



AIBE - 22

ALL INDIA BAR EXAMINATION

Notes

Volume - 8

Law of Torts, Negotiable Instrument Act 1881, Environment (Protection) Act 1986, Advocates Act 1961, Minimum Wages Act 1948, The Dowry Prohibition Act 1961

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CHAPTER 1

Law of Torts

1. Meaning of Tort

- ✓ The word “tort” comes from French, meaning “wrong.”
- ✓ It originates from the Latin word ‘**tortum**’, meaning “twisted” or “crooked”, and in Sanskrit, a similar word is ‘**Jimha**’, meaning “unjust” or “crooked.”
- ✓ A **tort** occurs when someone breaks a **legal duty** (not arising from a contract) that causes **harm to another person**.
- ✓ It is a **civil wrong**, and the injured person can seek **compensation**.

2. Definitions of Tort

- ✓ Various jurists have tried to define tort:

➤ **Salmond and Heuston:**

- ✓ “A tort is a civil wrong for which the remedy is a common law action for unliquidated damages and which is not a breach of contract, trust, or other merely equitable obligation.”

➤ **Clerk and Lindsell:**

- ✓ “A tort is a wrong independent of contract, for which the proper remedy is a common law action.”

➤ **Pollock:**

- ✓ “The law of torts is a collection of rules dealing with different kinds of civil wrongs that share common features and are handled by similar legal procedures.”

➤ **Winfield and Jolowicz:**

- ✓ “Tortious liability arises from the breach of a duty fixed by law; this duty is owed to persons generally and is redressable by an action for unliquidated damages.”

3. Winfield’s Definition — Analysis

According to **Winfield**, three key points define a tort:

(a) Duty fixed by law

(b) Duty owed to persons generally,

(c) Breach leading to unliquidated damages.

(a) Duty fixed by law

- ✓ Tortious duty is created by **law itself**, not by an agreement.
- ✓ For example, everyone has a legal duty to drive carefully.
- ✓ If a driver injures someone, he breaches a **legal duty**, not a **contractual** one.
- ✓ Also, the master can be liable for the servant's act — this is called **vicarious liability** (e.g., State of Rajasthan v. Vidyawati).

(b) Duty towards persons generally

- ✓ A tort duty applies to everyone in general, unlike a **contract**, which applies to specific parties.
- ✓ However, the phrase “persons generally” is sometimes vague, as it's not always clear who all are covered.

(c) Unliquidated damages

- ✓ “Unliquidated damages” means the **amount of compensation is not fixed beforehand** and is decided by the court.
- ✓ This differentiates torts from contracts, where damages are usually pre-decided.
- ✓ For example, if a plaintiff claims ₹25,000 but the court awards ₹15,000 (State of Rajasthan v. Vidyawati), it's unliquidated.
- ✓ Winfield's definition misses some other **remedies** like:
 - **Self-help** (taking lawful action yourself),
 - **Injunction** (court order stopping a wrong),
 - **Specific restitution** (getting your property back).

Example: Self-Help

- If a drunk stranger enters your room, you may remove him using reasonable force.

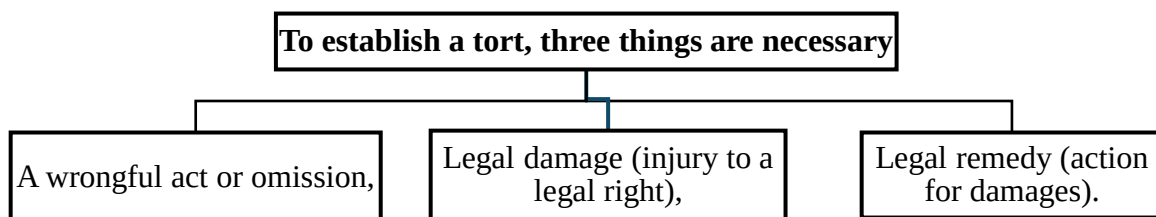
Example: Injunction

- In a **nuisance** case, the court may stop the wrongful act through an **injunction** before awarding damages.

Improved Definition:

- “Tortious liability arises from the breach of a duty fixed by law which causes an infringement of a private legal right, for which remedies like unliquidated damages, injunction, restitution, or self-help may be available.”

4. Essentials of a Tort

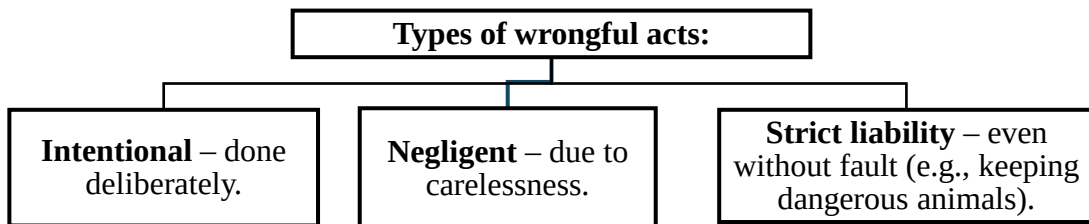


(a) Wrongful Act or Omission

- ✓ A wrongful act must **violate a legal right**, not just cause harm.

Example:

- In *Rogers v. Rajendra Dutt* (1860), the court held that the act must be legally wrongful—it should harm a **legal right**, not just an interest.



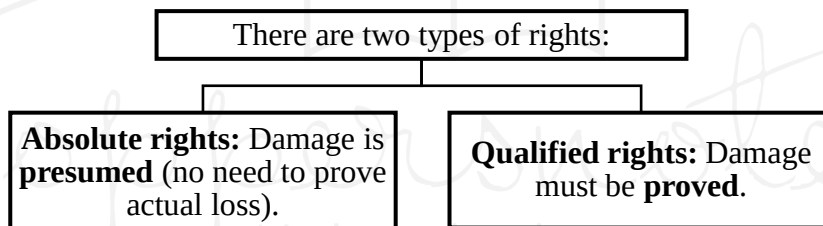
- Moral or religious duties are **not** legal duties.

Example:

- In *Dhadphale v. Gurav* (1881), failing to offer food to a temple idol was a religious, not legal, duty—so no damages.

(b) Legal Damage

- “Damage” means harm or loss; “Damages” means money compensation.



Case: *Ashby v. White* (1703)

- Plaintiff was wrongly stopped from voting — though no money loss, his **legal right** was violated.
- Court held: “Every injury implies damage.”

Case: *Marzetti v. Williams* (1830)

- A bank refused to honor a cheque — even without loss, the bank was liable.
- Hence, Legal damage = violation of legal right, even without actual loss.

(c) Legal Remedy

- Every tort must be **actionable in civil court**.
- The main remedy is **damages**, but **injunction** and **restitution** also exist.

Formula:

- **Wrongful act + Legal damage + Legal remedy = Tort**
- At least one legal remedy (damages, injunction, restitution, or self-help) must be available.

5. Ubi Jus Ibi Remedium

- ✓ Latin Maxim: **“Where there is a right, there is a remedy.”**
- ✓ If a legal right exists, the law provides a remedy for its violation.

Case: Ashby v. White (1703)

- Lord Holt: “A right without a remedy is meaningless.”
- This maxim forms the foundation of tort law.

6. Foundation of Tortious Liability (Theories by Winfield)

There are two theories:

(i) Winfield’s Wider Theory

- “All injuries done to another person are torts unless justified by law.”
- **Supporters:** Winfield, Pollock, Lord Mansfield, Bowen L.J., Holmes J.
- **Examples:** New torts like malicious prosecution and strict liability have evolved over time.

(ii) Salmond’s Pigeon-Hole Theory

- Only specific, recognized wrongs are torts.
- If a wrong doesn’t fit in an existing category (like assault, defamation, etc.), it’s not a tort.
- Supporters: Salmond, based on the idea that each tort is a separate pigeon-hole.

7. Conclusion

- ✓ **Winfield’s theory** says tort law can grow with new wrongs — it’s flexible.
- ✓ **Salmond’s theory** limits torts to fixed categories — it’s rigid.
- ✓ Modern courts favor **Winfield’s broader approach**, allowing the law of torts to evolve with changing times.

Point-wise:

Concept	Meaning
Tort	Civil wrong independent of contract
Remedy	Mainly unliquidated damages
Essentials	Wrongful act + Legal damage + Legal remedy
Maxim	Ubi jus ibi remedium – where there is a right, there is a remedy
Theories	Winfield’s Broad View vs. Salmond’s Pigeon-Hole Theory

CHAPTER 2

Tort Compared With Other Legal Liabilities

- To understand the **Law of Torts**, we must know how it differs from other kinds of **legal liabilities** such as **Crime, Contract, Quasi-Contract, Breach of Trust, and Bailment**.
- Although all deal with wrongs and liabilities, the **basis, remedy, and nature of duties** are different.

1. Tort and Crime

Historical Background

- In early societies, people were compensated with **money (pecuniary compensation)** for harm.
- Even serious injuries like homicide could be settled by paying money to the victim's family.
- According to **Henry Maine**, early "penal law" was actually the **law of torts**.
- In **Anglo-Saxon law**, three types of fines existed:
 - ✓ **WER** – price for causing death,
 - ✓ **BOT** – for personal injuries,
 - ✓ **WITE** – fine payable to the King.
 - ✓ Later, rulers like **Henry II** separated crimes from torts.

Main Difference

Basis	Tort	Crime
Nature of Wrong	Violation of private right of an individual	Violation of public right of society
Who Brings Action	The injured person sues	The State (Government) prosecutes
Purpose	To compensate the victim	To punish the offender
Remedy / Result	Damages paid to injured person	Fine or imprisonment ; fine goes to State
Intention	Secondary (not always necessary)	Primary (guilty mind – mens rea – is essential)
Type of Wrong	Private wrong	Public wrong
Overlap	Some acts are both tort and crime (e.g. assault, theft, defamation)	

Example:

- If A assaults B, it is both a **crime** (State punishes A) and a **tort** (B can claim compensation).
- But **public nuisance**, like blocking a public road, is a **crime** but not a tort unless someone suffers **special damage**.

2. Tort and Contract (Breach of Contract)

- ✓ With social and commercial growth, **contracts** emerged to avoid disputes by setting mutual terms.
- ✓ A **tort** is based on **duties fixed by law**, while a **contract** is based on **duties fixed by the parties**.

Key Difference by Winfield

- “In tort, the duty is fixed by law and owed to persons generally; in contract, the duty is fixed by the parties and owed to specific persons.”

Case Laws

- **Addis v. Gramophone Co. Ltd. (1909)**
- Breach of an employment contract (wrongful dismissal) is **not a tort** but a **contractual breach**.
- **Jarvis v. Mary Davies (1936)**
- If the duty arises **independently of a contract**, it is a **tort**; if it arises **from** the contract, it is a **contractual breach**.
- **Austin v. G.W. Railway (1867)**
- The railway company had a duty to **carry passengers safely**—this duty existed **independently** of any specific contract.
- Hence, failure to ensure safety can amount to **tortious negligence**.

Distinction Table

Basis	Tort	Contract
Source of Duty	Fixed by law	Fixed by agreement between parties
Persons Owed Duty	Duty owed to all persons generally	Duty owed to specific person(s)
Consent	May exist without consent	Always based on consent
Privity (legal relationship)	Not required	Must exist between parties
Right Violated	Right in rem (against the world)	Right in personam (against a specific person)
Remedy	Unliquidated damages decided by court	Liquidated or fixed damages (as per contract)
Motive	Sometimes relevant	Usually irrelevant
Example	Negligence, trespass, nuisance	Failure to deliver goods, non-payment, wrongful dismissal

Note:

- A single act may give rise to both a tort and a breach of contract if it violates both a **contractual** and a **legal** duty.

Example:

- If a doctor's careless operation injures a patient —
- it is a **tort** (negligence) and may also be a **breach of contract** (failure to provide medical care as agreed).

3. Tort and Quasi-Contract

- ✓ A **quasi-contract** is not a real contract but is treated “as if” there was one, to prevent **unjust enrichment**.

Example:

- A pays B by mistake. B must return the money, even though no contract existed.

Distinction Table

Basis	Tort	Quasi-Contract
Nature of Duty	Duty arises from breach of legal duty causing harm	Duty arises from unjust benefit or unjust enrichment
Type of Remedy	Gives right to damages or injunctions	Only gives right to repayment of money
Type of Damages	Unliquidated (decided by court)	Liquidated / fixed sum
Duty Owed To	Owed to persons generally	Owed to specific person
Example	Trespass, negligence	Money paid by mistake, goods received by mistake

4. Tort and Breach of Trust

- ✓ A **trust** is a relationship where one person (trustee) holds property for another (beneficiary).
- ✓ It's based on confidence and **property management**, not civil wrongs.

Distinction Table

Basis	Tort	Breach of Trust
Type of Wrong	Civil wrong causing injury to person/property	Misuse of property held in trust
Damages	Unliquidated (court decides)	Liquidated or specific compensation
Compensation Term	Called damages	Called compensation or account of profits
Branch of Law	Part of Law of Obligations	Part of Law of Property
Example	Defamation, negligence	Trustee misusing trust money

5. Tort and Bailment

Meaning of Bailment

- ✓ Defined by **Sir William Jones**:
- ✓ “Bailment is the delivery of goods on condition that they shall be returned or dealt with as directed after the purpose is fulfilled.”
 - **Bailor** → The person who delivers the goods.
 - **Bailee** → The person who receives the goods.

Examples:

- Car given for repair, goods given on hire, pledged jewellery.

Distinction Table

Basis	Tort	Bailment
Origin of Duty	Duty fixed by law	Duty arises from agreement or relationship between parties
Liability	Can arise without consent	Arises only with consent
Nature of Claim	May include damages, injunction, restitution	Generally for loss or misuse of goods
Type of Law	Law of Torts (Civil wrong)	Law of Contract (special type)
Example	Trespass to goods	Repair shop (bailee) failing to return car

According to **Prof. Winfield**, if a bailee violates a **legal duty** (not just a contractual one), the case may still fall under **tort law**.

Point-wise — Tort vs Other Liabilities

Comparison	Main Difference
Tort vs Crime	Private wrong vs Public wrong
Tort vs Contract	Duty fixed by law vs Duty fixed by agreement
Tort vs Quasi-Contract	Compensation for wrong vs Refund for unjust gain
Tort vs Breach of Trust	Civil injury vs Misuse of property
Tort vs Bailment	Legal duty vs Duty under mutual agreement

CHAPTER 3

Damnum Sine Injuria & Injuria Sine Damno

1. Meaning of the Maxims

- Both these Latin maxims deal with the **relationship between legal injury and actual damage**.
 - ✓ **“Damnum”** means actual loss or harm — whether to money, comfort, health, or property.
 - ✓ **“Injuria”** means violation of a legal right.
- A **legal right** means a right recognized by law, and its **violation** gives rise to an action in tort.
- Moral or emotional wrongs are **not enough**—the wrong must be **legal**.

2. Damnum Sine Injuria (Damage without Legal Injury)

Meaning

- ✓ This maxim means **“damage without infringement of a legal right.”**
- ✓ That is, **no action lies** even if a person suffers actual loss or harm, as long as the act of the defendant was **lawful**.

In short:

- If no legal right is violated, the motive or loss does not matter — no tort exists.

Case Laws

(1) Gloucester Grammar School Case (1441)

- ✓ The defendant opened a rival school near the plaintiff’s school.
- ✓ Because of competition, the plaintiff had to reduce his fees and suffered loss.
- ✓ **Held:** There was no violation of any legal right — mere **competition** is not unlawful.
- “If I have a mill and my neighbour sets up another mill, my profit may fall, but I have no action against him.”

Principle:

- Loss due to **lawful competition** does not create liability.

(2) Mayor of Bradford v. Pickles (1895 AC 587)

- ✓ Defendant sank a shaft on his own land, reducing the flow of underground water to plaintiff’s land.
- ✓ His motive was revenge, but his act was within his **legal rights**.
- ✓ **Held:** The act was **lawful**, even though the motive was bad.
- “It is the act, not the motive, which matters. Motive cannot convert a lawful act into an unlawful one.”

Principle:

- An act done within one’s **legal rights** cannot become actionable merely because of **bad intention**.

(3) **Mogul Steamship Co. v. McGregor, Gow & Co. (1892 AC 25)**

- ✓ A group of shipowners (defendants) offered cheaper freight to drive a competitor (plaintiff) out of business.
- ✓ The plaintiff suffered loss and sued.
- ✓ **Held:** The defendants were lawfully competing to expand trade; their act was **not illegal**.

Principle:

- **Fair competition**, even if it causes loss to others, is **not actionable** unless **unlawful means** are used.

(4) **Anand Singh v. Ramachandra (AIR 1953 MP 28)**

- ✓ The defendant built walls on his own land, causing rainwater to damage plaintiff's walls.
- ✓ **Held:** The defendant acted lawfully on his property; hence **no legal right was violated**.

Principle:

- Where there is **loss without legal injury**, the case falls under *damnum sine injuria*.

Summary of Principle

- If there is **actual loss** but **no violation of legal right**, **no legal remedy** is available.

Examples:

- Opening a rival business.
- Using one's land lawfully even if it harms neighbour's property value.
- Fair trade competition.

3. **Injuria Sine Damno (Legal Injury without Actual Damage)**

Meaning

- This maxim means **"violation of a legal right without causing actual loss or harm."**
- Whenever a **legal right is infringed**, the person affected can bring an **action**, even if he suffered **no real damage**.

In short:

Violation of a **legal right** itself gives rise to a cause of action — **no need to prove loss**.

Case Laws

(1) **Ashby v. White (1703) 2 Ld. Raym 938**

- ✓ Plaintiff, a qualified voter, was wrongfully prevented from voting by the returning officer.
- ✓ The candidate he wanted to vote for still won, so there was **no actual loss**.
- ✓ **Held:** His **legal right to vote** was violated, hence he was entitled to damages (£5).

Lord Holt, C.J. observed:

1. Plaintiff had a **legal right** to vote.
2. Violation of that right gives a **remedy**.
3. Every injury implies a damage, even if it causes no money loss.

Principle:

- Every infringement of a legal right is actionable, even without proof of loss.
- **Example:** Slapping someone (battery) or trespassing on land — even without harm — are torts.

(2) Kali Kishen Tagore v. Jadoo Lal Mullick (61 A 190)

- ✓ Defendant built a wall on his own land beside a water channel.
- ✓ Plaintiff claimed that the wall would divert the flow of water and cause damage.
- ✓ **Held (Privy Council):** Plaintiff had no ownership or legal right over the channel; neither **injury** nor **damage** was proved.
- ✓ “There may be cases where interference with a right (injuria sine damno) is actionable, but where there is neither injury nor damage, no action lies.”

Principle:

- If **no legal right** exists, there can be **no action**, even if future loss is likely.

Summary of Principle

- Violation of a **legal right** gives a right to sue, **even without loss**.

Examples:

- Wrongful refusal to allow a person to vote (Ashby v. White).
- Entry on someone's land without harm (trespass).
- Unlawful detention without injury (false imprisonment).

4. Comparison Table

Basis	Damnum Sine Injuria	Injuria Sine Damno
Meaning	Actual loss without violation of legal right	Violation of legal right without actual loss
Legal Remedy	No remedy available	Remedy available — actionable in tort
Right Violated	None	Yes, legal right violated
Example	Lawful competition reducing another's profit	Wrongful refusal of vote (Ashby v. White)
Type of Act	Lawful act causing loss	Unlawful act causing no loss
Leading Cases	Gloucester Grammar School, Pickles, Mogul Steamship, Anand Singh	Ashby v. White, Kali Kishen Tagore

5. Conclusion

- ✓ **Damnum sine injuria** → No right violated, so no remedy — moral wrong, but not legal.
- ✓ **Injuria sine damno** → Right violated, even without damage — legal wrong, so remedy exists.

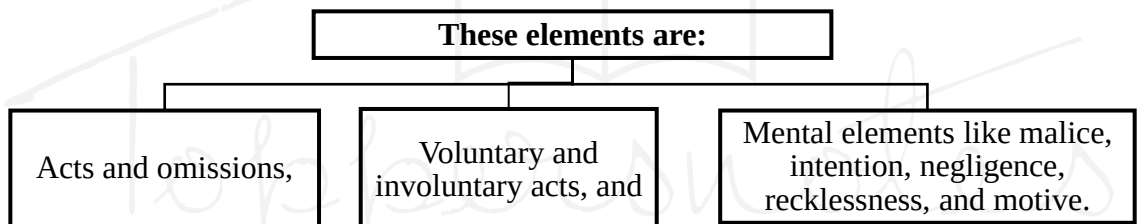
Hence:

- **Law protects legal rights, not mere interests.**
- **Moral wrongs** (like jealousy or competition) are not actionable.
- **Legal wrongs** (like trespass, denial of vote) are actionable even without loss.

CHAPTER 4

Some General Elements Of Torts & Their Relevance

- Before studying individual torts, it is necessary to understand certain **general elements** common to all.



1. Acts and Omissions

- ✓ A **wrongful act** is an essential element of every tort.
- ✓ The term “act” includes both **positive acts (doing something)** and **negative acts (omitting to do something which law requires)**.

Act

- A positive act — such as striking someone or trespassing — creates liability if it violates a legal right.

Omission

- An **omission** means **failure to do something**, such as failure to rescue or warn.
- Ordinarily, the law does **not impose liability for mere omissions**, unless there exists a **legal duty to act**.

Case: Stovin v. Wise (1996) 3 All ER 801 (HL)

- The court held that there is no general duty to prevent harm or to help someone in distress unless a special relationship exists (like parent-child, employer-employee, etc.).

Example:

- A sees a stranger's child drowning but does not help. A is not liable, as he owes no legal duty.
- But if A is the child's **parent or guardian**, he will be liable for **failure to act**, since a **duty exists**.

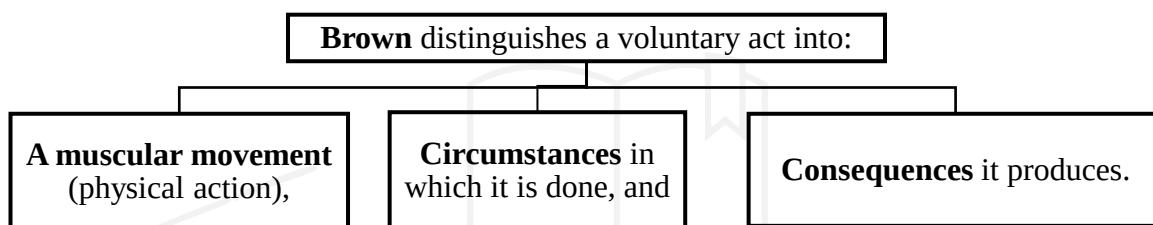
Key Principle:

- Liability for omission arises **only where there is a legal duty to act**.
- Mere moral or social obligation is not enough.

2. Voluntary And Involuntary Acts

Voluntary Acts

- ✓ A voluntary act means a willed and conscious act performed under the control of one's mind.
- ✓ Liability arises only from voluntary conduct — an act done intentionally or negligently under one's control.



Example:

- Crooking one's finger is the same physical act — but if it pulls a pistol's trigger aimed at someone, it becomes wrongful due to the surrounding **circumstances** and **consequences**.

Involuntary Acts

- An **involuntary act** occurs when a person has **no control over his actions**.
- For example, actions done while **sleepwalking, reflex actions**, or under **physical compulsion**.

Salmond explains:

“An act is involuntary when the actor lacks the power to control his behaviour.”

Example:

- If a person faints while driving a car and causes an accident, it is an involuntary act — he cannot be held liable unless the fainting was foreseeable (e.g., due to known illness).

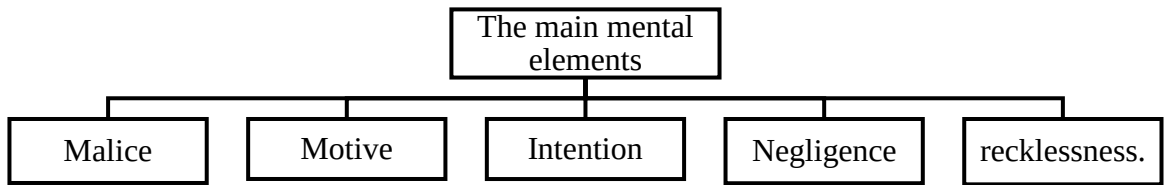
Key Difference:

Basis	Voluntary Act	Involuntary Act
Control	Done with free will	Without control
Liability	Generally liable	Generally not liable
Example	Shooting intentionally	Convulsion causing accidental strike

3. Mental Elements In Torts

- ✓ A person's state of mind (mens rea) often determines liability.

The main mental elements



(a) Malice

- ✓ The term **malice** means “ill-will” or “wrongful intention.”
- ✓ It has **two meanings** in law:

Type	Meaning	Relevance
Malice-in-law	Doing a wrongful act intentionally without just cause or excuse	Implied in most torts (e.g., trespass, defamation)
Malice-in-fact	Acting with spite, hatred, or ill-will	Relevant in specific torts like defamation, malicious prosecution, deceit, conspiracy

Case: Brommage v. Prosser (1825) 4 B&C 247

Justice Bayley explained:

- “Malice in law means a wrongful act done intentionally without just cause or excuse. Malice in fact means actual ill-will or spite.”

Example:

- If A knowingly poisons a pond, though not knowing the owner, he acts maliciously — it is a wrongful act done intentionally.
- Malice is not limited to personal hatred — it includes **any improper motive** forbidden by law.

(b) Motive

- ✓ Motive means the reason or purpose behind an act.
- ✓ In tort law, motive is generally irrelevant — what matters is whether the act is lawful or unlawful.

Case: Nankee v. Ah Fong (AIR 1935 Rang 73)

- The court held that motive is immaterial; if an act is lawful, it remains lawful regardless of bad motive; if unlawful, a good motive cannot excuse it.

Examples:

- Opening a rival shop out of jealousy — lawful (motive irrelevant).
- Publishing false news with good motive — still unlawful (good motive no defence).

Summary:

Law judges acts, not motives.

- A lawful act doesn't become unlawful because of bad motive, and vice versa.

(c) Intention

- ✓ **Intention** means doing an act with knowledge of consequences and desire that they occur.
- ✓ It is a **mental state** inferred from conduct, not directly known.

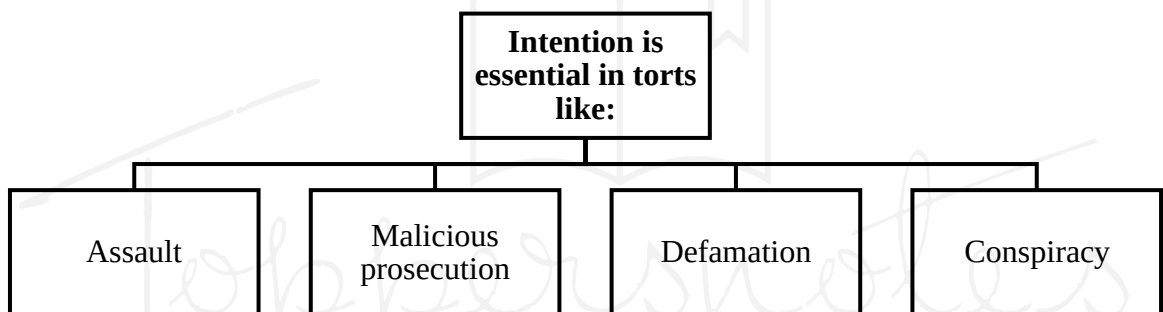
Salmond cites Chief Justice Brian:

- “No one can be sure what is in another's mind; it can only be inferred from conduct.”

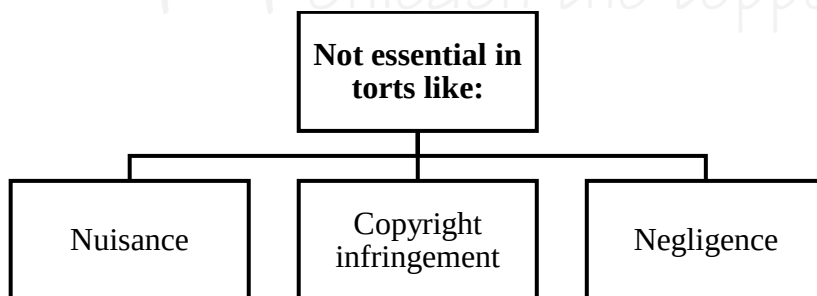
Examples:

- Pointing a loaded gun at someone and firing — **intentional harm**.
- Intentionally spreading lies — **intentional defamation**.

Intention is essential in torts like:



Not essential in torts like:

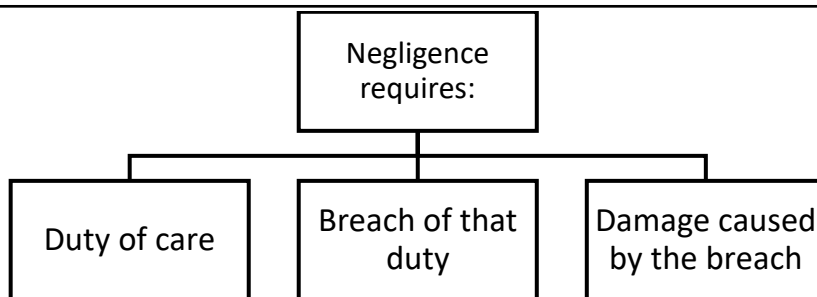


(d) NEGLIGENCE

- ✓ **Negligence** means **failure to take reasonable care** that a prudent person would have taken.
- ✓ It involves **carelessness or inadvertence**, not deliberate harm.

Example:

- A driver runs over a pedestrian because he was looking at his phone — negligent, even if he didn't intend it.



(e) RECKLESSNESS

- ✓ **Recklessness** is acting **with utter disregard to probable consequences**.
- ✓ It is close to **gross negligence** and sometimes equated with **intention**.

Case: **Wilkinson v. Downton (1897) 2 QB 57**

- The defendant jokingly told a woman her husband was injured. She suffered shock.
- Court held: he was liable, as he could **foresee harm** — even if he didn't intend it.

Principle:

- Foreseeable harm = liability, even if there was no deliberate intention.

4. FAULT

- **Fault** means a wrongful state of mind or conduct.
- It shows **the degree of blame** in the defendant's behaviour.
- In torts like **battery, assault, or false imprisonment**, the **mental state** of the wrongdoer is relevant.
- But in some torts, **liability exists even without fault**, known as **strict or absolute liability**.

Strict Liability: **Rylands v. Fletcher (1868 LR 3 HL 330)**

- If a person keeps something dangerous on his land and it escapes causing harm, he is liable — **even if he was not negligent**.

- “A person who, for his own purposes, brings and keeps anything likely to do mischief, must keep it at his peril.”

Absolute Liability: **M.C. Mehta v. Union of India (1987)**

- The Supreme Court held that **hazardous industries** are **absolutely liable** for any harm caused by their activity, even without proof of negligence.

Principle:

- No defence is allowed — liability is absolute and unlimited.

No-Fault Liability (**Motor Vehicles Act, 1982**)

- Due to rising motor accidents, the law provides **compensation without proof of fault** under “no-fault liability.”
- Victims can claim compensation even if negligence is not proved.

Summary of Fault-Based and No-Fault Liability

Type	Fault Required?	Example	Legal Basis
Fault-based	Yes	Negligence, assault, nuisance	Ordinary torts
Strict liability	No (but escape must occur)	Rylands v. Fletcher	Common law
Absolute liability	No (no defences)	M.C. Mehta v. UOI	Indian law
No-fault liability	No	Motor accident compensation	Statutory

5. CONCLUSION

- Liability in tort arises mainly from **voluntary acts** causing harm or violating a legal right.
- **Mental elements** (intention, negligence, recklessness, malice) determine the degree of liability.
- **Motive** is usually irrelevant — what matters is whether the act was **lawful or unlawful**.
- Some torts impose **liability even without fault**, especially in **hazardous activities**.

Hence, tort law balances individual freedom and social responsibility — punishing careless or wrongful conduct and protecting lawful actions even if they cause harm.

CHAPTER 5

General Principles Nullifying Tortious Liability (General Defences)

1. INTRODUCTION

In the **law of torts**, even when the plaintiff successfully proves that a wrongful act was committed and damage was suffered, the **defendant may still escape liability** if he can justify his act under certain **general defences**.

These are situations where the defendant's act, though apparently tortious, is **legally excused** due to broader legal or moral principles.

2. VOLENTI NON FIT INJURIA

Meaning

The Latin maxim Volenti non fit injuria means **“to a willing person, no injury is done.”**

If someone **knowingly and voluntarily consents** to suffer harm, they cannot later claim damages for it.

Essence:

“No legal injury can arise from a risk voluntarily undertaken with full knowledge and free consent.”

Essential Elements

1. Knowledge of the risk:

The plaintiff must know the **nature and extent** of the risk involved.

Mere awareness is not enough unless the risk is **clearly understood**.

2. Free consent:

The plaintiff must voluntarily agree to undertake the risk.

Consent obtained under **coercion, fraud, or mistake** is invalid.

3. Voluntariness:

The act must be done out of the plaintiff's own free will—not out of compulsion or pressure.

Situations Where the Defence Does Not Apply

➤ Consent to an illegal act:

(R v. Donovan, 1934) — No one can consent to a criminal act.

➤ Consent by minors or insane persons:

Their consent is invalid; only guardian's consent is valid.

➤ Breach of statutory duty:

Consent cannot excuse violation of a **statutory obligation** (e.g., Baddeley v. Earl Granville, 1887).

Key Case Laws

(a) **Ilott v. Wilkes (1820)**

- ✓ Defendant placed spring guns in his land.
- ✓ Plaintiff, knowing of them, trespassed and got injured.
- ✓ **Held:** The defendant not liable — the plaintiff willingly accepted the risk.
- ✓ Principle: Voluntary assumption of risk bars recovery.

(b) **Bird v. Holbrook (1828)**

- ✓ Defendant set a spring gun in his garden without notice.
- ✓ Plaintiff entered unknowingly to recover his bird and was injured.
- ✓ **Held:** Defendant liable — plaintiff had no knowledge of the risk.
- ✓ Principle: Consent must be **informed**, not implied blindly.

(c) **Maung Sein v. Emperor (1935)**

- ✓ Patient knowingly chose an **unqualified midwife**.
- ✓ **Held:** Consent valid; defence applied.
- ✓ Principle: Voluntary risk assumption = no damages.

(d) **Thomas v. Quartermaine (1887)**

- ✓ Worker fell into a boiling vat at a brewery.
- ✓ **Held:** Plaintiff knew the danger; consent implied.
- ✓ Principle: Knowledge + voluntary risk = no claim.

(e) **Smith v. Baker & Sons (1891 AC 325)**

- ✓ Worker injured by falling stones from a crane overhead.
- ✓ Though he knew the risk, the employer was negligent.
- ✓ **Held:** Defence failed — knowledge ≠ voluntary acceptance.
- ✓ Rule: For the defence to apply, the **risk must be freely accepted**, not endured due to employment compulsion.

(f) **Dann v. Hamilton (1939)**

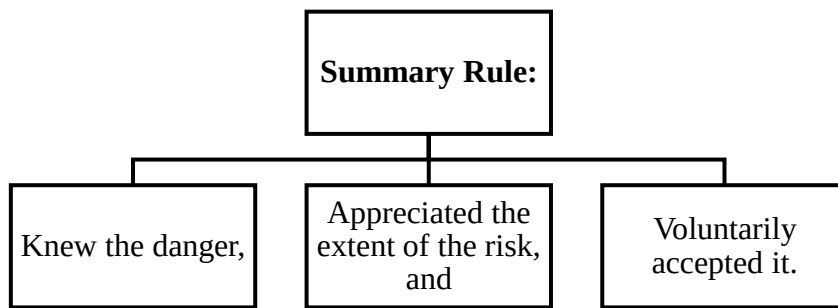
- ✓ Passenger accepted a lift from a drunk driver.
- ✓ Accident caused by the driver's negligence.
- ✓ **Held:** Defence not applicable — mere knowledge of risk ≠ consent to harm.
- ✓ Principle: Consent applies only where danger is **obvious and extreme**.

(g) **South Indian Industries Ltd. v. Alamelu Ammal (1923)**

- ✓ Plaintiff injured by flying iron pieces from a foundry.
- ✓ Court held: The defence applies **only when the plaintiff knew, appreciated, and voluntarily accepted the risk**.
- ✓ Principle: Knowledge alone is insufficient; **risk appreciation** is essential.

Summary Rule:

The defendant can successfully plead *Volenti non fit injuria* **only if** he proves that the plaintiff:



3. EXCEPTIONS TO THE MAXIM

➤ Rescue Cases:

- ✓ A rescuer who acts reasonably to save another's life is protected, even if he voluntarily faces danger.
- ✓ *Wagner v. International Railway* (1921): "Danger invites rescue."
- ✓ *Haynes v. Harwood* (1935): Policeman injured while saving children from runaway horses — defendant liable.

➤ Breach of Statutory Duty:

- Consent does not excuse statutory negligence.

➤ Employer–Employee Relationship:

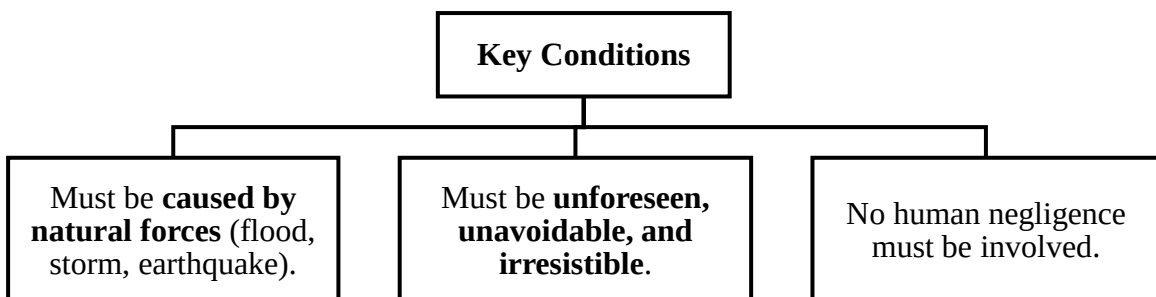
- Continuing in a dangerous job does not mean consent to negligence (*Smith v. Baker*).

4. ACT OF GOD (VIS MAJOR)

Meaning

An **Act of God** refers to an **unforeseen, natural event** so extraordinary that no human foresight or care could prevent it.

"An act of God is an occurrence due to natural forces without human intervention, which could not have been prevented by reasonable care."



Case Laws

(a) Nichols v. Marsland (1876)

- ✓ Heavy rainfall caused artificial lakes to overflow, destroying bridges.
- ✓ **Held:** Defendant not liable — flood was unprecedented and unforeseeable.
- ✓ Principle: If harm arises purely from natural, irresistible causes, it's an Act of God.

(b) Mahindra Nath Mukherjee v. Mathuradas (1946)

- ✓ Advertising board fell due to a storm.
- ✓ **Held:** Defendant negligent — storm not uncommon during monsoon.
- ✓ Principle: If the event is foreseeable, defence fails.

(c) State of Mysore v. Ramachandra (1970)

- ✓ Overflow from an incomplete reservoir damaged crops.
- ✓ **Held:** State liable — damage resulted from human negligence, not an Act of God.

Formula for Act of God

Condition	Example
Unprecedented + Unforeseen + Irresistible	Act of God (Nichols v. Marsland)
Foreseen + Unpreventable	Still Act of God
Foreseen + Preventable	Negligence, not Act of God

5. INEVITABLE ACCIDENT

Meaning

An **inevitable accident** is one which could not have been prevented by any amount of **reasonable care or foresight**.

Pollock's Definition:

"An accident which cannot be avoided by any precautions as a reasonable man could be expected to take."

Case Laws

(a) Fardon v. Harcourt Rivington (1932)

- ✓ Dog in a parked car accidentally broke glass; splinter injured a passerby.
- ✓ **Held:** No negligence — event too unlikely to foresee.
- ✓ Principle: Law guards against **reasonable probabilities**, not **fantastic possibilities**.

(b) Padmavati v. Dugganaika (1975)

- ✓ Jeep wheel came off suddenly, killing passengers.
- ✓ **Held:** Accident inevitable; no fault or negligence proved.