

LAW OF TORTS

**M. S. RAMA RAO B.Sc., M.A., M.L.
Class-room live lectures edited, enlarged
and updated**

LAW OF TORTS

CONTENTS

Chapters	Pages
Textual and Reference Books	
Introduction	
Syllabus	
Questions-Bank	
Table of Cases	
Ch. 1 Definition and Meaning of Tortious liability	10
2. Tort distinct from breach of contract	
3. Tort distinct from Crime	
4. Tort distinct from-Quasi contract	
5. 'Reasonable man' Explained	
Ch. 2-1 Motive and Malice	17
2. Ubi jus Ibi remedium	
3. Injuria Sine Damno and Damnum Sine Injuria	
Ch. 3-1 General Defences	20
2. Volenti non fit injuria	
3. Inevitable accident	
4. Act of God (Vis Major)	
Ch. 4. Nervous Shock	23
Ch. 5-1 Strict liability : Ryland V. Fletcher, Exceptions	26
5-2 Scienier action	
Ch. 6-1 Vacarious Liability- Liability of the Master	29
2. Independent Contractor	
3. Joint Tort-feasors	
Ch. 7-1 Defamation- Definition	34
2. Essentials	
3. Slander and libel	
4. Slander not actionable per se	

5. Defences : Justification, fair comment	
Innuend and privileges	
Ch. 8. Trespass to person-Assault and Battery	40
Ch. 9-1 False imprisonment- Definition essentials	42
2. Malicious prosecution- Essentials	
3. False Imprisonment distinct from Malicious prosecution	
4. Maintenance and Champerty	
Ch. 10-1 Deceit (Negligent misstatement) definition	46
2. Essentials	
Ch. 11-1 Conversion :Definition and essentials	48
2. 'Finding is keeping is a dangerous half-truth' Explained	
Ch. 12 Occupiers Liability, Invitee - Licensee and Trespasser	50
Ch. 13-1 Nuisance : Definition	51
2. Public and private Nuisance	
3. Essentials	
4. Remedies	
Ch. 14 Capacity : Who can sue and who cannot be sued	55
1. Convict	
2. Minor	
3. Married women	
4. i) State and ii) Act of state	
5. Corporation & Trade Unions	
Ch. 15 Remoteness of Damage- Meaning	59
Novus acts interveniens	
Ch. 16-1 Negligence	61
2. Contributory Negligence	
3. 'Alternate Danger' doctrine	
4. Res ipsa loquitur	
Ch. 17-1 Trespass to land	65
2. Trespass ab initio	
3. Remedies for Trespass	
4. Jus Terti	

Ch. 18-1 Remedies	68
2. Damages	
3. Extra-judicial Remedies	
Ch. 19 Death in Relation to Torts	70
Ch. 20 Interference with Business etc.,	71
1. Passing off	
2. Slander of title	
3. Slander of goods	
4. Breach of Statutory Duty	
5. Mayhem	
6. Foreign Torts	
7. 45 degree Rule	
Ch. 21 Conspiracy	77

PRE-VIEW [Topic-wise]

1. Definition of tortious liability- Nature- theories, Motive, Malice.
2. General Defences: Volenti non fit injuria- Inevitable accident, Act of God, Necessity, Private defence, Statutory Authority.
3. Capacity; who can sue and who cannot be sued-state, Corporations - Act of State joint tort-feasors-Husband and Wife-Foreign Torts.
4. Vicarious Liability- Master and Servant- Parent and Children.
5. Remoteness of Damage.
6. Trespass to person. Assault- battery, false imprisonment.
7. Defamation-Definition- Libel- Slander- Essentials- Defences: justification, Fair Comment and privileges.
8. Nuisance: Public and private- Definition. Scope- Nuisance to Highways- Defences.
9. Malicious prosecution-Essentials- Defences.
False imprisonment distinguished-
maintenance and champerty.
10. Negligence- Essentials -1) Standard of care 2) Contributory Negligence.
11. Nervous Shock.
12. Rule in Ryland V Fletcher- Explanation- Exceptions.

13. Scienter action- scope
14. Trespass - to land. Remedies - Trespass ab initio- Defences.
Conversion: Definition- essentials-detinue
15. Conversion –Definition-essentials-detinue
16. Deceit
17. Death in Relation to Torts.
18. Remedies : Damages, Injunction and Extrajudicial Remedies.
19. Liability of occupiers to : Invitee, Licensee, Trespasser.
20. Interference with business, conspiracy and passing off.

Table of Cases (Topic - Wise)

This list should be read several times in conjunction with the respective chapters to develop utmost familiarity with the cases.

Ch. 1-1 Tort distinct from breach of contract

- i) Haynes V. Harwood ii) Donoghue V. Stevenson iii) Grant V. Australian Knitting Mills *

Ch. 1-2 Tort distinct from crime Rose V Ford

Ch. 1-3 Reasonable Man

- i) Daly V. Liverpool Corporation, ii) Vaughan V. Manlove iii) Wagon Mound Case(i)

Ch-2 Motive and Malice

- i) Mayor of Bradford Corporation V. Pickles,ii) Allen V. Flood iii) Guive V. Swan
iv) Christie V. Davey

Ch. 2-2 Injuria Sine Damno

- i)AshbyV White ii) Merzette V. William (Bank Case)

Ch. 2-3 Damnum Sine Injuria

i) Chasemore V. Richards ii) Gloucester Grammar School & iii) Moghul Steamship Co. V Mc Gregor etc. iv) Dickson V. Reuter Telegraph Co.

Ch 3-1 Volenti non fit Injuria

i) Thomas V. Quartermaine ii) Smith V. Baker iii) Dann V. Hamilton iv) Haynes V. Harwood

Ch. 3-2 Inevitable accident:

i) Nitroglycerine case ii) Brown V. Kendal iii) Fordon V. Harcourt

Ch. 3-3 Act of God (Vis Major)

i) Nichols V. Marsland ii) Green Corporation V. Caledonian Rly. Co. iii) Nobel V. Harrison
iv) Circus Tiger Case

Ch. 3-4 Nervous Shock:

i) Bourhill V. Young ii) Wilkinson V. Downton iii) King V. Phillips iv) Hambrook V. Stokes
v) Owens V. Liverpool Corporation vi) Dulieu V. White vii) Chadwick V. British Railway

Ch. 4 Strict Liability

i) Ryland V. Fletcher ii) Shiffman's case iii) Peters V. Prince of Wales Theatre, iv) Carstairs V. Taylor v) Richards V. Lothian vi) Green V. Chelsea Water Works Company vii) Crowhurst V. A.B. Board

Ch. 5 Scienter action

i) Hudson V. Roberts ii) Jackson Smithson

Ch.6-1 Vicarious Liability:

i) Century Insurance Co. V. Northern Ireland Road Transport ii) Bayley V. Manchester Railway iii) Limpus V. London General Omnibus iv) Bread V. London Omnibus Co.
v) Lloyd V. Grace Smith Co. vi) Morris V. Martin

Ch. 6-2 Independent Contractor

i) Tarry V. Ashton ii) Grey V. Pullon iii) Padbury's case iv) Ellis V. S. G. C Co.,

Ch. 6-3 **Joint Tort Feasors** i) Brood V. Bool ii) Merry weather V. Nixon

Ch. 7-1 Defamation

- i) Yousouppoff V. M.G.M. Pictures ii) Eastwood V. Holmes iii) Mrs. Casidy V. Daily Mirror
- iv) Tolley V. Fry & Sons v) Robinson V. Lautiar

Ch. 7-2 Slander is actionable per se

- i) Hailing V. Mitcell ii) Jackson V. Admas iii) Bull V. Vasquez

Ch. 7-3 Defences :

- I Bishop V. Lautiar i) Fair Comment i) Mrs. Cassidy V. Daily Mirroor
- ii) Tolley v. Fry Co. (Chacolate Case)

Ch. 8 Assault and Battery:

- i) R. V. St. George ii) Stephens V. Myers Ch. 9-1 False Imprisonment: i) Bird V. Jones
- ii) Meerings Case iii) Robinsons V. Balmain Ferry Co. iv) Herd V. Steel Co.

Ch. 9-2 Malicious prosecution:

- i) Wyatt V. White ii) Abrath V. N. E. Railway Co. iii) Abdual Majid V. Chaube

Ch. 9-4 Maintenance and Champerty

Bradlaugh V. Newdagate

Ch. 10 Deceit

- i) Pasley V. Freeman ii) Edginton V. Fitzmaurice iii) **Derry V. Peek** iv) Candler V. Crane
- v) Nocton V. Lord Ashburton vi) Hadley Byrne & Co. V. Heller & partners.

Ch. 11-1 Conversion

- i) Fouldes V. Willonby ii) Richards V. Alkinson iii) Armory V. Delamerie iv) Water Co. V. Sharman v) Bridges V. Hawkesworth

Ch. 12. Liability of occupiers.

i) Indemauro V. Dames ii) Stowell's case iii) Fairman's case iv) Bare's case

Ch. 13 Nuisance :

i) Robinson V. Kilvert ii) Health V. Brington iii) Wagon Mound case iv) Christie V. Davey

v) Hollywood Silver Fox V. Emmett vi) Rose V. Miles vii) Solten V. De viii) Tarry V. Ashton

Ch 14-1 Capacity to sue

Curtis V. Wilcox

Ch 14-2 Liability of the State

i) P & O Steam Navigation Co. V. Sec of state ii) Rup Ram V. St. of Punjab iii) State of Rajasthan V. Mrs. Vidyavathi iv) Kasturial V. State of U.P. v) Basawa V. St. of Mysore

Ch. 14-3 Act of State:

i) Secretary of state V. Kamachi ii) Buron V. Denman Ch. 14-4 Corporations i) Polton V. London Railway Co. ii) Pillai V. Municipal Council

Ch. 14-5 Trade Unions

Traff Vale Railway Co.

Ch. 15 Remoteness of Damage

i) Scott V. Shepherd ii) Re Polemis and Furnace Ltd. iii) Wagon Mound case iv) Hughes V. Lord Advocate v) Haynes V. Harwood

Ch. 16-1 Negligence

i) Donoghue V. Stevenson ii) Bolton V. Stone iii) Roe V. Minister of Health

Ch. 16-2 Contributory Negligence

i) Davies V. Mann ii) Butterfield V. Forrester iii) British India Electric Co. V. Loach

Ch. 16-3 Alternate Danger: Jones V. Boyce

Ch. 16-4 Res Ipsa Loquitur

Byrne V. Boadle St. of Punjab V. Modern Cultivators

Ch. 17-2 Trespass ab initio

i) Six Carpenters Case and ii) Chick-Fashions V. Jones

Ch. 18 Remedies in Torts :Merzettee V. William

Ch 19 Death in relation to Tort Rose V.Ford.

Ch. 20-1 Passing Off:

i) White Hudson V. Asian Organisation ii) Singer Sewing Machine Case

Ch. 20-2 Slander of title Malachy V. Soper

Ch. 20-3 Slander of goods Ratcliff V.Evans

Ch. 20-4 **Breach of Statutory Duty** Harely V. Mayor

Ch. 20-5 Foreign Tort

i) Phillip V. Eyre ii) Mostyn V. Fabrigas iii) In re Halley

Ch 21 Conspiracy

i) Moghul Steamship Co. V. Me Gregor Co. ii) Sorrell V. Smith iii) Quinn V. Leathern

iv) Allen .V. Flood and v) Gregory V. Brunswick

Questions Bank

1. Define Tortious Liability, Explain its ingredients, Distinguish Tort from Crime and Breach of Contract.
2. a) Discuss the relevance of Malice or Motive in the Law of Torts.Refer to Bradford Corporation V pickles and Allen V. Flood.
b) Explain with illustrations: Damnum Sine Injuria Injuria Sine Damno
3. a) Discuss 'Volenti non fit injuria' Refer to exceptions.
b) State and Explain briefly the general defences available for a tortious act.
4. What is 'Vicarious' 'Liability'?

Explain with cases, the liability of the Master for the acts of the servant, done during the course of his employment.

5. What rules govern the determination of the remoteness of damages? Refer to Scott V. Shepherd and The Wagon Mound Case.
6. a) Define and distinguish assault from Battery. Give illustrations.
b) What are the ingredients of 'False Imprisonment'. Refer to Cases.
7. Define Defamation. What are the ingredients of Defamation? Distinguish Slander from Libel.
When is slander actionable per se?
8. Explain justification, 'Fair Comment', Absolute and qualified privileges as defences open to an action for defamation.
9. What is Nuisance? Explain its essentials. Distinguish Private from public Nuisance. Illustrate.
10. Distinguish between:
1 Malicious Prosecution and False Imprisonment.
2 Maintenance and Champerty
11. Discuss the doctrine of 'Standard of Care'. Refer to Donoghue V. Stevenson and bring out the essentials of Negligence. What are the Defences?
12. What is 'Nervous Shock'? Explain, with cases, what essentials should be established to succeed in an action for Nervous shock'.
13. Discuss Contributory Negligence as a defence, with cases,
14. Discuss Ryland V. Fletcher. Refer to Exceptions.
15. What is trespass to land?
16. What is Conversion? Bring out its essentials with reference to decided Cases.
17. Discuss the responsibility of the owner of a premises to an Invitee, Licensee and a trespasser.
18. Define 'Deceit' or 'Negligent mis statement'. What are its essentials?
Refer to Derry V. Peek. Hadley Byrne and Co. V. Heller and partners.
19. **Write short Notes on:**
1. Distress Damage Peasant. 2 Inevitable Accident. 3 Act of God. 4 Joint Tortfeasors.
5 Scianter Rule. 6 Trespass ab initio. 7 Passing Off. 8 Novus actus intervenies. 9 Conspiracy.
10. Innuedo. 11 Res ipsa loquitur. 12 Contemptuous & Exemplary damages., 13 Act of State.
14 Jus tertii. 15 Rolled up plea. 16 Statutory Authority. 17 18. Ubi jus ibi remedium.

20. State the fact and the decision in:

1. Haynes V. Harwood. 2 Rose V. Ford. 3 Yousouppoff V. Metro 4 Goldwyn Mayow Pictures. 5 Cassidy V. Daily Mirror. 6 Bolton V. Stone.7.Ashby V. White 8.Bourhill V. Young 9.Grant V. Australian Knitting Mills. 10.Dann V. Hamilton 11.Jones V. Boyce 12.Mayor of Bradford V Pickles. 13. Chirstie V. Davey. 14 Allen V. Flood. 15.Tarry V. Ashton.16. Noble V. Harrison. 17. Byrne V.Boadle 18 Six Carpentters Case. 19 Armory V. Delamorie. 20 Moghul Steamship Co. V Mcgrogor Gow ad Co. 21 Gloucestor grammer School Case. 22.Chick Fashions V. Jones.23 Butterfield V. Forrester.

21. Explain the extent to which actio personalis moritur cum persona (Personal Cause of action dies with the person) is applicable to actions in the law of torts. Refer to leading cases.
22. Discuss the liability of the state for tortious obligations. Refer to state of Rajastan V.Vidyavati and Kasturlal V.State of U.P.
23. Write a note on who can sue and who cannot be sued for tortuous obligations. Examine the position of Corporations, a minor and "Husband and Wife".
24. What is Conspiracy? Explain its ingredients. Refer to leading cases.
25. Is the master liable for the acts of the independent contractor? Explain with cases.
26. Write an explanatory note on "Discharge of torts".

INTRODUCTION

The 'Law of Torts' is a **fascinating subject** to the student of law. It is in this area that he finds a plethora of decided cases with reasons most appreciable and illuminative, the judges in many cases, treading the virgin soil enunciating a fundamental principle hitherto unknown to a case on hand, rendering their decisions, with the utmost dexterity of a matured craftsman. Equity, justice and good conscience seem to be the 'guiding stars' to them in a majority of these decisions.

Although over the years, much of the law is, from time to time codified, Negligence, Defamation, Deceit, Etc, are the horizons where the case law is assuming importance and prominence. There seems to be a race between codification which has a tendency to shrink the subject and the ever enlarging modern challenges, emanating from scientific and technological advancement. The result is that there is an ever widening scope for the subject to traverse into areas unknown.

A word is to be said to the reader, who desires to grasp the subject without experiencing any serious gymnastic acrobats. He must, under each topic first read and digest the principle of law and later take-up the cases. While reading the cases the situations and circumstances must be picturised. The leading cases must be fixed up in the mind, under each topic. The names of the cases are to be read, re-read and recapitulated, until some amount of familiarity is developed.

Attempt is made in the Text to explain lucidly all the leading cases with the facts, (arguments for and against) and the decision with reasons thereof. Clarity and brevity are maintained without sacrificing the necessary explanation.

The line is clear. You are welcome to tread along. But, be sure you commit no tort (of negligence!).

CHAPTER 1

Ch. 1-1 Definition and Meaning of Tortious Liability :

"Tort" comes from "Tortum" which means "to twist". What is twisted is the conduct of the wrong-doer, called the defendant. Such a twist causes a legal injury (a civil wrong) to the plaintiff and the courts provide for a remedy to him in the law of Torts.

"Tortious liability arises from a breach of duty fixed by law. This duty is towards persons generally and its breach is redressible by an action for unliquidated damages" (Winfield).

Salmond defines tort as a civil wrong for which the remedy is

an action for damages and which is not exclusively a breach of contract or breach of trust or breach of other merely equitable obligations.

Thus **"torts are civil wrongs. But all civil wrongs are not torts"**. To be a tort, the civil wrong should have three essentials :-

1. The duty is primarily fixed by law. Law provides for legal rights and legal duties. In fact, one man's rights are another man's duties. Such legal rights are numerous in number, as for example, everyone has a right to his reputation, right to property, right to his person etc. On every other man duties are imposed by law, such duties are numerous in number; Eg. Not to assault others, not to commit Nuisance, not to slander others, not to deceive others, not to trespass on other's land, not to defame others etc. The violation of such a legal duty gives rise to a tortious liability.

2. The legal duty is towards persons generally: The legal duty, for example, not to slander means not only that slander should not be committed against X or Y but in tort the duty is considered general, i.e., it is against all persons in the world (in rem). Hence, the legal duty not to assault, libel, trespass etc., is against all persons in the world.

3. Unliquidated Damages: Damages are divided into liquidated and unliquidated. 'Liquidated', means the amount is pre-estimated and fixed by the parties themselves as in a contract. Damages are unliquidated when the court, in its discretion, awards compensation taking into consideration a large number of factors that help to assess the compensation. In fact, according to winfield action for unliquidated damages, is the basis of tortious liability. It may be noted that there are other remedies as well. Eg. Self-defence, temporary or permanent injunction, action for specific restitution of land and chattels, or abatement of nuisance etc.

Ch. 1-2 Torts Distinct From Breach of Contract:

Torts	Breach of Contract
1. In tort, there is an infliction of an injury without the consent of the plaintiff. Consent negatives liability under "Volenti non fit injuria", subject to certain exceptions. Eg. Rescue cases (Haynes V, Harwood).	1. Consent is the basic essential of all contractual obligations. In fact, if there is no consent, there is no contract at all.
2. There is no privity between parties. Ex: Donoghue V Stevenson: the manufacturer of ginger-beer was held liable for negligence to the ultimate consumer. (Legal neighbour) Another leading case is Grant V. Australian knitting Mills Ltd.	2. There is privity of contract between the parties called the contracting parties,

* *

3. In the law of torts, there is a specific violation of a right in rem (right against all the persons in the world). Right to personal safety, right to reputation, breach of contract to sell. right to property etc., are examples.	In case of a contract, the breach is due to the violation of a right in personam
--	--

Though the above distinctions are made out, it cannot be disputed that there are cases where torts and breach of contract overlap eg. A surgeon negligently operating P's minor son. There is no contract between the surgeon and the father of the minor son, but there is a tort of negligence by the surgeon in relation to the boy.

Ch. 1-3 Torts Distinct From Crime:

Torts	Crime
1. In tort, there is an infringement of a civil right or a private right of the party. Hence, a tort is a private wrong.	1. In crime, there is an infringement of a public right affecting the whole community. Hence, a crime is public wrong.
2. In torts, the wrong-doer (tortfeasor) should pay compensation to the plaintiff according to the decision of the court.	2. In crime, the criminal is punished by the state in the interests of the society, punishment may be death, imprisonment or fine as the case may be.
3. In tort, the affected or injured party may sue.	3. In crime, the state is under a duty to institute criminal proceedings against the accused.

4. The right to sue or to be sued survives to the successor. The leading case is *Rose V. Ford*, 4. The legal action dies with the person in crimes subject to certain exceptions. The maxim is 'Actio personalis moritur cum persona', (personal action dies with the person).

Ch. 1-4 Tort Distinct from Quasi-Contracts :

a) In tort, there is a primary legal duty fixed by law, but in quasi-contract there is no such duty. A qualified surgeon who operates on P, owes a legal duty to P, and hence becomes liable for negligence. In quasi-contract, for example, in unjust enrichment, there is no legal duty where A delivers goods by mistake to B instead of to C. B is not under a legal duty not to receive the goods. Of course, B must return the goods to A, but he is not liable to pay compensation to A.

b) In tort, breach of duty is redressible by an action for damages. The damages are determined by the Courts. There is no such liability in quasi-contracts.

Ch. 1-5 Reasonable Man Explained:

The reasonable man has a reference to the "Standard of care" fixed by law in negligence or in other tortious obligations.

A reasonable man is a person who exhibits a reasonable conduct which is the behaviour of an ordinary prudent man in a given set of circumstances. This is an abstract standard. As Lord Bowen rightly stated "he is a man on the Clapham Omnibus".

"He is not a person who is having the courage of Achilles or the wisdom of Ulysses or the strength of Hercules." But he is a person who by experience conducts himself according to the circumstances, as an ordinary prudent man. He shows a degree of skill, ability or competence which is general in the discharge of functions.

He is not a perfect citizen nor a "paragon of circumspection." Winfield.

As Winfield pointed out, the reasonable man's standard is a guidance to show how a person regulates his conduct.

A driver should have the capacity to drive as an ordinary prudent driver. He need not show the skill of a surgeon, an advocate, an architect or an engineer. He must show his skill in his own work or profession.

In fact, "a reasonable man is a judicial standard or yardstick which attempts to reach exactness. This is because complete exactness may not be reached". Hence, the judge first decides what a reasonable man does and then proceeds to find out whether in the circumstances of the case, the defendant has acted like a reasonable man.

Conflicts do arise as it is not possible to specify reasonableness in all its exactness, or with specifications.

Reasonableness can be best explained in cases of negligence. Negligence is in fact the omission to do something which an ordinary prudent man would not do in the circumstances. Hence, reasonable man is a man who uses ordinary care and skill.

In **Daly V. Liverpool Corporation** it was held that in deciding whether a 70 year old woman was negligent in crossing a road, the standard was that of an ordinary prudent women of her age in the circumstances, and not a hypothetical pedestrian.

The standard of conduct is almost settled since the case of **Vaughan V. Manlove**.

The defendant D's hay stock caught fire and caused damage to p's cottages. D was held liable as he had not acted like a prudent man:

In the **Wagon Mound case** (No 1) the test of "reasonable foresight" was applied and the defendants were held **not liable**.

In fine, a reasonable man is only a legal standard invented by the courts.

CHAPTER 2

MOTIVE AND MALICE

Ch. 2-1 Motive and malice explained:

The general rule is that motive is irrelevant in torts. Motive denotes the reason for the conduct of an individual. Thus, if the act is unlawful then mere good motive will not exonerate it. If the conduct is lawful then a bad motive will not make him liable.

The fact that motive is irrelevant is evident from the leading case: **Mayor of Bradford Corporation V. Pickles**. Here, the corporation refused to purchase the land which belonged to pickles, for the purpose of the water supply scheme. In revenge, he sank a shaft on his land. In consequence, the water of the corporation became discoloured and diminished. The corporation sued pickles. It was held that pickles was not liable. The judge said "we are to take the man's act into consideration, not the motive behind it".

In another case, **Allen V. Flood** this was re-stated. In this case, P was appointed by A to make repairs to the ship and this was terminable at will. D, belonging to an union objected to the appointment and threatened to go on strike if P was not removed. A dismissed P. P sued D. Held, the motive of D may be bad but not unlawful and hence not liable. This shows that if the act is lawful, mere bad motive will not make the act tortious.

Malice: It means (1) evil motive and (2) a wilful act done without just cause or excuse. The rule is that if lawful, evil motive will not make the act tortious. Further, if the act is good, still the defendant becomes liable if the act injures and damages the rights of the plaintiff. In **Bradford Corporation V. Pickles**, the court observed; 'If the act gives rise to damage without legal injury, then motive however reprehensible it may be, will not make the act tortious'.

In another case (**Guive V. Swan**), D, a baloonist landed on the garden of P. People, in large number, entered the garden to see him, but much damage was done to the vegetables and flowers. P sued D. Held, D had committed trespass and liable. Though, D had no motive or malice he was held liable.

Exceptions to the rule that Motive is irrelevant: i)
Malicious prosecution, ii) Conspiracy.

iii) Deceit or Negligent Misstatements. iv) Some circumstances
in Nuisance. (Christie V. Davey) **Ch. 2-2 Ubi jus ibi remedium:**

"Where there is a right, there is a remedy"

According to some jurists, the law of torts had developed from this maxim. "Jus" means the "legal right", to do something, "Remedium" is the right to take action (ie. remedy according to law). Hence, a person who has a legal right also has the means to vindicate his rights. It is difficult to imagine a legal right without a legal remedy.

In injuria sine damno, there is a legal remedy available to the plaintiff through the court. But, in cases coming under damnum sine injuria there is no legal injuria and hence there is no compensation.

Ch. 2-3 Injuria Sine Damno and Damnum Sine Injuria Explained:

'Damnum' is damage in the substantial sense of the term, involving economic loss or loss of comfort, service, health, or the like. 'Injuria' is legal injury and hence tortious.

Injuria sine Damno:

Injuria Sine Damno means "legal injury, without damage". There is an infringement of a legal right, but no substantial damage or loss, The plaintiff has a cause of action under section 42 of specific Relief

Ashby V. White:

The defendant, a returning officer, without proper reason refused to register P's vote duly tendered. Held that the plaintiff had a legal right to vote and that there was a legal injury to him. Defendant was held liable. The Court observed "every injury imports a damage, though it may not cost a farthing to the party".

Merzette V. William (Bank Case):

In this case without any excuse the Banker refused to honour the cheque presented by a customer. Held: that the Banker was liable to the drawer. Compensation was paid by the Bank.

Damnum Sine injuria:

Damnum sine Injuria means actual and substantial loss without the infringement of the legal right. The actual loss sustained by the plaintiff may be substantial enough, but as no legal injury has been done to him, no compensation can be recovered.

Chasemore V. Richards:

The defendant D dug a well on his own soil. In consequence, the adjoining owner P's stream of water dried up and his mill was closed down. P sustained heavy economic loss. Held: No compensation. There was no legal injury to P but only economic loss.

Gloucester Grammar School:

A teacher who was illegally terminated by Gloucester school opened a school opposite to it. The pupils, who loved the teacher joined his school in large numbers. Thereupon the Gloucester school was closed. Held: No compensation. Reason: Business competition, and teacher has not infringed any legal right of the Gloucester School.

Moghul Steamship Co., V. McGregor:

A B C and D four ship owners joined together and offered special terms to the consignors to book cargo. In consequence, P a' prosperous steamship company suffered substantial loss, for which it sued ABC and D for compensation. Held: Not liable. (Business competition and no legal injury to P).

Dickson V. Reuter Telegraph Company:

A sent a telegram to B to send goods. The telegram was wrongly delivered by the post office to c. c sent the goods to A. A refused to take the goods. C sued A. Held : No compensation.

Ch. 2-4 Misfeasance Non feasance and Mai feasance:

Misfeasance means doing a lawful act in an improper manner. (Cases in master and servant). Nonfeasance means not performing or omitting to do that which must be legally done (cases of negligence). Malfeasance means doing an unlawful act e.g. trespass.

: (Refer Chapters 4,10 & 14)

CHAPTER 3

GENERAL DEFENCES

Ch. 3-1 General Defences: Nature and Scope

A defence is a plea put forth by the defendant against the claims of the plaintiff. The following are the defences open to a defendant in an action for tortious liability.

1. Volenti non-fit injuria.
2. Inevitable accident.
3. Act of God
4. Private defence.
5. Necessity.
6. Statutory authority.

Ch. 3-2 Volenti non fit injuria (Also called leave and licence):

This means that "if the suffering is willing, no injury is done." Accordingly harm or even grievous hurt may be inflicted on a person for which he has no remedy if he has consented to take the risk. To this group belong injuries sustained in lawful games or sports or surgical operations. The origin of this can be traced to the writings of Aristotle. Roman jurists had recognised it. Later Bracton explained it in his *De Legibus Angliae*. The modern meaning is confined to the injuries sustained by persons. Here the risk to which a person gives his consent is "the risk of an operation being unsuccessful", similarly, in respect of injured but, if he is injured in a legal incident then, there is no injury because he has consented to the legal risk which is natural in such sports or events. The consent is not merely to the physical risk, but to the legal risk as well.

Consent may be express or implied.

This maxim is subject to a number of exceptions :-

1. The game or sports or the operations must not be one which is banned by law. Football, Cricket, Hockey etc. are lawful games. However, Boxing with open fists, duel with poisonous swords are legally prohibited. Similarly notoriously dangerous processes in, cinema shootings. In such cases the maxim does not apply. The injury may be sustained by the persons who are participating in the

games or by the spectators or by third parties.

2. Consent :- The consent must be free and voluntary. If consent is obtained by fraud it is no consent. In a case a music teacher obtained the consent from his pupil fraudulently to improve her voice and seduced her. Held : Music teacher was liable.

3. Knowledge does not necessarily imply consent. The test of consent is objective, for the rule is not *Scienti* (Knowledge), but *volenti non fit injuria*. This is evident from two leading cases:

a) Thomas V. Quarter Maine :

In this case, Thomas, working in a Brewery, was removing the top roof of a boiling vat. But the lid came off suddenly and he fell into another vat containing scalding liquid and was injured. It was held that the damage was accidental to the legal act and hence the defendant was not liable. This was a wrong decision. The error was corrected in the leading case :

b) Smith V. Baker :

In this case a crane was jibbing from one place to another. The plaintiff P had no notice of it but had the knowledge of jibbing work being carried on by D. He knew the possible risk, involved, but was not warned as to when the jibbing work commenced. A stone glanced off from the crane and hit P who was injured. The House of Lords held that D was liable : "Mere knowledge" was not sufficient according to the court.

4. Negligence :- Cases of negligence are exceptions to the rule. In *Dann V. Hamilton*, P a lady passenger had knowledge that D who was driving a Taxi, was under the influence of drink. There was an accident due to negligence of the driver and P was injured. Held : D liable.

5. Rescue cases :- In circumstances where a person goes out to rescue another, the maxim does not apply.

The leading case is **Haynes V. Harwood**. In this case a police-

man P darted out from his police station to stop a van, run by horses without a driver, in a crowded street. The defendant D had

left the van unattended on the highway and the horse had bolted when some boys threw stones at the horse. The police-man went to rescue and to stop the horses, but was seriously injured in this process. Held : D liable.

Ch. 3-3 Inevitable accident :

Accidents are of two kinds :

i) Act of God (Vis major) and ii) inevitable accident.

In Act of God there is the operation of natural forces so unexpected that no human foresight or skill could reasonably be expected to anticipate. In inevitable accident, the accident is not avoidable by any such precautions as a reasonable man doing such an act then and there could be expected to take. (Pollock)

Inevitable accident is a defence recognised in law. Hence, the defendant may set up a plea and prove that act was beyond a reasonable man and hence no liability would arise.

Leading Cases :

a) **Nitroglycerin case:** In this case Nitroglycerin packed in a box was sent through a common carrier. As there was some leakage, the servants of the carrier opened the box in the premises of P with a view to preventing the leakage. There was an explosion resulting in damage to the premises of P. P sued for damages. It was held that the defendant had taken all precautions and that he was not negligent. The defendant did not know the contents of the box and had no knowledge also. The accident was beyond the standard of a reasonable man. Hence the defendant was held not liable.

. b) **Fighting Dogs case:** In this case the dogs of P and D were, fighting. D was beating with a stick to separate them. P was the onlooker. Accidentally D hit P in the eye resulting in a serious injury. It was held : D was not liable as there was no negligence. The hit was inevitable and could not be prevented (Brown V. Kendal)

c) **Dog and Motor-car Case :** A dog, quiet and docile, had been put by D in his motor car which had been parked on the road side. P was walking along- side the road. The dog jumped, barked and smashed the window glass pane. A splinter entered the eye of P causing injury. Held this was inevitable accident and D was not liable. (Fordon V Harcourt)

Ch. 3-4 Act of God : (Vis major)

This is a circumstance where the injury is directly due to certain natural causes. There would be no human intervention, and no

human foresight could visualise the act thereof. In such a case the primary reason is traced to nature or to God. No liability arises.

Nichols V. Marsland : The natural stream of a river had been dammed up. An extraordinary rainfall came and broke the embankments and water escaped and destroyed 4 country bridges for which the court held that D was not liable. Such a rainfall was an extraordinary act of nature which nobody could reasonably expect to happen.

Act of God is a question of fact and must be established. In **Greenock Corporation V. Caledonian Railways**, the corporation built a padding pool for children, by deviating the natural flow of the stream of water. Owing to extraordinary rainfall, the stream overflowed. Water entered the property of P and damaged it. It was held that though rainfall was an act of God, the deviation of the stream was a human intervention and hence the corporation was liable. The contention of act of God as a defence was rejected.

Lightning, earth quake, cloudburst, tempest, hurricane, snowfall, frost etc., are acts of God. In **Noble V. Harrison** a branch of a tree fell on a car and the car was smashed. It was an act of God and hence the owner of the tree was not liable. In another case, a Tiger had been tied, in the premises of a circus, with iron chains. A lightning struck the chain. As a result the chain was cut off and the tiger escaped. It went to the nearby village and killed a person. This was an act of God and the circus owner was held not liable.

CHAPTER 4

NERVOUS SHOCK

Ch. 4 Nervous Shock :

Nervous Shock is a personal injury to the nerve and brain structure of the body and hence damages may be recovered. Mental shock is a shock to the moral or intellectual sense of a person. Such a shock may be caused by the defendants acts or words without any physical injury or impact. No action lies for mere mental anguish, feeling or distress. But, if the shock is factual and real then "True nervous shock is as much a physical injury as a broken bone or a torn flesh". The defendant is liable.

Two things are to be established :

1. The defendant must owe a duty to the plaintiff, and
2. The plaintiff must be within the area of potential danger or

dangerous zone created By the defendant. If one of these is not established the plaintiff fails. The leading cases are:

- a) Bourhill V. Young (Fisher -woman's case)
- b) Wilkinson V. Downton (Grey hair case)
- c) King V. Phillips (Car backing case)
- d) Hambrook V. Stokes (Unattended Lorry case)
- e) Owens V. Liverpool Corporation (Mourner's case)
- f) Dulie V. White (Horse Van running to a public house)
- g) Chadwick V. British Rly. Board (Rescue in Rail disaster)

Bourhill V. Young

P a fisherwoman, when she got down from a tramcar, the driver was helping her putting a basket on her head. Y a motorcyclist negligently collided on the main road, against a car and died. P did not see the accident but only heard the collision. The body of Y was removed. The tramcar proceeded on its way. P while crossing the road saw the blood on the road and suffered a nervous shock. She later gave birth to a still born baby and sued Y's representatives for nervous shock.

Held : Not liable. Reasons : 1) Y did not owe a duty to the fisherwoman, 2) It is no doubt true, she was within the danger zone created by Y but, as both conditions are not fulfilled, P failed, i.e., Y was not liable.

King V. Phillips.

D was negligently backing his car. He dashed against a tricycle rider boy. The boy was slightly injured but the tricycle was damaged. The boy's mother heard the screaming of the boy, saw through the window the damaged tricycle but not the boy. She suffered a nervous shock. Held, D liable.

Wilkinson V. Downton.

D, as a practical joke, reported to W, that W's husband was smashed in an accident. On hearing this, W suffered a shock and later her hairs turned grey. Held, D liable. The reasons are:

- i) D had a duty to W. By giving false news, he has committed a breach, and ii) W is within the danger Zone created by D.

Owens V. Liverpool Corporation

In a funeral procession, a few mourners were carrying the hearse. The tram car of D, negligently dashed against the hearse damaged it and the coffin was overturned. Seeing this the four mourners, who were the relatives of the deceased suffered a nervous shock. Held D liable.

Hambrook V. Stokes

D's driver had left unattended his lorry in running condition, at the top of a steep road. P's wife W, who had accompanied her children to see them off to the school, left them near the bend of the road and was returning. Just then, she saw the lorry running towards her child. She was frightened for the safety of her children. A bystander informed her that a child (answering the description of her child) was injured. She suffered a nervous shock and later died. Held D was liable.

i) The shock was caused by what W saw with her own eyes; W could not see her child round the bend when the lorry was coming down violently. The assumption was that the shock was due to this situation created by D.

ii) The fear for children's safety is not remote and in the circumstances D owed a duty to her. There was negligence, as the lorry was unattended.

CHAPTER 5

STRICT LIABILITY

Ch. 5-1 Strict Liability Ryland V Fletcher :

The principle of strict liability has its origin in the leading case **Ryland V. Fletcher**.

In this case B, a mill owner employed independent contractors who were competent, to construct a water reservoir for the purpose of his mill. In the course of construction the contractors came across some old shafts and passages on B's land. They did not block them up, but completed the construction. When the reservoir was filled with water, water gushed through the shaft and flooded the mines of A.A sued B. The court held that B was liable on the ground of "**Strict liability**".

Blackburn J held we think that, **the true rule of law is that the person who for his own purposes brings on his land and collects and keeps there anything likely to do mischief, if it escapes, must keep it in, at his peril and if he does not do so, is prima facie answerable for all the damage which is the natural consequence of its escape"** .

This is the rule in Ryland V. Fletcher. In this case, B was not negligent although the contractors were negligent. Still under the rule of strict liability B was held liable.

Scope of the Rule :

This decision laid down a new principle which became the subject matter of great importance in later years. It is considered as a starting point of the liability wider than what it was before the decision of the court. This rule has been extended to a large number of cases. Eg. Escape of fire, gas, explosives, Electricity, Oil, vibrations, Bad fumes etc. Here escape is necessary otherwise there is no liability. To apply the rule there must be a personal injury sustained by the plaintiff.

In Shiftman's case the plaintiff was injured as he was struck by a falling flag pole belonging to defendants. The rule was applied and D was held liable.

If the flooding is due to natural cause, as in the case of gravitation then the defendant will not be liable.

If a person grows poisonous trees and his neighbor's horse happens to eat the leaves over the compound and die, the defendant would be liable [Crowburst V. A.B. Board]

The question is whether the things are dangerous or not. Justice Blackburn stated that if anything is stored which is likely to do mischief then the liability arises. Normally water is not dangerous. But, in Rylands V. Fletcher, that was the main thing for the injury. Hence, the thing here need not be dangerous by itself.

Exceptions :

1. Consent of the plaintiff: If the plaintiff has given his consent the strict liability rule will not apply but 'volenti non-fit injuria' applies. Hence, the defendant will not be liable. In a leading case, Peter V. Prince of Wales Theatre, A took a lease of a theatre which had been fixed with pipes with running water to be used in case of fire hazard. Due to frost there was leakage in the pipes resulting in the damage to the property of P. P sued D the owner. The court held D not liable as there was consent of the plaintiff.

2. Common Benefit : If source of danger is for the common benefit of both the plaintiff and the defendant, the defendant is not liable. In Carstairs V. Taylor, B was in the first floor and A was in the ground floor as a tenant. Water from the roof collected in a box and was discharged out through a pipe. A rat gnawed a hole in the box and water leaked out and damaged the goods of A. Held B not liable.

The reason was that the arrangement was for the common benefit of both the parties.

3. Act of Stranger : If the escape of a thing is due to the act of stranger, the rule will not apply. In Richards V. Lothian, a stranger deliberately blocked up the waste pipe of a lavatory fixed in the premises of D. This caused flooding the premises of P. P sued D. Held, the defendant D was not liable as the act was due to a stranger.

4. Statutory authority : Sometimes the law made by parliament or State Legislature excludes strict liability. In Green V. Chelsea Water Works Company, the Parliament had authorised the company to lay the main pipes. The pipes burst flooding the premises of P. It was held that the company was not liable, (of course, the act should not be due to the negligence of the defendant).

5. Act of God : It is a general defence and may be set up to

establish that the escape was due to some natural cause which was beyond the control of the defendant.

6. Default of the Plaintiff: If the injury is due to the default of the plaintiff then there is no compensation. In a decided case, the plaintiff teased a Chimpanzee in a zoo and the animal caused injury by biting the hand of the plaintiff. Held the plaintiff alone was responsible and the defendant was not liable.

The modern law has extended this principle of liability to various circumstances and situations. Escape of sparks from railway engine, escape of fire from one house to another have been dealt with at length. In recent years, the liability is extended to nuclear installation where **Radio active** substances cause hazards to individuals.

Ch. 5-2 Scienter Action :

Means "Action when there is Knowledge". This is the principle applied in respect of animals.

Animals are broadly classified in to two categories. 1. Ferrae naturae and 2. Mensuetae naturae.

Ferrae Naturae means ferocious animals which are by nature Ferocious. The law relating to this, under the extended meaning of **Ryland V. Fletcher**, is that the very bringing and keeping of such animals is prohibited.

Mensuetae naturae means **domestic animals** which are by nature docile and obedient. But, they may have a tendency to become ferocious under some circumstances. The owner may or may not know the dangerous propensity of the animals. If he does not know the propensity, he is not liable in tort. However if it is possible to establish that the defendant had the knowledge of the dangerous propensity of the animal, the defendant becomes liable under "Scienter Action".

In respect of **ferocious animals** like Lion, Tiger Chimpanzee etc., the very bringing is prohibited because the experience of human beings shows that these animals like Dogs, Cats, Cows, Bullocks, Donkeys, Horses, etc. are not by themselves dangerous to human society. But the domestic animals may develop a propensity to cause harm or injury and the owner is liable if he has the knowledge of this propensity. In a number of cases decided, the Courts have held that in order to constitute a tortious liability it must be established:

1) That the animal was savagery

(2) That the defendant knew or had knowledge of the tendency of his animal.

In Hudson V. Roberts : The bull of Roberts gored Hudson on seeing in his hands a red hand-Kerchief. Held Defendant liable as 1) the animal had so attacked others many times previously (2) that defendant had knowledge of it.

In Jackson V. Smithson : The facts were that one person by name Catherine was attacked by a ram, which goaded her and threw her down. Held, defendant liable as he had knowledge of the propensity of the animal.

CHAPTER 6

VICARIOUS LIABILITY

Ch. 6-1 Vicarious Liability : Origin and Meaning :

This concept makes one man liable for the acts of another because of certain relationships like Master and Servant, Parent and children etc. Originally it came from "Quit facit per alienum facit per se" (He who does an act through the instrumentality of another does it himself). This rule was inadequate to explain the reason. Later the "General command theory" was put forward and then "particular command theory". None of these was satisfactory and the modern theory is that the master is liable because he is a substantial fellow or authority. **As Winfield points out this theory is based on "Social convenience and rough justice"**.

'Servant' and independent contractor distinguished : The

Servant is a person who works according to the instructions of the master. The master can, not only order him to do an act but can also control how it should be done. The servant works under the thumb of the master. The master has full powers to control the acts of the servant. He has the powers of removal also. He is different from an independent contractor who undertakes to do a piece of job according to the requirements of the employer. The independent contractor is not under the control of employer. Hence, the employer is not liable for the acts of the independent contractor.

Liability of the Master: The master is liable for the acts of the servant, if the acts are done within the course of his employment otherwise, he will not be liable.

"Within the course of employment" means :

i) Doing an authorised act

(ii) Doing an authorised act in an unauthorised manner

and (iii) Doing acts which are incidental thereto.

The act of the servant must fall into any one of the above, then only the master becomes liable. Broadly speaking the master is liable for carelessness, mistake and wilful wrong doing of the servant. Sometimes he is liable for the criminal acts of the servant.

Carelessness of the Servant : This is the most common kind of wrong which is generally due to the negligence of the servant. The intention of the servant is not material. If the servant is acting in the course of his employment, then the master becomes liable, but if the servant is on a frolic of his own then the master is not liable.

The leading case is **Century Insurance Co. V. Northern Ireland Road Transport**. In this case, the driver of a petrol lorry was transferring petrol from the lorry to the tank. He negligently struck a match to light a cigarette and threw it on the floor. This caused a conflagration and an explosion. The property of P was damaged. The defendant master was held liable for the careless act of the driver, as the act had been done in the course of his employment. "Lighting a cigarette was an act of the servant for his comfort and convenience". The act was innocent, but was a negligent act of the servant, and hence the master was liable.

Mistake of the Servant : Here the servant is a mis-guided enthusiast. The leading case is **Bayley V. Manchester Railway**.

The porter of the defendant Railway Co. violently pulled out from a train P who had a ticket to go to some destination. In fact, the porter had mistakenly taken P to be going in a wrong train. P sued and the Railway authority (master) was held liable.

In another case the servant of D suspected that sugar was pilfered by a boy from the wagon and he struck the boy, who fell and a wheel of the wagon went over his foot. D was held liable.

In another case a petrol bunk servant under a mistake, as to payment assaulted a car owner P who had taken petrol. The servant did not know that P had already paid for the petrol. The master was held liable for the act of the servant.

Wilful wrong of the servant: Here there are two rules.

i) The act of servant is still in the course of employment even if it is forbidden by the master.

ii) It is not outside his employment if he intends to benefit himself, though not his master.

Limpus V. London General Omni -Bus Company :

The driver, had printed instructions not to race with or obstruct other buses. The driver did not observe this and caused a collision. His master was held liable because this was an unauthorised manner of doing an authorised act.

The **Beard V. London Omni-Bus.** the driver brought the bus to a terminus and went out for breakfast. In the meanwhile the conductor drove the bus for the next journey. In so doing he dashed against and caused injury to P. P sued. It was held that the master was not liable as the conductor was not in the course of employment when he was driving the bus.

In another case, the driver, had printed instructions not to give lift to any unauthorised person. The driver violated it, gave lift to P and there was a collision resulting in the death of P. It was held that the master was not liable for the act of the driver.

In Lloyd's Case, D was a firm of solicitors. It had employed a clerk to do its work. P a widow was the owner of some cottages. She went for professional advice and the clerk asked her to execute documents, which she did. Here he had conveyed cottages to himself. The court held that D the master was liable for the wilful wrong doing of the servant clerk.

Criminal acts of the servant: The general rule is that only in some cases master is liable. In *Morris V. Martin*, P gave her furcoat for dry cleaning to X who handed it over to D. The servant of D sold

it away. It was held that under the circumstances D was liable for the criminal act of the servant. The master is not liable except in some cases where the act amounts to fraud or theft or assault.

The other cases are : 1) *Crood V. Durbyshire.*

2) Blanton V. National Coal Board.

3) Dyer V. Munday.

Ch. 6-2 Independent Contractor :

An independent contractor is a person appointed by the employer to turn out a piece of job. He is different from a servant in as much as a servant is a person who works under the control and supervision of the master. For the acts of independent contractor the general rule is that the employer is not liable. There are a number of exceptions. These are the non-delegable duties.

According to Winfield the question is always whether the damage is caused due to the employer's breach of duty. The duties of the employer are divided into delegable and non-delegable. This means, the non-delegable functions must be performed by the employer himself. But if he delegates such a function to an independent contractor, the employer himself becomes liable.

There are a number of non-delegable duties :

i) Delegation may be a breach of duty itself and the employer may be negligent in giving instructions or information to the independent contractor. In a case, a gas company had no authority to interfere on the Highways. Independent contractor's servant negligently left a heap of stone over which the plaintiff fell and was injured. Held, the employer was liable. (Ellis V. S. G. Co.)

ii) Obligations of the employer are to provide, a competent staff of men, adequate material and a proper system of effective supervisor. If he does not follow these, the employer becomes liable. '

iii) Operations on or adjoining the highways : **In Tarry V.**

Ashton there was a over-hanging lamp of D on

the foot way. D appointed independent contractor to repair who did it negligently. The lamp fell on P a passer-by. It was held that the employer D was liable.

In **Grey V. Pullon** the defendant D had statutory authority to make a drain from his house to a sewer across the road. He appointed independent contractor to cut trenches, who did it but negligently filled it up. The plaintiff P a passenger, was injured. D was held liable.

iv) Case of strict liability : The rule in Ryland V. Fletcher is applicable in respect of bringing and storing of items which

cause injury when they escape. In such case the employer is liable.

v) Cases of statutory authority : The recent enactments have fixed the liability of the employer under the Factories Act, Workmen's Compensation Act etc.

In **Padbury's case**, D employed a subcontractor to put casements to the windows. In so putting, an iron tool which had been kept by the servant on the window sill, fell and injured P on the street. P sued D. The court held that D was not liable as the tool was not placed in the ordinary course of doing work. There was only a collateral negligence of D.

vi) When the employer personally interferes and gives directions to the independent contractor the employer becomes personally liable.

6-3 Joint Tort-Feasors

When two or more breaches of legal duty by different persons result in a single injury to the plaintiff- P, then the two or more persons are called joint Tort Feasors. According to Lord Justice Bankers "Persons are said to be Joint tort-feasors when their shares in the commission of tort are in furtherance of a common design".

In **Brook V. Bool** : Two men were searching for a gas leak. Each applied naked light to the gas pipe in turn and one of them caused explosion. They were held to be joint tort-feasors. This is different from a case where two ships negligently collided and later dashed against another vessel negligently. This is also different from a tort committed by a child under the directions given by the parents.

Contribution : Both the joint tort-feasors are liable in tort. But, the plaintiff can claim the amount in full from one of them. Question arises in such cases whether one tort-feasors may claim indemnification from the other.

In **Merry Weather V. Nixon**. A and B jointly damaged the machinery in C's mill. C sued them jointly and got compensation which he recovered from A. Now A sued B for half the amount which he had paid. It was held that A could not recover from B. This decision has been reversed by the Parliament in England in the Law Reforms Act 1935. According to this one tort-feasor can recover his

contribution from the other tort-feasor. Hence he is entitled to be indemnified.

CHAPTER 7 DEFAMATION

Ch. 7-1 Defamation

Defamation is the publication of a statement which reflects on a person's reputation and which tends to lower a person in the estimation of right thinking members of society generally, or, which tends to make him shun or avoid that person (Winfield).

This definition is wider than those, which define, defamation to mean the publication of a statement which tends to bring a person into hatred, contempt or ridicule. Imputations of insincerity or insolvency etc., which may arouse only sympathy or pity in the minds of reasonable people, are also covered by the above definition.

Ch. 7-2 Essentials:

The statement or words must be :

- i) False
- ii) Spoken (slander) or written (libel)
- iii) Defamatory and
- iv) published.

i) **False** : The words used must be false. In fact, truth is a clean justification. It must be shown that the imputation was false and malicious.

ii) The words may be spoken as in slander or may be in writing i.e., in a permanent form as in libel. Any writings, publication in a newspapers, sky writing, cinematograph film, etc., are covered under libel. The leading case is *Youssof V. M.G.M. Pictures*.

The defendant D, produced a film named "Rasputin, the mad monk". In that film, one princess "Natasha" had been raped by Rasputin, the mad monk. The princess Irina of Russia, the wife of

prince Youssouppoff (plaintiff) claimed compensation on the ground that it was clearly understood that the reference was to prince Irina. The jury awarded 25,000 pounds as compensation and this was confirmed by the Court of Appeal.

iii) Statement must be defamatory and refer to the plaintiff.

The test is whether the words used tend to lower the plaintiff in the estimation of the right thinking members of the society generally (Winfield). If the words expose a person to contempt, ridicule or hatred or injures his profession or trade, or makes others shun or avoid his company, then the words are defamatory e.g. imputation of unchastity to a woman.

The plaintiff must prove that the defamatory words have a reference to him. Intention is not material.

If the reference is to a Class or group of persons, then the plaintiff must prove that the reference is to himself. A writes that "lawyer are thieves", no particular lawyer can sue (Eastwood V. Holmes), But, when words have a latent meaning or a double meaning (pun), then it is defamatory. This is called "Innuendo".

Leading Cases.

i) Mrs. Cassidy V. Daily Mirror.

ii) Tolley V. Fry and Sons (Refer Ch. 7.5 infra)

iv) The words must be published: publication is an essential requirement. Whether a statement tends to lower a person's reputation is decided by the standard of a reasonable man.

Publication means publishing a particular item of news or information to a person, other than the person to whom it is addressed.

1. If A writes to B, defaming B and sends the letter by registered post, there is no publication and therefore A is not liable.

2. If A writes a post-card defaming B, and sends by post, there is publication if an inquisitive postman reads and publishes. A is liable in such a case. (Robinson V. Jones)

3. If A dictates to his steno defaming B and if the steno publishes it, there is publication.

4. In *Huth V. Huth*, A sent a defamatory letter in an unsealed cover to B. B's butler, without authority opened and read it, held, that there was no publication as B had no authority to see.

Ch. 7-3 Differences between slander and Libel.

Libel :-

1. The statement must be in a permanent form, Broadcasting of words comes under libel. Pictures, statues, effigy writing in any form, Printing marks or signs, sky writing by airplane etc come under libel. T V relay is libel.
2. Libel is generally addressed to the eye.

3. Libel is actionable per se. (by itself) Libel tends to provoke breach of peace. It is a crime as well as tort in England and India.

Slander

1. Slander is in a temporary form. It is in words or gestures. Manual languages of the deaf and dumb, mimicry, and gesticulations etc., are examples. Slander is addressed generally to the ear.
2. Slander is not actionable per se. Hence, special damage must be proved i.e., Economic or Social

loss to the plaintiff must be proved. Slander is not a crime, in England However on some occasions words may be seditious or blasphemous and hence may become a crime, but according to Sn. 499 I .P.C. it is a crime, in India.

Ch. 7-4 Slander is not Actionable per se.

This means that in cases of Slander special damage must be proved. Libel is actionable per se. As libel will be in a permanent form, it is likely to do more harm to plaintiff. Special damage means actual damage sustained by the plaintiff. The plaintiff, must prove loss of money or some temporal or material advantage estimable

in money which he has lost. Mere loss of society or consortium of one's friends is not sufficient.

If a person is excluded from a dinner party, because of slander he sustains a loss material and temporal. Hence, there is special damage and compensation can be recovered. If there is no special damage there will be no compensation in slander. Hence, the general rule is that slander is not actionable per se. But, this is subject to the following exceptions:

1. Imputation of Criminal offences punishable in nature.

Hailing V. Mitchel. M was a hotel owner. H was a hair dresser. M said to H "You were with a crowd last night". "I cannot have you here. You are to be turned out". The court held that the words did not amount to an imputation of an offence.

Jacksons V. Adams :

P was in possession of parish bell-ropes. D told P "Who stole the parish bell-ropes; you rascal". As the possession of bell-ropes was with P stealing by P was not possible and hence, there was no imputation of an offence.

2. Imputation of contagious or infectious diseases which are likely to make others avoid the company of the plaintiff.

3. Imputation of unchastity or adultery to a woman.

4. Imputation of unfitness, dishonesty or inefficiency in a profession trade or business. Imputation of ignorance of law to a lawyer or incompetence to a surgeon, or cheating to a trader or insolvency to a businessman are examples;

Bull V. Vasquez, B was an M.P. and was in army service. He had come back on leave. V said of him that B was sent home for taking much drinks. B sued B. Compensation was granted. There was imputation of drunkenness.

Ch. 7-5 Defences open to the defendant are :-

i) **Justification** : Truth or justification is a very good and complete defence. Defamation is the injury to a man's reputation and if there is truth in the statement, then there is no defamation. The person is not lowered, but is placed to his proper level.

The substance of the statement must be true, not merely a part of it. "How, a lawyer treats his clients" was an article which dealt with how a particular lawyer was treating his client.

Held the article was in-sufficient to justify the heading. (Bishop V. Lautiar)

ii) Fair Comment : The comment must be on a matter of public interest. Honest criticism is essential for the efficient working of democratic public institutions. The Government and its institutions may be criticized.

Contents :

1. The matter commented must be of public interest. The Government and its various wings and establishments and public institutions may be criticised. Novelists, Dramatists, Musicians, Actors, etc., may be criticised.

2. Fair comment must be an expression of an opinion and not an assertion of facts. Plaintiff was advertising in papers as a specialist in E.N.T the defendant commented on him as "a quack of the rankest species". Held: that it was a comment, the Court always looks to the merit of the comments.

3. The comment must be fair : Mere violence in criticism by itself will not make the statements unfair.

4. Comment must be **malicious**. Even fictitious name may be used. That by itself will not render the statement unfair.

Innuendo :

In case of defamation one question that may come up for consideration is the actual meaning of the words used. Sometimes words may have double meanings (pun) or may be ambiguous but courts will be interested in finding out the exact meaning that is to be attributed under the circumstances. It is for this reason that the court invokes the concept of Innuendo i.e. to find out the inner meaning of the words used by the author of the defamatory words.

w

Mrs. Cassidy V. Daily Mirror.

The facts were that the defendant published in his newspaper that 'Mr. Cassidy and Miss. K are engaged', In fact Mr. Cassidy had married Mrs. Cassidy. The wife Mrs. C sued the

publishers. Her contention was that on seeing the news item, her friends in the women's club and elsewhere shunned her company and looked down upon her. The court therefore looked into the inner meaning of the publication. In effect, it meant that Mrs. C was not a legally wedded wife of Mr. C i.e. she was a kept mistress of Mr. C. The court awarded compensation.

Tolly V. Fry and Co. (Chocolate case)

In this case, P was a golf player and a member of the golf club. He was an amateur who became very popular. The defendant company D, published his photo with a chocolate protruding from his pocket, inscribed 'Fry and Co. Chocolates'. The Golf club felt that the plaintiff had violated the club rules and that he could be asked to resign. P sued the company for compensation. Court applied the principle of Innuendo and held that the real meaning was that if P by consent sell his name as Golf player he could be terminated from the golf club. Hence D was held liable.

i) Privileges : Privileges are of two Kinds : absolute and qualified.

Meaning of privileges : They are occasions on which there ought to be no liability for defamation. This is because the public interest outweighs the plaintiff's right to his reputation.

Privileges are absolute when the communication is of paramount importance. Such occasions are protected, however malicious or outrageous they may be. The defendant may make statements even if they are false.

Examples for absolute privileges:

1. Statements made in Parliament or Legislature.
2. Reports, papers, etc., of either House of Legislature.
3. Judicial proceedings.
4. Communications between solicitor (advocate) and his client.
5. Communication between one officer and a foreign officer.

Statements are qualified when the person makes the statement honestly even though they are false.

1. Fair and accurate reports of Parliamentary debates, and proceedings.
2. Fair and accurate reports published in newspapers. Similarly broadcasting.
3. Statement made in pursuance of duties. A reports to B. about the conduct of C. If it is A's duty to report and if he is to protect the interest of B, he may make statements about C.
4. Where A and B are having a common interest to be protected. Statements made about the plaintiff P between A and B themselves are protected.
5. Statements made in self protection and self-defence to procure redress of public grievances are protected.

CHAPTER 8

ASSAULT AND BATTERY

Ch. 8 Trespass to person :

Assault and Battery are two forms of Trespass to person. Battery is the intentional application of force to another person. Assault is an action of the defendant which causes to the plaintiff a reasonable apprehension of the infliction of a battery on him by the defendant. (Winfield)

To. throw water at a person is assault. It is battery if a drop falls on him. Pulling away the chair when a person is about to sit is assault. It becomes battery when he touches the ground. Similarly, flashing light with a mirror is assault. It is battery when the rays impinge on the plaintiff.

The word force has a defined scope in the context of assault and battery ; infliction of light, heat, electricity, gas, odour and similar things which may be applied to such a degree as to cause injury or personal discomfort, amounts to force as required in battery. As Chief justice Holt, rightly said the least touching of another in anger is battery (Cole V. Turner). Hence spitting a man on his face is assault, but, if any drops fall on him, it is battery.

1. Pointing a loaded pistol is assault. Pointing an unloaded pistol is no assault. In **R.V. St. George**, it was held that pointing an unloaded pistol at dangerously close quarters was assault. There

was a reasonable apprehension of the impact of the gun. Hence it was assault.

2. In Stephens V. Myers : P as Chairman, was in a meeting. D, a member became angry and vociferous. Resolution was passed

3. To remove him from the meeting. Thereupon D moved with closed fist towards the Chairman, but was stopped by a person who was sitting next to D. Held that there was assault.

When a person standing on a Railway platform shows his fist to the plaintiff who is in moving train, there is no assault.

Awakening a pupil in a class-room by another student while the class is going on, is battery. But if the teacher wakes him up there is no battery.

Similarly in the case of sermons, to touch a person with the least force, to call attention, is no battery, if this is done by the Bishop.

There are hundreds of instances of assault and battery in the day to day affairs of human beings. But because of the good humour of mankind they do not go to the Courts. Perhaps the other reason is **De minimis non-curet lex** meaning law does not take cognisance of trifles.

Defences :

For assault and Battery the following are the defences open to the defendant.

i) Self Defence : This is a natural right recognised by law. A person may defend his person, his family or his property from any trespass. Of course, the physical defence must be proportionate to the injury received. Similarly, a person may inflict injury to defend his property.

ii) Right to Expulsion : The defendant is entitled to forcibly expel the trespasser who enters by force or otherwise without permission. Of course, the defendant should not use more force than what is necessary.

iii) Right to retake property : Use of force as is 'necessary' under the circumstances is valid and law allows the retaining of the land or goods using force.

iv) **Volenti non fit injuria** : In lawful games like cricket, football, boxing etc.. any injury received is covered under volenti non fit injuria. This is a good defence to the defendant.

v) **Legal Arrest or search** : Under the law the police officer is empowered to arrest a person or search a premises and in such a circumstance, he may use so much of the force as is necessary according to law.

iv) **Force used under authority** : Parents, guardians, supervisors of trainees, captain of ship etc. have some inherent rights to "correct" the persons under their control. Such persons may validly defend themselves, provided the force used was reasonable and necessary.

CHAPTER 9

FALSE IMPRISONMENT AND MALICIOUS PROSECUTION

9-1 False Imprisonment:

False Imprisonment is the infliction of bodily restraint which is not expressly or impliedly authorised by law. False means erroneous (wrong). There is the restraint of a man's liberty, when the person cannot freely go about at his own will

There are two essentials :

i) Knowledge of the plaintiff about his imprisonment is not essential.

Merrings Case: Defendant D suspected M of stealing a Keg of Varnish. He asked two police-men who went to M and brought him to the defendant. M was put in a waiting room and the police were standing outside. Held : Though the plaintiff did not know that the police were outside, this amounted to false imprisonment.

ii) The restraint must be complete :

In **Bird V. Jones**. The defendant wrongfully covered a part of the road on a Bridge, put certain seats for spectators to see the regatta show on the river. P claimed over the fence without paying, but was prevented by D. Held : D not liable because the

restraint was not complete. P could have taken the uncovered part of the road to go to the other side.

Herd V. Steel Co: In this case, P, a mine-worker came down the lift at 9-30 A.M. to the work-spot. As per rules he could go back at 4 P.M. using the lift. P was ordered to do a different job which he wrongfully refused. P demanded to be taken up but was prevented. He was detained for about 20 minutes. P sued D, the steel Company. Held : D not liable as there was no false imprisonment.

Robinson V. Bui main ferry Co. : P paid a penny to enter a Wharf of C. P was to wait until a boat came. He could take the journey on paying again a penny, to go to the other side. However, P refused to pay. Held : D not liable as the toll of a penny was reasonable and that D could prevent evasion of payments. There was no false imprisonment.

Ch. 9-2 Malicious Prosecution.

It is defined as the institution of Malicious case against another without reasonable or probable cause.

In Malicious prosecution the plaintiff must prove:

1. That the defendant prosecuted him in a Criminal court.
2. That the prosecution ended in favour of the plaintiff, i .e, he was acquitted.
3. That the prosecution lacked reasonable and probable cause.
4. That the defendant acted with malice.
5. That the damage resulted to the

plaintiff.

Essentials explained:

1. There must be a prosecution by the defendant complaining against the plaintiff. This means at least summons must have been issued to appear before the court.

2. The plaintiff must prove that there was acquittal or discharge. If the plaintiff is convicted he cannot sue for Malicious prosecution. Similarly when the case is withdrawn under a compromise, no suit lies for Malicious prosecution.

3. There must be lack of reasonable and probable cause. In

other words, it must be proved that at the time the charge was made there was no reasonable cause for the prosecution to proceed further. Objectively, the prosecutor must have a case which he believed to be true. This is to be judged from the standard of a reasonable man. Mere suspicion is not enough.

Further, dismissal or acquittal by the court will not create a presumption of malice, or reasonable cause. It must be proved as a "Fact" that there was no probable Cause.

In *Dr. Abarth V. North Eastern Railways*: A sued the Railways for personal injuries suffered by him in a Railway collision.

He got a large sum as compensation. The Railway Directors relying on information that Dr. Abarth manufactured symptoms of injury of A, instituted an enquiry. They found sufficient ground against Dr. Abarth. They prosecuted him, but he was acquitted. Thereupon, Dr. Abarth sued the Directors for Malicious Prosecution. Held : Not liable. Reason : The Directors had taken reasonable care and also had honestly believed in the case.

4. Malice : This must be proved by the plaintiff. If the objective of the defendant is vindictive or to tarnish the name of a person or purely personal or prejudicial, then there is Malice.

5. The damage must be proved, that is, the damage of man's fame, or of the safety of his person, or of the security of his property. There may be a moral stigma attached.

Eg., D prosecutes P for forgery but P is acquitted, thereupon P may sue D for Malicious prosecution.

In **Wyatt V. White**: D noticed in P's godown some sacks which had D's markings. He prosecuted P. But, P was held not liable. Thereupon, P sued D, for Malicious prosecution. Held : There was reasonable cause for the prosecution to proceed and hence D was not liable.

Damage to the plaintiff must be proved. Merely because there was an acquittal, the plaintiff will not succeed in a suit for Malicious Prosecution. Plaintiff must show that he suffered damage to his person, property or reputation.

Ch. 9-3 False Imprisonment and Malicious prosecution Distinguished.

False Imprisonment

1. This is the wrongful (erroneous) restraint of P, the plaintiff with out any legal authority. Here defendant acts wrongfully (Meering's case)
2. The defendant must prove that he had reasonable justification to detain the plaintiff (Herd V. Steel Co., Robinson V. Balmain ferry Co.)

Malicious prosecution

1. The defendant D Maliciously sets the Criminal Law in motion against the plaintiff P. There is the judicial officer who conducts the Criminal case by issuing the process.
2. The plaintiff must allege and prove that was no reasonable or probable cause to prosecute the plaintiff.
3. Malice must be proved by the plaintiff. Otherwise, he fails (Dr. Abarth's case)

Ch. 9-4 Maintenance and Champerty.

Maintenance means aiding or assisting a party to a case in civil proceedings, by pecuniary or other means, without any legal justification. This is the case of an intermeddler who acts without any legal right. In Common Law (in England) this is a tort as well as a crime.

Champerty is a form of maintenance but with an agreement to share the proceeds of the gains of the civil proceedings. Here 'C' enters into an agreement with P to bear the cost in a suit between P and D. 'D' is not having any legal right. He has no common interest with P. hence C is liable for Champerty.

The object of law is to prevent litigious tendency in public interest.

Bradlaugh V. Newdegate.

P sat as a member of the parliament, without taking oath as required by the procedure of the House, and participated in Voting. D, a member of the parliament procured 'C' to sue P, for contravention of the Rules. D gave a bond to 'C' to indemnify 'C' of all the expenses. Held : C and D had no common interest and hence D was liable for the tort of Maintenance.

In India the above English Rules are not specifically applied.

Assistance given to a person to protect his right and to prevent any oppression is valid, if not opposed to public policy. The court always looks to the bonafides of the parties. If the agreements are found to be unconscionable or made with malafides or with improper motives, or contrary to public policy, they are bad.

CHAPTER 10

DECEIT

Ch 10-1 Deceit.

Definition : Deceit is a false statement of fact made by A, knowingly or recklessly, with intent that it shall be acted upon by B, who does act upon it and, thereby, suffers damage (Winfeild).

In Peasley V. Freeman : The principle of Deceit was extended from contracts to torts. The defendant assured that X was trustworthy to give a credit of some money. It was false, p gave credit and suffered a loss and sued D. Held, D liable.

Ch. 10-2 Essentials of Deceit.

1. Representation as fact, of that which is false.
 2. Knowledge or Recklessness that it is false.
 3. Intention that the plaintiff could act upon the statements.
 4. The plaintiff should sustain damage.
1. False Statement of Fact: By silent representations:

A cow with some infection or disease was sold in the market. P sued D. held : D is not liable if he did not know the disease at the time of selling. In a case the court held mere silence did not amount to deceit.

2. Promises: Mere promise will not amount to deceit. Scores of promises are made which are never kept up.

3. Mis-statement of fact : The Edginton V. Fitzmaurice, the company raised debentures. It stated in the prospectus that the debentures money was to be utilised to purchase vans. But in reality the money was used to pay off outstanding loans. Held :
Deceit.

4. Opinions: Mere opinions do not amount to deceit. These must have been made with knowledge that the statement is false, or, the statement must have been made with carelessness.

Derry V. Peek: A company was running trams using animals. Directors issued a prospectus stating that the company had powers to use steam in propelling their trams. In fact the grant to use steam was subject to the consent of a Board of Trade. Company had believed that the consent of Board of Trade was merely a formality. But the Board refused to give its consent. The company went into liquidation. Some shareholders sued the company. Held: No deceit. There was an honest mistake in viewing that the consent of Board was a formal procedure. A false statement made carelessly and without reason to believe to be not true was "not fraud". This decision is criticised by judges and Jurists.

Candler V. Crane : The defendant, an Accountant prepared accounts of the Company and induced the plaintiff to invest money. B invested money. The company had given a misleading picture, but the Court held that it was a mere careless misstatement. Hence P failed. It was held that mere careless statements were not actionable unless there was a contractual or fiduciary relationship.

Nacton V. Lord Ashburton : The error in Derry V. Peek was exposed in this case. Here circumstances showed a duty to be careful. In the particular circumstance of Derry V. Peek there was no duty to be careful. In this case, Solicitor, negligently but without any fraud induced his client to release part of Mortgage security. Security became insufficient and the plaintiff suffered. He sued the solicitor. Solicitor was held liable.

Exceptions : Derry V. Peek is not applicable to :

1. Statutory provisions as in Companies Act. Eg.: in respect

of prospectus, directors and auditors are liable.

2 Cases of Estoppel.

3. Cases where there is a contractual duty to take care.

4. Cases where there is an Implied warranty of another in agency.

Rule in Hadley Byrne : As regards liability for careless statements the leading case is :

Hadley Byrne and Co. Ltd., V. Heller and partners Ltd.,

P, an advertising agency, wanted to know the trustworthiness of Easipower Company. It asked its bankers about this. The Bankers referred to Easipower company's bankers. "Heller and partners Ltd", who gave favourable reports. They had written as "confidential. For your private use. Without responsibility on the bank or its officials". This was passed on to Hadley Byrne, who relied on and allowed credits and suffered heavily when Easipower company went into liquidation.

Held : The Bank was **not liable**. The bank did not know to whom the information would be passed on. Further, it had taken no responsibility whatsoever. Hence, not liable. There was no deliberate misstatement to make it a deceit.

CHAPTER 11

CONVERSION

Ch. 11-1 Conversion.

Conversion is any act in relation to the goods of a person which constitutes an unjustifiable denial of his title to them. (Winfield)

Essentials:

1. Wrongfully taking possession of goods.
2. Abusing possession of them.
3. Denying title or asserting one's right.

1. Taking possession.

If A snatches the hat of B with an intention to steal it, it amounts to conversion.

In *Foldes V. Willouby*, A and his horses embarked on B's boat. A dispute arose between A and B. B put the horse on the shore and went to the other side with A. A claimed that B had committed conversion. Held: No conversion.

In *Richardson V. Atkinson*, D drew out some quantity of wine from cask of P, but added water to fill up the cask. Held, D was liable for conversion.

2. Abusing Possession.

A person may be in possession of goods of another as a Bailee, pawnee, Trustee etc. If he abuses his possession by selling or disposing of, he is liable for conversion.

If A makes omelette out of eggs given by B for custody, or if A makes a statue out of log of wood of B given for custody, there is conversion. If a bailee abuses his possession Eg. : Carrier, using customer's goods for himself, there is conversion.

3. Denying Title.

Denial of title of plaintiff amounts to conversion. A let-out his land to B, B had dumped some material C bought the land from A and used up part of the materials. Held : C liable for conversion.

Ch. 11(2) "Finder is **keeping is a dangerous half truth**"

The finder of goods has every right against all persons in the world except the real owner. However, if the owner is not traced or if the owner makes no claim, question arises as to the rights of the finder of goods.

1, In *Armory V. Delamire* : A Chimney sweeper found a jewel when he was weeping a chimney. He gave it to S, servant of a goldsmith for purpose of valuation. S refused to return the same.

Held: Chimney sweeper was entitled. He had a better title than S.

2, In *Water Co., V. Sharman* : P appointed D to clean his pool. While cleaning, D found two gold rings. The owner could not be traced. Held : P was entitled. Reason : For things found on land, the presumption is that the owner is entitled, as he has custody over

3, In *Bridges V. Hawkesworth* : P a customer found a bundle of currency notes on the floor of D's shop. The owner could not

be traced. Held: P was entitled to the notes. Reason : D was never in the custody of the currency notes, before they were found.

Hence the law relating to finding is that "**The finder has a better title than all others, except the real owner**".

CHAPTER 12

OCCUPIER'S LIABILITY

Ch. 12 Liability of Occupiers.

The duty of the occupier in tort depends on whether the plaintiff is an invitee, or a licensee or a trespasser.

Invitee / Invitee is a person who comes on the premises on business, with the consent of the occupier having some "common interest" with him.

A person who enters a shop with a view to doing business is an invitee. A passenger who uses the railways, a cleaner invited to clean windows, children in a Circus show are invitees.

The occupier's duty is expressed in **Indemauro v. Dames**.

X had employed P, a journeyman as a gas-fitter. He had directed him to test burners in the Sugar refinery. While doing the test, P fell into an unfenced shaft and was injured. Held, X liable.

The occupier should use reasonable care to prevent damage from unusual danger which he knows or ought to know.

A railway company is liable to the users. P went to the Railway station to receive his daughter, but slipped on an oily patch of the Railway platform and sustained injuries. As he was an invitee The company was held liable. (Stowell's case)

A Mother who visited her son in the hospital where he was an in patient, fell on a mat and sustained injuries. Held : She could recover compensation from the hospital authorities.

Licensee : He is a person who enters for his own purpose under an express or implied consent of the occupier. The occupier must warn him of any concealed danger or trap which the occupier knows or ought to know, A guest who is asked to take dinner or to stay for a day is a licensee.

Fairman case : To D' s house, P had come for a function. She caught her heels while coming down the staircase, fell and was injured. Held D not liable. P was a licensee and that there was no hidden danger.

A licensee enters and takes just as he finds the premises. He must take his own precautions, however, if there is hidden trap, the occupier becomes liable.

Trespassers : He is a person who wrongfully enters on the land of the occupier, having, neither any right nor permission to be there.

The occupier is under no duty to take care. The trespasser comes at his own risk. However, if there is any wilful act harming him, the occupier becomes liable.

1. A person entered the premises of a railway company without permission and fell into a reservoir in the dark, Held : The company was not liable.

2. Police P entered the premises of D in the dark to see whether every thing was alright, but fell into a saw pit and was injured The door was half opened in the night and hence the police had entered. Held : In the circumstances he was a trespasser and hence, owner was not liable (Bates case)

This was criticised to be wrong. The reason is, the policeman was entering the premises to protect. Hence, he should not be considered as a trespasser.

CHAPTER 13

NUISANCE

Ch. 13-1 Nuisance.

Nuisance is the unlawful interference with a person's use or enjoyment of land or some right over or in connection with it (Winfield).

The main principle is "use your property so as not to interfere with that of others" (Sic utere tu et alienum non laedas). •

Nuisance is of two kinds, private and public. Public Nuisance is a Crime. It materially affects the peace, comfort and convenience of the people at large. Ex.: Obstructing public highways, carrying on a prohibited trade causing annoyance to the public, etc

In *Soltan V. De*, P was residing in a house next to the Roman Catholic Church. The Church bell was ringing at all hours of the day and night. Held : that this was public nuisance. An injunction was granted.

Ch. 13-2

Public Nuisance	Private Nuisance
1. A public right is violated.	1. Private right is violated
2. It is a crime.	2. It is not a crime but tort only.
	3. Special damage, is necessary.
3. Special damage need not be proved to recover compensation,	There must be an unlawful interference.

Ross V. Miles.

Examples:

<p>D caused obstruction on the P incurred damage to his was sufficient special damage to recover compensation. Proving is not necessary.</p>	<p>Excessive playing of piano, river. or Radio, or obstructing cargo this light or air or access to water etc.,</p>
--	---

- | | |
|---|---|
| <p>4. To be filed through Advocate General.</p> | <p>4. Suit may be filed by the plaintiff.</p> |
|---|---|

Ch. 13-3 Essentials of Nuisance.

1. There must be an unlawful interference.

This must be in respect of the use or enjoyment of land or of some right over or in connection with it causing physical discomfort to the plaintiff or some damage to his property. Eg. Noise, smell, pollution of air or water. But in society some amount of interference by sound, smell etc., is inevitable. The courts apply the standards of a reasonable man and determine the degree of injury to the comfort or enjoyment of the property. Up to a certain degree, interference is not actionable. (De minimis non curet lex).

Taking all the circumstances into consideration the court fixes the "Standard of liability"

2. There is no liability for abnormal sensitiveness of a person or of the property. The leading cases are:

- i) Robinson V. Kilvert
- ii) Heath V. Brighton.
- iii) Wagon Mound Case

The defendant is not liable in respect of abnormal sensitiveness.

i) Robinson V. Kilvert : D was in the ground floor, and was manufacturing paper boxes. Just above D's room, P had stored sensitive paper. Due to heat used by D to make boxes, the paper got spoiled. P sued D. held : P's paper was abnormally sensitive in the circumstances. Hence, D was not liable.

ii) Heath V. Brighton : D's power station was making a buzzing noise. The church complained that it affected the sermon. Held : as the noise never affected the attendance for sermons there was no nuisance.

iii) Wagon Mound Case : Oil stored in Wagon Mound vessel escaped and spread to over 600 feet away, where another ship P had been embarked. Welding operations were going on ship P. The people there took care to test oil but continued welding work. Fire broke out and the ship was damaged. Held : Not liable.

3. Malice : The question is whether, bad intention of the defendant is necessary for nuisance. The answer is that Malice is not essential.

This has been answered in the leading cases.

Christie V. Davey : D became angry with the Music lessons given by P a Music Teacher. P was living in a residence separated from D by thin wall. D interfered with Music Lessons by whistling, Shrieking, beating trays, drums etc., Held : That an injunction could be given to D to stop the Nuisance.

Hollywood Silver Fox V. Emmett: D intentionally fired guns and scared the silver mixed during their breeding time, and caused great damage. P the owner sued for nuisance,

Held : There was Motive, compensation must be paid. Hence, Malice is not essential but it is necessary to get more compensation.

4 Nuisance on the highway :

This is any act or omission on or near a highway, whereby the public are prevented from freely, safely and conveniently passing along the highway.

1. Under common Law, the crown was not liable for nuisance on Highways, But this has been changed under the Highways Act 1961 and the State or Department is liable.

In India, as per the National Highways Act 1956, the state is liable.

2. Projections over the Highways.

The law is strict in this regard. The person who creates a nuisance on the highway is liable.

Tarry V. Ashton : An overhanging lamp of D fell on the plaintiff who was walking on the pavement. Held. D the defendant was liable. This was an interference on the Highways and the rule of strict liability applied.

Ch. 13.4 Remedies.

The remedies for private nuisance are (i) Abatement (ii) Damages and (iii) Injunctions.

i) **Abatement** : This means removal of nuisance. This is a private remedy without going to the courts, Eg: Overhanging branches of a tree may be cut off, if they are a nuisance. Further, to save the lives of individuals or for security reasons, the nuisance may be removed. No notice is necessary.

ii) **Damages** : The court determines to what extent there is diminution or reduction of the value or utility of the property to fix the compensation. But some special damage is to be proved.

iii) **Injunction** : As per the specific Relief Act, temporary or permanent injunction may be granted by the court depending on the circumstances of the case.

Ch. 14 Capacity to sue and to be sued.

The general rule is that all persons are entitled to sue and to be sued in tort. However, this rule is subject to several exceptions.

The legal capacity to sue or to be sued may be discussed under the heads.

1). Convict (2) Minor (3) Married Woman and (4) (i) State Sovereign (ii) Act of state (5) Corporations and trade unions.

Ch. 14-1 Convict.

A convict may sue for torts to his person and property. In England, the rule was that a convict serving the sentence could not sue; but this has been abolished in 1948. Hence a convict may sue. This is the position in India also.

Ch. 14-2 Minor : Right to sue.

The general rule is that an infant may sue, through his next friend, and there is no bar. However, a child en ventre sa mere (in the womb) cannot maintain an action for injuries sustained when in womb. In a case, *W* a pregnant woman was injured in a Railway accident and later gave birth to a deformed child, held, that the Railway company was not liable.

Minor may be sued in tort and he is liable. Minors have been held liable for assault, false imprisonment, libel, slander, nuisance, injuries to neighbors etc. Minors cannot take advantage of their minority in cases of deceit.

A minor is not liable for violation of contracts, but in tort he is liable.

The father becomes liable for the tort of the minor, if the son was acting on behalf of the father or "in the course of his employment". Otherwise, the father is not liable. If a father supplies an air-gun to his son and negligently allows him to fire at a person to hit on his eye, the father is liable. (*Newton V. Edgerley*).

Ch. 14-3 Married Woman.

i) Right to sue : Husband and wife are considered as one under common law in England and hence a married woman could not sue without her husband. But, this has been amended by the law Reforms Act of 1935. She may sue in her own capacity as a feme sole. She may sue her husband. In **Curtis V. Wilcox**, *W* sustained injuries

caused by H's negligent driving of his car. W later married H but sued for damages, Held, H liable.

ii) Liability of married woman : In England at common law husband and wife were to be sued for the tort of the wife. She could not be sued alone. The Married Woman's property Act has changed the above position and according too it, the wife could be sued alone. Damages are payable from her separate property. The husband is not liable for her torts.

In India, the position is the same under the Married Women's property Act. The Wife may sue or be used for tortious obligations as a feme sole.

Ch. 14-4 State.

The State is a legal person and can sue and be sued. It is vicariously liable for the tortious acts of its servants done during the course of their employment. The injured party may sue the State and recover compensation.

Historical sketch : In England, at common law the rule was that "the king can do no wrong" and the king or his servants could not be sued. However, the Crown Proceedings Act has fixed liability & hence the state may sue and be sued.

Before the Constitution, the Secretary of State was liable for torious acts. (Govt. of India Act 1935).

In India, the constitution of India in Art. 300, lays down that the state may sue and be sued.

Leading cases :

1. Peninsular and oriental Steam Navigation Co. V. Secretary of State (1861)

A servant of P, was travelling in a coach through the Govt's dockyard. Due to the negligence of D's servants, a heavy piece of iron carried by them fell and the horse of the coach was injured. P sued D. It was held that the maintenance of the dockyard was a non sovereign function, and hence, the secretary of State was liable.

2. Rup Ram V. State of Punjab.

P, a motor cyclist was seriously injured when the driver of a P. W. D. truck dased against him. It was held that the Govt. was liable. The Govt's argument that at the time of the accident, the driver was carrying materials for the construction of a bridge and that this

was a Sovereign function and hence, the State was not liable, was rejected by the court.

3. State of Rajasthan V. Mrs. Vidyawati.

Vidyawati's husband died of an accident caused by the Govt. driver who was driving negligently the Govt. Jeep from the garage to the office. Vidyawati sued the Govt. for compensation. Held, State liable.

4. Kasturilal v. State of U.P.

A was arrested on suspicion of having stolen gold. Gold seized from him, was deposited in police Malkhana. A was acquitted. In the meanwhile, the Head Constable had stolen the gold and escaped to Pakistan. 'A' sued the Govt. for the return of the gold or for compensation. Gajendragadkar J, held, that the State was not liable.

Reasons :

- i) The police Officers were within their statutory powers.
- ii) The Authority of the police in keeping the property (gold) was a 'Sovereign function'.

Held, Govt. not liable for the act done in the exercise of sovereign function.

Comment: This decision is not satisfactory as the concept of Sovereign function is extended beyond limits. The Supreme Court itself has suggested that the remedy is to make a suitable law to give protection to individuals in such cases. No such law has been made so far.

Basavva V. St. of Mysore(1977) : In a case of theft, property worth Rs 10,000/- was recovered and kept in police custody. This was stolen from custody. The Supreme Court held that payment should be made to the owner, who had claimed the property. This is an improvement over Kasturilal's case.

Ch. 14-5 Act of State.

This is an exercise of power by the Executive, as a matter of policy, in its relation with another State or aliens. In such a circumstance, the State claims immunity from the jurisdiction of the court, to decide. Such an act of the representative of the state may have the authority of the state or the state may ratify such an act.

Secretary of state V. Kamachi Bai Saheba The Rajah of Tanjore, an independent sovereign, died leaving no male heirs. The East India Company declared that as there were no male heirs, the Raj lapsed to the British Govt. The widow Kamachi Bai sued the company. The privy Council held that it was an 'Act of State' and hence, there was immunity. Hence, she failed.

Buron V. Denman : P sued D, the captain of the British Navy for releasing the slaves and burning their camps belonging to P. This act of D was ratified by the British Govt. Held, this was an act of State, and hence, P failed.

Exception: There is one exception. There is no act of state between a sovereign state and its own subjects.

Ch. 14-6 Corporations

Right to sue : A Corporation is a legal person and many sue for any tortious act like libel, wrongs affecting its property or business, For libel of Corporation officials may sue in their individual capacity.

i) Liability :

The corporation may be sued and is liable for torts, committed by its agents or servants, during the course of their employment. The rule of vicarious liability applies, there were some doubts regarding whether the corporation is liable for the 'Ultra Vires' act of its servants. The general rule is that in such a case, the corporation is not liable. The leading case is **Poulton V. London Railway Co.** the plaintiff P was arrested by the station master of the corporation D. The reason was that P had refused to pay, the freight of the horse. D had authority to arrest persons who did not pay his fare, but not for non payment for goods or animals. Here D had acted ultra vires (beyond powers) in arresting P for non-payment of freight. Held D not liable.

In pillai V. Municipal Council, P's dog was killed by the Municipality D, in destroying stray-dogs. P sued Held, D liable the defence by D that it was an ultra vires act of the servants was rejected.

ii) Trade Unions

In a leading case (Taff Vale Railway Co.) the House of Lords had held that the trade unions could be sued for the wrongful acts of its officials. To counter this the English Parliament, passed the Trade Disputes Act 1907. which provided that the courts have no

jurisdiction to entertain suits against the trade union, its officials or members.

In India, under the Indian Trade Union Act 1926, a Trade Union, may or may not be registered, If registered, it may be sued in its registered name. If not so registered one or more members may be sued on behalf of the union.

The regd. trade union and its officers and members are exempted under Sn. 18 from certain torts, which are done in furtherance or contemplation of a trade dispute.

CHAPTER 15

REMOTENESS OF DAMAGE

Ch. 15 Remoteness of Damage : Meaning.

i) In law, the damage must be direct and the natural result of the consequence of the act of the defendant. Otherwise, the plaintiff will not succeed. This is "In jure non remota causas proxima spectatur" (In law the immediate, not the remote cause of any event that is to be considered). The reason for this is that the defendant is presumed to have intended the natural consequences, but not the remote damage. It means then that the defendant's act must be the 'Causa Causans' or the proximate (near) cause.

ii) Novus actus interveniens : (new act intervening)

The act and the consequences are to be connected directly and the defendant will not be liable for Novus actus interveniens and the consequences thereof.

Scott V. Shepherd (Squib case)

D threw a lighted squib into a crowd. It fell on X. who threw it further, It fell on Y who threw it away. It fell on P, exploded and blinded one eye. Held, D was liable to P. Though X and Y, had intervened , D's act was the 'Causa Causans'. The defendant pleaded novus actus intreveniens but the court rejected this defence. In **Haynes V. Harwood**, the unattended horse van of D started running as some boys had thrown stones at the horse. The policeman who attempted to stop the horse was injured. Held, D liable. The contention that the throwing of stones was an intervening cause and hence D was not liable, was rejected by the court.

iii) Direct damage. Two tests to find out direct damage.

1. The test of reasonable foresight.

2. The test of directness.

The test of reasonable foresight means that the liability of the defendant extends only to those consequences, which could have been foreseen by a reasonable man. This theory was rejected in 1921, and the second theory was applied in *re Polemis and Furnace Ltd.* In this case, D chartered P's vessel to carry a cargo which included petrol. Some cases were leaking and there were vapours of petrol. D's servants while shifting cargo, negligently knocked at a plank which fell rubbing the wood and got ignited. As a result the entire vessel caught fire and was destroyed. Held, D was liable. It was due to the negligence of D's servants that the fire had broken out and hence D was liable for all the consequences, even though those could not reasonably have been anticipated.

This theory was rejected in the *Wagon Mound Case 1960*. there is a return to the old reasonable foresight test.

The *Wagon Mound*, an oil-tanker vessel, was chartered by D and had been moored at Sydney (Australia) harbour. At a distance of about 600 feet, P had a wharf, where repairs of a ship were going on. Due to the negligence of D's servants, oil spilt from the *Wagon Mound*, spread over to the wharf where P was making some welding operations. P's manager stopped his welding work, enquired D whether he could safely continue the welding. D assured no danger. P's manager himself believed that the oil was non-inflammatory on water, and continued welding work. Two days later molten metal from the *Wagon Mound* fell on cotton waste, ignited and caused a great damage to the wharf and the equipment.

The Privy Council in England, held that D (*Wagon Mound*) was not liable.

The Court applied the test of reasonable foresight and rejected the direct rule theory. It overruled *Re Polemis* case. It said 'after the event a fool is wise. But, it is not the hind-sight of a fool, it is the foresight of a reasonable man which alone can determine responsibility'.

What the **reasonable man ought to foresee**, corresponds with the common conscience of mankind and hence, the test of

reasonable foresee ability must be applied. Judged from this, it was held not liable.

This decision has been approved in a recent case *Hughes V. Lord Advocate* (1963)

CHAPTER 16

NEGLIGENCE

Ch. 16-1 Negligence.

Negligence is the breach of legal duty to take care which results in damage, undesired by the defendant to the plaintiff (*Winfield*).

Negligence is an independent tort. Its essentials are:

1. **Duty to take care.**
2. **Breach of duty.**
3. **Consequent damage.**

1. **Duty to take care.**

The leading case is ***Donoghue V. Stevenson***, M, the manufacturer had sold ginger-beer in an opaque bottle to a retail seller R. R sold it to A who gave a treat with it to a young woman P. P consumed the ginger-beer, but found in the bottle a dead snail. This seriously affected her and she became ill. She sued M, the manufacturer. In fact there was no contractual duty of M to P, but the House of Lords, held that M was liable. Lord Atkin's judgment is a classic. He held 'You must take reasonable care to avoid acts or omissions which you can reasonably foresee would be likely to injure your neighbour, who then in law is my neighbour ? the answer seems to be, Persons who are so closely and directly affected by my act that ought reasonably to have them in contemplation as being so affected by my acts or omissions'.

It was the duty of the manufacturer to take care that the opaque bottle did not contain noxious matter. It was held that the manufacturer was liable.

This case is a milestone and the above principle is regarded as the statement of law. The courts follow this, unless there are strong reasons to deviate from it.

The "standard of care" as applied by the courts, is the standard of a reasonable man. The care, the skill and the diligence

of the person, must be that of an ordinary prudent man under the circumstances.

In Bolton V. Stone, D, a person who was on the roadside, was injured by a cricket-ball hit by the player from the field which was about 100 yards away from the road. There were one or two such rare occasions in the past. The court held that the defendants (the members of the club) were not liable. The hit was so exceptional that no prudent man would have foreseen. Further, it was too remote and no reasonable man would have anticipated.

2. There must be a breach of duty.

The second essential condition is that there must be a breach of duty. This is judged with reference to a "reasonable man". According to Alderson J, "Negligence is (i) the omission to do something which a reasonable man would do, (guided by the circumstances on hand) or (ii) doing something which a prudent man would not do".

This is the objective standard of a reasonable man. It is the application of "foresee-ability test" i.e. whether a reasonable man would have foreseen.

Roe V. Minister of Health : In 1947. Dr. G. gave to R a spinal anesthetic to conduct an operation. The anesthetic which was in a ampoule, had been stored in phenol as usual. But due to an "invisible crack" in the ampoule, phenol had entered and in consequence, the patient R became paralysed. Dr. G had taken all care as a prudent surgeon would have taken and he was not aware of the crack in the ampoule. Held, Dr. G was not liable.

The medical literature on the subject was consulted as the set standard and Dr. G was held not negligent.

3. Consequent damage.

There must be the injury to the plaintiff as a direct consequence of the negligence of the defendant. It must not be too remote. The leading cases are (i) *Donoghue V. Stevenson* (ii) *Bolton V. Stone* (iii) *The wagon Mound* case etc.

Ch. 16-2 Contributory Negligence : Meaning.

This is a defence open to the defendant, in an action for negligence. This is based on the principle that no doubt, the defendant is, in fact negligent but the plaintiff also has contributed his negligence, and hence the plaintiff should not be allowed to take advantage of his own tort of negligence. The maxim is "in pari delicto potior est conditio defendatis" (If both parties are equally to blame, the condition of defendant is to be preferred). Both are authors responsible for the injury. Of course, the burden of proof lies on the defendant to establish contributory negligence of the plaintiff.

The question in each case is : who caused the accident ?
(Winfield)

i) If it were the defendant, the plaintiff can recover damages in spite of negligence (Rule of last opportunity : Davis V. Mann)

ii) If it were the plaintiff, he cannot recover damages inspite of defendant's negligence (Butterfield V. Forrester).

iii) If it were both the plaintiff and defendant, the plaintiff cannot recover.

Davies V. Mann : P had tied the forefeet of his donkey and had let loose on the highway. D who was going at a smartish pace in his wagon (horse driven), ran over and killed the donkey. P sued D. It was held that D had the last opportunity to avoid the accident. Hence, D was liable.

Butterfield V. Forrester : D wrongfully obstructed the highway by putting a pole across the road. P who was riding violently saw the pole from a distance of about 100 ft. away, but came against the pole and was thrown over by the pole and was injured. It was held that D was not liable. The reason : If P had exercised due care, he could have avoided the accident, this decision has been modified later in Davies V. Mann.

Rule of last opportunity : This is the rule now in operation.

In British India Electric Co. V. Loach : The rule was applied to constructive last opportunity. In this case, P, a wagon driver was driving negligently on the level crossing. D's driver who was driving a tram came at a fast speed, saw the wagon on the tramline, applied the brakes. But, as the brakes failed, he dashed against P and P was killed. P's representative sued D.

It was found that the brakes were defective and hence D had the last opportunity. If the brakes were in order, he could have

averted the accident. He has failed to do so and hence, D was held liable.

As this rule was also not free from doubt, the Parliament enacted in England the Law Reforms Act 1945. It provides that when both P and D are at fault the claim of P will not be defeated, but would be reduced to such extent as the court thinks just and equitable.

Ch. 16-3 Alternate Danger doctrine : Jones V. Boyce

This is also called as the dilemma principle. Such a situation arises, when the plaintiff, P is put in a position of imminent personal danger by the wrong doing of the defendant. In order to avoid the danger, P suffers injury. In such cases, D is liable.

Jones V. Boyce : D, a Coach-driver was driving with P, so negligently and with so much speed that P was alarmed. Going down the hill, the coach's coupling gave way ; It struck a post and was about to be turned down. P, to save himself jumped out and was injured. He sued D. Held D liable.

If P had not jumped out, he would not have been injured, as the coach came to rest later without any trouble. Even then D was held liable as he had created a dilemma to P.

Ch. 16-4 Res ipsa loquitur. (The thing itself speaks)

This is part of the rule of evidence. In cases of negligence, the burden of proving negligence is on the plaintiff, but Res ipsa loquitur is an exception. This is a case where the event "tells its own story" clearly and speaks to the defendant to disprove. Eg. the presence of a pair of scissors in the stomach of a patient P, 2 days after the operation is over, or the presence of a stone in a loaf of bread, tells its own story. The court presumes the negligence of the Defendant.

Byrne V. Boadle : A barrel of flour rolled out of an open doorway of the upper floor of the godown of D, and fell on P who was going on the street. The burden was on D to prove that he was not negligent. Held, D liable.

In State of Punjab V. M/s Modern Cultivators, a canal was under the care of the State. Due to its negligence there was a breach and water flooded the fields of P. P suffered losses and sued the State. Held, the State was liable. Res ipsa loquitur was applied.

CHAPTER 17

TRESPASS TO LAND

Ch. 17-1 Trespass to Land.

Definition : Trespass to land is the unjustifiable interference with the possession of land. (Winfield)

Two Essentials :

1. Invasion of or entry on the land.
2. Invasion must be unjustifiable.

1. Possession : It is the evidence of ownership and has two ingredients : Animus and Corpus ; Animus is the mental element and corpus is the physical element. The person in possession of land need not be the owner ; he gets the right to quiet and peaceful enjoyment of the property. He has a right to exclude all others.

There is trespass if A enters on the land of 'B' or remains there or does any act affecting the possession of B, without legal authority. It is not necessary that he must use force and cause damage on the land of B. In fact as chief justice Holt said "Every invasion of private property, be it ever so minute, is trespass". (Entinck V. Corrington)

2. Invasion must be unjustifiable. •

Every interference which is without any legal authority or justification amounts to trespass, e.g. Placing any chattel on the land of B, planting trees on that land, shooting over that land, causing any noxious substance to cross the land, erecting a building overhanging that land etc, Even the airspace above the land belongs to the possessor of land and any unauthorised invasion is a trespass.

Trespass may be by animals. The owner of the animal is liable.

Ch 17-2 Trespass ab initio.

Trespass ab intio means trespass from the beginning, This is a

circumstance where the entry of a person on the land of another is lawful, but if the person stays and abuses his authority he becomes a trespasser ab initio. It is important that the person must abuse his possession by doing some positive act and not by a mere omission.

i) **Six Carpenter's case:** Six carpenters entered an inn (hotel), took bread and wine. They paid the bill. They ordered again and were served. They quarrelled on the rates and then did not pay as per the demand. The hotel owner P sued them for trespass ab initio. Held, not liable. For trespass ab initio, there must be a positive act. Not paying was an omission.

If a carpenter or an electrician lawfully enters to do some repairs but does some positive act (damaging the property, stealing some materials etc.,) he becomes liable for trespass ab initio.

ii) **Dais V. Pasmore:** In this case, the police entered the premises of P, To arrest P and others. They seized some documents which were relevant for the trial of the arrested person; they also seized other documents which they returned later. It was held that the police officers were liable for trespass ab initio in respect of documents seized and returned. But they were not liable for entry on the premises to arrest P and others.

iii) **Chic Fashins V. Jones:** The police officers, under a search warrant entered P's shop to search certain stolen goods. They found none but found certain others which they seized. They had reasonably and erroneously believed that the seized goods were stolen.

Held, the seizure was not illegal. The doctrine of trespass ab initio was not raised.

Ch. 17-3-1 Remedies for Trespass.

The Remedies are

1. **Right of re-entry:** The dispossessed person P, may re-enter if that is possible or may enter under the orders of the Court. (Specific Relief Act).

2. Action for recovery of land: The dispossessed person may sue for recovery of land; if he establishes his title and possession, he is entitled to recover the land.

3. Action for mesne profits: Any profits made or rent collected or benefit made by the person who was on land without legal authority, may be recovered by the plaintiff under Civil Procedure Code by filing a suit for mesne profits.

4. Jus Tertii: As in Ch. 17-4

Ch. 17-3-2 Defences for Trespass

The various defences open to an action for trespass to land are briefly as follows:

a) Right by prescription: The defendant must establish his right earned by prescription.

b) Leave and Licence: The entry may be under permission expressly or by implication.

c) Authority of law : The entry may be according to law as in cases of entry for attachment of property under the orders of the court.

d) **Distress Damage feasant** : For cattle trespass, the animal may be detained until compensation is paid by the owner of the animal.

e) Self defence : This is a general defence and must be proved.

f) Re-entry on land: A person who is wrongfully dispossessed may enter peaceably and without using force.

g) Abating a Nuisance: To remove a nuisance, entry on the land is justified.

h) Entry to protect an easementary right.

Ch. 17-4 Jus Tertii.

This means 'right of third party'. If T is a tenant of P, the plea of T that P is not the owner of that house or that he has no title, is no defence of T. Similarly, in case of Trespass to land, the plea of the trespasser that P has no rights or title will not be allowed. This is a sound rule of procedure before the courts. However in case of ejectment this may be a defence.

In Asher V. Whotlock: 'A' was in possession of a waste land. B entered the premises to take the waste. B pleaded jus tertii that the title was with a third party but could not establish. Hence B failed.

CHAPTER 18

REMEDIES IN TORTS

CH. 18-1 Remedies.

The various remedies available for Torts are:

- 1) Damages.
- 2) Injunctions
- 3) Restitution of Property
- 4) Extra Judicial Remedies.

These may be discussed with some details.

Ch. 18-2 Damages.

In Tort, damages refers to the pecuniary (Money) Compensation that is determined by the court (Unliquidated Damages). The defendant is liable for the damage caused to the plaintiff if the damage is the direct consequence of the act of the defendant.

Scott V. Shepherd: Wagon Mound case etc., Kinds of damages: There are four kinds of damages:

1) Nominal (2) Substantial (3) Exemplary and (4) Contemptuous.

1) Normal damages are awarded in circumstances where only a right is established (e.g. Assault). This may not even meet the expense incurred for suing.

2) Substantial damages are awarded to fairly compensate the plaintiff for his injury and suffering. The court considering the nature of the case, awards compensation which is fair and reasonable.

3) Exemplary damages: Where it is not possible to calculate the compensation in terms of money. The court may take into account the conduct, motive and other circumstances and award aggravated

(high) damages. This is exemplary. The objective is to make the wrongdoer an example, and to deter and punish such persons. The amount awarded is much more than loss suffered.

Huckle V. Money: D, a Government servant entered the house of P under a nameless search warrant and made the search. P sued D. Held: D liable. As entering without proper authority amounted to an attack on the liberty of P, the court awarded exemplary damages.

In **Merzett V. William** : The bank D, had without reason, refused to honour a cheque. P the drawer sued D. Held: D liable to pay exemplary damages.

4) Contemptuous Damages : In "Contemptuous damages", the court finds that the plaintiff should not have brought an action, as the matter was so "Trifling". The court forms a low opinion of the plaintiff, but, to protect his right, it awards one rupee or some small amount. This is called contemptuous damages.

Cases of trespass on land, trespass to person are examples.

The rule is "De minimis non curet lex". (Law does not take cognisance of trifles).

Ch. 18-3 Extra-judicial Remedies. The

Remedies are :

i) Distress Damage feasant: This is an extra-Judicial remedy. A person in possession of land, may distress (means detain) a feasant for the damage it has done. He has the authority to seize and detain the animal, until compensation is paid to him. He may release it after the compensation is paid.

"Feasant" means animal or chattel. Examples are the stray animals, Cow, Ox, Horse, etc. chattel may be a Road engine.

The animal is to be detained when it is creating a trespass. It should not be seized by a "Hot Chase".

The person who detains must take care of the animal as a reasonable man. He must provide proper food, shelter, water etc., to the detained animal. He has no right to sell or to use the animal.

When compensation is paid, he should release the detained animal or chattel.

- ii) Abatement of Nuisance: See Ch. 13-4
- iii) Expulsion of Trespasser : See 17-3
- iv) Recaption of goods: Retaking of goods with a right to take.
- v) Re-entry on land : See Ch. 17-3

CHAPTER 19

DEATH IN RELATION TO TORTS

Ch. 19-1 Death in Relation to Tort.

The general rule in common law is 'Actio personalis moritur cum persona' (personal cause of action, dies with the person). This has been abolished in England by the Law Reforms Act 1934.

The position in civil cases is that the right or liability survives, to the successor. Hence, on the death of the injured person, his legal representatives may sue or continue the suit. Similarly, if the defendant dies his legal representative becomes liable.

1) Death of plaintiff or person wronged.

a) The leading case is **Rose V. Ford**.

G a girl of 23, was severely injured in an accident caused negligently by D. She was admitted to the hospital and treated. After two years, her legs were amputated. Four days later she died. Her mother sued D on (i) Loss of service (ii) Pain and suffering (iii) Diminution in the expectation of life.

Held, that P, had a right to sue. D was held liable on all the above three counts. Compensation was awarded under each count.

b) Rule in **Bake V. Bolton**.

Plaintiff P and his wife W were travelling on the top of a stage coach of D. Owing to the negligence of D, the coach overturned. P was bruised and W sustained severe injuries and after a month died.

Held, P was entitled to recover for bruises; P could also recover for loss of services, of his wife, upto her death.

2) Death of Wrong-doer

At common law no action could be brought but this has been abolished by the law Reforms Act 1934.

In India, an action may be maintained against the legal representatives or heirs or executors of the deceased of defendant. The action should be taken within the period of limitation i.e. One year.

The general rule is that if a suit is filed against the defendant and if he dies pending the suit, the suit abates and could not be continued against the heirs or legal representatives. Suits for slander, libel, false imprisonment, Assault, battery etc, fall into this category. In others the suit may be continued.

Ch. 19-2 Discharge of Torts.

The right to sue for torts, is discharged by:

1. Death of one of the parties. Ch. 19-1
2. Waiver: When there are two or more remedies available for torts, the plaintiff may waive one and select the other. He cannot pursue both or take one after the other. If A is deprived of his goods by B, A may sue for tort of conversion, in the alternative he may sue for the price of the goods. He may elect one or the other.
3. Accord and satisfaction: Accord is agreement and satisfaction is consideration or money payment. Such an agreement discharges of tort.
4. Release : This is the giving up of the right of action in tort. But, it should not be in ignorance of the rights or by mistake.
5. Acquiescence : This is acceptance and results in discharge of tort.
6. Limitation: Suits barred by Limitation, are automatically discharged. In India, the period of limitation is one year for Libel, false imprisonment, malicious prosecution etc.,

CHAPTER 20

INTERFERENCE WITH BUSINESS etc.,

Ch. 20-1 Passing Off.

If a person disposes of his goods, as those of another person without legal justification there is passing off. He may have used the same famous brand name or a similar name or a get-up to closely resemble another product; there is the tort of passing off. The test is that a reasonable ordinary buyer must have been misled by the goods offered by D. Intention is not essential.

White Hudson V. Asian Organisation.

P was selling his cough mixture in bottles covered with red cellophane paper, in the name "Hacks". D, started selling cough mixture covering similar paper. The people were misled and started buying the goods of D as that of P. P sued D. The circumstances showed that D was liable for passing off.

Singer Manufacturing Co. V. Loog : D was making his sewing machines and selling as Singer type. Held D, not liable. The name "Singer" had become "Public juris" and merely designated a particular type of sewing machine. D's advertisement was not deceptive.

'Passing off is a common law remedy. In India Trade and Merchandise Act 1958 Protects the interest of the users of the registered trademarks and an action may be brought against those infringing the right. This is a statutory remedy.

Ch. 20-2 Slander of Title:

This consists of a false, malicious statement injuring the plaintiff's title to property and causing special damage to him.

Essentials: The plaintiff P must show.

- i) that the statement was false.
- ii) that it was made with mala fides, to injure the interest of P or to impute motives to him.
- iii) that the statement defeated his title to property, iv) that special damage resulted therefrom.

In *Malachy V. Soper* : P had owned a number of shares in a Silver Mining Company. C and others had made a statement that a "Receiver" has been appointed and that the officer has arrived at

the Mines. Held: as special damage was not shown, there was no "Slander of Title" to goods.

Special Damage means a property may be sold at lesser price because of the Slander, or the owner may be put to much inconvenience and trouble because of the Slander.

Ch. 20-3 Slander of goods :

This consists of a false statement, Published maliciously, disparaging a man's goods and causing special damage to that person.

Essentials: The plaintiff must prove.

i) that D, the defendant had disparaged P's goods.

ii) that the statement was false.

iii) that there was mala fides. No special damage need be proved.

Statement by A that his goods are superior to all others, is not trade libel.

Ratcliff V. Evans

P was manufacturing Boilers under his name Ratcliff and Sons. D published in his newspaper that such a firm did not exist. There was Malice. Held: D liable for Slander of Goods.

Ch. 20-4 Breach of Statutory Duty.

This is a specific tort. A statute (Act of Parliament or of State Legislature) which creates certain duties on the authority or a body of persons, also imposes the liability for breach of such duties. The court may have to ascertain the "legislative intent". The statute may create benefit to a group or a class of persons. Eg. The Factories Act creates certain duties on the occupier of Factory. Similarly, the Industrial Disputes Act, Workman's Compensation Act, etc, impose such duties.

Essentials:

i) The defendant must owe a duty to the plaintiff. When a statute provides benefits to a class of persons, the plaintiff must belong to that class to claim the benefit.

In Harely V. Mayoh, A, a fireman was electrocuted when he was fighting to put out fire in D's factory. The widow W claimed for

breach of obligations. But these were applicable only to "Persons employed". A was not employed in the factory. Hence D was not liable.

ii) The nature of the injury: The object of the Statute may be to prevent a particular kind or type of mischief or injury, in such a case only such kind or type is to be proved. Loss of eyes, or hands or toes when the worker is working in the course of employment. Employer liable under Workman's Compensation Act.

iii) The defendant must have breached a statutory obligation.

The obligation are defined in the Statutes. Eg. ship building Regulations. To succeed there must be a breach. In Factories Act, many obligations are provided and the "Occupier" of the Factory is liable for breaches. If there are no breaches, there is no liability.

In a case, the thumb of a workman was cut off when it came in contact with a revolving wheel. There was a violation of Statutory duty by employer as there was no fencing of such a wheel. The occupier of the factory was held liable.

iv) There must be damage.

The plaintiff must have suffered injury as a result of the breach of statutory duty. In Ginty's case an experienced workman, due to his own negligence, fell down from the roof where he was working. Held, defendants not liable.

Defences:

i) Volenti non fit injuria is not a defence.

ii) Contributory negligence: There is not a complete defence, but may be pleaded to reduce compensation.

iii) Delegation of duty by the person under a statutory duty to another person is no defence. The occupier of a Factory cannot plead innocence under delegation of duty to the supervisor.

iv) Statutory provisions: Defences, eg. negligence of the workman which are open under Statute may be pleaded.

Ch. 20-5 Mayhem:

Mayhem means "maim" i.e., rendering any part of the human body useless.

This is a bodily harm or injury and hence it is an aggravated form of battery. Cutting off of a finger, or a toe, blinding of a person, castrating a person, removing the teeth are examples of mayhem. But, if there is a mere disfigurement, it is not mayhem. For example, cutting off of an ear or the nose, is not mayhem.

To become mayhem, there must be deprivation of the use of part of the body or any of the five senses. The loss must be permanent.

This is a tort and damages may be claimed by the plaintiff.

For mayhem, the court will award more compensation, than for assault or battery.

Ch.20-6 'Foreign Torts'

A tort committed abroad is a fo will have arisen abroad.

If the foreign tort is in respect

Foreign tort ie., the cause of action of immovable property situated

abroad, the Indian Court has no jurisdiction. But if it is a personal tort, it has jurisdiction, but two conditions are to be fulfilled,

1. The wrong must be a tort in the place of the forum ie., where action is brought.

2. It must not have been justifiable in the place where wrong is committed.

If both the conditions are established, the plaintiff will succeed.

The leading case **if Philips V. Eyre**. P filed in England a suit for assault and false imprisonment against the ex Governor of Jamaica for the torts done in Jamaica. The defendant relied on the 'Act of Indemnity' Passed by the Jamaican Legislature in which the acts done during the rebellion had been legalised.

Held, P could not recover as the indemnity had justified the action of the Governor.

In **Mostyn V. Fabrigas**, the Governor of Minorca imprisoned F for a week and banished him to Spain. F sued in England for arbitrary action of the Governor. It was held that Governor was liable.

Both the conditions are fulfilled in this case. False imprisonment was a tort in Minorca and England. Further, it was not justifiable according to Minorca Law.

In **re Halley**: In this case, an English steamer was plying in Belgian Waters but was under a compulsory pilot under Belgian law. It collided with a Norwegian Vessel.

Under Norwegian Law the steamer was liable, but in England, not liable if a vessel was under a compulsory pilot.

Hence, the court held that an action was not maintainable.

Ch. 20-7 : 45 degree Rule:

This is not a rule of law, but is a circumstance (or evidence) to enable the courts to ascertain whether there was any interference to the right to light (and air) of the plaintiff. In a way this is a working principle.

P, the owner or occupier of a building has a right to light and air, but any substantial interference over this right by this neighbor D, amounts to nuisance, and, hence P is entitled to the remedy of removal of the interference.

However, according to 45 degrees rule there is no interference, if P is left with an angle of 45 degrees at the base for light and air. If the interference is more than 45 degrees, then there is nuisance. Light from other sources should also be taken into consideration to decide this 45 degree interference.

The leading case is **Colls V. H & C. Stores Ltd.**

In this case, A was carrying on his business in a building; just opposite to this building, on the other side of the street there was a land on which B proposed to put up a building about 50 feet height.

'A believed that this would cause interference and hence, sued B for injunction. There were five windows in the ground floor rooms, of A and, there would be interference to two windows, if the building is built up.

But, there was sufficient light from other windows. Hence, there was no material interference. Hence, A did not succeed.

This rule has limited scope. It is used only when the proof available is unsatisfactory or indefinite.

CHAPTER 21

CONSPIRACY

Ch. 21 Conspiracy :

i) **Definition:** Conspiracy is (i) an unlawful combination of two or more persons to injure a third party, or (ii) a combination to injure but without the use of unlawful means (Winfield).

ii) **Origin:** The concept of conspiracy originated during the days of the "Star Chamber" in England as a crime, later the Common Law courts made it a civil wrong. The leading cases are Crofter v. Veitch, Allen V. Flood, Quinn V. Leathern, Moghul Steamship Co. V. Me Gregor, and Sorrell V. Smith.

iii) Essentials.

- a) The purpose must be to cause damage to the plaintiff.
- b) Combination of persons.
- c) Overt act of causing damage.

a) **Purpose :** "Intention" or "Malice" is not the essential element. What is required is that the defendants should have acted in order that the plaintiff should suffer damage. Hence, the main purpose or objective decides whether there is conspiracy or not.

Crofter V. Veith : 7 small producers of tweed were using imported yarn to make cloth. 5 mill owners were using local yarn to manufacture cloth and they could sell at cheaper rates. The union of mills desired to fix a minimum price for cloth. Their objective was to get their wages increased. They could not get higher wages as the 7 small tweed producers were paying less. The union officials put an embargo on importation of yarn by ordering the dockworkers not to handle import yarn. This was obeyed by them. In consequence the small producers suffered and their trade was affected. They sued for conspiracy.

Held, union is not liable. The main purpose was not to affect trade but to promote their own interests.

In Moghul Steamship Co. v Me Gregor, the defendants offered reduced freight charges to gain a monopoly of the China Tea trade. P, a shipping company seriously suffered which sued

for conspiracy. Held, not liable. The main object of the defendants was to earn profits. This was usual in a business competition.

Allen V. Flood: See Ch. 2(1)

Quinn V. Leathern : P was a butcher selling a good quantity of meat to a big dealer M. The defendants D, the union officials, demanded that P should dismiss his workers and appoint only the members of the union. P refused. D induced M to stop buying from P with a threat that if M does not obey, his workers (who were members of the union) would resort to strike. M stopped all dealings with P. P suffered and sued for conspiracy. Held, defendants liable. The purpose in effect was to affect the business of P.

Sorrel V. Smith: Retail Newspaper formed a union, and desired to limit the shops only to themselves and those who had union's permission. R was a wholesale dealer who supplied newspapers to a few retailers who had opened shops without union's permission. The union interfered. It transferred P the customer of R to another wholesaler W. The newspapers owners, the defendants, found this to be injurious to trade and jointly they threatened to stop supplies to W. P sued the defendants, to restrain them from stopping.

Held, no order or injunction against D was to be given. The combination was not to injure W or others but only to protect the interests of the newspaper trade.

b) Combination of persons : There must be two or more persons with the objective or purpose to injure a third person. The nature of the purpose is evident from the above cases.

c) Over act: There must be an overt act to cause damage in addition to the combination of persons. Mere overt act by itself will

not be actionable injury. This is evident from Mighell V. Me Gregor and Sorrel V. Smith. The act must be injurious to trade as in Quinn V. Leatham.

THE END