a financial loss but if no legal right was violated, there's no tort.

Example: In the old English case, ***Gloucester Grammar School Case***, a teacher started a rival school right next door and charged lower fees. The original school lost many students and a lot of money. Sounds unfair, right? But the court said, no legal right was broken here, it's just competition. So, no tort, even though real damage happened.

Injuria Sine Damnum (legal injury without damage): The opposite situation where no real loss happened, but a legal right was still violated. This IS a tort.

Example: In *Ashby v. White*, a man was wrongly stopped from voting. His preferred candidate won anyway, so he suffered no actual loss. Still, the court held it was a tort — because his **right to vote** had been violated, and that's enough.

How is a Tort Different from a Crime or a Contract?

Students often confuse these three. Here's the simplest way to remember the difference:

Category	Tort	Contract	Crime
Duty comes from	Law itself	Agreement between parties	Law itself
Owed to	Everyone (the world at large)	Only the other party to the contract	Society/State
Who sues	The injured person	The injured person	TheState (prosecution)
Compensation	Decided by the court (unliquidated)	Usually pre-agreed (liquidated)	Punishment, not compensation

So if you break a promise you made in a contract, that's a contract issue. If you commit theft, that's a crime, and the State prosecutes you. But if you're careless and injure a stranger on the road, that's a tort, a duty the law placed on you, owed to everyone, not just one person.

Why Does Tort Law Exist?

At its heart, tort law exists to:

- Decide who is at fault when a dispute arises,
- Protect basic rights – to your body, your property, your reputation,
- Discourage people from being careless or wrongful towards others, and
- Try to put the injured person back in the position they were in before the wrong happened (as far as money can do that).

This is tied to a famous legal maxim: **Ubi Jus Ibi Remedium** – "where there is a right, there is a remedy." If the law gives you a right, it must also give you a way to enforce it.

Unlike the IPC (or now the BNS) for crimes, or the Indian Contract Act for contracts, **India doesn't have a single codified law of torts**. It's largely based on English common law, along with Indian court judgments and principles of "justice, equity, and good conscience." That's why case law is so central to this subject and why examiners love testing you on landmark cases like the two mentioned above.