

# Law of tort Sem 1

## Q1) Answer in two sentences.

### **1. How tort is distinct from breach of contract?**

A tort is a civil wrong resulting from a breach of duty imposed by law, such as negligence or defamation, which applies to all individuals. In contrast, a breach of contract arises from failure to fulfil specific terms mutually agreed upon in a contract, and duties in such cases are voluntarily undertaken by the parties.

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### **2. Explain the maxim *Volenti non fit injuria*.**

The maxim *Volenti non fit injuria* translates to "to a willing person, no injury is done." This principle applies when someone voluntarily consents to the risk of harm or injury, such as in sports or dangerous recreational activities, and cannot claim damages for injuries arising from those risks. For example, a spectator injured at a cricket match cannot hold the organizers liable if they knew the risks involved.

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### **3. What is meant by assault?**

Assault is an intentional act by one person that creates a reasonable apprehension in another person of imminent physical harm or offensive contact. It does not require physical contact but involves an act like raising a fist or making a threatening gesture that causes fear of harm.

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### **4. What is meant by joint tortfeasors?**

Joint tortfeasors are two or more individuals who act together to commit a tort or independently contribute to the same wrongful act. For example, if two people negligently cause an accident, they are jointly liable for the damages. The injured party can sue them collectively or individually for compensation.

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### **5. What is meant by nervous shock?**

Nervous shock refers to a sudden mental or emotional disturbance caused by a traumatic event, such as witnessing a fatal accident. The law allows claims for nervous shock when it leads to physical symptoms or psychiatric illness, as seen in *Alcock v. Chief Constable of South Yorkshire Police* (1991).

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### **6. State the exceptions to the principle of strict liability.**

The principle of strict liability, established in *Rylands v. Fletcher*, has the following exceptions:

1. **Act of God:** Natural events like floods or earthquakes.
2. **Consent of the Plaintiff:** The injured party voluntarily accepted the risk.
3. **Third-Party Act:** Harm caused by an independent third party.

4. **Statutory Authority:** Activities permitted by law, such as constructing dams.
  5. **Plaintiff's Own Fault:** Injury caused due to the plaintiff's actions.
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#### **7. Define the consumer.**

A consumer is defined under the Consumer Protection Act, 2019, as a person who buys goods or hires services for personal use and not for resale or commercial purposes. The definition also includes beneficiaries who use the goods or services with the consumer's consent.

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#### **8. What is meant by liability without fault?**

Liability without fault, also known as strict liability, means that a person is held legally responsible for damages caused by their activities or property, even if they were not negligent. For example, in *Rylands v. Fletcher*, the defendant was held liable for harm caused by a water reservoir leak, even though there was no negligence.

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#### **9. What is wrongful act?**

A wrongful act is an action or omission that infringes upon the legal rights of another person and causes injury or harm. It forms the basis of liability in tort law. For example, driving recklessly and causing injury to another person is a wrongful act.

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#### **10. What is an injunction?**

An injunction is a court order requiring a person to do or refrain from doing a specific act to prevent harm or injustice. Injunctions can be of different types, such as temporary (interim relief during a case) or permanent (issued after a case is decided).

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#### **11. What is contributory negligence?**

Contributory negligence occurs when the plaintiff is partially responsible for their injury or damage due to their own negligence. For instance, if a pedestrian jaywalks and is hit by a speeding car, their claim for damages may be reduced or denied.

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#### **12. Explain the term waiver.**

Waiver is the intentional and voluntary relinquishment of a known right or claim. It occurs when a party to a contract or agreement chooses to forgo enforcing a specific term or condition, often implied through conduct or explicitly stated.

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#### **13. What is malfeasance and misfeasance?**

- **Malfeasance:** The intentional commission of an unlawful or wrongful act, such as embezzlement.
  - **Misfeasance:** The improper or negligent performance of a lawful act, such as a doctor performing surgery carelessly.
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#### 14. How is trespass to land committed?

Trespass to land occurs when a person unlawfully enters or occupies another person's property without permission. Examples include building a structure that encroaches on another's land or refusing to leave someone's property when asked.

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#### 15. What is complaint according to Consumer Protection Act, 2019?

Under the Consumer Protection Act, 2019, a complaint is a written allegation by a consumer alleging unfair trade practices, defective goods, deficient services, or charging excessive prices. It seeks redressal against the trader or service provider.

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#### 16. Explain assault and battery.

- **Assault:** Causing reasonable apprehension of imminent harm through threatening gestures or words, even without physical contact.
- **Battery:** Actual physical contact or harm caused intentionally, such as hitting or pushing another person. For example, raising a fist to threaten is assault, but actually punching someone is battery.

### Q2) Short Notes.

#### 1. Ubi Jus Ibi Remedium

The Latin maxim *Ubi jus ibi remedium* translates to "where there is a right, there is a remedy." It highlights the idea that if a person's legal right is violated, there must be a remedy to address the wrong. This principle is foundational in both civil and criminal law and ensures that no legal injury goes unredressed.

- **Key Points:**
  1. **Protection of Rights:** Every legal right is accompanied by a remedy to enforce that right.
  2. **Redress for Wrongdoing:** If a person's rights are violated, the legal system provides a way to seek compensation or restitution.
  3. **Available Remedies:** Remedies can include damages (financial compensation), injunctions (orders to do or not do something), or restitution (restoring the injured party to their original position).
  4. **Ensures Justice:** This maxim ensures that legal rights are not hollow and that victims can pursue justice.

- **Example:** If someone suffers injury from another's negligence, they have a right to compensation for the harm caused, ensuring the legal right to personal safety is not disregarded.
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## 2. Kinds of Nuisance

Nuisance refers to a situation where a person's use or enjoyment of their property is interfered with by another's actions. There are several types of nuisance, classified based on the scope and effect on individuals or the public.

- **Key Points:**
    1. **Public Nuisance:** An act that causes harm or inconvenience to the public or a section of the public. For example, obstruction of public roads, pollution, or the sale of unlicensed goods.
    2. **Private Nuisance:** Involves interference with an individual's use or enjoyment of their property. Common examples include loud noises, foul smells, or smoke emitted from a neighbouring property.
    3. **Statutory Nuisance:** This type of nuisance is defined by legislation, often related to public health, sanitation, or environmental protection. Examples include the emission of pollutants by industries.
  - **Remedies:**
    1. **Damages:** The affected person can claim compensation for the harm suffered.
    2. **Injunction:** A court order to stop the nuisance-causing activity.
    3. **Abatement:** The affected party may take action to remove or prevent the nuisance themselves, such as cleaning up an illegal dump.
  - **Example:** If a factory releases toxic fumes that affect nearby residents, it constitutes a public nuisance, and the affected parties can seek compensation or demand cessation of the harmful activity.
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## 3. Principle of Absolute Liability

The principle of absolute liability was established in the case *MC Mehta v. Union of India* (1987) and applies to situations where harm is caused by hazardous activities. Unlike the principle of strict liability, where the defendant can avoid liability by proving certain defences (such as an act of God), absolute liability provides no such defences.

- **Key Points:**
  1. **Strict Liability vs. Absolute Liability:** Under strict liability, the defendant is liable for damages caused by inherently dangerous activities unless they can prove that the harm was caused by an act of God, third-party intervention, or the victim's own fault. In absolute liability, no defences are allowed.
  2. **Hazardous Activities:** The rule applies to activities that are inherently dangerous to the public, such as chemical manufacturing or the use of explosives.
  3. **Landmark Case:** In *MC Mehta v. Union of India*, the Supreme Court ruled that industries engaging in hazardous activities must take all precautions to prevent harm and be held absolutely liable for any accidents or damage caused, irrespective of fault or negligence.

- **Example:** A chemical plant that causes an explosion, leading to damage to nearby properties, will be held absolutely liable for the damage even if the explosion was not caused by negligence.
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#### 4. Deficient Service

Under the Consumer Protection Act, 2019, a service is deemed deficient if it fails to meet the standard expected, is not delivered as agreed, or is not provided with reasonable skill and care.

- **Key Points:**
    1. **Substandard Service:** When the service is below the level that is expected under the contract or by law. This can include delays, poor quality, or incomplete services.
    2. **Failure to Perform:** The provider may fail to deliver the service altogether or do so inadequately, like an unqualified mechanic failing to repair a car properly.
    3. **Breach of Consumer Rights:** Consumers are entitled to expect that services are provided competently and in line with the expectations set in the contract or by industry standards.
  - **Examples:**
    1. A travel agency providing substandard tour packages or failing to deliver the promised services.
    2. A hospital that performs an incorrect procedure, causing harm to the patient.
  - **Remedies:**
    1. Compensation for losses incurred due to deficient service.
    2. Re-performance of the service.
    3. Refund of payment made for the service.
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#### 5. Unfair Trade Practice

unfair trade practices refer to unethical or deceptive business practices aimed at misleading consumers for financial gain. These practices are prohibited under the Consumer Protection Act, 2019.

- **Key Points:**
  1. **False Advertising:** Misleading consumers by making exaggerated or false claims about a product or service, like advertising a defective product as brand new.
  2. **Bait and Switch:** Offering an attractive deal that does not exist or is misleading, and then replacing it with a more expensive alternative.
  3. **Counterfeit Goods:** Selling imitation products labeled as genuine, such as counterfeit medicines or electronics.
- **Examples:**
  1. A company selling fake designer handbags at discounted prices, claiming they are original.
  2. A furniture store advertising “free delivery,” but hiding additional charges.
- **Remedies:**

1. Refund of money paid by consumers.
  2. Penalties or fines for the business engaging in unfair practices.
  3. Action taken by consumer forums or government authorities to rectify the situation.
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## 6. Libel

Libel is a form of defamation where false statements are made about a person, published in written form, or through other permanent means such as pictures, videos, or electronic media.

- **Key Points:**
    1. **Written or Published:** Libel differs from slander in that it involves permanent forms of communication, such as newspapers, books, or social media posts.
    2. **Harm to Reputation:** The primary harm caused by libel is to a person's reputation, and the person defamed can seek compensation for any damage caused to their image.
    3. **Strict Liability:** In most cases of libel, the person who published the defamatory content is strictly liable, meaning they can be sued even if they did not intend to harm the person.
  - **Examples:**
    1. A newspaper falsely claiming a person committed a crime they did not commit.
    2. A social media post accusing someone of unethical behaviour without evidence.
  - **Remedies:**
    1. Financial compensation (damages) for the injury to reputation.
    2. A public apology or retraction of the false statement.
    3. In some cases, criminal prosecution.
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## 7. Discharge of Torts

Discharge of a tort refers to the ending of the liability for a tortious act. There are several circumstances under which a tort may be discharged:

- **Key Points:**
  1. **Consent:** If the injured party gives consent to the defendant's act, then the tort is discharged under the principle of *volenti non fit injuria* (to a willing person, no injury is done).
  2. **Accord and Satisfaction:** When the party at fault compensates the injured party, and the injured party accepts the settlement, the tort is discharged.
  3. **Statutory Immunity:** Certain statutes may grant immunity from tort liability, such as governmental immunity for certain actions.
  4. **Act of God:** If a tort is caused by natural events beyond human control, such as earthquakes or floods, liability may be discharged.
- **Example:**
  1. A person agrees to settle a tort claim by receiving compensation, and this ends the legal dispute.

2. A government body is immune from tort liability while performing public duties.
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## 8. Damnum Sine Injuria

*Damnum sine injuria* means "damage without legal injury." It refers to a situation where a person suffers loss or damage, but no legal rights have been violated in the process. This is a principle used to prevent claims for mere financial loss in the absence of a tort.

- **Key Points:**
    1. **No Violation of Legal Right:** A person may suffer financial loss, but if there's no violation of their legal rights, no tort has occurred.
    2. **Absence of Legal Injury:** Damage must be accompanied by a legal wrong for a claim to succeed.
  - **Example:**
    1. If a person loses money due to a competitor's better market strategy, this is *damnum sine injuria*, as no legal rights were violated.
    2. If a person suffers loss from a competitor's legitimate business practices, they cannot claim compensation as no tort has been committed.
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## 9. Assault and Battery

- **Assault:** The act of intentionally creating a fear or apprehension of imminent harmful or offensive contact in another person. It involves a threat of harm, but no physical contact occurs.
  - **Battery:** The actual physical contact with another person without their consent, resulting in harm or offense.
  - **Key Points:**
    1. **Assault:** Involves the threat or fear of harm, such as raising a fist or brandishing a weapon in a threatening manner.
    2. **Battery:** Involves physical harm or offensive contact, such as punching, kicking, or touching someone in an offensive way.
  - **Examples:**
    1. **Assault:** Raising your hand to strike someone, but stopping before making contact.
    2. **Battery:** Striking someone with your hand or an object.
  - **Remedies:**
    1. Compensation for injury or distress caused.
    2. Criminal charges for both assault and battery.
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## 10. Central Consumer Protection Council

The Central Consumer Protection Council (CCPC) is a body established under the Consumer Protection Act, 2019, that advises the government on matters related to consumer welfare and protection.

- **Key Points:**
  1. **Advisory Role:** It advises the government on policies to promote and protect consumer rights at a national level.
  2. **Consumer Advocacy:** The Council advocates for the interests of consumers and helps raise awareness about consumer rights.
  3. **National Standards:** The CCPC works to establish national standards for goods and services to ensure quality and fair practices across industries.
- **Examples:**
  1. The CCPC works on guidelines to protect consumers from deceptive advertising and unfair trade practices.
  2. It also addresses complaints related to consumer exploitation in various sectors, from food and retail to services.

## 11. Trespass Ab Initio

*Trespass ab initio* is a legal doctrine that arises when a person who initially enters another's property lawfully later commits a wrongful act, thereby making their initial lawful entry a trespass.

- **Key Points:**
    1. **Lawful Entry:** The person initially enters the property with legal authority or permission.
    2. **Subsequent Wrongful Act:** The lawful entry becomes unlawful due to the wrongful act committed afterward.
    3. **Legal Consequences:** The individual is treated as a trespasser from the beginning (*ab initio*), even if the initial entry was lawful.
  - **Example:**
    - A police officer lawfully enters a house with a warrant but damages property or acts beyond their authority. This makes their initial entry unlawful.
    - A person enters a restaurant, consumes food, and then refuses to pay. Their initial entry is treated as trespass.
  - **Landmark Case:**
    - *Six Carpenters' Case (1610)*: The court held that initially lawful entry by carpenters became trespass *ab initio* when they refused to pay after consuming food in an inn.
  - **Remedy:** The aggrieved party can file a suit for trespass to seek damages.
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## 12. Difference between Tort and Breach of Contract

Tort and breach of contract are both civil wrongs, but they differ in nature, scope, and legal principles.



Aspect	Tort	Breach of Contract
<b>Definition</b>	A tort is a wrongful act or omission that causes harm to another person and violates a legal duty.	A breach of contract occurs when one party fails to fulfil their obligations under a valid agreement.
<b>Nature of Duty</b>	Duty is imposed by law and is owed to everyone.	Duty arises from a contractual agreement and is specific to the parties involved.
<b>Remedy</b>	Remedies include damages, injunctions, or restitution to restore the injured party.	Remedies are typically compensation (damages) or specific performance to enforce the contract.
<b>Intent</b>	Torts can occur with or without intent (e.g., negligence).	Breach of contract is generally intentional or due to negligence in fulfilling contractual obligations.
<b>Examples</b>	Negligence, defamation, nuisance, or trespass.	Non-delivery of goods, failure to pay, or not completing a promised service.
<b>Objective</b>	Protects public rights and ensures accountability for harm caused.	Protects private rights and ensures that contractual promises are honoured.

- **Examples:**
  - **Tort:** A person is injured due to a driver's negligence (tort of negligence).
  - **Breach of Contract:** A builder fails to construct a house as per the agreed timeline in a contract.
- **Legal Remedies:**
  - In torts, the focus is on compensating the victim for the harm suffered.
  - In a breach of contract, the aim is to fulfil the contract's terms or provide monetary compensation equivalent to the promised benefit.

### **Q3) Situational based questions (This is just a sample question for your reference).**

#### **1. New Restaurant vs. Old Restaurant**

##### **Question:**

A new restaurant opened in Motinagar near the old restaurant. Due to this, the old restaurant lost 50% of its consumers and revenue. Since it suffered heavy losses, the old restaurant filed a civil suit for damages against the new restaurant.

- Whether the old restaurant can succeed in a suit for damages against the new restaurant? Why?
- Explain the principle involved in this situation.

##### **Answer:**

**a. Whether the old restaurant can succeed in a suit for damages against the new restaurant? Why?**

The old restaurant **cannot succeed** in the suit for damages against the new restaurant. Competition in business is lawful, and there is no legal liability for causing economic harm merely by opening a competing establishment.

- **Reasoning:**

1. The new restaurant's actions are not unlawful. Opening a business in the same locality is a lawful activity and part of free market competition.
2. Loss of customers or revenue due to legitimate competition does not amount to a tortious act.
3. There is no wrongful act or infringement of any legal right of the old restaurant.

**b. Principle Involved**

The principle involved is "**Damnum sine injuria**" (damage without legal injury). It refers to a situation where economic harm or loss is caused to a person without violating their legal rights. Such harm does not give rise to a legal claim for damages.

- **Key Case:**

*Gloucester Grammar School Case (1410)*: A teacher opened a competing school in the same town, leading to financial losses for another school. The court held that no legal action could be taken, as no legal right was infringed.

- **Explanation:**

1. In this situation, the old restaurant's legal rights are not violated; hence, no compensation can be claimed.
  2. Competition in business is not inherently unlawful unless unfair trade practices or other illegal means are used.
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## 2. Ms. Anita vs. Hospital

**Question:**

The Plaintiff, Ms. Anita, filed a civil suit for damages against the hospital where she was operated on for stone removal surgery from her gall bladder. However, she continued to feel pain. After a few days, it was detected that a gauge was left in her abdomen by the surgeon who operated on her.

- a. Whether Ms. Anita would succeed in a suit for damages against the hospital? Why?
- b. Explain the principle involved in this case.

**Answer:**

**a. Whether Ms. Anita would succeed in a suit for damages against the hospital? Why?**

Yes, Ms. Anita **can succeed** in her suit for damages against the hospital. Leaving a foreign object (gauge) in a patient's abdomen during surgery is a clear instance of medical negligence.

- **Reasoning:**

1. The surgeon and hospital owed a duty of care to Ms. Anita.
2. Leaving a gauge in the abdomen is a breach of that duty and constitutes negligence.
3. The breach directly caused harm (pain and suffering) to Ms. Anita, establishing liability.

### **b. Principle Involved**

The principle involved is "**Negligence**". Negligence occurs when a person or institution breaches their duty of care, causing harm or injury to another.

- **Essential Elements of Negligence:**
  1. **Duty of Care:** The hospital and surgeon had a legal obligation to provide safe and competent medical care.
  2. **Breach of Duty:** Leaving a gauge in the abdomen demonstrates a failure to exercise reasonable care.
  3. **Causation:** The breach caused harm to the patient.
  4. **Damages:** Ms. Anita suffered physical and emotional harm, entitling her to compensation.
- **Key Case:**

*Dr. Laxman Balkrishna Joshi v. Dr. Trimbak Bapu Godbole (1969):* The Supreme Court held that failure to exercise reasonable skill and care in medical treatment constitutes negligence.
- **Explanation:**
  1. The hospital is vicariously liable for the negligence of its employees (surgeons and staff).

**Ms. Anita can claim compensation for pain, suffering, and additional medical expenses caused by the negligence.**

## **Q4) Answer in Details**

### **1. Discuss the aims and objects of the Consumer Protection Act, 2019**

#### **Introduction:**

The Consumer Protection Act, 2019, replaces the 1986 Act, strengthening consumer rights in India. It aims to safeguard consumer interests, ensure fair trade, and prevent exploitation in the market.

#### **Aims of the Act:**

1. **Consumer Empowerment:**
  - Protect consumer rights through awareness, education, and redress mechanisms.
2. **Prevent Unfair Trade Practices:**
  - Address false advertisements, misleading claims, and unfair pricing.
3. **Timely Justice:**
  - Simplify and speed up the redress process via consumer commissions and mediation.

#### **Objects of the Act:**

1. **Protection of Rights:**

- Six consumer rights, including the right to safety, information, and redress, are prioritized.
- 2. **Accountability for Deficiency:**
  - Encourages accountability from manufacturers, sellers, and service providers for defective goods and deficient services.
- 3. **Digital Consumer Protection:**
  - Extends coverage to e-commerce platforms, addressing modern consumer issues like online fraud.

### **Key Features:**

1. **Central Consumer Protection Authority (CCPA):**
  - A regulatory body empowered to investigate violations, recall goods, and impose penalties.
2. **Simplified Dispute Resolution:**
  - Mediation cells established to resolve disputes amicably and faster.
3. **Liability for Endorsers:**
  - Celebrities endorsing false claims can be penalized.
4. **E-Commerce Guidelines:**
  - Covers unfair practices on platforms like Amazon and Flipkart.

### **Landmark Cases:**

1. **Consumer Education and Research Centre v. Union of India (1995):**
  - Affirmed the right to information as part of consumer rights.
2. **Abhaya Kumar Panda v. Bajaj Allianz (2014):**
  - Highlighted deficiency in insurance services under consumer law.

### **Conclusion:**

The Consumer Protection Act, 2019, is comprehensive and modern, addressing challenges in a digital and globalized market. It ensures consumer safety, fairness, and trust in the system.

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## **2. Explain the general defences in torts**

### **Introduction:**

General defences in tort law are legal justifications that allow a defendant to escape liability for an alleged wrongful act. They aim to balance the interests of justice between the plaintiff and defendant.

### **Defences in Tort Law:**

1. **Volenti Non-Fit Injuria (Consent):**
  - If the plaintiff willingly accepts the risk, the defendant is not liable.
  - *Example:* Injuries sustained during voluntary participation in sports.
  - *Case:* *Hall v. Brooklands Auto Racing Club* (1933) – No liability as the spectator consented to risks of a race.
2. **Inevitable Accident:**
  - Liability does not arise if the act was unavoidable despite reasonable care.

- *Case: Stanley v. Powell* (1891) – No liability for accidental injury during a shooting event.
- 3. **Act of God** (Vis Major):
  - Natural and unavoidable forces causing damage absolve the defendant of liability.
  - *Example:* Damage due to floods or earthquakes.
  - *Case: Nichols v. Marsland* (1876) – No liability for flood damage caused by unprecedented rainfall.
- 4. **Self-Defence:**
  - Defending one's person or property using reasonable force is permissible.
  - *Example:* Injuring a burglar during an attempted robbery.
- 5. **Necessity:**
  - An act done to prevent greater harm may excuse liability.
  - *Case: Cope v. Sharpe* (1912) – Destroying property to stop the spread of fire was justified.
- 6. **Mistake:**
  - Honest mistakes may excuse liability, provided they lack malice.
- 7. **Statutory Authority:**
  - Acts done under legal sanction cannot attract liability.
  - *Case: Vaughan v. Taff Vale Railway* (1860) – Railways are immune from liability for lawful operations.

#### **Conclusion:**

General defences in tort law uphold fairness and justice, ensuring liability is imposed only where it is justifiable. These defences demonstrate that not every harm leads to compensation.

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### **3. Discuss vicarious liability arising out of master-servant relationship**

#### **Introduction:**

Vicarious liability arises when one party is held responsible for the wrongful acts of another due to a special relationship, such as employer-employee (master-servant). This ensures accountability and protection for victims of negligent or wrongful actions.

#### **Key Principles:**

1. **Employer's Control:**
  - The employer has control over the employee's work and actions.
2. **Course of Employment:**
  - Liability arises when wrongful acts occur during employment and within the scope of duties.

#### **Master-Servant Relationship:**

1. **Acts within Scope:**
  - Employers are liable for employees' acts done within the scope of employment.

- *Case: State Bank of India v. Shyama Devi (1978)* – Employer held liable for employee's fraud during banking operations.
- 2. **Frolic and Detour:**
  - If an employee acts outside their employment, the employer is not liable.
  - *Case: Beard v. London General Omnibus (1900)* – Employer not liable for a driver's unauthorized act.
- 3. **Intentional Torts:**
  - Employers may be liable for intentional acts if done in connection with duties.
  - *Example:* Bouncer injuring a patron during duty.
- 4. **Liability for Independent Contractors:**
  - Employers are generally not liable for independent contractors unless non-delegable duties arise.

### **Exceptions:**

1. Unauthorized acts benefiting the employer may still lead to liability.
2. Fraud or negligence committed within apparent authority binds the employer.

### **Conclusion:**

Vicarious liability ensures fairness by holding employers accountable for employee actions. This doctrine not only protects victims but also incentivizes employers to monitor their employees.

## **4. Explain negligence as tort. Discuss professional negligence.**

### **Introduction:**

Negligence refers to the failure to exercise reasonable care, leading to harm or damage. It is one of the most common torts and focuses on unintentional harm caused by carelessness.

### **Elements of Negligence:**

1. **Duty of Care:**
  - The defendant owed a duty to the plaintiff.
  - *Case: Donoghue v. Stevenson (1932)* – Manufacturer owed a duty to consumers.
2. **Breach of Duty:**
  - Failure to meet the standard of care expected in the situation.
3. **Causation:**
  - The breach directly caused harm to the plaintiff.
4. **Damages:**
  - Actual harm must be proven for compensation.

### **Professional Negligence:**

This refers to negligence by professionals like doctors, lawyers, or accountants who fail to meet the standard of care expected in their field.

### **Medical Negligence:**

1. **Definition:** Failure to provide adequate care resulting in harm to the patient.
2. *Case: Bolam v. Friern Hospital Management Committee (1957)* – Established the "Bolam Test" for medical negligence.

### **Legal and Financial Professionals:**

Negligence by lawyers or accountants can lead to financial or reputational harm.

### **Defences to Negligence:**

1. Contributory Negligence
2. Volenti Non-Fit Injuria
3. Statutory Authority

### **Conclusion:**

**Negligence is a critical tort balancing individual accountability and societal fairness. Professional negligence carries additional responsibility due to the reliance on specialized skills.**

## **5. Explain the essential elements of defamation. State the defences in defamation.**

### **Introduction:**

Defamation is the act of damaging a person's reputation by making a false statement. It is a tort that protects an individual's right to reputation while balancing freedom of expression. Defamation can be categorized as *libel* (written or published statements) and *slander* (spoken statements).

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### **Essential Elements of Defamation:**

1. **False Statement:**
  - The statement must be untrue and not based on facts. Truthful statements, even if harmful, do not constitute defamation.
  - *Example:* Accusing someone of theft without evidence can damage their reputation.
  - *Case Law: R. Rajagopal v. State of Tamil Nadu (1994)* – The court held that truthful statements made in the public interest are not defamatory.
2. **Publication of the Statement:**
  - The defamatory statement must be communicated to a third party other than the plaintiff.
  - It can include newspapers, television, or even social media platforms.
  - *Example:* Writing defamatory posts on Facebook that others can see.
3. **Injury to Reputation:**
  - The statement must harm the reputation of the plaintiff in the eyes of society.
  - It may lead to public hatred, ridicule, or avoidance.
  - *Case Law: D.P. Choudhary v. Manjulata (1997)* – Publishing false news about a girl's character affected her marriage prospects and reputation.
4. **Reference to the Plaintiff:**

- The statement must clearly identify the plaintiff, even if indirectly.
  - 5. **Malicious Intention:**
    - The statement should be made with the intention of harming the plaintiff.
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### **Defences to Defamation:**

1. **Truth:**
    - Truth is an absolute defence if the statement is true and in the public interest.
    - *Example:* Reporting a politician's involvement in corruption based on facts.
    - *Case Law: Alexander v. North Eastern Railway (1865)* – A statement about a convict's punishment was held not defamatory as it was true.
  2. **Fair Comment:**
    - Honest opinion on matters of public interest, such as reviews or criticism.
    - *Example:* Film or book reviews.
    - *Case Law: K.P. Narayana v. Moolya (2005)* – Honest criticism of a book did not amount to defamation.
  3. **Privilege:**
    - Certain occasions grant immunity to the defendant.
      - **Absolute Privilege:** Statements made in parliament, judicial proceedings, or by the President.
      - **Qualified Privilege:** Statements made without malice in the performance of a legal, social, or moral duty.
  4. **Consent:**
    - If the plaintiff consented to the publication of the statement, no action for defamation can be brought.
  5. **Apology and Retraction:**
    - Immediate retraction and apology may mitigate damages or absolve liability.
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### **Conclusion:**

Defamation laws aim to balance individual reputation and the right to free speech. While the essential elements ensure accountability for false and damaging statements, the defences provide safeguards against misuse of this law.

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## **6. Discuss the principle of strict and absolute liability with reference to landmark cases.**

### **Introduction:**

Strict and absolute liability are legal doctrines that impose liability for harm caused by hazardous activities, irrespective of fault or intention. They aim to ensure accountability in industrial and hazardous operations.

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### **Principle of Strict Liability:**

This principle was established in the case of *Rylands v. Fletcher (1868)*. Strict liability holds a person responsible for damages caused by inherently dangerous activities or materials, even if there was no negligence.

### **Essentials of Strict Liability:**

1. **Dangerous Thing:**
    - The defendant must have brought something dangerous or harmful onto their land.
    - *Example:* Chemicals, explosives, or large reservoirs of water.
  2. **Non-Natural Use of Land:**
    - The activity must be unnatural, meaning beyond ordinary usage of the land.
    - *Case: Rylands v. Fletcher (1868)* – A reservoir built on the defendant's land caused flooding when it burst, and the court held the defendant liable.
  3. **Escape of Dangerous Thing:**
    - The harmful thing must escape from the defendant's property and cause damage.
  4. **Damage Caused:**
    - Actual damage to the plaintiff must occur.
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### **Principle of Absolute Liability:**

The principle of absolute liability was introduced in India through the landmark case of *M.C. Mehta v. Union of India (1987)*. Unlike strict liability, it does not allow exceptions and imposes complete liability for any harm caused.

### **Features of Absolute Liability:**

1. **No Exceptions:**
  - Absolute liability applies even in cases of acts of God, plaintiff's fault, or third-party actions.
2. **Applicability:**
  - It applies to hazardous or inherently dangerous activities, especially industrial operations.
3. **Higher Standard of Care:**
  - Industries must ensure the utmost safety and precautions to avoid accidents.

### **Case Law:**

- *M.C. Mehta v. Union of India (1987)*: A gas leak from Shriram Fertilizers caused several deaths. The Supreme Court held the company absolutely liable, introducing a stricter standard for industries.
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### **Comparison:**

Aspect	Strict Liability	Absolute Liability
Exceptions	Provides exceptions (e.g., act of God).	No exceptions allowed.
Applicability	Established by <i>Rylands v. Fletcher</i> .	Introduced by <i>M.C. Mehta v. Union of India</i> .
Scope	Limited to specific cases.	Broader and applies to modern industries.

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**Conclusion:**

Both principles emphasize accountability and serve as vital legal doctrines for addressing industrial accidents and environmental damage. Absolute liability, however, reflects modern needs by imposing stricter obligations on industries.

**by Shahbaz Khan**

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