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.

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Name: RUPAL JAISWAL
Subject: Law of Torts
Phone: _____

Teacher's Remark

1(a) Elucidate the difference between damnum sine injuria and injuria sine damnum with the help of decided cases.

Injuria in "Law of Torts" means a legal injury while "damnum" refers to actual financial / non-pecuniary damages (de facto).

The remedy in law is only provided for "injuria sine damnum".

DISTINCTION BETWEEN THE TWO

Basis	Injuria sine Damnum	Damnum sine injuria
Meaning	legal injury without any actual damages	damages de facto without any legal injury

Nature of damage	de jure - law implies damage	de facto - may or may not be legally recognized
Remedy	Ubi jus Ibi Remedium applicable (ie where there is a right, there is remedy	Law provides no remedy, unless a legal right/ injury.

Cases:

(a) Ashby v/s White - Lord Acton held "every legal injury imports a remedy, though it may not cost a farthing" - Injuria sine damnum

(b) Mcgregory & Sons v/s Gaiatto - competitors legally combined business - loss to plaintiff - but no legal right violated - damnum sine injuria.

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1(b) "Duration of total restraint or liberty of movement of a person is irrelevant in tort of false imprisonment. Discuss with the help of relevant cases.

False imprisonment is a trespass against human body - violates Art. 21 right to liberty and Art 19(1)(d) right to move freely (Thus, even a constitutional tort).

Elements of false imprisonment

① Total restraint required - in Bird v/s Jones, plaintiff stopped from crossing bridge but free to go other direction - not a tort.

② without legal justification -

(i) if arrested for a crime, no false imprisonment

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Duration of Restraint is Irrelevant

① Even if restrained for few seconds (eg) in Harnett v/s Bond, in a mental asylum, a discharged patient wrongfully asked to wait, held false imprisonment

② Duration if unreasonably long, can call for exemplary damages (eg) in Sebastian M. Hongray v/s Union of India, extended custody of undertrial for years

Thus, false imprisonment as a tort seeks to prevent invasion of right to liberty of movement, irrespective of the duration of restraint.

1(c) Write explanatory notes on defence of statutory authority.

"Statutory authority" refers to powers on a public instrumentality conferred by a parliamentary law.

Scope of statutory authority as a defence

① Essentials:

↳ the act/omission was mandated under a statutory law (not rules) (eg) police's duty to prevent ~~harm to~~ escape of prisoners.

↳ there was no negligence or impropriety in such authority

② When cannot be claimed as a defence:

↳ act was beyond scope of authority conferred

↳ unreasonable / abuse of powers

(a) in Ramchandram Nagoram Oil Mills V/s Municipal Commissioner, Purulia, plaintiff's goods seized and loaded in rubbish truck - even after release, no one bought. Held liable for negligence

In Kasturi Lal V. State of U.P. statutory authority was held complete defence. However, now in N. Nagendra Rao of ~~State Union~~ State of Andhra Pradesh limited such unbridled defence to essential sovereign functions like administration of justice, law and order.

1.(d) "All torts are civil wrongs but all civil injuries are not torts. explain the above statement.

Winfield has defined torts as "civil wrong ~~against~~ involving breach of duty towards public generally which imposes liability for unliquidated damages.

However, not all civil wrongs are torts and vice versa.

Civil injuries not all torts

① Contracts - private exchange of promises. If breached, cause civil injury.

BUT not torts, as the objective is to enforce promises (unlike allocation of losses in torts)

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② Trust - property held in trust for a beneficiary. If fiduciary duty breached, causes civil injury but not a tort.

③ Quasi contracts : impose civil liability to return / make up for unjust enrichment but not a tort

However, tort may be available as alternate to enforce such civil injuries

↳ In White v/s John Warrick and Co - exclusion of contractual liability - but tort action allowed for negligence.

↳ Donoghue v/s Stevenson - if no privity of contract suit in tort of negligence allowed.

Thus, all civil injuries not tort but tort involves civil injury.

1(e) Tort of nervous shock is very wide and covers physical as well as mental damage. Discuss.

Nervous shock refers to any psychological illness manifested either in physical impairment (eg reduced mobility) or in anxiety (eg post traumatic stress disorder).

Nervous shock as physical damage

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① Plaintiff as primary victim
ie. was present on site of tort can recover for nervous shock which aggravated an existing spinal disease
[Page v/s Smith - eggshell skull rule]

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① Secondary victim: if foreseeable physical injury (eg) in King v/s Philips, not allowed damage for nervous shock to mother who suffered physical harm because not foreseeable injury

Nervous shock as Mental damage

① Recoverable by primary victim (eg) in ~~Hotbrook~~ Hill v/s Chief Constable, West Yorkshire - stadium disaster causing PTSD

② BUT secondary victim can claim only when:
↳ ties of natural love and affection (Mc'Loughlin v/s Brian)
↳ present in nearness or in aftermath

Thus, damage for nervous shock subject to judicially evolved restrictions

3(a) What is the liability for faulty medical service under Consumer protection Act? What is a reasonable standard of care?

Medical service provided by a doctor squarely falls within definition of service under Sec 2(7) of Consumer Protection Act 1986.

· Patient as consumer

Historically, faulty medical services by professional doctors was actionable under tort of medical negligence.

Today, as held in V. Kishan Rao v/s Nikhil Speciality Hospital (2010), a patient is a consumer

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and medical service is a service under Consumer Protection Act 2019 - thus, patient or Legal representatives can file complaint in Consumer Dispute Redressal forum.

Liability for faulty medical service

① when service is paid for:

↳ patient entitled to reasonable standard of medical service. If suffers injury due to doctor's negligence, entitled to damage (eg) in Spring Meadows Hospital v/s Ahluwalia

② when service availed for free:

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↳ in a hospital where bulk services provided for money, doctor/ hospital still liable for free faulty services [V P Shanta v/s Indian Medical Association]

↳ if all services provided for free, patient (who availed for free) can't sue as consumer.

STANDARD of CARE

↳ Test of Reasonable person skilled in the medical profession - held in Bolam v/s Friern Hospital Management

↳ Test of standard of care may differ based on reputation: in India, Harjot Singh Ahluwalia case held if a

reputed hospital, standard of expected care is higher

↳ Bolitho test : standard of care higher than Bolam. If a contrary medical opinion exist, defendant doctor must show that he weighed risks and benefits before adopting a particular course of action

Thus, professional standard of care is different from ordinary occupational standard of care.

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

Negligence, defined by Pollock, is a conduct - doing something an ordinary person would not do or omitting something an ordinary person would do.

Evidence in negligence cases

① difficulty to gather -
   (eg) in medical negligence cases

② direct evidence not easily available

Therefore, the courts have evolved "Res Ipsa Loquitor"

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Res Ipsa Loquitor :

Literally "a thing speaks for itself".

↳ it is not rule of law but of evidence

↳ if Plaintiff shows prima facie that agency of negligence in defendant's control and

↳ breach of care would not ordinarily result if the care was taken.

the burden of proof shifts on the defendant. He has to prove that he exercised all reasonable care.

Judicial application in India

① Inferred negligence from circumstances ⇒ when a hoarding only held by coir rope, fell in ordinary rainfall and injured, court applied Res Ipsa Loquitor [Manindra Nath Mukherjee case]

② ~~Application~~ to hold government liable : when an 80 year old clock tower fell, municipal corporation held liable in Municipal Corporation v/s Subhagwanti by applying Res Ipsa Loquitor

Thus, Indian courts have consistently eased burden of proof to on Plaintiff in evident cases of negligence.

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3(c) What are the key differences between fault liability and strict liability?

The general rule of liability is that only a culpable mind can be held liable. In torts, a person usually liable for intentional civil wrongs. However, some exceptions exists in form of strict and absolute liability.

Fault Liability

↳ generally applicable rule of torts

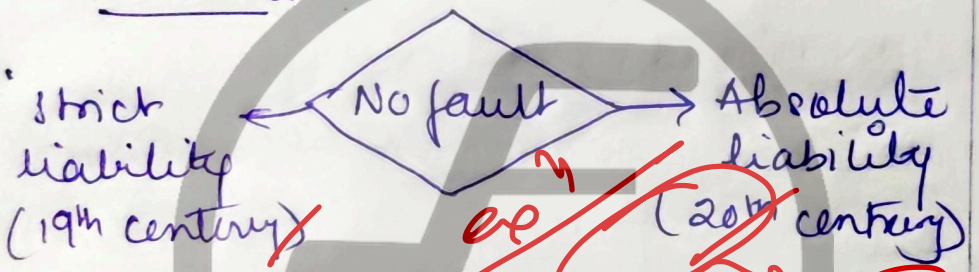
↳ fault is intentional doing of an act

eg in Stanley V/s Powell, a

bullet directed towards a bird hit plaintiff - no fault and no liability in tort.

No fault liability

→ can be imposed even for an honest mistake or unintentional accident



Key differences

Basis	fault liability	strict liability
Rationale	liability only for intended acts - protects innocent wrongs	Liability based on non-natural user of land

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Essentials	↳ malice in law (ie a wrongful act without justification OR ↳ malice in fact (eg in malicious prosecution)	↳ Bringing dangerous thing on land ↳ non-natural use of land ↳ the thing escapes (Rylands V/s Fletcher.
exceptions	several (eg. consent, private defence, statutory authority, trivial harm etc.	limited exceptions: • act of God (eg tempest • statutory authority • harmful thing for community purpose • act of stranger

Thus in Carvetnagaram case when dam on zamindar's land overflowed, not strict liability as maintained for everyone's use

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6(a) Master is vicariously liable only for the act done by servant in course of its employment. elucidate with cases.

Vicarious liability is based on principle of ~~respondeat superior~~ (i.e. superior must answer for subordinates) and qui facit alium facit per se (one who acts through another is said to act himself.

Master's liability for servant's act.

(1) For imposition of vicarious liability; 3 pre-conditions
↳ a wrongful act by one
↳ special relationship of wrongdoer with defendant
↳ act done in course of

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carrying out that special relationship

Thus, to hold master liable: **THE ACT MUST BE IN COURSE OF EMPLOYMENT**

① Scope of employment: [control list]

- contract of service (Master servant relationship)
- contract for service (independent contractor)

↳ if master supervises or controls, then servant's wrongs vicariously imputed to him.

↳ if servant employs own judgment and skills, still liable if master took express undertaking for his/her acts

② liability for unauthorized acts

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↳ if authorized act done negligently, master liable

(eg) in Kanchanmala case, cleaner drove bus without driver's permission; driver's negligence and hence master liable.

~~(eg)~~ Similarly, in Lloyd v/s Grace and Smith, bank liable for misappropriation by an agent

↳ if entirely unauthorized act

(eg) in Limpus v/s London Omnibus Co., driver explicitly ordered not to race to bus stop which he did - employer not liable.

(3) Master's liability for crimes

↳ even if during course of

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employment, no general vicarious liability unless conspiracy or abetment shown.

④ Acts beyond the course of employment:

↳ if not incidental to master's business

↳ performed in personal capacity (eg) in SBI v/s Shyama Devi, bank not liable when employee accepted money from friend in personal capacity.

Thus, vicariously liability of master arises only for acts done during course of employment

Recently, hire and fire test, integral business Test evolved to determine master-servant relationship.

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

Strict liability is a species of no fault liability, which holds a person liable for even unintentional or innocent torts.

Evolution of the principle

① Common law usually applied fault liability → hardships to victims in proving fault

② Rylands v/s Fletcher case:

↳ eased rule of fault liability

↳ to hold a person strictly liable:

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- prove that he brought a dangerous thing on his land
- such bringing amounts to non-natural user of land
- the dangerous thing escaped, causing harm

Application of doctrine in India

(1) To industrial undertakings: carrying out hazardous activities (eg) in Union Carbide corporation v/s Union of India, the MP High Court held the Plaintiff strictly liable for Methyl Isocyanate leak

(2) For environmental harms:
(eg) in MC Mehta v/s Union of

India (Taj Trapezium case) – pollution causing discoloration of Taj Mahal – strict no fault liability

(3) Statutory no fault liability

↳ workmen's compensation Act makes employers strictly liable for employee suffering harm

↳ Public Liability Insurance Act 1991 – mandatory insurance and strict liability of insurer.

Exceptions to strict Liability

- Harmful thing for benefit of community (Dam in Kaevetnagaram case)
- Statutory authority
- act of God (Vis major)
- act of third party (Carstairs v/s Taylor)

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.

Negligence lies in "indifferent recklessness towards the consequences despite being aware of the risks (Blyth v/s Birmingham Water Works].

Essentials of tort of negligence

(1) Defendant owed a duty of care : must be a legal, not a moral duty (eg) in Donoghue v/s Wise, not saving a stranger from drowning, no tort.

(2) Duty was breached
↳ reasonable standard of care not exercised (eg) in Scott vs Shepherd, related

a lit squib in a crowd, held liable.

③ Duty's breach caused damage
↳ liability on for foreseeable damage (Wagon Mound case)

Standard of Reasonableness - factors

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① Awareness of circumstances

(eg) in Raman Services Pvt Ltd v/s Subhash Kapoor, lawyer failed to attend court, knowing risk of ex parte order, liable

② Past events

(eg) in Bolton v/s Stone, a ball crossed high boundary and hit plaintiff on highway; no past incident of such accident, not liable.

③ Likelihood of harm

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↳ if least likely harm results,

(eg) a dog in closed car smashes glass and injures pedestrian; could not have thought reasonably possible hence, not liable for negligence [Harcourt v/s Butler]

(4) Pre-existing vulnerabilities

(eg) in Page v/s Smith, defendant already suffered from mental illness but aggravated by defendants tort - still held liable [eggshell skull rule]

Thus, standard of reasonable care in negligence must be examined comprehensively to prevent disproportionate liability.

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8 (a) Rani's ornaments were stolen from his house. On a report lodged with police, recovered. Pending prosecution, stored in police malkhana. Stolen again due to police negligence. Is state vicariously liable?

Vicarious liability of state was always a possibility in India (Art. 300). Common law maxim Rex Non Potest Peccare (or King can do no wrong) was never applicable in India.

Gist of case

① Rani's ornaments seized after recovery from thief

↓

② Stored in police Malkhana

↓

③ Ornaments stolen from malkhana again due to police's negligence.

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Issues

↳ vicariously liability of state for negligence of police?

Applicable cases - Two views

① Police not liable

↳ In Kasturi Lal Ralia Ram V/s state of UP, on similar facts, the court held that seizure of ornaments was in exercise of statutory powers; amounts to sovereign acts, hence no vicarious liability of state.

If this case is applied, state not vicariously liable.

② Police liable, thus state vicariously liable.

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Nagendra Rao v/s State of Andhra Pradesh

- abolished artificial distinction between sovereign and non-sovereign acts
- even when police seized Plaintiff's fertilizers in exercise of statutory powers and caused damage, state vicariously liable

In the present case

since it is expressly stated that ornaments lost due to police negligence and police being employee of state, we can apply Nagendra Rao case

Justification:
↳ Nagendra Rao case more recent than Kasturi Ram

↳ Kasturi Ram's authority overruled by supreme court in common cause v/s Union of India

↳ Art. 21 protects citizens from arbitrary actions of state

↳ Art 300 provides expressly state may sue or be sued.

Thus, in this case, Ram can hold state vicariously liable for negligence of police and recover full value of ornaments.

8(b) What are major changes introduced under Consumer Protection Act 2019? Discuss the scope of product liability under Consumer Protection Act.

Consumer Protection Act 2019 is based on maxim "caveat venditor" (or seller beware) — aims at protecting consumers from unfair trade practices and restrictive trade practices of sellers.

Changes introduced by 2019 Act vis-a-vis 1987 Act

Basis	1987 Act	2019 Act
Definition of consumer	Did not include online buyers	Includes buyers on electronic platforms

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Regulatory authority	No such authority	Central Consumer protection Authority created (S.10)
Juris-diction	Earlier District forum heard upto ₹20 lakhs only	Now upto 1 crore → District 1-10 crore → State forum >10 crore → National forum
Power of review	No such power to district and state forum	Review powers at all levels
Mediation	No provision	All three forums can direct settlement through mediation

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PRODUCT LIABILITY UNDER 2019 Act

↳ Definition [S. 2(36)] - Product liability defined as liability of manufacturer or seller for

harm caused due to defective goods or deficient services

↳ liability when: (S.83)
- failure to disclose defects
- failure to inform special instructions
- Breach of warranty
- false or misleading information/ ads

↳ Exceptions (S.87)
- if express instructions of usage not followed
- consumer materially altered the product
- product used without prescription, when so required

Thus, product liability is a salutary step towards ensuring "consumer welfare"

8(c) "The basic principle for measure of damages in tort as well as contract is that there should be restitutio in integrum. Explain and comment.

Restitution in Integrum literally means restoring the position as it existed before the subject act happened.

Principle of Restitution in integrum

↳ aims at restoration of situation ex-ante

↳ used to measure / quantify damages that can be awarded

(Eg) in Pushpa Thakur Vs Union of India, plaintiff allowed full ~~damages~~ value of his vehicle destroyed by military.

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↳ Restitution required can be:

- pecuniary (if medical expenses, wages)
- non-pecuniary (if loss of consortium, mental stress)

Rules to measure restitution

① Interest Theory of damages:

↳ damage awarded be such that yield interest (in lifetime) equivalent to loss suffered in monetary terms

② Multiplier Theory: used in cases of death of victim (who was earning member).

③ In ~~mental~~ case of non-pecuniary damage:

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↳ Restitution requires such compensation that "society considers fair and reasonable as per prevailing standards of justice"

Thus, restitutio in integrum principle has evolved from pecuniary to non-pecuniary restitution — in keeping with justice, equity and good conscience.

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9

5(a) "Exemption clause in the contract is alien to the determination of liability in tort. Comment.

Tort is a common law creation. Liability in tort arises not from an underlying contract but from the operation of common sense justice.

Tortious liability can't be exempted in a contract

① such tortious exception is void (eg) in White v/s John Warrick and Co, a plaintiff was insured as saddle of hired tricycle defective.

Held liable despite exclusion clause in contract.

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② Standard from of contracts can't exclude tortious liability:

(i) in Lily White v/s Munnuswami - a laundry store excluded liability for breach of basic care - Plaintiff allowed to recover for negligence

Even in Donoghue v/s Stevenson, Lord Atkin held, privity of contract is no excuse to tort action - for action in tort arises not for breach of promise but because of "failure to take care of thy neighbours"

5(b) Liability of joint tort feasors in Law of Tort is joint and several. Discuss

When a group of persons or 2 or more tortfeasors cause an indivisible harm to the plaintiff, they are held liable in Tort as joint tortfeasors.

Concept of Joint Tortfeasors

↳ either single act or individual acts done with concurrence ; eg in Barn v/s Boole, two officers caused fire by lighting match over a gas leak.

↳ such act causes indivisible harm

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Liability of Joint Tortfeasors

↳ Joint and several : held in Khenyei V/s United India Assurance Co. - Plaintiff can hold any one liable without recourse to another or recover by joining them all as co-defendants

↳ Release of one does not mean release of all : Khusro V. N.A Gazder

↳ Inter se liability of contribution (eg) in Lister V/s Ramford Ice Co., employee held liable to indemnify employer.

Thus, clearly liability of joint tortfeasors is joint and several.

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5(c) Write explanatory notes on Defence of 'Vis Major'.

Vis Major refers to "supernatural force" or colloquially called Act of God. (Eg) tempest, storm, extraordinary rainfall.

Scope of Vis Major

① Essentials:

- must be an unexpected supernatural force
- natural in occurrence,
- no human agency
- cannot be guarded against

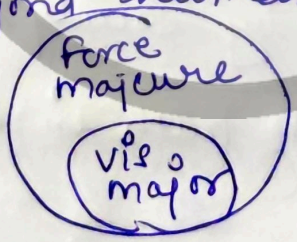
② Vis major as a defence

↳ excuses liability in tort (Noble v/s Harrison - fall of tree on highway)

↳ even justifies strict liability

(2) in Rajkot Municipal Corporation v/s Manjul Ben, when a tree fell in extra-ordinary storm, Municipal Corporation not liable.

(3) Vis major is species of force majeure (or unexpected event beyond human control)



Thus, Vis major is a well-established defence to tortious liability.

5½

5(d). Elaborate "Justification of truth" as a defence for tort of defamation

Tort of defamation is any act of publishing imputations against another which:

↳ lower the Plaintiff's reputation in eyes of right thinking members of the society

↳ harms his standing in trade or business

↳ or causing him to be shunned by society

Justification of truth in defamation

(1) Absolute defence:

↳ unlike criminal defamation (under S.499 of IPC), where truth must be in public

interest, in tort of defamation, truth offers complete defence.

↳ truth ab initio or thereafter: at the time of imputation, if statement untrue, but later events render it true, still complete defence.

↳ mala fide or bona fide irrelevant if statement is true

When not truth:

① Yousoupoff v/s MGM - showed Plaintiff ravished by an evil man - untrue. liable for defamation.

② T S Fry v. Tolley and Co - ~~don~~ athlete shown advertising chocolate - when he was not - liability for defamation.

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5(e) What is Pigeon Hole Theory? Do you think it expands the scope of tort laws?

"Pigeon Hole Theory" propounded by Salmond holds that tortious principles are limited. To claim damages, the Plaintiff must prove one specific tort was committed - no general principle of tort exists.

Pigeon Hole → "Law of Torts"

↳ Limits the claims : (eg) if a wrongful act is alleged, Plaintiff must prove that it falls in any of the existing pigeon holes (each pigeon hole

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represents an existing tort.

↳ no universality of torts:

- rejects "Law of Tort" as suggested by Winfield - it held "for every wrong, there is a remedy" - expanded scope of Law of tort (qf) applied in Jayalaxmi Salt Works v/s State of Gujarat

DOES NOT EXPAND SCOPE OF TORTS

Reasons: (1) limits torts to those already established, thereby restricting judicial ~~discretion~~ innovations

(2) is now outdated (in light of Ubi jus Ibi Remedium in Ashby v/s White)

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