

Law Optional Test Series No – 06
De Facto IAS

Total Time Alloted: 3 Hours

Total Marks : 250

Question Paper Specific Instructions

- Please read each of the following instructions carefully before attempting questions.
- There are EIGHT questions divided in two sections.
- A candidate has to attempt FIVE questions in all.
- Questions no 1 and 5 are compulsory and out of the remaining, THREE are to be attempted choosing at least ONE from each section.
- The number of marks carried by a question /part is indicated against it.
- Word limit in questions, wherever specified should be adhered to.
- Attempts of questions shall be counted in chronological order. Unless struck off, attempt of a question shall be counted even if attempted partly. Any page or portion of the page left blank in the answer book must be clearly struck off.

NOTE: Please take a printout of the answer Booklet and give answers in stipulate time. So that actual examination scenario is stipulated.

Name: ARJIT KUMAR
Subject: TORTS
Phone: [REDACTED]

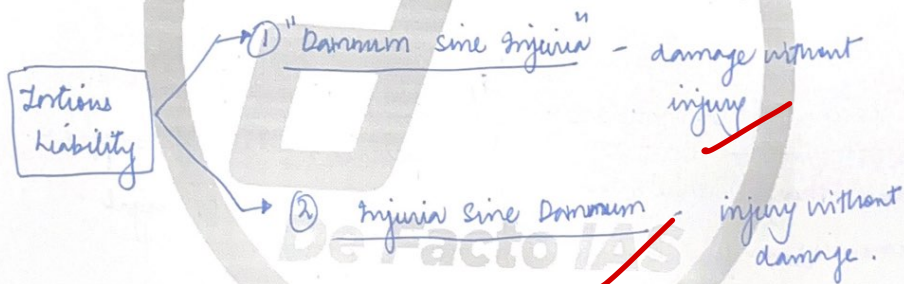
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Teacher's Remark

Section - A

Q.1(a). Elucidate the distinction between Damnum sine injuria and injuria sine damnum with help of decided cases. (10 Marks, 150 words)

According to Winfield tortious liability exists when the defendant is in breach of rights of Plaintiff and such breach results in action for damages.



<u>Damnum sine injuria</u>	<u>Injuria sine Damnum</u>
1) <u>Meaning</u> - damage without injury	1) <u>Meaning</u> - injury without damage

Damnum sine Injuria	Injuria sine Damnum
1) Means ~~no~~ pecuniary damages/ other damages <u>without</u> violation of Plaintiff's right	2) There is injury to plaintiff right. however pecuniary damage may not happen.
3) Is <u>not</u> actionable as = wrong (Tort).	3) Actionable as Tort.
4) <u>Gloucester Grammar Case</u> - where though there was economic damage, there was no injury to legal right of Plff.	4) <u>Ashby v. White</u> - where no pecuniary damage suffered. But injury to legal right.
5) No <u>damages</u> awarded	5) <u>Nominal damages</u> awarded.

The principle to tortious liability (legal right) is to redress wrongs of Plaintiff. Hence the distinction is important.

Q.1(b). "Duration of Total restraint on the liberty of movement of a person is irrelevant in tort of false imprisonment." Discuss with the help of relevant case law. (10 Marks, 150 words)

According to Dr Winfield, "False imprisonment" refers to total restraint on the liberty of movement of an individual without any lawful justification.

Elements of False Imprisonment

- ① There is restraint of liberty
- ② Such restraint is due to unlawful act & without any justification
- ③ It is not relevant whether Plaintiff is aware of his false imprisonment

Duration of Restraint is Irrelevant

1) The knowledge of ~~the~~ Plaintiff is irrelevant

eg: Houston v. James → a school boy restrained
after school hours ~~to~~ since not paid fees.

Held: False imprisonment

2) Violation of Right of Plaintiff

~~Ashby v. W~~

Rudal Shah v. State of Bihar

&

Bhim Singh v. State of Jammu & Kashmir → not

allowed to move beyond circumscribing limits,
Held violative of Plaintiff's right

False Imprisonment helps to protect the rights
of innocent citizens whose right could be
violated by mighty state.

mention 7 PL
is well

Q.1(c). Write explanatory notes on Defence of 'Statutory Authority'. (10 Marks, 150 words)

A tortious liability exists when the defendant has breached the rights of the plaintiff. However there are certain exceptions when the defendant may not be liable.

"Defence of Statutory Authority is one such exception".

Defence of Statutory Exception : Meaning

1) When Statute confers a duty

① Chelsea Water Works Case - where the water leaked from the water supply maintained by the Defendant. Held = Not liable.

2) When statute grants exceptions

→ eg: A police officer firing at a mob on orders of his superiors.

3) When statute imposed duty and it is not complied

→ eg: Sending of hazardous machinery in industries.

4) When statute makes exceptions:

→ eg: ~~When~~ Electricity Act - makes exception for death caused due to ex electricity ~~when~~ no fault of state.

~ Defence of Statutory Authority should be

used sparingly as today's world is a
"welfare state" where state is ~~more~~ answerable
for its actions.

Q.1(d). "All torts are civil injuries but all civil injuries are not torts." Explain the above statement. (10 Marks, 150 words)

As per Dr. Winfield, Tortious liability exists when there is breach of duty by the defendant towards Plaintiffs. It gives rise to a suit for unliquidated damages.

"Civil Remedy is a genus & Tort is its species"

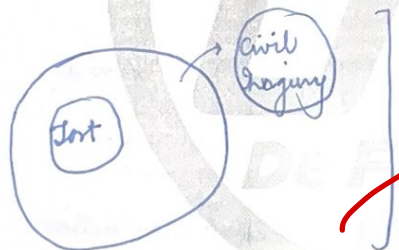


Fig: Showing relationship between Tort & Civil liability

Civil Injury	Tort
1) Includes - Breach of Contract, Torts, Breach of Trust.	1) Means violation of Plaintiff's right by Defendant.

Civil Injury	Tort
2) give rise to remedy in form of <u>liquidated damages</u> or <u>unliquidated damages</u>	2) <u>Remedy</u> - always <u>unliquidated damages</u> .
3) <u>Right in Personam</u>	3) <u>Right in Rem</u> .
4) <u>Law is Codified</u>	4) Law is not codified. Judge made law.

Civil Remedy/Injury is a broad branch of which Tort is one sub-branch.

It helps courts to determine whether an action will fall under which category.

Q.1(e). Tort of nervous shock is very wide and covers physical as well mental damage. Discuss. (10 Marks, 150 words)

As per Winfield, Nervous shock occurs when damage is suffered by plaintiffs through faculty of eyes and ear. It is a recent development in Tort Law.

Nervous Shock is Wide:

1) Covers Physical Damage:

i) In Bourhill v. Young, the young fisherwoman suffered mental nervous shock and lost her child (in womb).

ii) The plaintiffs suffer physical damage as a result of nervous shock.

2) Covers Mental Damage

i) In McLoughlin v. Brain, mental damage was suffered to a woman who lost her child.

ii) The damage is in form of emotional shock.

iii) Leads to mental disturbance of Plaintiff.

3 Test laid down in McLoughlin Case

→ ① The Plaintiff must be related to the victim.

→ ② Plaintiff ~~was~~ suffered mental shock & it is in relation to time & events.

Correct
Ans

News check is of recent origin which has helped courts determine the damage caused to Plaintiff and provide remedy.

Q.3(a). What is the Liability for faulty medical service under the Consumer Protection Act, 1986. What is a reasonable standard of care? (20 marks)

Section 2(1)(b) defines of Consumer Protection Act, 1986 defines "services". For a customer to succeed under Consumer Protection Act, 1986 he/she must prove two elements: → ① That he/she is a customer under Section 2(1)(d) of the Act.
② That the services offered were deficient in nature.

Liability for Faulty Medical Service under Act

① Medical Services are "Services" under the Act

① IMA v. VP Shant - it was held that medical services provided are services within meaning of the Act

→ Order 17

2) Even if the services are provided free - there is liability

① In Paschim Bengal Khet Mazdoor Case - it was held that services provided by ~~State~~ State ~~crant~~ crant hospitals free of cost - still, they are liable.

3) Shift from "Control Test" to "Organisational Control Test"

① In Silverland v. Modern Text has shifted from control test to organisational control test.

Remedy under the Act

1) Compensation : to compensate for losses caused to the plaintiff.

2) Exemplary Damages : for exemplary / high damages caused.

3) Redressal : in form of substitution of service.

4) Replacement : of the services

5) Holding the defendant liable.

Reasonable Standard of Care

1) Adoption of Bolam's Test:

① To determine whether the doctor took reasonable care.

2) Test of Reasonableness:

① When a reasonable man in such circumstances would have acted in similar manner or would have acted differently.

3) Test of Skillful Care:

① Jacob Mathew v. MCT of Delhi: Held that skillful care needs to be undertaken.

4) should not be negligent:

- ① Suresh Gupta Case - where it was held that the doctor must not be negligent.

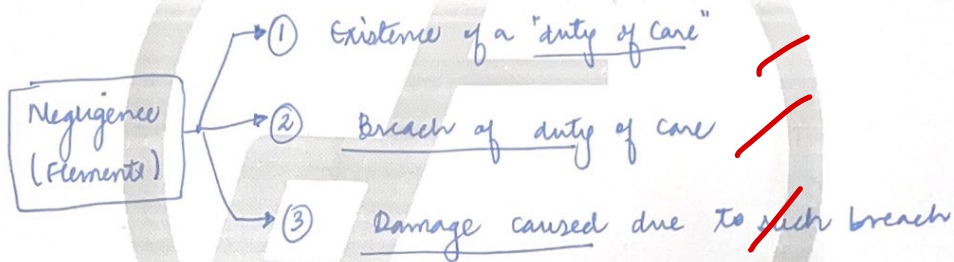
Consumer Protection Act & Medical Liability

- ① The courts have recognised the liability of doctors/hospitals in such cases.
- ② Adequate remedy has been provided to victims.

Medical Case have been dealt by courts under consumer protection act which has protected rights of consumers.

Q.3(b). "Direct evidence of negligence, however, is not always necessary and the same may be inferred from the circumstances of the case." Elucidate with cases. (15 marks)

Negligence is the breach of duty to
care which the defendant owed to the
Plaintiff.



Direct evidence of Negligence = Not always necessary

① Neighbourhood Principle

1) In Donoghue v. Stevenson, Lord Atkin laid
down the principle of "Neighbourhood"

(2) As per the Neighbourhood principle, I
ought to have all those in contemplation
of to whom my actions have an effect.

(3) Defendant owes duty of care to Plaintiffs
(Neighbours)

II. Res Ipsa Loquitur

① Means - "things speak for themselves"

② When the circumstances indicate that
was negligence but it may not have evidence.

③ that the defendant was in control of situation

④ It is now for defendant to prove that
he was not negligent.

Municipal Corporation, Delhi v. Subhagwanti → when clock tower
fell, it was held to be Res Ipsa Loquitur.

Res Ipsa Loquitur : When Not Applicable

- 1) When two or more explanations are possible. ✓
- 2) When Defendant is not in control of situation. ✓
- 3) When Negligence does not point towards Defendant. ✓

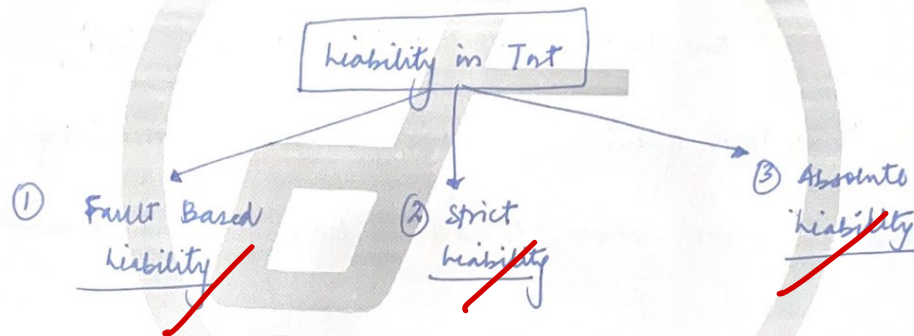
The two doctrines i.e. "Neighbourhood Principle" and "Res Ipsa Loquitur" helps courts in determining negligence even when direct evidence is not available.

This helps in furthering the cause of justice.

2. Why is it called 'De Facto'?

Q.3(c). What are the key differences between liability based upon fault and strict liability (15 marks)

The various principles of liability in Tort law help in determining the liability of defendant and this helps in course of justice.



Fault Based liability	Strict liability
1) There needs to be <u>fault</u> on part of defendant.	2) <u>Fault</u> may or maynot be present.

Fault Based Liability	Strict Liability
2) Determination of liability } Foreseeability Test Remoteness of Damage Test. 3) Element of <u>use of land</u> is absent. 4) No requirement of <u>"escape"</u> 5) ~~Requires~~ may or may not result in <u>mischief</u>. 6) Based on <u>"fault/negligence"</u> of plaintiff. [~~Harmon~~ <u>Harmon Salt Water Works v. State of Gujarat</u>]	2) liability determined } on basis of test laid down in <u>"Rylands v. Fletcher" case</u> 3) Requires <u>"non-natural use of land"</u> 4) Requires element of <u>"escape"</u> 5) escape <u>should</u> cause <u>"mischief"</u>. 6) Based on <u>"strict liability"</u> rule as laid down under <u>"Rylands v. Fletcher"</u>

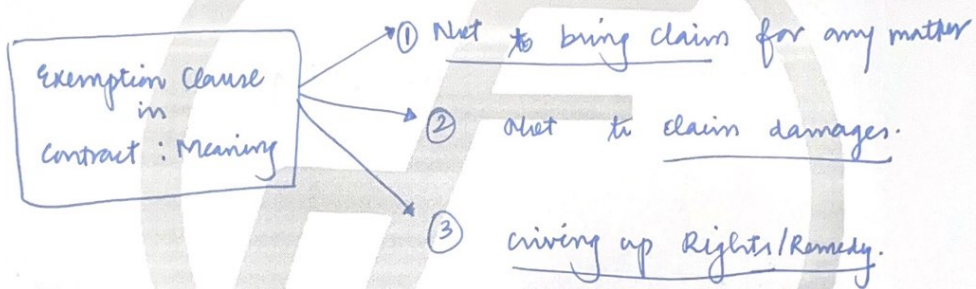
Fault Based liability	strict liability
1) <u>Scott v. Shepherd</u> - Re Directness test was applied. ex: <u>Wagon wheel case</u>	1) There are exceptions available such as Vis Major, consent, etc.
2) Has old origin	3) Emerged recently.

The rule in Ryland vs. Fletcher
was further enhanced to "Absolute liability" in
Mc Merton case to serve ends of justice.
This is why Winfield was in favour of
"Law of Tort & not Torts" as new category of Tort law
always evolves.

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2:30
Q.5(a). "Exemption clause in the contract is alien to the determination of liability in tort." Comment. (10 Marks, 150 words)

"Exemption clause" refers to the mutual understanding between parties to not bring an action in certain cases.



Exemption clause alien to Tort Law

1) Tort law is for unforeseeable damages

① Contractual clause can only exclude those wrong which are foreseeable.

② Ex: Bombhill v. Organ

② liability in Torts is unliquidated

eg: Reputational damages;

ex: HDL v Reckitt

→ It can not be waived

③ liability in Tort is a fundamental principle of law.

④ Law of Equity requires some form of remedy to exist.

⑤ Tort law remedy cannot be extinguished

5

It is hence clear that contractual exemptions cannot bind people to not bring a suit in Tort law. This is furtherance of cause of justice.

2/11/24

Q.5(b). Liability of joint tortfeasors in Law of Tort is Joint and Several." Discuss (10 Marks, 150 words)

Joint liability refers to liability against the wrongdoer either jointly or severally.

This implies

→ ① can sue against all of the defendants/
Joint Tort Feasors.

② can sue against any one of
the joint Tort Feasors.

Liability is Joint & Several: Meaning

① Liability is Joint: Suit can be instituted against
all the wrongdoers (defendants)

② Meaning all are liable to compensate the
defendant plaintiffs.

Liability is Several :

- ① Means suit can be instituted against any one or some of them.
- ② The defendant has to compensate the plaintiff.
- ③ A decree executed obtained against all of the joint tortfeasors can be executed against any one of them.
- ④ ~~Joint~~ A single defendant has right to seek contribution from other defendants in payment of compensation.

Joint & Several liability of Tortfeasors
uphold the rights of the Plaintiff and promote
justice.

Q.5(c) Write explanatory notes on Defence of 'Vis major'. (10 Marks, 150 words)

"Vis Major" or "Act of God" refers to those circumstances in which the damage is caused to the plaintiff due to "act of God".

Elements of Vis Major

① Beyond control of the Defendant

② Due to Natural Factors:

eg: Nicholas v. Marshland - where the reservoir wall collapsed due to unreasonably high rainfall. Held liable.

③ No negligence of ~~Plaintiff~~ Defendant

(A) Damage Caused:

① vis major must cause damage to plaintiff

(5) only due to Natural factors

① Damage should not due to non-natural factors.

(B) no. for online

Ex: Mob - looted a shop.

Held: not vis major

Significance of vis major

① to protect defendant for situations outside his/her control.

② to protect cover unforeseeable circumstances.

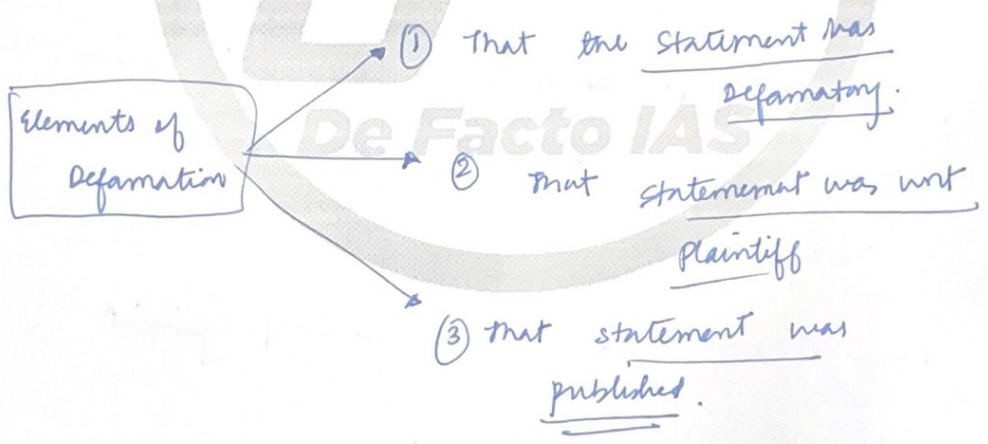
Justice & equity requires that defendant must not be held liable for acts beyond his control.

vis major satisfies this criterion.

2:41

Q.5(d). Elaborate "Justification or truth" as a defence in tort for defamation (10 Marks, 150 words)

According to Winfield, defamation is the publication of a statement which tends to lower / injure the reputation of the plaintiff in the ~~not~~ right thinking section of plaintiff's society which makes them to shun / avoid him.



Truth / Justification as defence :

- 1) that the statement published was truth.
- 2) that there is display of facts
- 3) that there is no wrongful / misrepresentation of facts.

Union Beth v. State → wrongful content published about Legislators. Couldn't prove it true - hence liable.

DP Chaudhary v. Mahulata → Defamation since wrongful / demeaning news published in newspaper.

Truth / Justification is granted on very specific grounds in defamation.

Q.5(e). What is 'Pigeon Hole Theory'? Do you think it expands the scope of tort Laws (10 Marks, 150 words)

"Pigeon hole theory" was provided by Salmond. It emphasises on "law of Torts" and not "law of Tort" [Winfield]

Pigeon hole theory
Explained

→ ① that category of torts is closed and ended.

→ ② cannot evolve new torts.

→ ③ Plaintiff will succeed only if he/she can place ^{wrongful act} tort in already categorised torts / well-labelled torts.

→ ④ that to ~~be~~ succeed, the ~~tort~~ wrongful act must fit in pigeon hole.

Does it expands Law of Torts?

- ① Yes Because it retards development of new torts. Ex: Nervous shock, Cyberstalking.
- ② As per this theory, category of tort has closed.
- ③ Plaintiff can succeed only when he can put wrongful act is already defined well labeled torts.

Which theory is correct: Law of Torts or Law of Tort

Law of Tort = by Dr Winfield is the correct theory.

In Ashby v. White, Justice Holt - supported

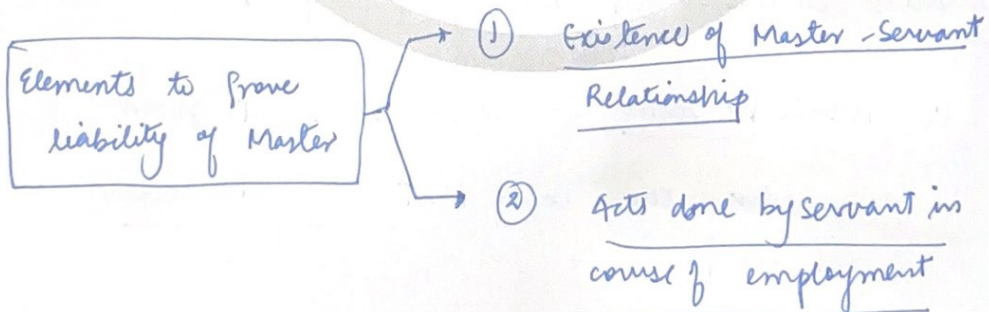
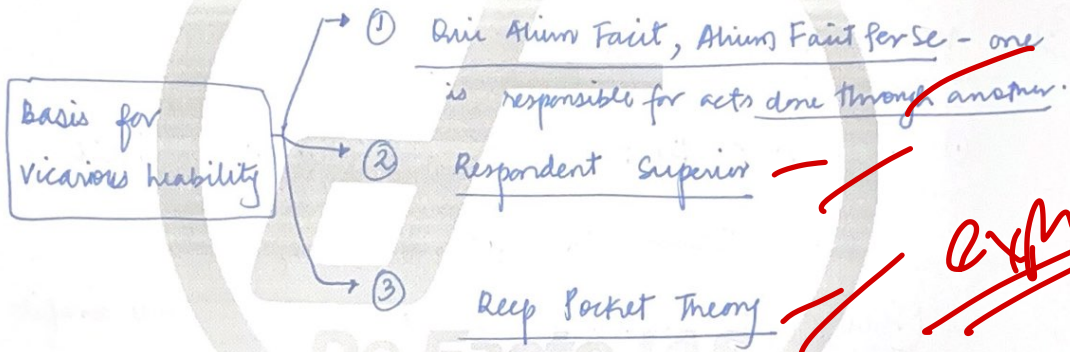
"Law of Torts" as propounded by Winfield.

In Luxmi Sait (P) Ltd v. State of Gujarat - held that

Law of tort is to be left open to allow its development.

Q.6(a). Master is vicariously liable only for the act done by servant in course of its employment. Elucidate with help of decided cases. (20 marks)

The doctrine of vicarious liability states that a Master is liable for acts of his servant done in course of employment.



Determination of Master's Liability :

① Servant acts in course of employment :

- ① Lampert v. London General Omnibus Company Ltd -
where accident caused due to racing.
Master held liable.

② Acts done for benefit of Master

- ① Rose v. Plenty : where a boy (plaintiff) assisted
the milkman in delivery of milk.
Held : that master is liable since he derived benefit.

③ Assault committed in course of employment

- ① Pollock v. John - where a deep cut given
as under the belief that master's sugar
was stolen.

④ Unauthorised mode of doing an Authorised Act :

- ① Scindia Insurance Co Ltd v. Kabilaben Chandraman -
held that the driver was negligent. However
Master held liable.

⑤

Cases when Master Not Liable

①

where servant acting out of scope of employment.

Eg: Assault committed to a newspaper boy
while coming to work. Assault was not connected
to employment

②

Servant Acting in Personal Capacity

- ① State Bank of India v. Shyamala Devi -

Held: that deposits appropriated by ~~Devi~~ culprit
in personal capacity & not as employee of Bank.

③ Unlawful Act of Servant

- ① Railway Board v. Chandrima Das - where
rape of a Bangladeshi woman in "Yatri Niwas".
Railways held liable - as access to Yatri Niwas
only to employees.

exposed in matter

④ Servant Acting for personal work

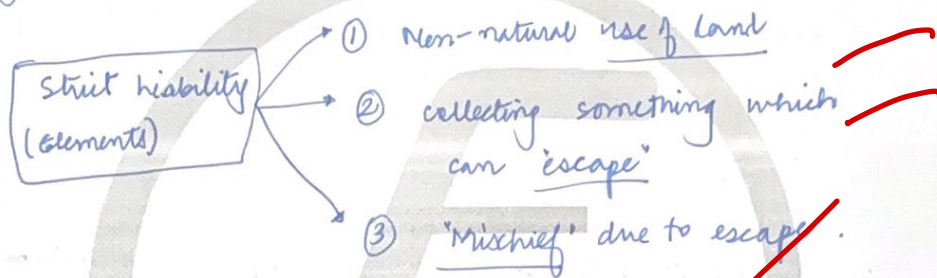
⑤ "Coming to work is not within scope of employment"

Determination of liability in master-servant
relationship is complex and has to be determined
on basis of facts & circumstances of case.

more

Q.6(b). Explain the concept of strict liability and provide examples of cases in India where this doctrine is applied. (15 marks)

The concept of strict liability originated in Rylands v. Fletcher.



Strict Liability : Explained

① Non - Natural Use of Land

① Ponting v. Noakes: Held that growth of poisonous trees is non-natural use.

② Bellon v. Stone: Ball hit plaintiff outside the premises. Held it was "natural use of land".

② Element of Escape :

① Cambridge Industries v. Eastern Leather Company :

PCE used by industry seeped and damaged the Plaintiff's premises. Held: not liable as could not reasonably foresee escape.

③ Mischief :

① Peter v. Prince of Wales Theatre Brighthelm :

where the leakage due to water burst caused mischief.

① Richard v. Lethian : burst of water basin caused mischief.

Application of strict liability in India

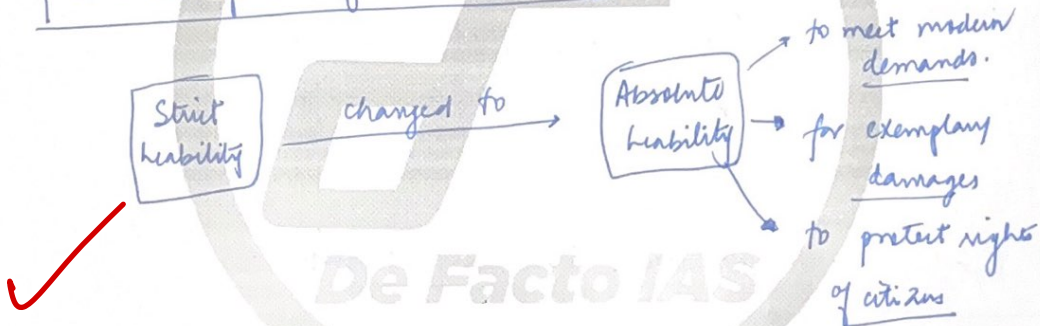
① Cases of Industries : MC Mehta v. UOI - where leakage was from "Oleum gas".

② Cases of Households :

- eg: Keeping ferocious dogs in premises and if they escape and cause damage.

③ Cases of others: eg: Poisonous trees in neighbourhood

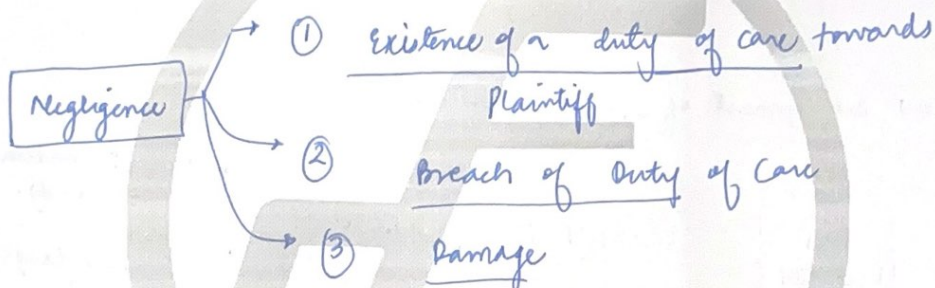
New Development of Strict Liability



Strict liability has thus widened the horizons and provided newer avenues to seek remedy.

Q.6(c). "In the tort of negligence the question as to whether the defendant has acted as a reasonable man or not depends on many factors". Discuss. (15 marks)

According to Dr Winfield, Negligence is the breach of duty of care towards by the defendant towards the plaintiff.



Test of Reasonable man in Cases of Negligence

1) The Neighbourhood Principle:

- ① In Dorridge v. Stevenson - court emphasised on "Neighbourhood Principle"
- ① It implies - that I ought to have into consideration my neighbours while performing my acts.

- ① A neighbour is a person who is affected by my acts.
- ② Test of ^{Directness} Foreseeability:
 - ① In Scott v. Shepherd - a squib was thrown and re-thrown multiple times. At last it injured Plaintiff's eyes. Defendant held liable.
- ③ Test of Reasonable Foresight
 - ① Mercy Danks v. Croft
 - ② Wagon Mound Case: held that the Plaintiff is liable only if he/she can foresee the consequences of his actions.
- ④ Duty to take Care
 - ① Whether Plaintiff took adequate precautions/duty of care.
 - ② If failed to take care - held liable.

⑤ Test of Reasonable man's Foresight :

- ① The Plaintiff Defendant's acts are assessed parameter of "reasonable man".
- ② Whether acted as per reasonable man's standard.

Can
the
ex-
acts

⑥ Res Ipsa Loquitur

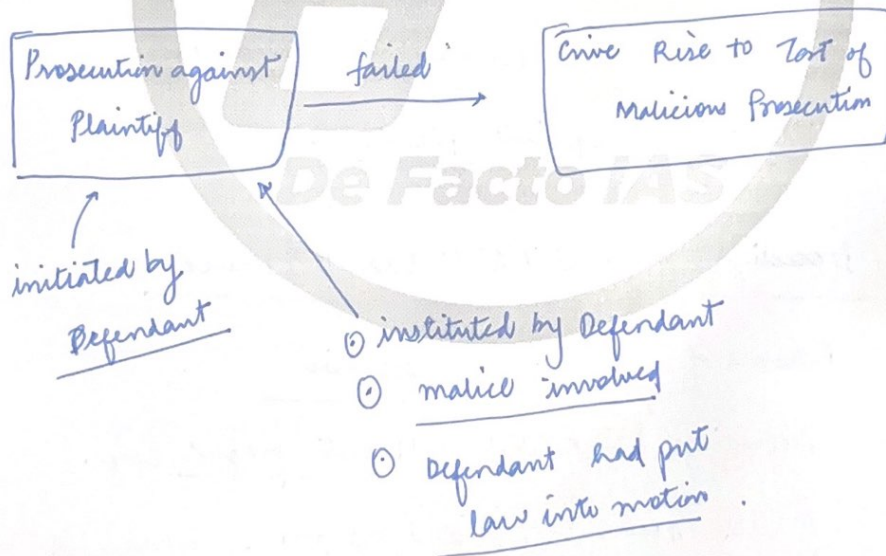
- ① Has applicability where facts point towards liability of Defendant.

Determining liability of Defendant requires courts to adopt a broad and multidimensional view to determine whether he acted as per reasonable man's standard or not.

5

Q.7(a). For malicious prosecution tort to succeed, the defendant must not have succeeded in its effort. Discuss various element of malicious prosecution? (20 marks)

Malicious Prosecution refers to a situation when the plaintiff was put before the process of law initiated by the defendant and which has not succeeded.



"Fig : Malicious prosecution"

Elements of Malicious Prosecution

① Failure of earlier Proceedings against Plaintiff

- (i) there was earlier proceedings against Plaintiff
- (ii) The proceedings have resulted in favour of Plaintiff.

② Defendant was active in Putting law into motion

- (i) Defendant was involved in instituting proceedings against Plaintiff.

③ The proceedings were initiated due to Malice

- (i) Presence of malice is essential
- (ii) Proceedings instituted without proper care.

Mond Agam V. Harishchandram : where false case of dowry was filed.

④ Malice must be proved independently.

① Acquittal of Plaintiff does not give rise to presumption of malice

② Malice must be proved independently.

⑤ Setting of law into motion violates Plaintiff's right

⑥ This gives rise to filing suit of "Malicious Prosecution"

Benefits of Malicious Prosecution

1) Prevents abuse of process of law

2) Protects right of Plaintiff

3) Resists prosecution based on malice

4) Reduces burden on judiciary as only genuine cases
are expected to be filed.

5) Ensures faith in Rule of law.

6) Protects rights of citizen

The tort of malicious prosecution has
led to deterring frivolous cases being filed
and has prevented abuse of process of law.

work can be done
to be more on
the way

8 1/2

Q.7(b). Analyse the Supreme Court's judgement in the case of Kasturi Lal Ralia Ram Jain v. State of Uttar Pradesh (1965) and its implications on sovereign liability. How do Indian courts differentiate between sovereign and non-sovereign functions of the State? (15 marks)

Sovereign Functions refers to those functions which are exclusively performed by the state. The doctrine of "sovereign liability" arises from the English doctrine - "The King Can do No Wrong".

Origin of Sovereign liability in India

Peninsular Oriental Steam Navigation Co. Ltd v. UOI

Held that state is not liable for sovereign functions

Vidhyavati v. State of Rajasthan

Driving was not a sovereign function

Kasturi Lal v. State of UP

State was not held liable - as sovereign function

Kasturilal v. State of UP : Analysis

Facts: Gold was seized by a police officer and later he misappropriated it.

Issue: Whether Kasturilal can recover gold from State?

Decision:

- ① Gold cannot be recovered.
- ② State not liable for wrongful acts of its servants ("sovereign immunity")
- ③ Seizure of gold = sovereign functions

Analysis of case:

- ① Not as per norms of welfare state
- ② Not as sovereign function
- ③ employee/servant of state should not be allowed to fulfill his/her personal goods.

How courts differentiate between sovereign & non sovereign function

- ① Sovereign Functions : which can be performed only by the state. eg. Policing.
- ② Non sovereign functions : can be performed by non-state actors.

Modern Stance of Sovereign Immunity

- ① Art 300 of Indian Constitution : allows to sue state.
- ② State as a Welfare State : thus state cannot evade its liability

Modern notion is well-accepted now
and forms basis of "modern-day" tort law.

Q.7(c). Discuss the origins and Purpose of evolving the concept of absolute liability in India. How does it differ from Strict liability? (15 marks)

Absolute liability refers to a situation where the liability of the defendant is absolute i.e., without any exceptions.

Origins of Absolute liability

- 1) growing threat due to Industrialisation
- 2) Failure ^{Limitations} of "strict liability" doctrine in several cases.
- 3) Deep Pocket Theory: the principle in tort is to compensate for loss/damage caused to plaintiff.
- 4) MC Mehta v. UOI: Industries need to be absolutely held liable for inherently dangerous acts.

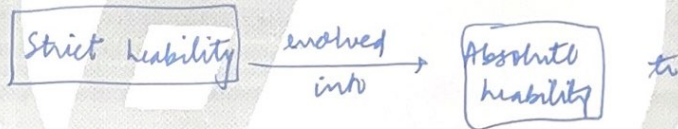
Purpose of Absolute liability

- 1) To compensate for damage/wrong caused to plaintiff
- 2) To cover scenarios where rule of strict liability does not apply.
- 3) To protect rights of consumer & the environment.
- 4) Growing awareness about Right to Environment.

Absolute liability v/s strict liability : Differences

Strict liability	Absolute liability
① Has exceptions - Volenti Non Fit Injuria - Act of God (Vis Major) - Natural Use - Plaintiff is <u>fault</u>	① No exceptions provided. <u>MC Mekhon v. Kamal</u> <u>Nath</u> : held absolutely liable.

Strict liability	Absolute liability
② Elements to satisfy → Non-natural use → escape → mischief.	② No such elements. If there is damage → then <u>liable</u>.
③ Rule originated in <u>Raylands v. Fletcher</u>.	③ Modern law of tort which applied in Industrialised world.



further cause of justice and protect rights of Plaintiff (provide compensation) which is the fundamental principle of tort law.

7/2

Justice