# LL. B. I Term

# **Paper - LB – 103 – Law of Torts**

The Law of Torts is primarily concerned with redressal of wrongful civil actions by awarding compensation. In a society where men live together, conflict of interests are bound to occur and they may from time to time cause damage to one or the other. In addition, with the rapid industrialization, tortious liability has come to be used against manufacturers and industrial units. The Law of Torts had originated from Common Law and by and large this branch of law continues to be uncodified. Tortious liability has been codified only to a very limited extent such as workmen's compensation, motor vehicle accidents, environmental degradation, consumer protection and the like.

As the Law of Torts is basically a judge made law, students are required to study it in the light of judicial pronouncements. They are required to equip themselves with the latest developments extending to the entire course.

#### **Prescribed Books:**

- 1. W.V.H. Rogers, Winfield & Jolowicz on *Tort* (17<sup>th</sup> ed., 2006)
- 2. R.F.V.Heuston and R.A. Buckley, **Salmond & Heuston** on *The Law of Torts* (20<sup>th</sup> ed.,1992)
- 3. G.P. Singh, Ratanlal & Dhirajlal The Law of Torts (25th ed., 2006)
- 4. Tony Weir, A Casebook on Tort (9th ed., 2004)
- 5. Avtar Singh (Rev.), **P.S. Atchuthen Pillai** *Law of Torts* (9<sup>th</sup> ed., 2004)

## **Topic 1: Introduction: Definition, Nature and Scope**

- (a) Origin and Development of Law of Torts in England Forms of action Specific remedies from case to case.
- (b) Evolution of Law of Torts in India Un-codified and judge-made Advantages and disadvantages.
- (c) Meaning and function of Law of Torts Prescribing standards of human conduct, redressal of wrongs by payment of compensation, injunction.
- (d) Definition of Tort
- (e) Constituents of Tort Wrongful act, Legal damage and Remedy *Injuria Sine Damno* and *Damnum Sine Injuria Ubi jus ibi remedium*
- (f) Tort vis-a-vis other wrongs e.g. crime, breach of contract, etc.
- (g) Relevance of intention, motive and malice in law of torts
- 1. White v. John Warrick & Co., Ltd., (1953) 2 All ER 1021
- 2. Town Area Committee v. Prabhu Dayal, AIR 1975 All. 132
- 3. P. Seetharamayya v. G. Mahalakshmamma, AIR 1958 AP 103

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- 4. Jayalakshmi Salt Works Pvt. Ltd. v. State of Gujarat (1994) 4 SCC 1
- 5. State of A. P. v. Govardhanlal Pitti (2003) 3 SCALE 107
- 6. Ashby v. White (1703) 2 Lord Raym 938

- 7. Municipal Corpn. of Agra v. Asharfi Lal, AIR 1921 All. 202
- 8. Mayor of Bradford Corpn. v. Pickles (1895) AC 587
- 9. Glouscester Grammer School case (1410) Y.B. 11 hen. IV of 47

## **Topic 2 : Defences against Tortious Liability**

(a) Consent as defence – Volenti non fit injuria – Essentials for the application of defence; Exceptions to the defence – Rescue cases and Unfair Contract Terms Act, 1977 (U K); (b) Statutory authority; (c) Act of God

10.	Smith v. Charles Baker and Sons (1891) AC 325 (HL)	12
11.	South Indian Industrial Ltd., Madras v. Alamelu Ammal,	
	AIR 1923 Mad. 565	17
12.	Haynes v. Harwood (1935) 1 K B 146	18
13.	Ramchandraram Nagaram Rice & Oil Mills Ltd. v. Municipal	
	Commissioners of Purulia Municipality, AIR 1943 Pat. 408	23
14.	Manindra Nath Mukherjee v. Mathuradas Chatturbhuj,	
	AIR 1946 Cal. 175	27
15.	Hall v. Brooklands Auto Racing Club (1932) 1 KB 205	
16.	T.C. Balakrishnan v. T.R. Subramanian, AIR 1968 Ker. 151	

## Topic 3: Negligence – Liability at Common Law and Statutory Law

(a) Theories of Negligence; (b) Meaning and Definition; (c) Essential Ingredients – duty to take care, breach of duty, consequent damage; (d) Proof of Negligence- Res ipsa loquitor

17.	Donoghue v. Stevenson (1932) All ER Rep. 1	34
18.	Municipal Corporation of Delhi v. Subhagwanti, AIR 1966 SC 1750	40
19.	Pinnamaneni Narasimha Rao v. Gundavarapu Jayaprakasu,	
	AIR 1990 AP 207	43
20.	Indian Medical Association v. V. P. Shantha, AIR 1996 SC 550	54
21.	Jacob Mathew v. State of Punjab (2005) 6 SCC 1	64

## **Topic 4: Nervous Shock**

22.	Hambrook v. Stokes Bros. (1924) All ER Rep. 110	84
23.	(Hay or) Bourhill v. Young (1942) 2 All ER 396 (HL)	89
24.	McLoughlin v. O'Brian (1982) 2 All ER 907 (HL)	92
25.	Alcock v. Chief Constable of the South Yorkshire Police	
	(1991) 4 All ER 907 (HL)	106
26	Dana are Consider (1005) 2 All ED 726	

- 26. Page v. Smith (1995) 2 All ER 736
- 27. Dulieu v. White (1901) 2 KB 669
- 28. King v. Phillips (1953) 1 QB 429

#### **Topic 5: Remoteness of Damages**

29.	In Re An Arbitration between Polemis and Furness, Withy & Co.	
	(1921) All ER Rep. 40	124
30.	Overseas Tankship [UK] Ltd. v. Morts Dock & Engineering Co.	
	[The Wagon Mound] (1961) 1 All ER 404	126
31.	Hughes v. Lord Advocate (1963) AC 837	130
32	Smith v. Leech Brain & Co. (1961) 3 All FR 1159	

#### **Topic 6: No Fault Liability – Strict and Absolute Liability**

(a) Strict Liability – Rule in *Rylands* v. *Fletcher* – Origin and nature, scope, defences – Application of the rule in India; (c) Absolute Liability – Rule in *M. C. Mehta* v. *Union of India*; (d) Liability under modern legislation – The Public Liability Insurance Act, 1991

33.	Rylands v. Fletcher (1868) LR 3 HL 330.	140
34.	M. C. Mehta v. Union of India, AIR 1987 SC 1086.	145
35.	M. P. Electricity Board v. Shail Kumar, AIR 2002 SC 551.	152
36.	The Madras Railway Co. v. The Zemindar of Carvatenagarum,	
	LR (1874) 1 IA 364	

#### **Topic 7: Vicarious Liability of State**

(a) Basis of Liability - Position in England and India; (b) Government Liability in Torts – (1) Constitutional Provisions; (2) Sovereign and Non-sovereign Functions; (3) *Law Commission of India First Report*, 1956; (4) Violation of Fundamental Rights and Sovereign Immunity

37. State of Rajasthan v. Vidyawathi (1962) Supp. 2 SCR 989	154
38. Kasturilal Ralia Ram Jain v. State of U. P. (1965) 1 SCR 375	160
39. N. Nagendra Rao & Co. v. State of A. P., AIR 1994 SC 2663	169
40. Chairman, Railway Board v. Chandrima Das (2002) 2 SCC 465	181

#### **Topic 8 : Defamation**

 $\label{lem:likelike} \begin{tabular}{ll} Libel \& Slander-Defences, Justification by Truth, Fair and Bonafide Comments, Privilege, Consent and Apology \\ \end{tabular}$ 

41. Tushar Kanti Ghosh v. Bina Bhaumic (1953) 57 CWN 378	186
42. Rustom K. Karanjia v. K. M. D. Thakersey, AIR 1970 Bom. 424.	195
43. Melepurath Sankunni Ezhuthassan v. Thekittil Geopalankutty Nair	
(1986) 1 SCC 118	

**IMPORTANT NOTE:** 1. The topics and cases given above are not exhaustive. The teachers teaching the course shall be at liberty to add new topics/cases.

- 2. The students are required to study the legislations as amended up-to-date and consult the latest editions of books.
- 3. The question paper shall include one compulsory question. The question papers set for the examinations held during 2007-08 and 2008-09 are printed below for guidance of the students.

#### LL.B. I Term Examinations, December, 2008

<u>Note</u>: Answer *five* questions including Question No. 1 which is compulsory. All questions carry *equal* marks.

- 1. Attempt briefly any *four* of the following:
  - (i) Act of God as a defence of tort;
  - (ii) Distinguish between tortious and contractual liability;
  - (iii) Maxim res ipsa loquitur;
  - (iv) 'Rescue Cases' as an exception to the maxim volenti non fit injuria;
  - (v) Essentials of defamation
- 2. Explain the maxims *Injuria sine damno* and *Damnum sine injuria*.
  - 'X', the owner of 300 sq. yards of land in an approved residential colony, applied for, and obtained sanction of building plans of  $2\frac{1}{2}$  storey structure. At the time of construction, however he constructed a  $3\frac{1}{2}$  storey building. The Corporation, which sanctioned the plans, after giving notice, demolished one storey of the building constructed beyond sanction. As a result, a water tank also got demolished. 'X' claims damages from the Corporation alleging malice on the part of the Corporation officials. Can he succeed? Decide, giving reasons.
- 3. Discuss with the help of decided cases various essentials of the maxim volenti non fit injuria.

Sapna went to a surgeon for operation to remove stones from her kidney. The surgeon 'Dr. X' performed the operation but left a gauze piece in the abdominal cavity during operation. Peritonitis developed which led to a second surgery being performed on her. She sues 'Dr. X' for negligence. 'Dr. X' takes the plea of *volenti non fit injuria*. Decide, giving reasons.

4. "We must take reasonable care to avoid acts or omissions which we can reasonably forsee would be likely to injure our neighbour. Who, then, in law is our neighbour?

How was this question answered by Lord Atkin in *Donoghue* v. *Stevenson* [(1932) All ER 1]? Discuss fully the liability of a manufacturer on the basis of this principle laid down in the above case.

- 5. Discuss the historical development of the law relating to "Nervous Shock'. Can a person claim damages, caused due to nervous shock, which he suffered on seeing 'the aftermath' of the accident after being told about it?
- 6. What are the tests to determine the 'remoteness of damage'? Analyse the reasoning of the Privy Council in the Wagon Mound case for rejecting the principles laid down in *Re Polemis* case. Discuss the present laws on this point.
- 7. How far is 'Rule of Absolute Liability' different from 'Rules of Strict liability'?

Due to extraordinary heavy rainfall, a storage tank belonging to an enterprise engaged in an inherently dangerous industry collapsed. Highly toxic gas contained in the tank escaped and caused the death of two persons and adversely affected a number of others. Will the enterprise be liable? What is the measure of damages in such cases?

8. Enunciate the law evolved by the Supreme Court on 'Vicarious Liability of the State' for torts committed by its servants.

'X' was carrying on a business in foodgrains. Huge stock of foodgrains was seized from his premises. In proceedings taken under section 6A of the Essential Commodities Act, 1955 no serous violation of any control order was found and only nominal portion of the stock seized was confiscated and the rest was ordered to be released. When 'X' went to take the delivery of the released stock, he found that it had been spoilt both in quality and quantity. He instead of taking the delivery of the stock sued the state for compensation, while establishing negligence on the part of the officers in properly maintaining the stock. Will 'X' succeed in his suit? Decide.

### LL.B. I Term (Supplementary) Examinations, May-June, 2009

<u>Note</u>: Attempt *five* questions including Question No. 1 which is compulsory. All questions carry *equal* marks.

- 1. Attempt briefly any *four* of the following:
  - (i) Concept of Tort;
  - (ii) Distinction between tortious and Contractual liability;
  - (iii) Distinction between tortious and criminal liability.
  - (iv) Injuria sine damno;
  - (v) Damnum sine injuria
- 2. How will you explain the logical progression of the concept 'Nervous Shock' emphasizing specially on *Mcloughlin* v. *O'Brian* [(1982) 2 All ER 907] and *Alcock* v. *Chief Constable of the South Yorkshire Police* [(1991) 4 All ER 907]?
- 3. Examine critically the concept "*Innuendo*" with reference to Indian and English cases. What do you understand by defamation of a class? Illustrate.
- 4. What is Negligence? Discuss its essential ingredients.
- 5. "The rule of *Rylands* v. *Flectcher* no longer affords a useful remedy to the plaintiff who has been injured without fault."

Critically examine the above statement in the light of recent judicial pronouncements made by the Supreme Court of India.

6. "Award of compensation in a proceeding under Article 32 by this court or by the High Court under Article 226 of the Constitution is a remedy available in public law based on strict liability for contravention of fundamental rights to which the principle of sovereign immunity does not apply, even though it may be available as a defence in private law in an action based on tort."

Critically comment on the above statement and discuss the latest trends of the Supreme Court of India relating to the state liability for tort in India.

- 7. (a) Discuss the various tests of remoteness of damage with the help of decided cases.
  - (b) The employee of the Telecommunication Department opened a manhole in the street for repairs and in the evening left the manhole covered by a tent unattended. They

placed warning lamps around the tent. Z, a boy of eight years, along with his uncle, took a lamp and entered the manhole. As they emerged, the lamp was knocked into the hole and a violent explosion took place, with flames shooting thirty feet into the air. Z was knocked back into the hole where he sustained serious burns. His uncle had a serious heart attack due to the sound of explosion of the lamp. Both Z and his uncle filed a suit against the Telecommunication department for the damages.

How will you decide? Refer to decided cases.

- 8. (a) "The maxim is Volenti non fit injuria; it is not scienti non fit injuria." Explain.
  - (b) D left his horses attached with a van unattended in a crowded street and went to see his friend in the adjoining street. While D was away, his horses got frightened and started running furiously along the road with the van. P, a pedestrian, saw F in danger of being run over and in order to save him pushed him away but in doing so he himself was injured. P sues D. How will you decide? Refer to case law on the subject you are familiar with.

#### LL.B. I Term Examinations, December, 2010

<u>Note</u>: Attempt *five* questions including Question No. 1 which is compulsory. All questions carry *equal* marks.

- 1. Attempt briefly any *four* of the following:
  - (a) Explain the meaning of tort.
  - (b) Distinguish between Tort and Crime.
  - (c) Discuss statutory authority as a defence to tort.
  - (d) Egg-shell skull theory in tort.
  - (e) Doctrine of remoteness of damages.
- 2. Explain the maxims *Injuria sine damno and Damnum sine injuria*.

A group of transporters joined hands and offered reduced rates of transportation and lucky draw in order to induce customers to transport goods only throught them. In consequence of this, a company B which was kept out of the combination suffered trade losses. B sues for damages alleging that defendants maliciously formed the group to kick him out of the trade. Decide giving reasons.

- 3. Critically examine the vicarious liability of the state for the tortuous acts of its employees. Refer to the relevant case law, if any.
- 4. A was employed as an inspector by the Armament Inspection Department. He was directed to report on duty in the Ordnance Factory to which he first resisted on the ground that it was a dangerous job but later on joined the same. An accident took place in the premises of the Ordnance Factory in which A was injured. Before this accident, the employer had offer him a clerical job at a lower salary which he refused. A sued the employer for damages. Employer in defence pleaded *volenti non fit injuria*. Decide.

5. Explain the essential elements of the tort of defamation.

Z is not having good relations with his mother-in-law. He tells his wife. "there is hardly a day when your other does not indulge in adultery."

The statement made by Z is false. Is Z liable for the tort of defamation?

- 6. A, an iron foundry unit, imported metal scrap from certain war ravaged country. One day while the scrap was being unloaded from the trucks in the premises of the unit, an explosion occurred resulting in the death of an employee and two children living in the adjoining house. It was found that the scrap consisted of some bomb shell scraps of war weapons not completely defused. On an action filed against it, A pleaded complete ignorance of the presence of live shells in the scrap. Discuss the liability, if any, of A for the damages towards employee and/or children on the basis of the rule laid down in M.L. Mehta vs. Union of India.
- 7. A speeding bus carrying school children plunged into a river. A teacher T travelling in the bus escaped with only minor head injuries, but the fear of narrow escape from sudden death gave him a shock resulting in anxiety neurosis.
  A little later, the accident was reported to the school authorities who in turn informed the parents of the children. X and Y, father and brother of one of the child Z immediately rushed to the spot and saw the lifeless body of Z being fished out of the river. X and Y suffered morbid depression.
  - T, X and Y want to sue for compensation for the nervous shock suffered by them. Elaborating the law on nervous shock, advise them as to their chance of success.
- 8. Anuradha, wife of Amit, was diagnosed to be suffering from Toxic Epidermal Necrolysis. Dr. Saxena was consulted who prescribed a long acting corticosteroid 'Depomedrol' injection at a dose of 80 mg twice daily. Despite administration of this medicine, her condition deteriorated rapidly and she died within a week. On expedrt opinion, it was fond that the treatment line followed by Dr. Saxena is not supported by any school of medical thought, and is in sheer ignorance of basis hazards relating to use of steroids.

Amit files an application in the Consumer Forum claiming 75 lakhs as damages for the death of his wife. Dr. Saxena objects to the jurisdiction of Consumer Forum and also pleaded lack of negligence on his part. Decide.

# LL.B. I Term Supplementary Examinations, June-July, 2011

<u>Note</u>: Attempt *five* questions including Question No. 1 which is compulsory. All questions carry *equal* marks.

- 1. Attempt briefly any *four* of the following:
  - (a) Distinguish between tortuous and contractual liability.
  - (b) Discuss vis major as a defence to tortuous liability.

- (c) Explain the maxim 'res ipsa loquitur'
- (d) Explain the concept of 'innuendo' with the help of decided cases.
- (e) Critically analyse Winfield's definition of tortuous liability.
- 2. Explain the maxims *injuria* sine damno and damnum sine injuria.

Ram suffered substantial losses due to his unauthorized banquet hall, located in a residential colony, being selectively sealed in compliance with a resolution passed by his political rivals. Drawing distinction between malice in law and malice in fact, examine whether tortuous liability arises in this case.

- 3. (a) "The maxim is volenti non fit injuria, it is not scienti non fit injuria." Explain.
  - (b) A horse bolts along a highway, causing risk of grave injury to people on the road. A spectator rushes to stop it and is, in the process, injured. Can the spectator recover damages from the owner of the horse? Would it make any difference to your answer if the spectator was a police official?
- 4. D, a doctor, inoculate some children with Hepatitis B vaccine. The children were taken ill because of the presence of some toxin in the vaccine used by D who purchased it from C, a reputed chemist. C, in turn, had purchased the vaccine from M, the manufacturer. Decide the tortuous liability, if any, of D, C and M towards the children discussing the concept of 'duty of care' as enunciated by Lord Alkin in Donoghue V. Stevenson.
- 5. C, a child aged six years, was travelling in his school bus. Due to rash and negligent driving by the bus driver, the bus fell into a river. The children in the bus were rescued and taken to a nearby hospital. An hour later, information about the accident was conveyed on phone to C's mother (M) by the school principal. M rushed to the hospital where she saw C in a serious condition on life support system, as a result of which she suffered severe psychiatric illness. Can M claim damages for nervous shock? Decide, tracing the development of the law relating to nervous shock.
- 6. (a) Discuss the essential elements of the tort of defamation.
  - (b) A cyclist negligently collided against a pedestrian who was carrying a bomb. The bomb exploded and the pedestrian died as a consequence of the explosion. An army tent nearby was also set on fire due to the same explosion, resulting in burn injuries to the *jawans* on duty. Discuss the extent of liability of the negligent cyclist explaining the tests for remoteness of damage.
- 7. Explain the rule of strict liability as laid down in Rylands v. Fletcher with exceptions. An ordinance factory owned by X manufactured explosives and munition for the Govt. of India. One day, a shell exploded within the premises of the factory and a workman Y was injured. Y sues X for damages under the Rylands v. Fletcher rule. Will Y succeed?

Would your answer be different if Y claims damages under the rule laid down in M.C. Mehta v. Union of India [AIR 1987 SC 1086].

8. "Although the decision of the Supreme Court in *Kasturi Lal Ralia Ram Jain* v. State of Uttar Pradesh has not been over-ruled as such, yet for all practical purposes it force has been considerably reduced." Elucidate, tracing the development of the law relating to vicarious liability of the state for the torts committed by its servants.



# **Law of Torts**

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