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CONTEMPORARY ISSUES IN TORTS JURISPRUDENCE

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Abstract

Apart from great, explanatory theories, Law of Tort come in many ways. It has a fair amount of common laws. One significant claim found in various theorists, as well as a number of leading rights theorists that Law of tort develops gradually in such a way to achieve major judicial decisions in various occasions suited to particular cases according to those case laws. One is never 'guilty' of a tort, as that is a term from the criminal law that implies a violation of some societal or state standard. One who commits a tort is a tort feisor', the tort feisor is 'liable', rather than guilty. Tort liability means to monetarily reimburse the tort victim for the harm caused by the tort feisor. Other remedies are also possible, including restitution or injunctions. A tort may arise from intentional acts, negligent acts. The basis of tort law is that people are liable for the consequences of their actions. Under a most of the tort laws, the injury suffered by the plaintiff does not have to be physical. Torts may include causing emotional distress or a violation of personal rights. (E.g. the 'rights to privacy'). The laws of Torts take the outcomes of claim.

KEYWORDS: Tort feisor, omission, tortuous liability, breach of contract, compensation, unliquidated damages. Lack of consciousness.

I.INTRODUCTION:

The English term "Tort" has been derived from the Latin term "Tortum" which means "to twist". The same terms has been used in French as "to twist". It means which is not straight and correct. The same terms has been used in French as "wrong", and in Roman law as "Delict".

"Tort" is an infringement of a private common law right in rem. A person who commits a tort or wrong is called a "tort-feasor" or "wrong doer". His wrongful act is called a "tortuous act". The term "tort" was first reported in "Boulton V.Hardy (1597) Crown Eliz. 547, 548)" case in England. Winfield wrote a book on "The Law of Tort". In his book, he defines tort as "Tortuous liability arises from the breach of a duty primarily fixed by law:

this duty is towards persons generally and its breach is repressible by an action for unliquidated damages". The damages fixed in the breach of contract and the breach of trust is called as "Liquidated damages". The damages which can be fixed after the tortuous liability arised are called as "Unliquidated damages". The branch of a legal duty in a tortuous liability can be redress able by action for unliquidated damages. The concept of awarding unliquidated damages for a tortuous liability is to put the injured party in the same position. This is equivalent to the "Doctrine of Restitution".

As per Salmond, tort is a civil wrong. It is not equivalent to the breach of a contract or the breach of trust or other merely equitable obligation. In common law, it is a civil wrong, covering all civil wrongs in public life. The



tortious liability may arise, when a civil wrong occurs.

“Ubi jus Ibi remedium” (There is no wrong without a remedy) is the basis of the law of Torts in England. This is a Latin maxim. This implies equity, justice and good conscience. According to the legal maxim, the common law gives a right or prohibits an injury and also gives an appropriate remedy to the aggrieved. This legal maxim has a more extended signification in the Law of Torts. Tort is also recognized as a separate branch of law. Comparing with England and other developed countries, India is a background in Law of Torts. The significant reason is poverty, illiteracy, the spirit of toleration, lack of consciousness about one’s rights etc. The delay in court proceedings, costs of the suits, etc. are the added reasons for the non-development of the law of Torts in India. As changing times, the Law of Torts is growing in India too. The consumer Protection Act, 1986 is a welcome measure. It gave a considerable conscience and awareness to the Indian public. The Supreme Court in its latest cases adopted Absolute Liability Principle, Precautionary Principle, Polluter pays Principle etc. in torts and environmental cases.

II. CURRENT CHANGES IN LAW OF TORTS:

Recently Supreme Court also taking initiative in the law of Torts. It is applying the principles of Law of Torts in the environmental pollution cases. In December 1996, the Supreme Court ordered suo motto to close the aqua culture projects located in the coastal areas of India. It has also taken several cases of torts causing harm to injury to the public viz, Tajmahal case, Vellore Citizen’s Welfare case, etc. restraining the industrialists polluting the environment.

Law of tort is a created by numerous judicial decisions. The new principles have recognized by courts or public policy. First these ideas have been recognized by the society then by courts. These new principles in the areas of law of Torts gradually formed a new content and atleast a new form.

In every wrongful act, there are two essentials ‘actus reus and mens rea. The phrase “actus reus’ means a ‘person’s act, and the phrase ‘mens rea’ means ‘ill intension’. In the Law of Torts, “mens rea” has no place. It is sufficient for the plaintiff to prove that by the act or fault of the defendant. If defendant violates the plaintiff’s right even without causing any damage to the plaintiff, the defendant is considered that he did “fault” and he is ordered to pay damages to the plaintiff. This is explained by the legal maxim “injuria sine damnum”. In the Law of Torts, if a servant does “wrongful act’ or “fault” and causes any damage to the plaintiff, the master is held liable, even though there is no fault from the side of the master under the principle of “Vicarious Liability”, which is also known as “Respondent Superior”.

“To deal with the behavior of the people tort existed in Hindu and Muslim law but it can be said that tort was formally introduced by the Crown in India. It is based on the principles of equity, justice and good conscience. The law of torts is based on the principles of “common law” which is mainly the English law of torts. The application of the law of the tort is an applied selectively in Indian courts keeping in mind if it suits the circumstances of India society.

Justice Bhagwati in M.C.Mehta V. Union of India observed that, “We have to evolve new principles and lay down new norms which will adequately deal with new problems which arise in a highly industrialized economy. We cannot allow our judicial thinking to be constructed by reference to the law as if prevails in England or for the matter of that in any foreign country. We are certainly prepared to receive light from whatever source it comes but we have to build our own jurisprudence”

III. TORTS vs. BREACH OF CONTRACT:

There are different kinds of based on the rights violated. Some acts like gross negligence that



may endanger the lives of others may be a tort, breach of contract and a crime.

No civil wrong is tort, if it is exclusively the breach of a contract. The law of contracts is a separate department and the law of torts is another. The contractual liability and the tortious liability are governed by different principles.

In torts, damages are always unliquidated or unascertained and invariably they are not, in fact cannot be actual. A tort is a violation of a right in rem. i.e. of a right vested in public at large, either personally or as a member of community and available against the world at large. Sometimes, in tort, motive is an essential factor to determine the liability e.g. malicious prosecution. Law relating to tort has not been codified. It is a judge-made law. In tort, a person injured may be entitled for such damages which he has not actually suffered. Exemplary or vindictive damages are awarded in tort. The factors do not effect on action of tort.

Whereas, in breach of contract injured party has right only for liquidated damages, i.e. pre-settled or actual damages. A breach of contract is an infringement of a right in personam. i.e a right available only against some determinate person or body and in which the community at large. In breach of contract, the motive is not an essential factor. The defaulting party has to pay the pre-settled and actual damages. Law relating to contract has been codified. In breach of contract, the party is entitled only for actual damages. Exemplary or vindictive damages are not awarded in the breach of contract, except in an action for breach of promise of marriage. Non compensation is paid in cases of contracts induced by fraud, misrepresentation, mistake, coercion or undue influence.

CONCLUSION

After going through this article, one can say that a tort is civil wrong which is committed when a

person infringes other person's rights. The main purpose of law of torts to compensate the injured party and made liable the person who violates that person's right in rem. It is a branch of civil law and is uncodified, but is being widely used in the present era.

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