As we all know, torts is the most important part in the legal reasoning section. Most number of questions are taken from this chapter and is considered as an essential for cracking C.L.A.T. So, let’s start with this chapter.

Tort is a civil wrong, other than breach of contract and it attracts penalty in form of compensation given to the injured party. The word ‘tort’ is derived from ‘tortium’, a latin term meaning ‘to twist’. It implies a ‘conduct that is twisted or not straight’. The law of torts is based on the principle “ubi jus ibi remedium” which means that “for every wrong, there is a remedy.”

**Purpose of tort law**

(1) to provide a peaceful means for adjusting the rights of parties who might otherwise “take the law into their own hands”;

(2) to deter wrongful action;

(3) to encourage socially responsible behavior; and,

(4) to restore injured parties to their original condition, insofar as the law can do this, by compensating them for their injury.

**Essentials of a Tort**

For an action of Tort, there must be an act or an omission on the part of alleged wrongdoer. A person must have done some act which he was not supposed to do.
The act or omission should result in a **legal damage**, hereinafter referred as ‘damage’ which means that the act or omission, should result in a violation of legal right of the plaintiff of the complainant.

There are two important maxims in tort:

**Injuria Sine Damnum**

This maxim means ‘legal injury without damage.’ According to this maxim, whenever there is a violation of a legal right, the person in whom the right is vested is entitled to bring an action though he as not suffered any damage and may recover damages. It is sufficient to show violation of legal right and the law will presume damage. Violation of legal right gives rise to legal action.

In a famous leading case of **Ashby Vs. White**, the defendant, a returning officer at a voting both wrongfully refused to register a duly tendered vote of the plaintiff. Even though the person for whom the plaintiff wanted to vote won the election, the court held that there was an injury to the legal right of the plaintiff and he was entitled to compensation.

In another interesting case of **Marzetti Vs. Williams**, a banker though having sufficient funds in his hands belonging to the customer dishonoured the cheque of the plaintiff. The plaintiff did not suffer any damage but the court held that there was violation of legal right of the plaintiff and so the banker is liable.

These examples clearly explain the meaning of the maxim, though there may not be any damage but if there is an injury to the legal right of a person, he is entitled to bring an action.
**Damnum Sine Injuria**

This maxim means that there is "actual damage without any violation of legal right". In such cases, there is an actual and substantial loss without the infringement of any legal right.

**Consider this example:**

I run a school in my locality. It’s called ‘St. GCS: Good, Cheap School’. I charge rupees 100 per student. I get good teachers for them. A nice playground. And a computer room!

A competitor school opens up very near to my school. It’s called ‘Better, Cheaper’. The fees is rupees 50 per student. Better teachers. A bigger playground. A well, they have Apple products in the computer room!

I suffer damage. Economic Loss. But my legal rights were **NOT** infringed. And I have no cause of action to take this case to a court of law.

Let us consider another example. Mr. Halim runs a highly profitable mill in a small town. Mr. Zouk is his neighbor. They do not like each other at all. Now, Mr. Zouk starts a rival mill in the same locality. As a result of this, Mr. Halim’s profits decrease.

In this situation, although Mr. Halim suffered damage, he cannot bring a suit against Mr. Zouk has no legal right of him is infringed.

**General Defences**

The law of torts provides some general defences which can be used by the defendant to protect himself against liability. These are:

**Volentia Non Fit Injuria (VNFI)**

This defence means ‘voluntary taking of a risk’. *Volenti non fit injuria* is a common law doctrine which states that if someone willingly places themselves in a position where harm might result, knowing that some degree of harm might result, they are not able to bring a
claim against the other party in tort or delict. *Volenti* only applies to the risk which a reasonable person would consider them as having assumed by their actions; thus a boxer consents to being hit, and to the injuries that might be expected from being hit, but does not consent to (for example) his opponent striking him with an iron bar, or punching him outside the usual terms of boxing. *Volenti* is also known as a "**voluntary assumption of risk.**"

Therefore, if a spectator watching a cricket match is hit by a ball, he will not be able to claim damages as he had consented to the danger.

To this defence, there is also a defence and that is in cases of **RESCUE.** There are certain conditions in rescue cases which are:

1. He was acting to rescue persons or property endangered by the defendant’s negligence;
2. He was acting under a compelling legal, social or moral duty; and
3. His conduct in all circumstances was reasonable and a natural consequence of the defendant’s negligence.

**For every law aspirant.**

**Plaintiff Being the Wrongdoer**

The essential part of this defence is that the plaintiff did something which caused him the injury. Since the plaintiff did something wrong, he cannot claim any damages from the defendant for the injury caused to him. For instance, if someone who tries to illegally enter the house of defendant and is bitten by the dog of defendant will not be able to claim damages from defendant.
Inevitable Accident

Inevitable-accident doctrine is a principle of Tort law that says that a person cannot be liable for an accident that was not foreseeable and that could not have been prevented by the exercise of reasonable care. Highest degree of caution is not required. It is enough that it is reasonable under the circumstances. However, the courts rarely use this doctrine at present and rely instead on the basic concepts of duty, negligence, and proximate cause.

According to the authorities, once the plaintiff establishes a prima facie case of negligence, the onus will shift to the defendant to prove inevitable accident. In so doing, the defendant is required to show how the accident took place and that the loss of control of the vehicle could not have been avoided by the exercise of the greatest care and skill.

Act of God

Act of God (Vis Major) means accident occurs because of an unforeseen natural event. In law, then, the essence of an Act of God is not so much a phenomenon which is sometimes attributed to a positive intervention of the forces of nature but a process of nature not due to the act of Man and it is this negative side which deserves emphasis.

The criterion is not whether or not the event could reasonably be anticipated, but whether or not human foresight and prudence could reasonably recognize the possibility of such an event. For example, loss due to earthquake, storm, heavy rainfalls etc.

Private Defence

The right of private defence entitles the plaintiff to go to any extent in order to protect his life or property. An important thing to note in this is that the force used in private defence should be reasonable and used as defence, not as offence. Also, the danger
must be imminent. For instance, a person warns a person that in evening, he will bring a gun and shot the plaintiff and plaintiff waits for that person and when he evening he comes to attack the plaintiff, the plaintiff will not have the right of private defence because he had the time to inform police about the matter. Take another example, if someone punches you on stomach and you shoot him that would be an excessive use of force which is not necessary for defending yourself.

The following must be satisfied in order to claim this defense:

(a) the defendant must be under threat or under attack,

(b) the defense must be for self-defense and not for revenge,

(c) the response must be proportional to the attack or threat. The principle for this is that the law will not hold you responsible for an action that you performed in order to save or protect yourself. If, however, it was not necessary to use force for protection, the law will not protect, and you can’t use this defense.

**Mistake**

Mistake is not usually a defence in tort law. It’s not good enough to say that you were not aware that what you were doing was wrong. Mistake is generally of two types:

a) **Mistake of Law** – Mistake of law or the ignorance of law is no excuse. *Ignorantia Juris Non Excusat* explains the same that ignorance of law is no defence.

b) **Mistake of Fact** – Mistake of fact is a defence but cannot be used in every case. It is a defence used in malicious prosecution.

**Necessity**

In tort law, the defense of necessity gives the state or an individual a privilege to take or use the property of another. A defendant typically invokes the defense of necessity only...
against the intentional torts of trespass to goods, trespass to land, or conversion.

The Latin phrase from common law is *necessitas inducit privilegium quod jura privata* (“Necessity induces a privilege because of a private right”). A court will grant this privilege to a trespasser when the risk of harm to an individual or society is apparently and reasonably greater than the harm to the property. In Necessity, one has to show that the act done was necessary in the circumstances. **Private necessity** is the use of another’s property for private reasons. Well established doctrines in common law prevent a property owner from using force against an individual in a situation where the privilege of necessity would apply. **Public necessity** is the use of private property by a public official for a public reason. The potential harm to society necessitates the destruction or use of private property for the greater good. The injured, private individual does not always recover for the damage caused by the necessity.

**Statutory Authority**

If the act was done under authority of a statute, that is a valid defence. For instance, if there is a railway line near your house and due to the noises of the trains passing by disturbs you, you have no remedy because railway line was constructed under the authority of a statute. Though, there is a responsibility for the authorities to be reasonable in respect of conducting the work.

So, with this we are done with the defences for the law of Torts.

**Capacity to Sue or to be Sued**

*Every person has the right to sue another and every person can be sued by another.*

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**Minor**

In India, ‘minor’ is a person who is below the age of 18. A minor can sue just like an adult, the only difference being that the tort action will have to put forth and proceeded with in court by an adult acting on behalf of the minor.

A minor can also be sued just like an adult. The only difference in this regard is that if the injury complained of arises from the violation of a contractual obligation, then a tort action to enforce the same cannot be initiated.

**Corporations**

Companies can also be sued for the action of their employees committed when acting as employees of the company. Companies are treated as ‘persons’ in law for certain purposes in law. Artificial persons like companies are also referred to as ‘juristic persons’.

**Act of State**

The government (state/centre) cannot be sued for any claim arising while it is acting within its governmental/sovereign capacity.

**Joint and Independent Tortfeasors**

When two or more persons whose negligence in a single accident or event causes damages to another person, they are called joint tortfeasors. In many cases, the joint tortfeasors are jointly and severally liable for the damages, meaning that any of them can be responsible to pay the entire amount, no matter how unequal the negligence of each party was.

Independent tortfeasors are those who act independently but cause the same damage.
Vicarious Liability

This is an exception to the general rule that a person is liable only for his wrongful acts. *Vicarious liability* means liability for the acts of others.

Vicarious liability can arise in the following relationships:

(1) **Master- Servant Relationship**

If a servant does a wrongful act in his course of employment, then as per this doctrine the master will be held liable for such an act. This is based on the principle of *"qui facit per alium"*, which means, "He who does an act through another is deemed in law to do it himself". Since the servant acts under the authority of his master, the latter should be held responsible.

**Type of relationship which exists between master and servant?**

A servant is someone who is appointed by another person (master) to do work under the direction and control. The definition of a 'servant' in law is much wider than our ordinary usage, the legal definition of a 'servant' is much wider – it includes anybody who is employed by another.

For instance, company (companies are considered as juristic persons) can be held liable for the wrongful acts of its servants, such as General Manager, done in the course of employment.

A servant is however different a **Independent Contractor** who is asked to do certain work but is not under any direction and control of such person. Another test for the identifying the master - servant relationship is the hire and fire test. If the person can hire and fire, then he is a master.
Difference between Servant and Independent Contractor

a. A Servant is under the control of the master while the contractor, though taking instructions, is not under anyone’s “control”, as he himself decides how to work.
b. The servant usually serves one master while an Independent contractor may serve different people at the same time.

Example:
My car driver is my servant. If he negligently knocks down X, I will be liable for that. But if he hire a taxi for going to railway station and a taxi driver negligently hits X, I will not be liable towards X because the driver is not my servant but only an independent contractor.

The taxi driver alone will be liable for that.

Tests to determine Master-Servant Relationship

a. The hire and fire test: The master can hire and fire his servant at his will. Nothing prevents the master form doing so.
b. The Direction and Control Test: The master directs and controls the work of the servant. The servant is bound to follow the direction. The essential part is that an Independent contractor is not bound to follow the instructions and is under the master’s control.
c. The course of employment: It is not sufficient if the person for whose act another person is being held liable is a “servant” of the latter. In order to proceed under the principle of vicarious liability, another ingredient needs to be made out - the act must be done “in the course of employment”.

An act is considered as in the course of employment if:
The act has been directly authorized by the master or comes within a group of acts that the master impliedly wanted the servant to perform.

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An authorized act can be performed in can be done by the servant in two ways: **rightly** or **wrongly**. Both would fail within the course of employment.

**An act is considered as out of course of employment if:**

It is an **unauthorized act**. Though the incorrect doing of an authorized act will make the master liable, but the **doing of an unauthorized act will not**. For instance, if your driver goes home and beats his wife, this act will have nothing to do with the authorized act, and you won't be held responsible for such an act.

(2) **Principal – Agent Relationship**

A situation may arise where the person for whose acts are made vicariously liable is not your servant but is merely someone who **acts on your behalf**. An agent is someone who is **authorized** to do an act by another person (principal) and consequently, acts on his behalf. Both, the principal and the agent are liable for such acts.

An example for this could be the acts of the managing clerk of the company. When acting as an employee of the company, he is authorized by the company to do certain acts. Thus, if he does something wrong while doing his job, the company, which is the principal, is responsible.

(3) **Partners in the Partnership firm**

In a partnership firm, the partners are responsible for each other's actions during the course of employment, i.e. during the conduct of the business. The partners can be held responsible jointly and severally for each others' actions. Jointly means “all together” while severally means “each separately”. This means that for any partners' actions, you can sue each of the partner separately or all the partners together. A partner can be held liable for the wrongful acts of all the other partners.
Lending an employee

If an employer lends an employee to another employer on a temporary basis, as a general rule it will be difficult for the first employer to shift responsibility to the temporary employer.

An employer will only be liable for torts which the employee commits in the course of employment. An employer will usually be liable for (a) wrongful acts which are actually authorised by him, and for (b) acts which are wrongful ways of doing something authorised by the employer, even if the acts themselves were expressly forbidden by the employer. Liability for criminal acts will also be considered.

Trespass

Trespass is an area of tort law broadly divided into three groups: trespass to the person, trespass to chattels and trespass to land.

Through the evolution of the common law in various jurisdictions, and the codification of common law torts, most jurisdictions now broadly recognize three trespasses to the person: assault, which is "any act of such a nature as to excite an apprehension of battery"; battery, "any intentional and unpermitted contact with the plaintiff's person or anything attached to it and practically identified with it"; and false imprisonment, the "unlawful obstruction or deprivation of freedom from restraint of movement".

Trespass to chattels, also known as trespass to goods or trespass to personal property, is defined as "an intentional interference with the possession of personal property ... proximately causing injury". Trespass to chattel does not require a showing of damages. Simply the "intermeddling with or use of ... the personal property" of another gives cause of action for trespass
Trespass to land is today the tort most commonly associated with the term *trespass*, it takes the form of "wrongful interference with one’s possessory rights in real property". Generally, it is not necessary to prove harm to a possessor’s legally protected interest; liability for unintentional trespass varies by jurisdiction.

**Trespass to Person**

There are three types of trespass, the first of which is trespass to the person. Whether intent is a necessary element of trespass to the person varies by jurisdiction.

**Assault**

Assault is the tort of acting intentionally, that is with either general or specific intent, causing the reasonable apprehension of an immediate harmful or offensive contact. Because assault requires intent, it is considered an intentional tort, as opposed to a tort of negligence.

**Elements Of Assault**

Three elements must be established in order to establish tortuous assault:

- first, the plaintiff apprehended immediate physical contact,
- second, the plaintiff had reasonable apprehension (the requisite state of mind) and
- third, the defendant’s act of interference was intentional (the defendant intended the resulting apprehension).

**Defences**

Assault can be justified in situations of self-defense or defense of a third party where the act was deemed reasonable. It can also be justified in the context of a sport where consent can often be implied.
Comparison with Battery

As distinguished from battery, assault need not involve actual contact; it only needs intent and the resulting apprehension. However, assault requires more than words alone. For example, wielding a knife while shouting threats could be construed as assault if an apprehension was created. A battery can occur without a preceding assault, such as if a person is struck in the back of the head. Fear is not required, only anticipation of subsequent battery.

An assault can be an attempted battery.

Battery

Battery is the tort of intentionally and voluntarily bringing about an unconsented harmful or offensive contact with a person or to something closely associated with them (e.g. a hat, a purse). Unlike assault, battery involves an actual contact. The contact can be by one person (the tortfeasor) of another (the victim), or the contact may be by an object brought about by the tortfeasor. For example, the intentional contact by a car is a battery.

Essentials

Battery is a form of trespass to the person and as such no actual damage (e.g. injury) needs to be proved. Only proof of contact (with the appropriate level of intention or negligence) needs to be made. If there is an attempted battery, but no actual contact, that may constitute a tort of assault.

Battery need not require body-to-body contact. Touching an object "intimately connected" to a person (such as an object he or she is holding) can also be battery. Furthermore, a contact may constitute a battery even if there is a delay between the defendant’s act and
the contact to the plaintiff’s injury. For example, where a person who digs a pit with the intent that another will fall into it later, or where a person who mixes something offensive in food that he knows another will eat, has committed a battery against that other when the other does in fact fall into the pit or eats the offensive matter.

**Defences**

The standard defenses to trespass to the person, namely *necessity*, *consent*, *self defense*, and *defense of others*, apply to battery. As practical examples, under the first, a physician may touch a person without that person’s consent in order to render medical aid to him or her in an emergency. Under the second, a person who has, either expressly or impliedly, consented to participation in a contact sport cannot claim in battery against other participants for a contact permitted by the rules of that sport, or expected to occur within the course of play. For example, a basketball player who commits a hard foul against an opposing player does not thereby commit a battery, because fouls are a regular part of the course of the game, even though they result in a penalty. However, a player who struck another player during a time-out would be liable for battery, because there is no game-related reason for such a contact to occur.

Self-defense as to battery can consist only of engaging in physical contact with another person in order to prevent the other person from themselves engaging in a physical attack.

**False Imprisonment**

False imprisonment is the *unlawful restraint* of a person against her will by someone without legal authority or justification. For example, an armed bank robber yells at the customers to get down on the floor, threatening to shoot them if they try to leave. Since they know they might be killed if they try to leave, they are being held against their will. The captive bank customers may be able to claim damages, and the bank robber may be
charged with the crime of false imprisonment. Even the police may be charged with false imprisonment if they exceed their authority (such as detaining someone without justification).

In fact, any person who intentionally restricts another's freedom of movement without their consent (and without legal justification) may be liable for false imprisonment, which is both a crime and a civil wrong. It can occur in a room, on the streets, or even in a moving vehicle—just as long as the subject is unable to move freely, against his or her will.

Similarly, "false arrest" is when someone arrests another individual without the legal authority to do so, which becomes false imprisonment the moment he or she is taken into custody.

**Elements of a False Imprisonment Claim**

All states have false imprisonment laws to protect against unlawful confinement. To prove a false imprisonment claim in a civil lawsuit, the following elements must be present:

There must have been a willful detention;

The detention must have been without consent; and

The detention was unlawful.

False imprisonment can come in many forms, including any threat or use of authority that confines you against your will. While physical force is often used, it is not required. Moreover, the restraint of a person may be imposed by physical barriers (such as being locked in a car) or by unreasonable duress (such as holding someone "within the bounds of a fixed area" over a long period of time).

A person claiming false imprisonment must have reasonably believed that he was being confined. A court will determine whether his belief was reasonable by determining what would a reasonable prudent person under similar circumstances would do or believe.
In addition, the person doing the confinement must have intended to confine, and not have the privilege to do so, such as shopkeepers who are permissibly investigating shoplifting at a store or civilians who have witnessed a felony.

**Examples of false imprisonment may include:**

A person locking another person in a room without their permission

A person holding something of value to another person with the intent to make the person stay in a certain place, and without the consent of the person whose valuables are being held

A person grabbing onto another person without their consent, and holding them so that they cannot leave

A security guard or store owner who detains you for an unreasonable amount of time based on the way you look or dress

**Defenses to False Imprisonment Claims**

Defenses to false imprisonment claims often turn on whether the person claiming the imprisonment gave consent either actual or implied or whether the person who confined another had reasonable grounds to justify the imprisonment. Below are common defenses to a false imprisonment claim:

**Voluntary Consent**

A person who consents to confinement, without duress, coercion, or fraud, may not later claim false imprisonment. Therefore, voluntary consent to confinement is often a defense to false imprisonment.
**Police Privilege**

In all states, police officers have the right to detain someone they have probable cause to believe has engaged in wrongdoing, or when they believe a crime has been committed.

**Trespass to Land**

*Trespass to land* is a common law tort that is committed when an individual or the object of an individual intentionally enters the land of another without a lawful excuse. Trespass to land is *actionable per se*. Thus, the party whose land is entered upon may sue even if no actual harm is done. In some jurisdictions, this rule may also apply to entry upon public land having restricted access. A court may order payment of damages or an injunction to remedy the tort.

By law, trespass for mesne profits is a suit against someone who has been ejected from property that did not belong to them. The suit is for recovery of damages the trespasser caused to the property and for any profits he or she may have made while in possession of that property.

For a trespass to be actionable, the tortfeasor must voluntarily go to a specific location, but need not be aware that he entered the property of a particular person. If A forces B unwillingly onto C’s land, C will not have action in trespass against B, because B’s actions were involuntary. C may instead claim against A. Furthermore, if B is deceived by A as to the ownership or boundaries of C’s land, A may be jointly liable with B for B’s trespass.

In most jurisdictions, if a person were to accidentally enter onto private property, there would be no trespass, because the person did not intend any violation. However, in Australia, negligence may substitute the requirement for intent.
If a trespass is actionable and no action is taken within reasonable or prescribed time limits, the land owner may forever lose the right to seek a remedy, and may even forfeit certain property rights.

Trespass may also arise upon the easement of one person upon the land of another. For example, if A grants B a right to pass freely across A’s land, then A would trespass upon B’s easement by erecting a locked gate or otherwise blocking B’s rightful access.

In some jurisdictions trespass while in possession of a firearm, which may include a low-power air weapon without ammunition, constitutes a more grave crime of armed trespass.

The maxim "cuius est solum, eius est usque ad coelum et ad infernos" (whoever owns the land owns it all the way to the heavens and to hell) is said to apply, however that has been limited by practical considerations. For example, aerial trespass is limited to airspace which might be used (therefore aeroplanes cannot be sued). Landowners may not put up structures to prevent this. There is therefore an asymmetry between aerial and underground trespass, which may be resolved by the fact the ground is almost always used (to support buildings and other structures) whereas airspace loses its practical use above the height of skyscrapers.

There may be regulations that hold a trespasser to a higher duty of care, such as strict liability for timber trespass (removing trees beyond a permitted boundary), which is a type of trespass to goods as a result of a trespass to land.

Some cases also provide remedies for trespass not amounting to personal presence, as where an object is intentionally deposited, or farm animals are permitted to wander upon the land of another. Furthermore, if a new use of nearby land interferes with a land owner’s quiet enjoyment of his rights, there may be an action for nuisance, as where a disagreeable aroma or noise from A drifts across the land of B.
Defamation

Defamation can be defined as an action of damaging the good reputation of someone. If someone injures a person’s reputation without any lawful justification, then the tort of Defamation is committed.

Types:

Slander

The common law origins of defamation lie in the torts of "slander" (harmful statement in a transient form, especially speech), each of which gives a common law right of action.

"Defamation" is the general term used internationally, and is used in this article where it is not necessary to distinguish between "slander" and "libel". Libel and slander both require publication. The fundamental distinction between libel and slander lies solely in the form in which the defamatory matter is published. If the offending material is published in some fleeting form, as by spoken words or sounds, sign language, gestures and the like, then this is slander.

Libel

Libel is defined as defamation by written or printed words, pictures, or in any form other than by spoken words or gestures. The law of libel originated in the 17th century in England. With the growth of publication came the growth of libel and development of the tort of libel.

Elements of a Defamation Lawsuit

Defamation law changes as you cross state borders, but there are normally some accepted standards that make laws similar no matter where you are. If you think that you have been the victim of some defamatory statement, whether slander or libel, then you will need to file a lawsuit in order to recover. Generally speaking, in order to win your lawsuit, you must show that:

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✓ Someone made a statement;
✓ that statement was published;
✓ the statement caused you injury;
✓ the statement was false; and
✓ the statement did not fall into a privileged category.

**The Statement** -- A "statement" needs to be spoken, written, or otherwise expressed in some manner. Because the spoken word often fades more quickly from memory, slander is often considered less harmful than libel.

**Publication** -- For a statement to be published, a third party must have seen, heard or read the defamatory statement. A third party is someone apart from the person making the statement and the subject of the statement. Unlike the traditional meaning of the word "published," a defamatory statement does not need to be printed in a book. Rather, if the statement is heard over the television or seen scrawled on someone’s door, it is considered to be published.

**Injury** -- To succeed in a defamation lawsuit, the statement must be shown to have caused injury to the subject of the statement. This means that the statement must have hurt the reputation of the subject of the statement. As an example, a statement has caused injury if the subject of the statement lost work as a result of the statement.

**Falsity** -- Defamation law will only consider statements defamatory if they are, in fact, false. A true statement, no matter how harmful, is not considered defamation. In addition, because of their nature, statements of opinion are not considered false because they are subjective to the speaker.

**Unprivileged** -- Lastly, in order for a statement to be defamatory, it must be unprivileged. Lawmakers have decided that you cannot sue for defamation in certain instances when a statement is considered privileged. For example, when a witness testifies at trial and
makes a statement that is both false and injurious, the witness will be immune to a lawsuit for defamation because the act of testifying at trial is privileged.

Whether a statement is privileged or unprivileged is a policy decision that rests on the shoulders of lawmakers. The lawmakers must weigh the need to avoid defamation against the importance that the person making the statement have the free ability to say what they want.

Witnesses on the stand at trial are a prime example. When a witness is giving his testimony, we, as a society, want to ensure that the witness gives a full account of everything without holding back for fear of saying something defamatory. Likewise, lawmakers themselves are immune from defamation suits resulting from statements made in legislative chamber or in official materials.

**Defences**

**Truth**

Often the most straightforward defence of defamation is to prove that the communication in question stated the truth. This will result in complete and absolute exoneration for the defendant. Even if the defendant had malevolent intent when communicating the information, and regardless of whether it was in the public’s interest to make it known, the veracity of a claim will still provide a defence.

The burden of proof rests solely upon the defendant. The information that causes the defamation, if damaging, will often be assumed to be untrue until the defendant proves otherwise.

An exception to using truth as a defence is if the information concerned spent criminal convictions, and the claimant can show that the defendant acted with pernicious intent against the claimant. This would contradict the justice system in its attempts to
rehabilitate offenders, who after having taken their punishment still have the offence used against them.

**Honest opinion**

The 'honest opinion' defence will replace the 'fair comment' defence when the Defamation Act 2013 comes into force.

It can be used as a defence to defamation claims if the defendant can show (i) that the statement in question was an opinion, (ii) that within the statement there was an apparent basis to the opinion and (iii) the statement is one that an honest person could have held.

A person claiming defamation can defeat this defence if they can demonstrate that the author of the statement complained about did not hold the opinion.

**Publication on matter of public interest**

It is a defence to a defamation claim if the defendant can show that their comments were made regarding a matter which is of public interest, and that they reasonably believed that publishing the statement was in the public interest.

This defence replaces 'qualified privilege' with the passing of the Defamation Act in 2013, and can be used by someone who finds themselves in a position in which it seems a necessity, either moral, legal, social, to impart certain information to another who has an interest. This covers situations where the information is false but may not seem so at the time to the person accused of defamation, and that they had a duty to report it before going into the process of verifying the information.

**Absolute privilege**

Absolute privilege allows for complete freedom of speech with no fear of being sued for defamation, and is applied to certain, special situations no matter how malicious or false
the information is. All proceedings in parliament and courts in England and Wales are afforded absolute privilege, as is communication between a solicitor and client.

**Negligence**

In everyday usage, the word ‘negligence’ denotes mere carelessness. In legal sense it signifies failure to exercise standard of care which the doer as a reasonable man should have exercised in the circumstances. In general, there is a legal duty to take care when it was reasonably foreseeable that failure to do so was likely to cause injury. Negligence is a mode in which many kinds of harms may be caused by not taking such adequate precautions. According to Winfield & Joloowicz, “Negligence is the breach of a legal duty to take care which results in damage, undesired by the defendant to the plaintiff”.

**Elements of a Negligence claim**

**Duty**

The outcomes of some negligence cases depend on whether the defendant owed a duty to the plaintiff. Such a duty arises when the law recognizes a relationship between the defendant and the plaintiff, and due to this relationship, the defendant is obligated to act in a certain manner toward the plaintiff. A judge, rather than a jury, ordinarily determines whether a defendant owed a duty of care to a plaintiff. Where a reasonable person would find that a duty exists under a particular set of circumstances, the court will generally find that such a duty exists.

In the example involving the defendant loading bags of grain onto a truck, and striking a child with one of the bags, the first question that must be resolved is whether the defendant owed a duty to the child. In other words, a court would need to decide whether the defendant and the child had a relationship such that the defendant was required to exercise reasonable care in handling the bags of grain near the child. If the loading dock
were near a public place, such a public sidewalk, and the child was merely passing by, then the court may be more likely to find that the defendant owed a duty to the child. On the other hand, if the child were trespassing on private property and the defendant did not know that the child was present at the time of the accident, then the court would be less likely to find that the defendant owed a duty.

**Breach of Duty**

A defendant is liable for negligence when the defendant breaches the duty that the defendant owes to the plaintiff. A defendant breaches such a duty by failing to exercise reasonable care in fulfilling the duty. Unlike the question of whether a duty exists, the issue of whether a defendant breached a duty of care is decided by a jury as a question of fact. Thus, in the example above, a jury would decide whether the defendant exercised reasonable care in handling the bags of grain near the child.

**Cause in Fact**

Under the traditional rules in negligence cases, a plaintiff must prove that the defendant’s actions actually caused the plaintiff’s injury. This is often referred to as "but-for" causation. In other words, but for the defendant’s actions, the plaintiff’s injury would not have occurred. The child injured by the defendant who tossed a bag of grain onto a truck could prove this element by showing that but for the defendant’s negligent act of tossing the grain, the child would not have suffered harm.

**Proximate Cause**

Proximate cause relates to the scope of a defendant’s responsibility in a negligence case. A defendant in a negligence case is only responsible for those harms that the defendant could have foreseen through his or her actions. If a defendant has caused damages that
are outside of the scope of the risks that the defendant could have foreseen, then the plaintiff cannot prove that the defendant’s actions were the proximate cause of the plaintiff’s damages.

In the example described above, the child injured by the bag of grain would prove proximate cause by showing that the defendant could have foreseen the harm that would have resulted from the bag striking the child. Conversely, if the harm is something more remote to the defendant’s act, then the plaintiff will be less likely to prove this element.

Assume that when the child is struck with the bag of grain, the child’s bicycle on which he was riding is damaged. Three days later, the child and his father drive to a shop to have the bicycle fixed. On their way to the shop, the father and son are struck by another car. Although the harm to the child and the damage to the bicycle may be within the scope of the harm that the defendant risked by his actions, the defendant probably could not have foreseen that the father and son would be injured three days later on their way to having the bicycle repaired. Hence, the father and son could not prove proximate causation.

**Damages**

A plaintiff in a negligence case must prove a legally recognized harm, usually in the form of physical injury to a person or to property. It is not enough that the defendant failed to exercise reasonable care. The failure to exercise reasonable care must result in actual damages to a person to whom the defendant owed a duty of care.

**Defences for Negligence**

In an action for negligence following defences are available:-

1. **CONTRIBUTORY NEGLIGENCE**: It was the Common law rule that anyone who by his own negligence contributed to the injury of which he complains cannot maintain an action
against another in respect of it. Because, he will be considered in law to be author of his wrong.

2. **ACT OF GOD OR VIS MAJOR**: It is such a direct, violent, sudden and irresistible act of nature as could not, by any amount of human foresight have been foreseen or if foreseen, could not by any amount of human care and skill, have been resisted. Such as, storm, extraordinary fall of rain, extraordinary high tide, earth quake etc.

3. **INEVITABLE ACCIDENT**: Inevitable accident also works as a defence of negligence. An inevitable accident is that which could not possibly, be prevented by the exercise of ordinary care, caution and skill. It means accident physically unavoidable.

**Contributory Negligence**

The concept of contributory negligence is used to characterize conduct that creates an unreasonable risk to one’s self. The idea is that an individual has a duty to act as a reasonable person. When a person does not act this way and injury occurs, that person may be held entirely or partially responsible for the resulting injury, even though another party was involved in the accident. If the defendant is able to prove the contributory negligence claim, the plaintiff may be totally barred from recovering damages or her damages may be reduced to reflect her role in the resulting injury.

**Last Opportunity Rule**

Under this doctrine, a negligent plaintiff can nonetheless recover if he is able to show that the defendant had the last opportunity to avoid the accident. Though the stated rationale has differed depending on the court adopting the doctrine, the underlying idea is to mitigate the harshness of the contributory negligence rule. The defendant can also use
this doctrine as a defense. If the plaintiff has the last clear chance to avoid the accident, the defendant will not be liable.

**Nuisance**

The word “nuisance” is derived from the French word “nuire”, which means “to do hurt, or to annoy”. One in possession of a property is entitled as per law to undisturbed enjoyment of it. If someone else’s improper use in his property results into an unlawful interference with his use or enjoyment of that property or of some right over, or in connection with it, we may say that tort of nuisance occurred. In other words, *Nuisance is an unlawful interference with a person's use or enjoyment of land, or of some right over, or in connection with it.* Nuisance is an injury to the right of a person in possession of a property to undisturbed enjoyment of it and result from an improper use by another person in his property.

**DISTINCTION BETWEEN NUISANCE AND TRESPASS**

· Trespass is direct physical interference with the plaintiff’s possession of land through some material or tangible object while nuisance is an injury to some right accessory to possession but no possession itself. E.g. a right of way or light is an incorporeal right over property not amounting to possession of it, and hence disturbance of it is a nuisance and not trespass.

· Trespass is actionable per se, while nuisance is actionable only on proof of actual damage. It means trespass and nuisance are mutually exclusive.

Simple entry on another’s property without causing him any other injury would be trespass. In nuisance injury to the property of another or interference with his personal comfort or enjoyment of property is necessary.

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They may overlap when the injury is to possessory as well as to some right necessary to possession. E.g. trespass of cattle discharge of noxious matter into a stream and ultimately on another's land.

· To cause a material and tangible loss to an object or to enter another person’s land is trespass and not nuisance; but where the thing is not material and tangible or where though material and tangible, it is not direct act of the defendant but merely consequential on his act, the injury is not trespass but merely a nuisance actionable on proof of actual damage.

If interference is direct, the wrong is trespass, if it is consequential, it amounts to nuisance.

E.g. Planting a tree on another's land is trespass, whereas when one plants a tree over his own land and the roots or branches project into or over the land of another person, act is nuisance.

**ESSENTIALS OF NUISANCE**

In order that nuisance is actionable tort, it is essential that there should exist:
- wrongful acts;
- damage or loss or inconvenience or annoyance caused to another. Inconvenience or discomfort to be considered must be more than mere delicacy or fastidious and more than producing sensitive personal discomfort or annoyance. Such annoyance or discomfort or inconvenience must be such which the law considers as substantial or material.

**KINDS OF NUISANCE**

Nuisance is of two kinds:
• Public Nuisance

Simply speaking, public nuisance is an act affecting the public at large, or some considerable portion of it; and it must interfere with rights which members of the community might otherwise enjoy.

Thus acts which seriously interfere with the health, safety, comfort or convenience of the public generally or which tend to degrade public morals have always been considered public nuisance.

Public nuisance can only be subject of one action, otherwise a party might be ruined by a million suits. Further, it would give rise to multiplicity of litigation resulting in burdening the judicial system. Generally speaking, Public Nuisance is not a tort and thus does not give rise to civil action.

In the following circumstances, an individual may have a private right of action in respect a public nuisance.

1. He must show a particular injury to himself beyond that which is suffered by the rest of public i.e. he must show that he has suffered some damage more than what the general body of the public had to suffer.

2. Such injury must be direct, not a mere consequential injury; as, where one is obstructed, but another is left open.

3. The injury must be shown to be of a substantial character, not fleeting or evanescent.

Elements of Private Nuisance

Private nuisance is an unlawful interference and/or annoyance which cause damages to an occupier or owner of land in respect of his enjoyment of the land.
Thus the elements of private nuisance are:
1. unreasonable or unlawful interference;
2. such interference is with the use or enjoyment of land, or some right over, or in connection with the land; and
3. damage.

**DEFENCES TO NUISANCE**

Following are the valid defences to an action for nuisance

It is a valid defence to an action for nuisance that the said nuisance is under the terms of a grant.

**Prescription**

A title acquired by use and time, and allowed by Law; as when a man claims any thing, because he, his ancestors, or they whose estate he hath, have had possession for the period prescribed by law. This is there in Section 26, Limitation Act & Section 15 Easements Act.

Three things are necessary to establish a right by prescription:
1. Use and occupation or enjoyment;
2. The identity of the thing enjoyed;
3. That it should be adverse to the rights of some other person.

A special defence available in the case of nuisance is prescription if it has been peaceable and openly enjoyed as an easement and as of right without interruption and for twenty years. After a nuisance has been continuously in existence for twenty years prescriptive
right to continue it is acquired as an easement appurtenant to the land on which it exists. On the expiration of this period the nuisance becomes legalised ab initio, as if it had been authorised in its commencement by a grant from the owner of servient land. The time runs, not from the day when the cause of the nuisance began but from the day when the nuisance began.

Statutory Authority
Where a statute has authorised the doing of a particular act or the use of land in a particular way, all remedies whether by way of indictment or action, are taken away; provided that every reasonable precaution consistent with the exercise of the statutory powers has been taken. Statutory authority may be either absolute or conditional.

In the claim of Nuisance, following are no defence that shall be used:

1. Plaintiff came to the nuisance: E.g. if a man knowingly purchases an estate in close proximity to a smelting works his remedy, for a nuisance created by fumes issuing therefrom is not affected. It is not valid defence to say that the plaintiff came to the nuisance.

2. In the case of continuing nuisance, it is no defence that all possible care and skill are being used to prevent the operation complained of from amounting to a nuisance. In an action for nuisance it is no answer to say that the defendant has done everything in his power to prevent its existence.

3. It is no defence that the defendant’s operations would not alone mount to nuisance. E.g. the other factories contribute to the smoke complained of.

4. It is no defence that the defendant is merely making a reasonable use of his own property. No use of property is reasonable which causes substantial discomfort to
other persons.

5. That the nuisance complained of although causes damages to the plaintiff as an individual, confers a benefit on the public at large. A nuisance may be the inevitable result of some or other operation that is of undoubted public benefit, but it is an actionable nuisance nonetheless. No consideration of public utility should deprive an individual of his legal rights without compensation.

6. That the place from which the nuisance proceeds is the only place suitable for carrying on the operation complained of. If no place can be found where such a business will not cause a nuisance, then it cannot be carried out at all, except with the consent or acquiescence of adjoining proprietors or under statutory sanction.

**REMEDIES FOR NUISANCE**

The remedies available for nuisance are as follows:

- **Injunction** - It may be a temporary injunction which is granted on an interim basis and that maybe reversed or confirmed. If it’s confirmed, it takes the form of a permanent injunction. However the granting of an injunction is again the discretion of the Court

- **Damages** - The damages offered to the aggrieved party could be nominal damages i.e. damages just to recognize that technically some harm has been caused to plaintiff or statutory damages i.e. where the amount of damages is as decided by the statute and not dependent on the harm suffered by the plaintiff or exemplary damages i.e. where the purpose of paying the damages is not compensating the plaintiff, but to deter the wrongdoer from repeating the wrong committed by him.
· **Abatement** - It means the summary remedy or removal of a nuisance by the party injured without having recourse to legal proceedings. It is not a remedy which the law favors and is not usually advisable. E.g. - The plaintiff himself cuts off the branch of tree of the defendant which hangs over his premises and causes nuisance to him.

**Malicious Prosecution**

Malicious prosecution is the malicious institution of unsuccessful criminal or bankruptcy or liquidation proceedings against another without reasonable or probable cause. This tort balances competing principles, namely freedom that every person should have in bringing criminals to justice and the need for restraining false accusations against innocent persons. Malicious prosecution is an abuse of the process of the court by wrongfully setting the law in motion on a criminal charge. The foundation lies in the triangular abuse of the court process by wrongfully setting the law in motion and it is designed to encourage the perversion of the machinery of justice for a proper cause the tort of malicious position provides redress for those who are prosecuted without cause and with malice. In order to succeed the plaintiff must prove that there was a prosecution without reasonable and just cause, initiated by malice and the case was resolved in the plaintiff’s favor. It is necessary to prove that damage was suffered as a result of the prosecution.

In an action of malicious prosecution the plaintiff must prove:

1) **That he was prosecuted by the defendant** - There must have been a prosecution initiated by the defendant. The word ‘prosecution’ means a proceeding in a court of law charging a person with a crime. To prosecute is to set the law in motion and the law is set in motion only by an appeal to some person clothed. The person to be sued is the person who was ‘actively instrumental in putting the law in force.
2) That the proceeding complained was terminated in favour of the present plaintiff -
The plaintiff must prove that the prosecution ended in his favour. He has no right to sue
before it is terminated and while it is pending. The termination may be by an acquittal on
the merits and a finding of his innocence or by a dismissal of the complaint for technical
defects or for non-prosecution. If however his is convicted he has no right to sue and will
not be allowed to show that he was innocent and wrongly convicted.

3) That the prosecution was instituted against without any just or reasonable cause -
Reasonable and probable cause’ is an honest belief in the guilt of the accused based on a
full conviction founded upon reasonable grounds, of the existence of a circumstances,
which assuming them to be true, would reasonably lead any ordinary prudent man and
cautious man placed in the position of the accuser to the conclusion that the person
charged was probably guilty of the crime imputed.

4) Malice - That the prosecution was instituted with a malicious intention, that is, not
with the mere intention of getting the law into effect, but with an intention, which was
wrongful in fact. Malice for the purposes of malicious prosecution means having any other
motive apart from that of bringing an offender to justice. Spite and ill-will are sufficient
but not necessary conditions of malice. Malice means the presence of some other and
improper motive that is to say the legal process in question for some other than its legally
appointed and appropriate purpose. Anger and revenge may be proper motives if channeled
into the criminal justice system.

5) That he suffered damage to his reputation or to the safety of person, or to
security of his property - It has to be proved that the plaintiff has suffered damages as
a result of the prosecution complaint of. Even though the proceedings terminate in favour of the plaintiff, he may suffer damage as a result of the prosecution.

**Strict and Absolute Liability**

**Strict Liability**

This rule was laid down in the famous case of *Rylands v. Fletcher* (1868). The Defendant, a mill owner, employed some independent contractors to build a reservoir. Beneath this reservoir were some iron shafts that went through a mining area and which were connected to the Plaintiff’s mine. The defendant did not know of the existence of these shafts and the contractors were negligent in not blocking the shafts. The Plaintiff’s mine was flooded when the reservoir was filled with water.

The Defendants themselves were not negligent and neither were they vicariously liable for the negligence of their independent contractors, but the HOL held them liable to the Plaintiff.

Blackburn J, in his decision said that:

‘We think that the true rule of law is, that the person who for their own purposes brings on his lands and collects and keeps there anything likely to do mischief if it escapes, must keep it at his peril, and if he does not do so, is prime facie answerable for all the damage which is the natural consequence of its escape.’

This statement is also known as the rule in Rylands v Fletcher.

**Elements of Strict Liability**
1) Dangerous things/ Thing likely to cause damage if it escape

There must exist a dangerous “thing” and the word “dangerous” has its own meaning under this tort. What is dangerous is a question of fact. The rule applies to anything that may cause damage if it escapes. Once this element is fulfilled, than the thing is a “dangerous thing”.

The object or “thing” therefore need not be dangerous per se because there are objects which are safe if properly kept, but are dangerous if they escape. This principle successfully applies to gas, noxious fumes, explosives, fire, electricity, water and sewage. Due to the difficulty and confusion that may arise between dangerous and non-dangerous thing, a less confusing phrase would be “thing likely to cause damage if it escapes”.

2) Intentional storage / Accumulation

This rule on applies to an object or thing which the D purposely keeps and collects. D will only be liable if he has accumulated the thing. Even if he himself has not accumulated the thing, he may still be liable if he has authorised the accumulation. The liability rests in those who have control over the thing. Rule is not applicable to anything that is naturally on the land.

3) Escape

P must prove that there has been an escape. Escape means the thing has escaped from a place over which the D has no control and authority to a place over which the D has no control and authority. It is not necessary that the defendant has a proprietary interest in the land from which the escape occurs.

4. Non-natural use of land

“It must be some special use bringing with it increased danger to others and must not merely be the ordinary use of the land or such a use as is proper for the general benefit of the community.”

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5. Remoteness/Foreseeability of damage

A defendant will not be liable for all consequential damage that results from an escape. Type of damage must be foreseeable.

Defences

1. **Consent of the plaintiff**: consent here may be express or implied consent. This defence isa mere application of volenti non fit injuria. The rational behind this rule is that accumulation is for the mutual benefit of both parties and with express or implied consent. The only duty is one of reasonable care.

2. **Default of the Plaintiff**: Here there will be no liability under the rule if the escape was due to default of the plaintiff to take action. Also, the plaintiff conducts may amount to contributory negligence. Also, there will be no liability if the damage would have occurred but for the abnormal sensitivity of the plaintiff’s property or the use to which it is put.

3. **Act of God**: This defense is available where the escape result from the operation of natural forces free from human intervention. For example: storm, wind, tide, earthquake, etc.

4. **Act of a stranger**: Here escape is caused by a deliberate act of a stranger which could reasonably have been anticipated by the defendant. However, mere negligent act of a stranger are not within the ambit of this defence. The act must be mischievous, deliberate and conscious. Stranger includes a trespasser.
5. **Statutory authority**: this is for the public authorities and oil companies and it is a question of construction of the statute in question as to whether and to what extent liability under the rule has been excluded.

**Absolute Liability**

In India, absolute liability is a standard of tort liability which stipulates that "where an enterprise is engaged in a hazardous or inherently dangerous activity and harm results to anyone on account of an accident in the operation of such hazardous or inherently dangerous activity resulting, for example, in escape of toxic gas the enterprise is strictly and absolutely liable to compensate all those who are affected by the accident and such liability is not subject to any of the exceptions which operate vis-à-vis the tortious principle of strict liability under the rule in Rylands v. Fletcher".

In other words, absolute liability is strict liability without any exception. This liability standard has been laid down by the Indian Supreme Court in *M.C Mehta v. Union of India*. These exceptions include:-

- Plaintiff's own mistake
- Plaintiff's consent
- Natural disasters
- Third Party's mistake
- Part of a statutory duty

The Indian Judiciary tried to make a strong effort following the Bhopal Gas Tragedy, December, 1984 (Union Carbide Company vs. Union of India) to enforce greater amount of protection to the Public. The Doctrine of Absolute Liability was therefore evolved in Oleum Gas Leak Case and can be said to be a strong legal tool against rogue corporations that were negligent towards health risks for the public. This legal doctrine was much more...
powerful than the legal Doctrine of Strict Liability developed in the UK case Ryland's Vs. Fletcher. This meant that the defaulter could be held liable for even third party errors when the public was at a realistic risk. This could ensure stricter compliance to standards that were meant to safeguard the public.