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DELHI JUDICIAL SERVICES

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Law of Torts

Introduction

The law of tort is a special branch of law governing actions for damages for injuries to certain kinds of rights i.e., as rights of personal securities, property or reputation.

It is also often said that a wrong which is not a crime, which is not a breach of contract or which is not a breach of trust, is a wrongful tort. An act twisted, crooked, which is not straight and lawful, is tort.

The word "tort" is derived from the Latin word *'tortum'*, meaning 'twist'. Like all other wrongs, tort is a wrongful act whereby the wrongdoer commits the breach of a legal right vested in some individual.

Tort is a civil wrong, but not all civil wrongs are torts. Thus, broadly speaking, though loosely-those civil wrongs which do not fit in any defined category of civil wrongs, are torts.

Definition of Tort

To define tort clearly and satisfactorily is an ambitious task due to the practical problems which obstruct writers in framing a precise definition. Following are the attempts made by various Justices to define tort

(a) **Winfield:-** "Tortious liability arises from the breach of a duty primarily fixed by law; this duty is towards persons generally and its breach is redressible by an action for un-liquidated damages."
(b) **Pollock:-** "The law of torts in civil wrongs is a collective name for the rules governing many species of liability which although their subject-matter is wide and varied have certain broad features in common, enforced by the same kind of legal process and are subject to similar exceptions."
(c) **Fraser:-** It is infringement of a right in rem of private individual giving a right of compensation at the suit of the injured party.
(d) **Prof. Bangia:-** "Tort is a civil wrong which is redressable by an action for unliquidated damages, and which is other than a mere breach of contract or breach of tort."

Section 2 of the Limitation Act, 1963:-

"Tort is a civil wrong which is not exclusively a breach of contract or breach of trust."

Nature of a tort: Nature of a tort can be best understood by distinguishing

1. Tort and crime
2. Tort and breach of contract
3. Tort and breach of trust

Tort	Crime
1. There is an infringement of private or civil rights of individual.	1. There is a breach of public rights which affect the whole community.
2. The forum of redressal is a civil court.	2. Proceedings are to be initiated in a criminal court.
3. The suit for damages is filed in the court against the wrongdoers by the plaintiff himself.	3. Proceedings are initiated against the accused by the State.
4. The main aim is to re-compensate the plaintiff for the loss suffered by him from the wrongful act of the defendant.	4. The main aim is to punish the accused if convicted to set example that such crime is not repeated in future.

Tort	Contract
1. There is a breach of duty which is fixed by law.	1. There is a breach of duty which is fixed by the contracting, parties.
2. Motive for breach of duty is immaterial.	2. Motive for breach of contract is often taken into consideration.
3. There is a violation of a right in rem i.e., a right vested in some determinate person and available against the whole world.	3. A breach of contract is an infringement of a right in *personam* i.e. a right available only to a some definite person and in which society has no concern
4. Damages are generally unliquidated and are determined by the court on the facts and circumstances of the case.	4. Damages are fixed according to the terms and conditions of contract.

Tort and Breach of Trust

Only similarity between breach of trust, breach of contract and tort is that claim is usually for monetary compensation. In the case of breach of trust, the damages may be liquidated: they may as well beunliquidated. Again, in the case ofbreach of trust, there exists a relationship of trustee and beneficiarybetween the two, but it is not so in trust. Trust is a breach of law of property, while tort is not.

General Conditions of Liability In Tort

Following are the conditions on which tortious liability is determined

1. Wrongful act or omission
2. Resultant damage (legal)
3. Legal remedy

1. **Wrongful Act or Omission:-** A tortious act may be positive or negative, in either case act must be one which is regarded by lawas unlawful. When a person has a legal duty to perform, and if he fails to do it, he can be made liable.

   If the act complained of does not violate legal right of another person, it is not a tort. Violation of moral,social and religious duties does not come under the category of torts. Thus, in tort the plaintiff has to provethat his legal rights have been violated by the act of the defendant.

2. **Resultant Legal Damage:-** Mere act or omission or failure to do duty will not be a tort, unless it results in some injury to the personsuing, or violation of his legal right. But it is not every damage that is an injury in the eyes of law. Theremay be a wrong caused to a person but, if actual legal damage is not caused to him, no action in tortswill be maintainable. "Legal damage" neither identical to "actionable damage" nor it is necessarily "pecuniary".

   Thus, if a legal right has been violated, remedy must be provided. This is expressed thus, *injuria sine damno*. If there is no violation of legal right, even though the act of one party causes harm or injury tothe other, no action can be filed: damnum sine injuria, or damage without the violation of legal right is notactionable in a court of law.

3. **Legal Remedy**

   Ubi jus ibi remedium:- The maxim means wherever there is a right there is aremedy or in other words "there is no wrong without a remedy." It had been laid down by Holt CJ., in the famous ease of Ashby v. White. "If the plaintiff has a right, he must of necessity have a means to vindicate and maintain it, and a remedy if he is injured in the exercise of enjoyment of it, and indeed it is a vain thing to imagine a right without a remedy: for want of right and want of remedy are reciprocal." If men will multiply injuries, actions must be multiplied too. For every man who is injured has a right to have recompense.

The law of Tort is said to be the development of the above maxim "Jus" signifies here the "legalauthority to do or to demand something and remedium' may be defined to be the right of action, orthe means given by law, for the recovery or assertion of a right.

A tort is a civil wrong for which the remedy is an action for unliquidated damages. Thus, the mainremedy for a tort is an action for damages. There are other remedies such as specific restriction andinjunction. But, an action for unliquidated damages is an essential characteristic of remedy for tort. It is mainly the right to damages which brings such wrongful acts within the category of torts.

Damnum Sine Injuria

By 'damnum' is meant damage in the sense of substantial loss of money, comfort, service, health or the like. In another words, it means loss without injury or harm. This is not actionable. If by action of 'A' injury is caused to 'B' but no legal right is violated, no action will lie. The man who has sustained loss in business competition or is injured by a spiteful action of his neighbor has no action in tort.

Injuria Sine Damnum

The maxim injuria sine damnum means infringement of private legal right without damage or loss. In such a case the person in whom the legal right is vested is entitled to bring an action and may recover damages although he has suffered no actual loss or harm. The maxim is reverse to the maxim damnum sine injuria.

In *Ashby v. White,* (1703) 2 LdRaym 938: 1 ER 417: 6 Mod Rep 45 the plaintiff was a qualified voter at a parliamentary election, but the defendant, a Returning Officer wrongfully refused to take plaintiff's vote. No loss was suffered by such refusal because the candidate for whom he wanted to vote won in spite of that.

Lord Chief Justice Holt laid down the following propositions in delivering his judgment in favour of the plaintiff.

(i) That the plaintiff, as burgress of this borough, hath a legal right to give his vote for the election of Parliament burgresses;
(ii) That as a necessary consequence thereof, and an incident inseparable to that right, he must have a remedy to assert, vindicate and maintain it; and
(iii) This is the proper remedy which the plaintiff health pursued, being supported by the grounds, reasons and principles of the ancient common laws of England.

In this case the defendant had maliciously infringed the private legal right of the plaintiff and so an action was held maintainable against the defendant. But where, a Returning Officer, without any malice or any improper motive, in exercising his judgment, honestly refused to receive the vote of a person entitled to vote at an election, no action will lie (Tozer v. Child).

Malice (Mental Elements In Tort)

Generally speaking, there is no requirement of showing a mental element to prove a wrong in tort. But some qualifications of the general statement are necessary. In torts like assault, false imprisonment, malicious prosecution, battery etc. the state of mind of the person committing the tort is relevant in ascertaining his liability. Often, the test of a reasonable man is applied if his conduct falls below the standard expected of a reasonable man, he is made liable. In the tort of negligence, a certain amount of care is expected of a person, and if he does not take that much care, he is liable, but, if he takes expected care, he is not liable even if his act causes damage or injury to the other person. Further, if the conduct of a person is innocent in regard to the act done by him and injury is due to the inevitable accident, he may not be liable.

Malice In Law and Malice In Fact

The term "malice" has been used in two different senses:

(1) In its legal sense it means a willful act done without just cause or excuse and it is known as 'malicein law'.
(2) In its wider and more popular sense, it means an 'evil motive' and the same is known as 'malice in fact'.

Motive

Motive means an ulterior reason for conduct. It is different from intention in the sense that motive causes intention. The immediate intention of a person may be to commit the theft of jewellery, though the ulterior motive may be to cause disruption of marriage of neighbor's daughter for whose marriage the neighbor bought the jewellery.

As a general rule, motive is of no importance in torts. However, this general rule is subject to followingexceptions

(1) When privilege of fair comment is pleaded as a defence for defamation, motive becomes relevant, as proof of good faith is necessary. The presence of malice, evil motive or ill-will negatives good faith.
(2) The motive of causing personal discomfort may convert an otherwise lawful act of nuisance into a wrong.

(3) In torts, like torts of deceit, conspiracy, malicious prosecution, the proof of malicious motive is essential.
(4) Bad or malicious motive or ill-will is a factor enhancing damages.

Fault

Fault' according to Salmond, is the basis of all tortuous liability. But there are cases where the mental element is quite irrelevant in determining the liability of the wrongdoer. In such cases liability may arise even without any wrongful intention or negligence on the part of the defendant. In such cases, the defendant cannot take the plea that he was innocent or there has been an honest mistake on his part.

No Fault Liability

There are cases where liability arises without fault, like cases of 'strict liability' and 'absolute liability. The rule of 'strict liability was laid down in Rylands v. Fletcher, where it has been held that the occupier of land who brings and keeps on it anything likely to cause damage, if it escapes is bound at his peril to prevent its escape and is liable for the direct consequences of its escape even if he has not been guilty of negligence.

Liabilities are also imposed by statutes on employers e.g., Factories Act, the Workmen's Compensation Act, where the element of fault is absent but they are held liable.

General Defences

As in criminal offences, so also in torts, there are certain defences available which can be put under twoheadings:

(1) **General defences:-** Such defences as defence of consent which are available in most action in torts.
(2) **Specific defences**:- Such defences which are available only in some torts, e.g. defence of privilege or fair consent in an action of defamation.

Following are the general defences of torts:
(a) Necessity
(b) Mistake
(c) Act of God
(d) Private defence
(e) Inevitable accident
(f) Consent (*Volenti non fit injuria*)
(g) Statutory authority
(h) Exercise of common rights
(i) Executive authority

(a) **Necessity**

The defence of necessity means that an act causing damage is done under the necessity to prevent a greater evil or harm. Even if the harm is done intentionally, in such cases, no liability arises.

There is a distinction between the defence of necessity and private defence. In the former, the harm is inflicted on an innocent person, while in the latter, harm or injury is inflicted on the person who is claiming relief; i.e., plaintiff.

(b) **Mistake**

In an action of tort, mistake, whether of law or fact is generally no defence. If a person interferes withthe rights of another person, he cannot take the defence that he honestly believed that there was some justification for the same. Similarly, if one enters upon the land of another thinking that it belongs to him is a trespass.

In some exceptional cases, mistake may be taken as a valid defence. For instance, for the tort of malicious prosecution, it is necessary to establish that the other party acted maliciously and without reasonable cause, and if an innocent man is prosecuted under a mistake, it is a valid defence.

(c) **Act of God (Vis Major)**

Vis major is a general defence for the reason that it relieves a defendant from liability for theconsequence of his antecedent conduct intervened by operation of natural forces. Even in cases of strict liability it has been recognized as a good defence. It is not within the policy of law to make person absolutely liable for natural calamities like severe gales, floods, storms or cloudburst. What the defendant must prove is that the disaster was really caused by a certain supervening force and that the disaster was in the nature of damnum fatale.

According to Salmond, act of God includes those acts which a man cannot avoid even by taking reasonable care Such accidents are the result of natural forces and are unconnected with the agency of man. Act of God is a good defence to any action in tort. Thus, when the damage, loss or injury is caused on account of operation of natural forces or phenomena, such as heavy downpour, storms, floods, earthquakes, droughts, etc.

The two essential ingredients of the defence of act of God are

(1) The act must result on account of working of natural forces, and
(2) The occurrence must be extraordinary.

(d) **Private Defence**

Every person has the right to protect his property or person and he can use necessary force for this purpose. Private defence or self-defence is a good defence in an action for tort as well. But the use of force in private defence should be reasonable, which is necessary to protect one's property or person. The use offorce is definitely justified in self defence when there is an imminent danger or threat to the safety of personor property.

However, what force is necessary or when reasonable force has been used will depend on the circumstances of each case. In self-defence, fixing of pieces of glasses as spikes on the wall or keeping a watchdog may be justified, but fixing of high-voltage barb-wire or spring guns is not justified.

(e) **Inevitable Accident**

Pollock describes inevitable accidents as "incidents which a person of ordinary prudence cannot avoidin spite of all reasonable care on his part in the circumstances in which they occur.

"An inevitable accident does not mean absolutely inevitable but it means unavoidable by any such Precaution as a reasonable man, doing such an act then and there, could be expected to take.

Inevitable accident is in general a good defence as actions of tort. This is the plea that the damage in question could not have been prevented by the exercise of reasonable care on the part of the defendant. In other words, it is the plea that the conduct of the defendant was neither willful nor negligent while taking help of inevitable accident must prove that there was no negligence on his part.

(f) **Consent or Volenti Non Fit Injuria**

Volenti non fit injuria is a possible defence in an action in torts. The maxim means that a person who consents to an act being done or who takes upon himself the risk of suffering damage cannot bring an action in respect of that act of damage. No action lies against the injury suffered voluntarily as no man can enforce a right which he has voluntarily waived or abandoned. The consent may be express and it may also be implied. One cannot sue a guest for trespass when one has invited him for dinner; one cannot sue a surgeon when one has consented to be operated upon by him: one cannot sue a person for defamation if one has agreed to the publication of such defamatory statements. These are examples of express consent to suffer harm. Similarly, incidents of implied consent to suffer harm can be responding to the cry of "help" of a person who

is unable to control his car, and in the process if one is injured, one cannot complain, or, the spectators by their presence in a stadium are deemed to have agreed to take the risk of being hurt, in a cricket match by a ball or in a car race if hurt by a car going off the track accidentally.

In the defence of Volenti non-fit injuria, consent must be free. When consent is obtained by fraud, undue influence or coercion, it is not free.

Limitation To The Application of The Maxim Volenti Non-Fit Injuria

The following are the conditions where the maxim Volenti non-fit injuria does not apply:

(i) The process must not be unlawful;
(ii) The consent must be freely given;
(iii) The consent is not obtained fraudulently; and
(iv) The maxim is Volenti non-fit injuria and *not scienti non fit injuria*.

(g) **Statutory Authority**

One cannot bring an action for tort if he suffers damage caused by an act done under the authority of the legislature. When harm results from such an act, the injured party can claim only such damages or compensation as is provided by the statute.

Running of train using coal or fuel-oil inevitably causes discharge of smoke and cause noise and vibrations, resulting in some harm or injury to human beings and land. But no action can be brought for the damage caused by the construction of railway lines and running of trains, provided there had been no negligence in doing such acts.

(h) **Exercise of Common Rights**

Subject to the restriction that the rights must be exercised in good faith and in lawful manner, every person has complete freedom to exercise his common or ordinary rights, even though it may cause some injury to others.

(i) **Executive Authority**

The Constitution and statutes confers certain privileges to the State and its executive officers. They can. in the exercise of their duties interfere with certain rights of individuals without being exposed to any liability for damages. But it is to be taken note of that if the executive officers act illegally or in improper exercise of their rights, they can be held liable.

Doctrine of Remoteness of Damage

It is well-settled principle of law that a man cannot be held liable for all the consequences of an act which has been found to be negligent, for the consequences may be infinite. The damages are not awarded because the plaintiff fails in that the chain of causation connecting the defendant's act with the damage resulting from it is of such nature that the law for some reason refuses to regard it as sufficiently continuous for liability. The damage of this kind is said to be too remote and the most important reason to exempt the defendant from liability seem that he cannot be responsible ad infinitum.

The extent of tortuous liability is basically a question of remoteness of damage in the case of tortuousliability. There is a famous maxim which explains this point well- *Injuria non remota causa sid proxima spectatur*, i.e., in law, the immediate and not the remote cause of any event is to be considered. Thus, lawcannot take account of everything that follows a wrongful act. Causes resulting in damages may be severalbut an action for damages will be against the wrongdoer if his wrongful act was the real cause of the injury or damage.
Under the law of torts, there are two fairly settled tests to determine the remoteness or proximity of damage. These are

(1) **The Test of Reasonable Foresight**
According to this view consequences are two remote if a reasonable man would not have foreseen them. Such was the opinion of Pollock C.B. in two cases in the Court of Exchequer, 1850- Rigby v. Hewitt, 5 Ex. 240 (243). and Greenland v. Chaplin, 5 Ex 243 (248). He admitted that he spoke only for himself and not for his judicial brethren, but in some later decisions his opinion was followed.

(2) **The Test of Directness**
According to this view that if is reasonable man would have foreseen any damage to the plaintiff as likely to result from his act, then he is liable for all direct consequences of it suffered by the plaintiff, whether a reasonable man would have for seen them or not, that is, if they are directly traceable to the act and not due to the operation of independent intervening causes.

Nervous Shock

Nervous Shock is a form of personal injury for which damages may or may not be recoverable according to the circumstances of the particular case.

In ***Bourhill v. Young, (1943) AC 92***, the Appeal Court observed: "The crude view that the law should take cognizance only of physical injury resulting from actual impact has been discarded, and it is now well recognised that an action will lie for injury by shock sustained through the medium of the eye or the ear without direct contact. The distinction between mental shock and bodily injury was never a scientific one, for mental shock is presumably in all cases the result of, or at least accompanied by some physical disturbance in the sufferer's system."

In ***Dulien v. White, (1901) 2 KB 669***, it was held that damage cannot be given for the mere sensation of fear, but when fear or any other sensation produces a definite illness, that consequence is no more remote than a broken bone or an open wound.

In ***Victorian Railway Commissioners v. Coultas, (1888) 13 AC 222: 57 LJPC 69***, appellant's servants had negligently allowed the plaintiff to drive over a level-crossing and she was clearly run over by a passing train. There was no physical impact, but the fright caused a mental shock to the plaintiff producing delicate health and impaired memory and eye-sight, which were stated as the ground of damage. The plaintiff stated she was going to be killed, that when she was put to bed she felt burning pain and aching in her head and sensations like pins and needles in her arms and head, that the was unable to sleep and that she could not read. She was then seven and half months advanced in pregnancy but her child was born at the usual time and was apparently healthy. The court decided that the damages claimed were not too remote. The Privy Council declined to say whether actual impact was necessary, but held that damages resulting from mere sudden terror unaccompanied by any actual physical injury, but occasioning a nervous shock, I could not be considered the natural consequence of the negligence complained of.

In ***Dulien v. White, (1901) 2 KB 669***, the defendants servant negligently drove a van into a public house. The wife of the proprietor standing behind the bar, received a severe shock which resulted into an illness, terminating in a premature confinement. The defendants were liable for damages.

In ***Hambrook v. Stokes Brothers, (1925) 94 LJKB 435***, the defendant's servant negligentlyleft a motor lorry unattended at the top of a narrow street which contained a steep incline, with the result that lorry started of its own accord, ran down the street and injured the plaintiff's daughter, a child of tender years. The plaintiff wife did no witness the accident, but saw the lorry rushing round a bend in the street towards her, became alarmed for the safety of her child, whom she had just left in the street, and, on hearing from bystander that a child answering to the description of her own child had been injury by the lorry, suffered a severe fright and shock to her nervous system and died in consequence. The Court held that

defendant was liable for her death. There was admission of negligence in the pleading which meant that the breach of duty owed to Hambrook was admitted by strokes.

In ***King v. Phillips, (1953) 1 QR 429***, the defendant's taxi cab, driven by his servant, was negligently backed into a small boy on a tricycle and slightly damaged both. The boy's mother heard his scream and looking out of an uptair window some seventy yards away, saw the tricycle under the taxi cab but could not see her boy. She suffered a shock as a result, but the Court of Appeal held that although the defendant was negligent vis-à-vis the boy, no hypothetical reasonable observer could reasonably or probably have anticipated that injury, either physical or nervous, could have been caused to the mother by the backing of taxi without due attention to where it was going, the defendant owed her no duly and was therefore not liable.

Vicarious Liability

As a general rule, a person is liable for his own acts and not for the acts done by others. But on the principles of social security and justice, some exceptions have been carved out of the general rule. One of such exception is the concept of vicarious liability.

According to Pollok, "I am responsible for the wrongful acts of my servant or agent because he doesmy act andtherefore it is my duty to see that he must do my act keeping in view the security of others"

Que Facit Per Alium Facit Per Se

Vicarious liability is based on the maxim *qui facit per alium facit per se* i.e., he who does an act through another is deemed in law to do it himself. When an act is authorized by the principal and is done by the agent, both are liable. The liability is joint and several. The liability of the master arises even when the servant acts against the express instructions of the master.

The master will be liable for the tort of his servant only if the following conditions are satisfied:

(1) The wrong should be committed by a person working in the capacity of a servant.
(2) The tort should have been committed by such person in the course of his employment.

Respondent Superior

The maxim respondent superior means 'let the principal be held responsible'. It is reasonable that master should pay damages because he can pay. The maxim is based on the fact that the master being superior can pay without any financial stringency and, as such, he should be held liable for the tort committed by the servant during the course of employment.

Vicarious liability may arise when the doer of the act and the person sought to be held liable therefor are related to each other as:

1. Master and servant;
2. Owner and Independent Contractor;
3. Principal and Agent;
4. Company and its Directors;
5. Firm and its Partners;
6. Guardian and Ward.

Who Is Servant?

To hold a person liable for the act of another, that the latter comes within the meaning of the word servant" is a condition precedent. Thus, it is important to answer the question 'who is a servant. Servant is a person who is employed by his master to do some work under him and under his directions and control.

The relationship of master and servant between two persons is established only when one gives orders and the other obeys those orders.

In ***Short v. J.W. Handerson Ltd.***, four tests for determining the contract of service', namely:

(1) The power of the master to select his servant.
(2) The power to pay wages and other remuneration.
(3) Master's right to control in the method of doing the work by the servant.
(4) Master's right to suspend and dismiss his servant.

Out of these tests, the test of control is the most important test to determine relationship of master and servants for other elements are found in a 'contract for service' also.

Servant Not Under Master's Control

Cases where master does not or cannot control the acts of his servant, he cannot be held to be vicariously liable for the acts of such servant. Under the current trend in the law of tort, the "hire and fire" rule is applied in many cases. According to this rule, if one employs another and pays him salary or other remuneration and has power to dismiss him, one is liable for the acts of one's employees.

Master's Liability For Servant's Fraud

It is a settled and undisputed principle of the law of tort that master is answerable for every such wrong of his servant as is committed in course of his service, though no express command or privity of the matter to be proved and the wrongful act may not be for the master's benefit. Accordingly, when a servant, while in course of the performance of his duties as such commits a fraud, the master would be liable for the same.

Master's Liability For Servant's Private Acts

An act of a servant, unconnected with his master's work, is his private work and being outside the course of the servant's employment, the master will not be liable for such acts of the servant.

Married Women

In Edward v. Poster, (1925) AC 1, it was held that a married woman could not sue or be sued unless her husband joined with her. There was only a procedural technically that her husband had to be joined with her as she had no procedural existence independent of him. But this technicality was also abolished by the Married Women's Property Act, 1882, and now with respect to property she could be sued as a *feme sole*. At present, the Law Reform (Married Women and Tort Feasors) Act, 1935 and the Law Reform (Husband and Wife) Act, 1962 put the married women in the same position as if they were not married. In India the notion of the legal identity between husband and wife does apply, and, therefore, an action in tort by one against the other is maintainable.

Strict Liability

According to the rule of strict liability, a person who, for his own purpose, brings on his land and collects and keeps there, anything likely to do mischief if it escapes, must keep 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 known as the rule of Ryland v. Fletcher. It has been held in several cases that the principle of ***Ryland's v. Fletcher*** applies in India.

Essential Elements of Strict Liability

There are two essential elements for the application of the rule:

(1) Non-natural user of land: "It must be some special use bringing with it increased danger to others and must not merely be the ordinary use of the land on such a use as is proper for the general benefit of the community. Thus, instances such as installation of water-pipes in houses and flats, trees planted by the defendant his land mining on land, building or bringing down walls and necessary

wiring for electrical supply, all being a natural user of land are perfectly outside the ambit of the rule of Ryland v. Fletcher.

(2) Escape of things from defendant's land: The principles of strict liability apply only when the things resulting into damages to the plaintiff, escape from the land in occupation and control of the defendant. Further, escape means going outside the place of occupation or control of the defendant.

Absolute Liability

A rule, more stringent than that of vicarious liability was laid down by the Supreme Court of India in M.C. Mehta v. Union of India, AIR 1987 SC 965. The rule in Ryland's v. Fletcher is subject to many exceptions but the new rule laid down in M.C. Mehta's case is absolute as it is not subject to any exceptions. The rule laid in the former case applies only when there is escape of dangerous thing from the land of the defendant whereas the new rule applies in a case where the defendant is carrying on a hazardous or inherently dangerous activity and harm is caused to a person on account of an accident in the operation of such hazardous or inherently dangerous activity.

The rule is Ryland v. Fletcher, does not cover cases where harm to a person is done within the premises as the rule requires that the thing causing harm must escape from the premises of the defendant. The new rule applies in both the situations whether the person suffer harm within the premises or outside. Further, the damages under the rule of strict liability will be ordinary or compensatory, but in cases where the new rule as laid down in M.C. Mehta's case applies, the court can award exemplary damages and if the enterprise is large and more prosperous, the amount of damages payable by it will also be greater.

Nuisance

Winfield defines nuisance as an "unlawful interference with other's use or employment of land or of some right over it or in connection with it."

Thus, nuisance, like trespass is concerned with the use of land but where in trespass, interference is generally through some material or tangible objects, in nuisance, the interference is created by some intangible objects such as gas, vibrations, noise, smell, smoke, etc. In the tort of nuisance, the wrongdoer does not enter the property in possession of another but he uses his own property in such a manner that he interferes with comfort of a person in possession of another's property.