



Total Time Allotted: 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: MANAV DHANETIYA

Subject: TORT - LAW

Phone: [REDACTED]

Criterion	Average	Good	Best
Presentation			
Content			
Structure			

Teacher's Remark

more case law needed 134.5
->
-> Be specific

Q.1(A). Write explanatory notes on Development of the law relating to nervous shock (10 Marks) [150 words]

Lord Wright defined Nervous Shock as the mental injury suffered by an individual due to what they see or hear [Wilkinson v. McIntosh]. Nervous shock has been considered as part of Negligence.

DEVELOPMENT OF LAW :

- ① The concept originated in Wilkinson v. McIntosh where a person joked with a woman that her husband had died. The court held it as the branch of negligence addressed to the eyes and ears.
- ② In Dulieu v. White court opined that negligence of nervous shock was applicable only if a person's own life was



under danger or threat.

③ In Hambrook v Stokes this requirement of danger to self. was removed, & Nervous shock could be available in case of third person.

④ Reasonably Foreseeable Test is applied in nervous shock. In Bourhill v Young a fishwife saw blood and suffered damages. Since defendant could not reasonably foresee such damages the court did not apply liability. §

Nervous Shock is a type of mental negligence which the court has developed over-time to enlarge the contours of negligence.

Q.1(B). What are the main Ingredients of the tort of 'Nuisance' (10 Marks, 150 words)

According to Winfield " Nuisance is unlawful use of one's own property to cause harm to the other person or unauthorised interference in someone else's property or proprietary causing legal damages"

INGREDIENTS

- ① Unlawful Interference in someone's right to use or exercise their right.
- ② Interference can be direct [Trespass] or indirect [smell or gas].
- ③ Causes legal damage to plaintiff
- ④ No exceptions ^{shall be} applicable

ANALYSIS

- Nuisance is decided according to the place. What is "nuisance in belgrade"

square will not be nuisance in Bermondsey
[Sturges v Bridgeman]

- For nuisance to occur some form of escape is necessary which interferes in someone's legal right. Trespass or bad smell or dust [Ram Raj v Babulal]

- Nuisance cannot succeed under following two exceptions:

① Prescriptive Rights → Easement rights enjoyed for more than 20 years continuously in a peaceful manner.

② Statutory Rights → Damage caused while performing statutory right in a lawful manner without being negligent [Chelsea Waterworks]

Test of Nuisance is a wrongful interference in someone's lawful right which needs to be abated.

Q.1(C). Discuss the defence of 'Act of God'. [10 marks, 150 words]

whenever a person commits a tortious act s/he is liable to pay damages except under 8 exceptions. Out of the eight exceptions "Vis-Major" or "Act of God" waives plaintiff's liability.

Defence of Act of God:

- when an act which is "unforeseeable" by reasonable man and happens under unnatural circumstances it is considered as an act of god.
- Extreme Frost which damages the piping network for water supply was considered as Act of God in Byrn Water works v Birmingham

- However when there was extreme rainfall which was found under past situation, it was not held to be an Act of god as it was foreseeable [Natwar V/S AEC]

- Act of god as a defence is also applied in cases of strict liability, though it is absent in case of Absolute liability [Sri Ram - Tekharis case]

if should happen
Act of god is a general defence which protects the defendant under unforeseeable and unnatural circumstances.

Q.1(D). Explain the concept of tort and distinguish it from crime. [10 marks] [150 words]

Tort according to Salmond is derived from the word "Tortum" which means twisted.

concept of Tort Law

- ① Tort law is civil in nature and is a branch of common law (Judge made law).
- ② Tort law is residuary in nature and is uncodified in the UK and India. *Like first*
- ③ Tort law provides for unliquidated damages [decided by court]
- ④ Tort law is based upon idea of "Ubi Jus Ibi Remedium" i.e. where there is a right there is a remedy

TORT AND CRIME :

TORT

CRIME

SIMILAR :

- ① Both are imposed by the law irrespective of any contract.
- ② Right in Rem arises under both.

Differences :

- ① Civil wrong suit instituted by individual
- ② Wrong against individual
- ③ Uncodified law
- ④ Damages, injunction etc.

- ① Criminal wrong instituted by state.

- ② Crime is a wrong against society at large

- ③ codified ③ IPC

- ④ Remedy : Punishment + Exemplary Damage (Exception)

Also write how this is not extinguished
if crime is made

The new regime of Tort law and criminal law is amalgamated in constitutional tort [DK Basu]

Q.1(E). Make out the distinction between tortious and contractual liability. [10 marks, 150 words]

Both Tortious and contractual liability are branches of civil law and deal with idea of reinstating the person suffered damages to the original place.

Distinction b/w Torts & contracts

- ① Under tort law there is a right in rem, while contract law deals with right in personam.
- ② Under tort law liability is imposed by the law, while in case of contract it is based upon privity of contract or the agreement.

- ③ Remedy under law of torts is unliquidated in nature, while in contract it is mostly liquidated.
- ④ Remoteness plays a much more important role in contract, where the event shall be foreseeable. However, in tort law with argument of Absolute liability remoteness's utility has diminished.
- ⑤ Exemplary damages are awarded under law of torts while there ~~is~~ no such provision in contract law @ Ashby v White

Tort and contract are part of civil law one being uncodified and the other being codified [Contract Act 1872] in India

Q.2(A) Elucidate the distinction between Damnum sine injuria and injuria sine damnum with help of case law. (20 Marks, 300 Words)

"Damnum sine Injuria" means Damage without legal Injury, while "Injuria sine Damnum" means legal injury without damage.

Damnum Sine Injuria

- Damage without injury means that a person might suffer economic or social damages, but not legal damages.
- In Gloster Grammar School case the plaintiff suffered economic damages due to defendant's school in vicinity, but court held that there was no legal damage.
- Similarly even if there is malice of

fact, but without malice in law there is no legal damages. In Chestmore v Richards the defendant with a malicious intent to sell his plot to plaintiff dug the well on his land to coerce the plaintiff.

- Hence, even if there is malice of fact, legal damage don't arise till there is a malice of law.

Injury sine Damnum

- Injury without damage includes situations where there might not be any economic loss but there is a legal damage.
- It is based on the principle of "ubi Jus Ibi Remedium" i.e. Every right has a remedy

- In Bhim Singh v/s State an MLA was stopped by police without legal justification to attend session of Legislative Assembly. Though MLA did not suffer economic damage, he suffered a legal damage and police was held liable.
- Similarly in Ashby v White a person who was denied to exercise voting right was seen as a violation of legal right.

Damnum Sine Injuria	Injuria Sine Damnum
① No <u>legal damage</u> ② Clouster Grammar School ③ Malice of Fact can be present.	① There is <u>legal damage</u> ② Ashby v White ③ Malice of Law is a must.



③ There might be economic loss

④ Not actionable

⑤ Based upon idea of Malice in fact.

③ There might not be any economic loss

④ Actionable per se

⑤ Based upon idea of "ubi Jus ibi Remedium"

According to Winfield it is "Injuria sine damnum" on which tort law is based upon to ensure that individuals whose rights are violated can claim damage.

write how both different
So Close steps

(12)

Q.2(B). Why and in what way the Governmental liability for Torts is different from that of the citizen's? Cite case laws. (15 Marks, 250 Words)

Under Article 300 the liability of Indian government is similar to the liability of government prior to independence. The court in Kastoori Lal v/s UP held that government is not liable for the sovereign functions. ✓

WHAT WAYS GOVT LIABILITY DIFFERS FROM CITIZEN'S LIABILITY

- The citizens are liable for all wrongful acts committed without legal justifications [Richard v/s Wetheran]. Government is only liable for non-sovereign acts of its employee [P&O case] ✓
- Citizens have eight defences like act of god, volenti non fit injuria, plaintiff's own fault, etc. Government has two

additional defences :

- ① Acts done while doing a sovereign function
- ② Incidental damages caused while performing statutory function [Chelsea Waterworks v/s Birmingham]

waiver state?

WHY GOVT LIABILITY DIFFERENT?

- The SC in P&O case expressed that since government indulges into sovereign functions which have been entrusted upon them by the citizens under Thomas-Hobbes Social Contract Theory special protection for government is needed.
- The government is involved in various functions which has made it impossible for reasonably foreseeing all implications of its actions. Hence state's tort responsibility

is different from that of citizen.

- court in Chelsea Waterworks and Blyth v Birmingham explained that while doing statutory functions incidental damages are inevitable and special protection to state is a must.

LINE B/W CITIZEN & GOVT LIABILITY DIMINISHING

with the augment of constitutional tort jurisdiction the state's sovereign function defence has been washed away by SC in various cases like DK Basu, Bhim Singh, Rudal Shah, etc.

The difference between state and citizen liability in case of tort law has diminished with time.

Again welfare state is the main reason

Q.2(C). Y bought a pair of blue jeans, for his girl friend G, from lovely Outfit at Ansal Plaza. As a result of wearing it, G suffered from acute dermatitis owing to the presence of excess sulphites which, it was found, had been negligently left in the process of manufacturing the denim. The denim had been purchased from a cloth mill and therefore the defendant, the manufacturer of the jeans, did not know of the defect in the cloth. In a suit for damages filed by G, the defendant pleads, *inter alia*, that he had done nothing to prevent examination before the trousers reached the actual user and in any case he did not sell the garment to G.

Enunciating the concept of 'duty of care' in cases of negligence, argue the case for G (15 Marks, 250 Words)

The present factual scenario is similar to the case of Australia Knitting Mill company case.

Negligence on part of defendant has caused damages to G.

ESSENTIALS OF NEGLIGENCE

Lord Wright has laid the following essentials:

- ① Defendant owed a duty of care and skill
- ② The duty was owed to plaintiff
- ③ There was breach of duty
- ④ The plaintiff suffered legal damages.

DUTY OF CARE:

• The court in Australian Knitting co. case held liable the manufacturer of an underswear

who was negligent and caused rashes to plaintiff due to the negligence.

• The court stated the following about Duty of care:

- ① Reasonable care which shall be expected from defendant
- ② Not only latent defects, but also patent defects are to be covered when goods can physically damage the plaintiff

CASE FOR G.O

In the given case we shall apply the ratio of Australian Knitting Co. case:

- ① The defendant was required to maintain due care and skill towards the garment as he was going to sell it.

- ② The duty was towards plaintiff A as she was using it.
- ③ There is breach of legal duty because:
 - 3.1 Harments require special care as they can impact the body.
 - 3.2 Defendants are liable for patient damages caused and principle of causation under applies.
- ④ A the plaintiff has suffered damages due to defendants negligence.

since all four essentials of Negligence are met A shall have a claim towards defendant in order to ensure the maxim of "Ubi Jus Ibi Remedium" is fulfilled.

Content is given

Q.4(A). What are the components of tortious liability? The plaintiff suffered substantial economic loss on account of his illegal chemical factory located in a residential/non-conforming area being selectively sealed in compliance with a resolution passed by his political rivals. Drawing distinction between malice in law and malice in fact, examine whether tortious liability arises in this case. (20 marks, 300 Words)

Under law of Torts according to Winfield a person is held liable for his/her wrongful actions done without legal justification.

COMPONENTS OF TORT LIABILITY

- ① Breach of legal duty or legal omission
- ② The plaintiff suffers legal injury that is "Injuria sine Damnum" and not mere "damnum sine injuria".
- ③ Legal Remedy for the plaintiff based upon "Ubi Jus Ibi Remedium" i.e. where there is a right there is a remedy.

Malice In law	Malice in Fact
① <u>Illegal</u> action per se	① <u>Legal</u> act done with malicious intent.

② Injuria sine
Damnum.

② Damnum Sine Injuria.

③ Person might not
suffer economic
loss. (9) Ashby v.
White [Hinderance
to exercise Right to
vote]

③ Person might suffer economic
damages but without legal
damages. (9) Clouston Grammar
School case

PRESENT FACTUAL SCENARIO

Facts: There is selective sealing of the
illegal factory of plaintiff by his political
rivals.

Analysis: The present facts showcase that
there is malice of fact on part of
authority which sealed plaintiff's factory.

- However there is no Malice in law as there is legal justification to seal such factory. The case is of "Damnum Sine Injuria" as plaintiff might suffer economic losses but no legal damages.
- In Cheshmore v/s Richards when a person dug the well on his property to maliciously impact neighbors waterflow in order to induce the person to buy the property was seen as mere malice in fact.
- Similarly applying Richard v/s Cheshmore to present facts the plaintiff's suit shall fail because:
 - ① There is no legal damage suffered by plaintiff.

② The acts done by defendant were merely malicious in fact, and not maliciously in law as they had legal justification and power to seal his factory.

Hence, Tortious liability will not apply in the present case of "Damnum sine Injuria"
i.e. Damage without Injury.

12

Can bad faith be
attributed to legislature?

Q.4(B). "The maxim is *volenti non fit injuria*; it is not *scienti non fit injuria*." Explain (15 Marks, 250 Words)

Salmond defines *volenti - Non - Fit - Injuria* [VNFI] as a waiver of claim to suit the other person [wrongdoer]. One who consents to the tort cannot claim damages later. VNFI is one of the eight defences under ~~tort law~~.

ESSENTIALS:

- ① Person shall give consent to face the tort.
- ② consent can be express or implicit
- ③ consent shall be given without force or undue influence.
- ④ Mere knowledge is no consent.

The two ways of VNFI:

- ① Express consent ③ when a person trespasses a house and the owner waives his right to sue.
- ② Implicit consent ③ ~~Hall v Brookland~~ where

a person goes to watch a racing match.

SCIENTI NON FIT INJURIA :

- Mere knowledge about danger does not amount to consent. When a servant rides an unruly horse which is unfit under master's pressure he is not said to have given consent due to the fiduciary relation.

- Similarly in Dann v. Hamilton the court held that mere knowledge is not consent. In this case a lady took lift from a person who was drunk. Court opined that mere knowledge about drunk state does not mean that lady consented for rash driving.

Hence, for VNFI to apply mere knowledge is not sufficient the person is either needed to give express consent or implicit consent which is denied from facts of case.

consent shall not be coerced as seen in R v/s Williams. In this case teacher used his position to take minor's consent for sexual favors.

Hence for VNFI's application mere knowledge is not sufficient and an express or implied consent is needed:

Q52 Again there are two
So (Consent) steps

Q.4(C). Because of the disruptive activities of a terrorist outfit based in a neighbouring country, a storage tank, belonging to an enterprise engaged in inherently dangerous Industry collapsed. Highly poisonous gas contained in the tank escaped and caused death of at least three thousand residents living nearby.
Discuss the measure of damages payable by the enterprise. Enunciate the principle of liability in such cases. (15 Marks, 250 Words)

The present facts deal with concept of No-Fault Liability where the liability of defendant arises due to the breach of an absolute duty.

PRINCIPLES OF LIABILITY

① Strict Liability: Justice Blackburn in Ryland v Fletcher introduced no-fault liability.

1.1 The following are elements:

- (i) Person brings dangerous thing on land
- (ii) For unnatural purpose
- (iii) Such thing escapes
- (iv) causes damage

1.2 Act of Third Party is a valid defence under strict liability as held in case of

Richard v Kothman. In given facts the terrorist attack can be seen as an act of third party.

② Absolute liability: In Sri Ram Fertilisers case the SC of India introduced concept of Absolute liability where the defences of strict liability: (a) Act of god (b) Third party interference (c) Statutory Act, etc are not available

rationale

17th Century law

2.1 The same principle was applied in Mc

Menta v/s Union of India [Bhopal Gas Tragedy]

25th Century problem

In the given case the Absolute liability doctrine shall be applied to hold the factory owner liable.

MEASURE OF DAMAGES

- The enterprise shall be absolutely liable just like UCC to pay damages to each individual who suffered damages.
- The plaintiff's can claim damages under Public Liability Act, 1991 wherein government could represent the injured individuals under a class action.
- Damages are unliquidated which shall be determined by the court according to circumstances.

In the given case enterprise can be held liable under Absolute liability, but not under strict liability.



Q.5(A). When is principal not liable for the torts committed by his servant? [10 Marks, 150 Words]

Under vicarious liability a principal is liable for the acts of servant due to the maxim "Qui Facit Per alium facit per se" i.e. those who do an act indirectly via others are liable.

PRINCIPAL LIABLE FOR SERVANTS ACT :

- ① When Bonafide mistake in course of employment [Lloyd v Grace Smith]
- ② Wrongful mode for doing authorised act [Rickett v Hughes]
- ③ Act out of course of employment subsequently ratified

PRINCIPAL NOT LIABLE :

- ① Beyond course of employment. In case

9. Sheyama Devi v/s State Bank court did not allow vicarious liability when servant performed act in personal relation.

② When a master is forced to choose a servant then s/he is not held liable.

③ When an injury is caused by servant to co-servant. [Priestly v/s Fowler].

④ When the relation between servant and master is of government head of department and employee.

⑤ Criminal liability does not extend to master.

vicarious liability is based upon "Respondent Superior", and does not apply in above cases.

Q.5(B).) Explain the difference between strict liability principle and absolute liability principle [10 marks, 150 Words]

strict liability and Absolute liability are No - Fault liability which arise due to an Absolute - Duty.

Fault liability elements:

- ① legal breach of duty
- ② legal damage [Injuria sine damnum]
- ③ legal remedy [~~like~~ Jus Ibi remedium]

The above three elements are missing in No - fault liability and ~~the fact that~~ defendant was not negligent does not protect him/her.

STRICT LIABILITY

Justice Blackburn introduced the concept in Ryland v/s Fletcher.

- Elements → ① Dangerous object ② Unnatural purpose ③ Escapes ④ Damage to Plaintiff

There are five defences available in strict liability: ① Act of God ② ~~Third Party Intference~~ ③ Statutory Act ④ ~~Mutual Benefit and~~ ⑤ ~~Third Party Intference~~.

This is given better

ABSOLUTE LIABILITY

- The concept was introduced in Sri Ram Farkhuseus case, and was applied in MC Mehta v/s Union [Bhopal Gas case]
- The key difference b/w Absolute and Strict liability is that the above mentioned five defences are unavailable in case of absolute liability and defendant can't escape liability.

Q.5(C). What is different component of Defence of 'Statutory Authority'. [10 marks, 150 Words]

When an individual commits a tort s/he is liable to pay damages or compensate the plaintiff. However there are eight general defences out of which "Statutory Authority" is an important one.

DIFFERENT COMPONENTS

- ① The tort committed should be done because of a statutory Act being performed by defendant.
- ② The damage caused should not be due to negligence [Chelsea waterworks case]. ~~not culpa in~~
- ③ Incidental damages while performing core statutory function is allowed

provided there is no malice or negligence

④ Statutory Authority is not an absolute
defence wherein the MCD was negligent
in maintaining adequate care while
cleaning sewers, it was denied
the defence of statutory authority.

⑤ The tort caused should be a direct
consequence of statutory authorities
act [Chelsea Waterworks case]
what if it is expressly provided?
statutory work is an important defence
to strict liability of the state while
doing its functions as a well run state

Q.5(D). When do the courts award exemplary damages in an action for tort? [10 Marks, 150 Words]

The courts have introduced a new regime of constitutional - tort where exemplary damages have been provided to discourage wrongful torts in society, and to reinstake the victim to the state of affairs which s/he should have been.

EXEMPLARY DAMAGES

① False Impersonment or wrongful confinement.

In Rudal Shah court provided exemplary damages for locking a person for twelve years even after acquittal.

② Injuria sine Damnum cases. In Bhims Singh and Ashby v White court

provided exemplary damages when legal rights of individuals were violated.

③ Create Deterrence in society → In McMenta v/s UOI and DK Basu for violation of Right to life exemplary damages were awarded.

④ State Actions which have criminal nature, are brought under constitutional test for doing justice for the victims [Seh-tan Hungary case] *Deep P. G. Chaturvedi?*

⑤ Court has applied exemplary damages in Public Nuisance against public at large. (Public Nuisance)

Exemplary damages under tort law empowers state to do justice

Q.5(E). Rescue Cases' as an exception to the maxim *volenti non fit injuria*. [10 Marks, 150 Words]

Volenti Non Fit Injuria according to Salmond means "Person cannot exercise a right which he has voluntarily waived".

RESCUE CASES

- The court in numerous cases like Haynes v/s Harwood and Harvey Railways case has stated that VNFI shall not apply to rescue cases.
- The reason behind VNFI inapplicable to rescue cases according to Lord Wright is that it could "discourage the brave men and women" in the society.

- VNFI is inapplicable in rescue cases of human life as seen in Haynes v/s Harwood where a person rescued me other from fire.
 - VNFI is inapplicable in rescue of property cases as held in Harvey Railway case.
arg for humanity bumps
 - The following guidelines are to be followed:
 - ① The rescuer shall not act under sheer emotions, there shall be a chance to save person/property.
 - ② Reasonable chance of success shall be existing in circumstances.
- "VNFI is inapplicable in rescue cases as it could discourage the brave" L. Wright

Q.6(A). Z. maliciously digs a ditch on a public road causing inconvenience to the users of the road. P, a passerby falls into the ditch and thereby sustains injuries on a dark night. Discuss the tortious liability of 'Z', if any. [300 words, 20 Marks]

According to Winfield Public Nuisance involves "interference with public's right to use public resources". Public nuisance is a criminal wrong under Section 268 of Indian Penal Code, 1860

LIABILITY OF Z :

(A) CRIMINAL LIABILITY:

- Z's act of digging a ditch is an interference with right of public at large to use public property.
- The state shall institute criminal proceeding under S.268 of Indian Penal Code against Z.
- In case of public nuisance tortious suit cannot be introduced unless there

are exceptional circumstances.

(B) TORTIOUS LIABILITY IN CRIMINAL NUISANCE:

- In Ramraj v Babul the plaintiff was allowed to institute a tortious suit against a brick kiln factory which was causing nuisance towards public at large.
- The three essentials are to be met to allow tortious suit in public nuisance. The following are the three:
 - ① Plaintiff should suffer special damages
 - ② Damages suffered shall be direct and not consequential to nuisance

③ Damages suffered by plaintiff shall be of special character.

In the given facts all the above conditions are fulfilled:

① P fell in the ditch and suffered special damages.

② The damage suffered by P was a direct consequence of Z's nuisance.

③ The damages ^{Special Injuries} suffered by P were of special character where P suffered severe injuries.

Since all the above three conditions are met the liability of Z in tort law is imposed via public nuisance.

Available course of action :

① criminal proceeding by the state under
S. 267 for public nuisance.

② Tortious liability towards the passengers

Hence Z shall be held liable under
both law of crime and law of
torts.

yes

13

Q.6(B). What is Negligence? Discuss its essential ingredients. [250 words, 15 Marks]

According to Lord Wright "Negligence in strict analysis is much more than mere illegal commission or omission, it includes legal duty, breach of legal duty and injury to person to whom legal duty was owed"

The Essential Ingredients:

- ① Duty to maintain skill and care
- ② Duty owed to plaintiff
- ③ Breach of duty
- ④ Legal damages to person whom duty owed

ANALYSIS

① Duty to Maintain skill and care :

1.1 There shall be a legal duty and not a moral duty to maintain due care and skill [Bezun Bibi v/s Tamil Nadu]

1.2 Reasonable amount of care needs to be taken towards "my neighbor" or any person who could be affected [Donoghue v Stevenson].

② Duty should be owed to the plaintiff.

In Barnhill v Young court held that reasonable man's test is to be applied to see to whom duty is owed.

③ Breach of legal duty by defendant:

3.1 Magnitude of Risk: When a driver allows ~~lift-seekers~~ to sit on roof he ~~is~~ needed to be more careful and needs to know magnitude of risk associated [TN v Bezlum Bibi]

3.2 Outcome to be served: In Katmer v AEC

court opined that to calculate breach of duty it is a must to look into objective of act. When a factory owner opens a factory flooded with water after due care for labourers survival the threshold of duty is lowered.

3.3 Quality of service: The higher the quality the higher the benden or standard of care [East India Company v Krauss]

③ Standard of care in 5-star is higher than in a 2 star.

④ The plaintiff shall suffer legal damages which is Injuria sine Damnum, and not mere Damnum sine Injuria [Morgan v/s Sim].

Negligence according to Lord Wright is based upon idea of due care and caution which ensures people aren't subjected to damages.



Q.6(C). Some writers are of the view that there is no law of tort but only a law of torts. Explain the view. What is your view? [250 words, 15 Marks]

There has been a debate with respect to law of Torts versus Law of Tort.

Law of Torts

- According to Salmond's Pigeon-Hole-Theory there are given set of rules prohibiting certain actions beyond which liability does not arise.
- Under law of Torts theory the burden is on plaintiff to show that the damage suffered by him were the ones proscribed. The court in Allen v Flood accepted the theory

Law of Tort

- According to Winfield all wrongful actions

done without legal justifications are considered a ~~tort~~ and are to be covered by defendant.

- The burden is upon the defendant to prove that there was legal justification behind their actions. The court held this theory of Winfield to be valid in Ashby v White

MY-VIEW

The theory of salmond suffers from various lacunae due to which i prefer winfield's theory of Tort. The following are flaws in Theory of Torts:

- ① Against the Residuary nature of tort

law.

- ② Favors one set of judges for their wisdom,
but disfavors subsequent judge wisdom.
- ③ Against the idea of "Ubi Jus Ibi Remedium"
i.e. where there is a right there is a
remedy. *it helps to broaden*
- ④ Salmond's theory *it's horizontal?* ~~horizontal~~ contractation.
Though Salmond is against judge made
tort law he accepts common law as a
branch of law.
- ⑤ Acceptance of Winfield's theory is much more.
The development of concepts like strict
and Absolute Liability show how the
Theory of Tort is more celebrated.
- The debate *9* is settled and it is Theory of
Tort which prevails in modern regime.