

**SCHOOL OF LAW
JAMIA HAMDARD
NEW DELHI**

SYLLABUS

Law of Torts-II

SEMESTER-II

BALLB-206

Course Description

Where there is a right there is a remedy, it was expressed in the ancient maxim Ubi jus ibi remedium. If a person's right is infringed, then the law allows him remedy by restoring his right. If anybody suffers damages due to the act of another, whatever is the name of the act, the former can claim compensation for damages under the law. The right in this maxim doesn't mean to include each and every right like moral and political rights, but it includes only the legal rights. If there is an infringement of a legal right, there is a remedy available in the law which confers that right. According to the Hofferfeldien analysis every legal right creates a corresponding duty in others; if there is a violation of this duty the injured party can have the right to vindicate his damages. On the basis of this maxim Law of Torts was developed as a distinct branch of civil law. The entire corpus of this branch of law was created by the judges in various courts at various times. Some of the tortious principles owe it origin in very ancient decision such as Tort of Deceit in *Prestely vs. Flower* (1837) and some of them are in modern decisions such as Principle of Absolute Liability in *MC Mehta Case* (1987). Though this is an old branch of law, it does have considerable value and it has survived for many centuries to protect interests of many kinds from unlawful infringements. Property rights and personal freedoms are among the many interests protected by the law of tort and more general duties in the law of negligence protect from a wide variety of wrongs. Over the centuries, tort has proved to be infinitely flexible and even the ancient rules are capable of being adapted to meet modern problems. The prominent feature of this branch of law is that, the judges are free to establish new principles of liability to cater the needs of the society. When compared to other countries in our country law of tort is not much developed. It is mainly because of the lack of awareness and the inability of a person to approach a civil court. The number of cases that go to the High Court and Supreme Court are very few, so they are prevented from the task of contributing to the development of this law. Even in this stringent condition our apex courts find space for establishing new tortious

principles. The unprecedented growth and development in the society has led to the creation of various forms of new threat to the legal rights of individuals. For e.g. sexual harassment at working place and cyber defamation etc. The law of tort by adding new Pigeon holes extends its hands to protect the innocent victims and thereby reduced its further development to a large extent. Thus, law of torts, an old branch of law has a significant role to play in this modern context. Most of the modern legislations such as Insurance act, Motor Vehicle act, Consumer Protection act, etc were originated from the Law of Torts. Being the mother of all these modern legislations it is necessary that a law student must have a good knowledge in this branch of law. Consumer Protection law is a fast-developing area, is also originated from the tort law, so this branch is included as a special module in this syllabus.

Object of the Course

The primary goal of this course is to familiarize the students with the basics of law of tort and to make them appreciate emerging areas of this branch such as Constitutional tort, Cyber tort, Economic tort and Family tort.

Objectives of the Course

At the conclusion of this course students will be able to approach a factual scenario, and analyze what torts exist therein. Students will also be able to discuss any defenses

available to all parties and the appropriate remedies. The main objectives of this course are:

- To learn the major principles fundamental to the operation of the tort system
- To become familiar with most of the important and commonly litigated torts
- To learn the leading case authorities in tort law
- The important legislations that impacts on it
- To develop skills of legal analysis and argument

In addition, this course will consider tort theory and its criticism, in order to identify the functions of tort law, what it is that tort law seeks to achieve in the context of society and its institutions, including the economic system, and to assess it against possible alternatives. Learning about the major torts, related principles and criticisms will enable you to understand the tort system and to learn about other torts on your own as you encounter them in your readings and research.

Evaluation Scheme

- **Internal Evaluation (25 Marks)**

- End Semester Examination (75Marks)

COURSE CONTENT

Unit one: Strict Liability and Absolute Liability

1. Principle of Strict Liability

The doctrine as laid down by Justice Blackburn in the famous case of *Reyland v. Fletcher* and the exceptions there of.

2. Principle of Absolute Liability

Evolution of the principle to face challenges posed by modern industrial conditions

3. No fault Liability-Statutory Expressions;

1. The Motor Vehicles Act
2. Public Liability Insurance Act
3. The Personal Injuries Act

Referred Cases

- *Reyland v. Fletcher (1868) L.R. 3 H.L.30*
- *M.C. Mehta v. Union of India (1987) 1SCC395*
- *Bhopal Gas Leak Disaster Case*
- *Gujarat State Road Transport Corporation v Raman B Prabha bhai (1987) 3SCC*

Unit Two: Vicarious Liability

Liability for the Wrong Committed by Other Persons

I. Principle of Vicarious Liability and its basis *Qui facit per alium facit per se and respondent superior*

1. Master and Servants

2. Principle and Agent
3. Partners of a firm
4. States Liability: Doctrine of Sovereign Immunity in Referred to the Crown Proceedings Act 1947, Federal Torts Claims Act 1946
5. Article 300 of the Indian Constitution

II. Joint Tort Feasors, Joint and Several Liability

Referred Cases

- *Loydv. Grame Smith &Co. (1912) AC716*
- *Brook v. Boole (1928) 2 KB578*
- *Marryweatherv. Nixon (1799) 101 ER1337.*
- *Nicholesv. Marshland (1876)2 Ex.D.1*
- *Smith v. London and South Western Railway Co. (1870) LR6*
- *Peninsular and Steam Navigation Co. Secretary of State for India (1861) 5Bom.*

- *State of Rajasthan v. Vidyawati Devi AIR 1962 SC933*
- *Kasturi Lal v. State of U.P. AIR 1965 SC1039*
- *N. Nagendra Rao & Co. v. State of A.P.(1994)6 SCC205*
- *Chairman Railway Board v. Chandrima Das (2000)2 SCC465*

Unit Three: - Causation & Quantification of Damages

1. Various Principles for Fixing the Liability
2. Remoteness of Damage, But for Test
3. Doctrine of Reasonable Foresight
4. Ascertaining the Damages
5. The Egg-shell Skull Principle
6. Kinds of Damages

Referred Cases

- *Scott v. Shepherd (1773)2 WBI892*
- *In Re Polemise Case (1921)3 KB 560 CA*
- *WagaonMound Case (1961)AC388*
- *Leisbosch Dredger v. Edison, (1933) AC 449HL.*

Unit Four: - General Defenses for the Tortious Liability

1. *Volenti Non Fit Injuria*
2. *Vis Major (Act of God)*
3. Inevitable Accident
4. Necessity
5. Private Defense
6. Mistake
7. *Act of State*
8. Authority- Statutory, Judicial, Quasi Judicial, Parental and Quasi-Parental
9. Plaintiff's Default
10. Act of Third Parties

Referred Cases

- *Hall v. Brookaland Auto Racing Club*
- *Smith v. Backer (1981) AC325*
- *Stanley v. Powell (1891)11 Q.B.86*
- *Heynes v. Harwood (1935) 1 KB146*

Unit Five: - Consumer Protection Act/Motor Vehicle Act/Emerging Areas

in Law of Tort

1. Remedies from Consumer Courts
2. Motor Vehicle Act
3. Emerging trends in the Law of Tort

Referred Cases

- *Astroworks, Inc. v. Astroexhibit, Inc., 257 F.Supp.2d 609 (SDNY2003)*

SUGGESTED READINGS

- 1) *Wienfield and Jolowicz, Tort, 17thEdi., Sweet & Maxwell2006*
- 2) *Salmond and Heuston on the Law of Torts*
- 3) *Paula Giliker and Silas Beckwith. Tort, 3rdEdi. Sweet & Maxwell2008*
- 4) *Salmond, J W, Salmond's Law of Torts (8th edition, Sweet & Maxwell, London, 1934)*
- 5) *Fleming, J G, The Law of Torts (9th edition, LBC Information Services, Sydney, 1998)*
- 6) *Ramaswamy Iyer's The Law of Torts, 10thEdi. Butterworths Wadhwa2007*

- 7) *Ratan Lal and Dhiraj Lal on Law of Torts, 26thEdi. Butterworths Wadhwa2010*
- 8) *David Baumer, JC Poindexter, Cyber law and E-Commerce, McGraw-Hill Irwin Newyork USA2002.*
- 9) *Tabrez Ahmad "Cyberlaw, E-Commerce & M-Commerce". APH Pub.Corp. New Delhi 2003.*
- 10) *Lee B. Burgunder, Legal Aspects of Managing Technology 2ndEdition West 2001.*
- 11) *V.K.Eradi, ConsumerProtectionJurisprudence, LexisNexisNewDelhi2005.*
- 12) *Mukherjee, Motor Vehicles Act 1988 with rules and exhaustive commentary on Motor accident compensation 2ndEdi. Premier Pub. Allahabad2006.*
- 13) *DK Ganguly Commentary on The Motor Vehicles Act 1988 with rules along with allied laws, Kamal Pub. New Delhi2007*

Wish you all the best!
