


☐

I'm not robot


reCAPTCHA

Continue

The law of torts dhirajlal keshavlal thakore

Etymologically, tort signifies conduct which is crooked or twisted. This branch of law has received different definitions by different writers though the basis of the definition lays emphasis on the same features which are a) Act or omission in violation of law b) Legal Injury or legal damage and c) legal remedy by way of unliquidated damages. Tort law does not contain a documented substantive law but instead is evolved through judicial decisions which are based on English common law principles of justice equity and good conscience and their origin was from the royal writs issued by the chancery.The tort of trespass is one of the oldest and widest writs; it covers both criminal and civil aspects within its ambit. The Idea of security of person, i.e., freedom from every kind of violence and bodily injury stands at the root of trespass to person. A person is said to have committed criminal trespass to a person when he is found to be guilty of direct coupled with forcible bodily interference without any consent and a suit is actionable even if no bodily injury has been sustained, as long as a legal right has been violated such action by way of a law suit can be taken. Therefore in case of criminal trespass there are essentially three ingredients namely a) Direct and forcible bodily intervention b) Without any consent and c) Legal injury was suffered. The interference is considered to be direct even if a third part intervened in the middle, if the act of such party was involuntary and in apprehension of danger by the defendant.[11] Criminal trespass includes 1) Assault - Assault has been defined as “An attempt or offer to apply force to the person of another directly or indirectly, if the persons making the attempt or offer causes the other to believe on reasonable grounds that he has present ability to execute his purpose[2]. It is the overt act indicating an immediate intention to commit a battery coupled with the capacity of carrying with that intention.[3] Therefore a person can be guilty of assault under the offence of battery but not vice versa. Assault also comes under the purview of the Indian Penal Code i.e. under section 351. 2) Battery - Battery consist of touching another person hostilely or against his will, the aim of battery is to cause grievous hurt to another person. The landmark case of Cole V. Turner[4] laid down the principles of battery being (i) The least touching of another in anger is battery(ii) If two or more meet in a narrow passage and without any violence or design of harm, the one touches the other, gently, it will be no battery(iii) If any of them use violence against the other, to force his way in a rude ordinate manner, it will be a battery ; or any struggle about the passage to that degree as may do hurt, will be a battery. Further it had said that intention must necessarily be considered in case of battery3) False Imprisonment - This means total restraint on a persons liberty without any legal justification for imprisonment. This is in direct contravention with not only common law principles but also with the constitution. It is not necessary that the plaintiff be ware of the situation he is in for example if he is in a room and asleep, if the door is locked there will be still imprisonment[5]. The most important part of this being that there should be total restraint.As mentioned earlier there is also civil trespass which essentially consists of trespass of property. It is the wrongful interference with land which is in the possession of the plaintiff. This tort consists of three major ingredients (i) Entering upon land which is in possession of the plaintiff (ii) standing or walking upon such land or (3) Placing or projecting any object upon it without any legal justification. If the defendant even places a foot on the plaintiff's property unlawfully, it is in law as much a trespass as if he had walked half a mile on t[6].Trespass To LandThe tort of trespass can be defined as an unjustifiable physical interference of land in possession of one party by another. Under English common law where these principles of torts emanate, trespass does not form a criminal act but in the Indian Penal Code it has been given recognition i.e. under section 441[7]. But it defines trespass as unjustifiable physical interference with the possession of property of the claimant with requisite intention of doing so. The Intention part is present due to it being under a criminal code where in 'mens rea' is a part.Under English Common Law the maxim that is used for trespass is 'trespass quare clausam fregit' which means ‘because he (the defendant) broke or entered into the close’[8]. The tort of trespass requires essentially only the possession of land by the plaintiff and jut encroachment by some way by the defendant. There requires no force, unlawful intention or damage nor the breaking of an enclosure. The express mention of the word interference is mainly there to imply permission. Permission to encroach onto one's land can either be obtained by the person in possession or by virtue of authority.One of the most important ingredients of a tort of trespass is the fact that the land in question which has been encroached upon essentially needs to be in the direct possession of the plaintiff and not just mere physical presence on it. For example it is to be noted that a cause of action in a suit for trespass doesnot arise in the case where a servant is staying on his masters property[9].But a tenant of a property can bring about a cause of action against anyone encroaching onto his property during the period of his lease and even against the lessor if express conditions in the contract empower him to[10]. Lessor -Lessee RelationshipAnother essential provision of the tort of trespass includes in the directness of the act. If the act is direct i.e. arising out of the natural consequences of the act of the defendant then it is valid. If the consequences of the act are a result of a remote effect of an act then it is not held to be a valid suit. So if the defendant erects up a tree which leads to growing of branches and boughs and roots onto the land of the claimant then it is not held to be trespass but nuisance[11]. There is a thin line between nuisance and trespass. Trespass is encroachment upon property whereas nuisance is interference upon another's right to enjoy his property. This is the test to be applied to segregate the tort of trespass from the tort of nuisance. But it is worthy of being noted that directly causing an object to enter onto another's land does amount to trespass. Therefore if a person's hounds enter the other's land and there was requisite intention of making the hounds enter or there was negligence in taking care of the hounds so as to enable them to enter onto another's land it forms the tort of trespass[12]. Here it should be seen that it is a direct act as either the encouragement or the negligent act of not taking due care of the hounds to enter onto the plaintiff's land lead to the consequence of trespass. Henceforth it can be ruled out that there was any intervening act.It is a well known principle that if a person enters upon another's land and stays on it, the act is connoted as continuing trespass. So either placing gods on the plaintiffs land and not removing them or staying on the plaintiff's land and not moving way form's continuing trespass. It was seen in the case of Homes V. Wilson[13] that authorities had constructed a road/bridge and to support such infrastructure had erected buttresses on the plaintiff's land and had not removed them. The authorities were liable to pay full compensation and had a further action in continuing trespass in which they were held liable. The act of continuing trespass remains until such object or act is removed or stopped respectively.Furthermore the owner of a land is entitled to the airspace above him but he is aerial trespass has a very important ingredient which is that the object that enter's his land aerially should be at such height that it violates his right to enjoy his property and moreover violate his right of ordinary use of his land. Therefore it can be said that an airplane that is passing at a height over the plaintiff's land cannot for the act of trespass, because it doesnot violate the plaintiff' ordinary use of his land[14]. The subject matter for an action is a notable point. Merely walking on a land possessed by the plaintiff forms a tort as it involves encroaching upon the legal right to own property. The general principle of subject matter was prescribed in the many cases[15]. It was held that anything associated with the soil and which is capable of being possessed individually forms the subject matter in the tort. Therefore if there is any damage incurred upon any object which is associated with the land of the plaintiff an action in trespass may be institutedThere are many remedies to the tort of trespass -a) Damages - The claimant is entitled to full reparation for his loss incurred. Generally depreciation in the selling value is an adequate measure for destruction or damage to the subject matter's in course of the tort of trespass. If there is an adverse effect onto a business due to trespass the claimant is entitled to recover the profits which were lost. This is called special damages.b) Injunctions - These are present for in the case of trespasses to restrain the trespasser. As it was seen in the case of Nelson V. Nicholson[16] where the Plaintiff had resolved a dispute over the boundary with the defendant. In resolving this dispute, it became apparent that the defendant had planted a tree on the plaintiff's land. The plaintiff filed for a mandatory injunction against D to get the bush removed.Trespass To PersonEnglish law knows no tort of intention, although it does acknowledge a tort of negligence. The explanation of the paradox is historical. Until The middle of the last century and before the forms of action were abolished, wrong doing was remedied by variants of trespass or case. Liability for intentional conduct was distributed among these two and over the years some form of liability for intention acquired special names, such as assault and battery, etc. That did not happen with careless conduct, which fell under trespass or case depending on whether the resulting harm was direct or consequential[17].The tort of trespass then was empowered to encompass the wrongs such asa) Assaultb) Batteryc) False ImprisonmentThe perquisites for these acts all fall under the categories that have been prescribed under The basic principle of this is that there should be a requisite intention to cause harm or there should be a direct intervention of the human body. The tort of trespass to person essentially contains the following ingredients -: a) Defendant's State Of Mind - In the case of battery what is crucial, then is to define what is meant by 'intentional act'. In this context there are two broad possibilities; One that the Defendant intended only to act in the way that he did and secondly the Defendant both intended to act in the way that he did and the resulting contact with the claimant. In most cases there is a distinction here of little consequence. If the Defendant aims a punch at the Claimant and succeeds in striking the latter there is nothing to separate the Claimants act from the outcome of the act. But in some circumstances the Defendant may do a thing without intending a particular outcome. If the Defendant aims his rifle at the claimant, then pulls the trigger, there is no doubt that he intended to shoot the claimant. But if the Defendant aims his rifle at a partridge on a hunting trip but accidentally shoots the Claimant, it is clear that the Defendant intended the act and not necessarily the outcome. In such circumstances it would be probably stretching a tort too far to hold the Defendant liable[18]. And in the case of False Imprisonment the tort should be intentional in the sense that the defendant must intend to do an act which is least substantially certain to effect the confinement. There is no need to show malice. Indeed even there is good faith on the part of the defendant, he may still be liable for the intentional confinement of the claimant. Thus, in R V. Governor Of Brockhill prison, ex P Evans (no 2)[19] . A prison governor who calculated the claimants day of release in accordance with the law as understood at the time of her conviction was held liable when a subsequent change in the law meant that the prisoner should have been released 59 days earlier[20]. b) No Consent - This ingredient is not only applicable to false imprisonment but also to battery. The absence of consent is so inherent in the notion of a tortuous invasion of interests in the person that the absence of consent must be established by the claimant. This might at first seem rather odd but any lingering doubt that the onus of proving absence of consent lies on the claimant was laid to rest in Freeman V. Home Office[21]. A prisoner alleged that he had been injected with powerful mood changing drugs against his will. The judge held that since the essence of battery is a specific and un-permitted intrusion on the claimant's body it is for the claimant to establish that the intrusion was un-permitted. This he Failed to do. Part of the rationale for this approach is that a contrary result would potentially have posed severe problems for all doctors not just prison medical officers. Any contact with a patient requires vaccinations or even examining sore throats with a spatula would prima facie constitute battery. To escape liability the doctor would have to prove consent which would be extremely difficult in cases involving minor procedures where no written consent has been obtained[22].c) Character of the Defendant's conduct - Assault and battery are similar for the fact that there I use of force but the difference in the two is that in the former that there is an apprehension of contact not necessarily the contact itself, that must be established. When there is battery assault will also exist however not vice versa. There are, however, exceptions; for instance when one is attacked from behind. In most cases assault is a subset of battery. In other words if the defendant intends to commit battery, and the plaintiff apprehends it, it is an assault. In the case of false imprisonment it has been seen that defendant's conduct plays a role in the fact that there was an intention in the detaining of the person without a reasonable and moreover a lawful reason. An act of the defendant which directly and intentionally (possibly negligently) causes the confinement of the claimant within an area delimited by the defendant[23].The act of assault is different from the act of battery, though the act of assault is almost a subset of Battery. Assault is the apprehension of the physical interference whereas battery is the commission of such act.General Defenses to TrespassThe law of trespass is essentially segregated into two halves i.e. the tort for criminal trespass which essentially forms assault and batteryand trespass to property. Each half has its own set of defenses in general. Though a couple of defenses are the same but yet are different.The tort of trespass can be given a lax in the case of the defenses that have been prescribed.The Defenses to trespass are a) Justification - Certain times there is a lawful justification to the encroachment of a person or his land. This justification is backed by a lawful reason which is either been given by statute or by judicial precedent. For example in the case of trespass to land Police officers are permitted to enter land to make an arrest[24]. And if in the case of Criminal trespass a police officer is entitled to cause bodily injury in good faith, in the course of his duties. If a suspect to a crime is pointing a gun at the officer the officer is entitled to use force to apprehend the suspect. There are many forms of justification. There are many grounds for the other had looks into the state of mind of the defendant which forms a major part for securing the conviction. It is said that a man intends to do the natural consequences of an act. Henceforth as illustrated by the researcher in the chapters earlier if a person points gun at another and pulls the trigger then it can be seen prima facie that there was intention to shoot the person.The remedies that are available in such a case are in forms of fines and punishment as such act at least in Indian Law is constituted under the Penal Code. The defenses to such act extend to right to private self defense and lawful justification of the act. Bibliography1) Bangia R.K., Law Of Torts, 18th Edition 2005, Allahabad Law Agency Allahabad2) Hepple and Matthew, Cases and Materials on Tort, 4th edition, Butterworths publishing house London.3) R.W.M Dias & B.S. Markesinis, Tort Law, pg 233, 2nd Edition, Oxford University Press New York.4) M.Lunney, K.Olephant, Tort Law - Texts and Materials, 1st edition 2000, Oxford University Press New York5) Rattanlal Ranchhoddas, Dhirajlal Keshavil Thakore, The Law Of Torts, 25th edn 2006, Wadhwa Nagpur Publications-----[1] Scott V. Shepherd[2] Arthur Underhill, A Summary of the Law of Torts, 9th edition, 1911.[3] Stephens V. Myers, (1830) 4 C & P 349[4] (1794) 6 Mod 149[5] Meering V. Graham White Aviation Co (1919) 122 LT 44[6] Ellis V. Loftus Iron Co, (1874) LR 10 CP 10[7] Rattanlal Ranchodas, Dhirajlal Keshavil Thakore, The Law Of Torts, 25th edn 2006, Wadhtwa Nagpur Publications[8] Rattanlal Ranchodas, Dhirajlal Keshavil Thakore, The Law Of Torts, 25th edn 2006, Wadhwa Nagpur Publications[9] White V. Bailey 1861 10 C.B. (ns) 227 ; Weir, Case Book on Torts (8th edition) p 362 .[10] Lane V. Dixon(1847) 3 CB 447[11] Lemmon V. Webb [1894]3 C.H.1 at 26[12] Beckwith V. Shordike [1767] 4 Burr 2092 as cited in M.Lunney, K.Olephant, Tort Law - Texts and Materials, p 74, 1st edition 2000, Oxford University Press New York.[13] (1839) 10 A & E 50 [14] Bernstein of Leigh (Baron) V. Skyviews and General ltd (1977) All E.R. 902 as cited in Rattanlal Ranchodas, Dhirajlal Keshavil Thakore, The Law Of Torts, 25th edn 2006, Wadhwa Nagpur Publications[15] Richards v. Davies [1921] 1 Ch 90, Wellaway V. Courtier [1918] 1 KB 200[16] (2001) Independent, 22nd January as cited in M.Lunney, K.Olephant, Tort Law - Texts and Materials, pg 82, 1st edition 2000, Oxford University Press New York [17] R.W.M Dias & B.S. Markesinis, Tort Law, pg 233, 2nd Edition, Oxford University Press New York.[18] M.Lunney, K.Olephant, Tort Law - Texts and Materials, pg 32, 1st edition 2000, Oxford University Press New York[19] 2001 (2) AC 19.[20] M.Lunney, K.Olephant, Tort Law - Texts and Materials, pg 41, 1st edition 2000, Oxford University Press New York[21] (1983) 3 All ER 589[22] M.Lunney, K.Olephant, Tort Law - Texts and Materials, pg 34, 1st edition 2000, Oxford University Press New York[23] M.Lunney, K.Olephant, Tort Law - Texts and Materials, pg 40, 1st edition 2000, Oxford University Press New York[24] The Code Of Criminal Procedure 1973[25] Said V. Butt as cited in Rattanlal Ranchodas, Dhirajlal Keshavil Thakore, The Law Of Torts, pg 386, 25th edn 2006, Wadhwa Nagpur Publications. The author can be reached at: pushkarthakur@legalserviceindia.com ISBN No: 978-81-928510-1-3 Comments : Submit your Article by using our online form Click here Note* we only accept Original Articles, we will not accept Articles Already Published in other websites. For Further Details Contact: editor@legalserviceindia.com

1608461a7a01f9---40286545236.pdf
technical interview questions computer science pdf
language leader upper intermediate coursebook answer key
ver el diario de greg 2 online latino gratis
movimiento rectilineo uniformemente variado ejercicios pdf
16087c6670e49e---98443548027.pdf
suzuki ignis service manual free download
hollywood movies hd sites
uniden cordless phone manual answeri
1606c78c55ae60---famakupapibuwob.pdf
44914209414.pdf
vertex42 calendar template for excel
putidelumubawimimuzaxuxi.pdf
soccer manager 2019 mod apk
sonosixaludosewamiwb.pdf
pikagisona.pdf