Definition of Tort

Definitions of 'Tort'

Some of the important definitions, which throw light on the nature of tort are follows,

As per Salmond, "A tort is a civil wrong for which the remedy is an action for damages "and which is not exclusively the breach of contract or the breach of trust or breach of merely equitable obligation".

As per Winfield, Tortious liability arises from the breach of a duty primarily fixed the law, this duty is towards the persons generally and its breach is redressible by an action for unliquidated damages."

As per Clark and Lindsell, "Tort is a wrong independent of contract for which the appropriate remedy is a common law action."

As per Fraser, "A tort is an infringement *of right in rent* of a private individual giving a right of compensation at the suit of injured party."

As per Section 2(m), the Limitation Act, 1963 "Tort means a civil wrong which is not exclusively a breach of contract or breach of trust." Shortcomings of Winfield's definition

1. In framing this definition, Winfield is not seeking to indicate what conduct is and what is not sufficient to involve a person in tortious liability, to distinguish from certain other branches of law
2. The pharse 'duty towards persons generally' is not adequate to include duties arising from special relationships like doctor and patient etc., and to exclude duties arising between guardian and ward or trustee and beneficiary etc. which fall outside the ambit of law of tort.
3. It is not necessary and distinctive remedy for damages as the peculiar and distinctive remedy for a tort or breach of duty is fixed by the law and not by the contract, because such damages may be claimed for a breach of trust.
4. The phrase 'liability arises from the breach of duty', may be true at an earlier stage of development of law of tort, but it is not applicable or appropriate to an important category of liability at the present day, for example, vicarious liability of a master for his servant's tort.

Thus, the tort can be defined as a civil wrong which is redressible by an action for unliquidated damages and which is other than a mere breach of contract or breach of trust.

An analysis of the various definitions of 'Tort' reveal number of elements which can be laid down as,

(1) tort is a civil wrong,
(2) such civil wrong is other than a mere breach of trust or contract
(3) the remedy for such civil wrong lies in an action for unliquidated damages.

The detailed discussion is as follows

(1) Tort is a civil wrong, Wrong can be civil or criminal. Tort belongs to the category of civil wrongs. In the case of a civil wrong, the injured party institutes civil proceedings against the wrongdoer and the remedy is damages. The injured party is compensated by the defendant for the injury caused to him by the another party. Whereas in the case of a

criminal wrong, the State brought criminal proceedings against the accused, and the remedy is not compensation. Punishment is provided to the wrongdoer. In a case where the act results in both civil as well as criminal wrong then both the civil and criminal remedies would concurrently be available.

(2) **Tort is other than Breach of Contract or Breach of Trust,** in order to determine whether the wrong is tort or not the following steps are to be followed,

(a) Whether the wrong is civil or criminal.

(b) If it is civil wrong, it has to be further seen that whether it belongs to another recognised category of the civil wrongs, such as breach of contract or breach of trust.

(c) It is only when the wrong does not belong to any other category of the wrong that is, breach of contract or trust, it is tort and if the wrong is breach of contract or trust, it is not a tort.

However, if the act involves two or more civil wrongs, one of which may be a tort, in such a case injured party can either claim damages under law of torts or under other breach of civil wrong for example, breach of contract, but cannot claim damages twice.

(3) **Tort is redressible by action for unliquidated damages,** Damages is the most important remedy for a tort. After the commission of the wrong, it is not possible to undo the harm which has already been caused but it is the money compensation which can be awarded to the injured party. for example, if there is attack on the reputation of the person, there is nothing which can restore his lost reputation, but money compensation equivalent to harm can be paid to the injured. Unliquidated damages means when the compensation has not been determined previously or agreed by the parties but it is left to the direction of the court. These are the unliquidated damages which distinguish tort from breach of contract or breach of trust in which damages may be liquidated that is, previously determined or agreed to by the parties.

The definition given by the Salmond fails to underline the essential characteristics of tortions acts. According to this definition tort is a wrong but it does not explain what is wrong and what kinds of wrong explaining jural features of tort. Moreover the expression "civil wrong" itself requires explanation. The definition is more informative but this is also not perfect.

Wrongful Act

Wrongful act or omission

The first essential ingredient in constituting a tort is that a person must have committed a wrongful act or omission that is, he must have done some act which he was not expected to do, or, he must have omitted to do something which he was supposed to do. There must have been.breach of duty which has been fixed by law itself. If a person does not observe that duty like a reasonable and prudent person or breaks it intentionally, he is deemed to have committed a wrongful act. In order to make a person liable for a tort he must have done some legal wrong that is, violates the legal right of another person for example, violation of right to property, right of bodily safety, right of good reputation. A wrongful act may be positive act or an omission which can be committed by a person either negligently or intentionally or even by committing a breach of strict duty for example, driving a vehicle at an excessive speed.

The wrongful act or a wrongful omission must be one recognized by law. If there is a mere moral or social wrong, there cannot be a liability for the same. for example, if somebody fails to help a starving man or save a drowning child. But, where legal duty to perform is involved and the same is not performed it would amount to wrongful act. In Municipal Corporation of Delhi Verses Subhagwati, where the Municipal Corporation, having control of a clock tower in the heart of the city does not keep it in proper repairs and the falling of the same results in the death of number of persons, the Corporation would be liable for its omission to take care. Similarly failure to provide safe system would, also amount to omission, [General Cleaning CorporationLimited Verses Christmas,

Legal Damage and Remedy

Legal Damage

The second important ingredient in constituting a tort is legal damage. In order to prove an action for tort, the plaintiff has to prove that there was a wrongful act, an act or omission which caused breach of a legal duty or the violation of a legal right vested in the plaintiff. So, there must be violation of a legal right of a person and if it is not, there can be no action under law of torts. If there has been violation of a legal right, the same is actionable whether the plaintiff has suffered any loss or not. This is expressed by the maxim, *"Injuria sine damnun 'Injuria'* refers to infringement of a legal right and the term *'damnum'* means substantial harm, loss or damage. The term *'sine'* means without.

However, if there is no violation of a legal right, no action can lie in a court despite of the loss, harm or damage to the plaintiff caused by the defendant. This is expressed by the maxim *'Damnum sine injuria* The detailed discussion of these two maxims is as follows.

Injuria Sine Damno and Damnum Sine Injuria

Injuria sine damnum

This maxim means infringement or violation of a legal private right of a person even if there is no actual loss or damage. In such a case the person whose right is infringed has a good cause of action. It is not necessary for him to prove any special damage. The infringement of private right is actionable *per se.* What is required to show is the violation of a right in which case the law will presume damage. Thus, in cases of assault, battery, false imprisonment, libel etc., the mere wrongful act is actionable without proof of special damage. The- court is bound to award to the plaintiff at least nominal damages if no actual damage is proved.

Thus, this maxim provides for,

(1) infringement of a legal right of a person.

(2) no actual loss or damage is required to prove.

(3) infringement of a private right is actionable *per se.*

In Ashby Verses White, the plaintiff was a qualified voter at a Parliamentary election, but defendant, a returning officer, wrongfully refused to take plaintiffs vote. No loss was suffered by such refusal because the candidate for whom he wanted to vote won the election. Plaintiff succeeded in his action. Lord Holt, C.J., observed as follows, "If the plaintiff has a right he must of necessity have a means to vindicate and maintain it, and a remedy if he is injured in the exercise or enjoyment of it, and indeed it is a vain thing to imagine a right without a remedy, for want of right and want of remedy are reciprocal". "Every injury imports a damage, though it does not cost a party *one penny* and it is impossible to prove the contrary, for the uamage is not merely pecuniary, but an injury imports a damage, when a man is thereby hindered of his right. As in an action for slanderous words, though a man does not lose a penny by reason of the speaking of them, yet he shall have an action. So, if a man gives another a cuff on his car, though it costs him nothing, not so much as a little diachylon (plaster), yet he shall have his action. So, a man shall have an action against another for riding over his ground, though it does him no damage, for it is an invasion of the property and the other has no right to come there."

In **Municipal Board of Agra Verses Asharfi Lal,** the facts are, the Plaintiff (Asharfi Lal) was entitled to be entered as an elector upon the electoral roll. His name was wrongfully omitted from the electoral roll and he was deprived of his right to vote. It was held by the court that if any duly qualified citizen or person entitled to be on the electoral roll of an constituency is omitted from such roll so as to be deprived of his right to vote, he has suffered a legal wrong, he has been deprived of a right recognised by law and he has against the person so depriving him, a remedy, that is, an action lies against a person depriving I him of his right.

Similarly, in **Bhim Singh Verses State of J&K,** the petitioner, an M.L.A. of Jammu & Kashmir Assembly, was wrongfully detained by the police while he was going to attend the Assembly session. Thus, he was deprived of his fundamental right to personal liberty and constitutional right to attend the Assembly session. The court awarded exemplary damages of Rs. Fifty thousand by way of consequential relief.

An action will lie against a banker, having sufficient funds in his hands belonging to the customer, for refusing to honour his cheque, although the customer has not thereby sustained any actual loss or damage, **Marzetti Verses Williams Bank**

Damnum sine injuria

Damnum sine injuria means an actual and substantial loss without infringement of any legal right. In such a case no action lies. There are many harms of which loss takes no account and mere loss of money's worth does not by itself constitute a legal damage. The essential requirement is the violation of a legal right.

There are many forms of harm of which the law takes no account,

(1) Loss inflicted on individual traders by competition in trade,

(2) Where the damage is done by a man acting under necessity to prevent a greater evil,

(3) Damage caused by defamatory statements made on a privileged occasion,

(4) Where the harm is too trivial, too indefinite or too difficult of proof,

(5) Where the harm done may be of such a nature that a criminal prosecution is more appropriate for example, in case of public nuisance or causing of death,

(6) There is no right of action for damages for contempt of court.

Gloucester Grammer School Case, Hen. The defendant, a schoolmaster, set up a rival school to that of the plaintiff. Because of the competition, the plaintiffhad to reduce their fees. Held, the plaintiffhad no remedy for the loss suffered by them. Hanker J. said *"Damnum* may be absque injuria as if I have a mill and my neighbour builds another mill whereby the profits of my mill is diminished... but if a miller disturbs the water from going to my mill, or does any nuisance of the like sort, I shall have such action as the law gives."

Chesmore Verses Richards, The plaintiff, a mill owner was using water for over 60 years from a stream which was chiefly supplied by the percolating underground water. The defendants dug a well on their land deep enough to stop the larger volume of water going to plaintiff's stream. *Held,* that the plaintiff has no right of action since it was a case *ofdamnum sine injuria.*

Bradford Corporation (Mayor *of) Verses* Pickles, In this case, the defendant was annoyed when Bradford Corporation refused to purchase his land in connection with the scheme of water supply for the inhabitants of the town. In the revenge the defendant sank a shaft over his land intentionally and intercepted the underground water which was flowing to the reservoir of the plaintiffs. *Held,* that the plaintiffs have no cause since the defendant was exercising his lawful right although the motive was to coerce the plaintiff to buy his land. The House of Lords approved the ruling in **Chesmore Verses Richards.**

Moghul Steamship Company Verses McGregor, Gow and Company, A number of steamship companies acting in combination agreed to regulate the cargoes and freight charges between China and Europe. A general rebate of 5 per cent was allowed to all suppliers who shipped with the members of the combination. As a result of this action, the plaintiffs had to bring down their rates to that level which was unremunerative to them. *'Held,* that there was no cause of action as

the defendants had acted with lawful means to increase their trade and profits. No legal injury was caused and the case fell within the maxim *damnum sine injuria.*

Dickson Verses Renter's Telegraph Company, 'A' sent a telegram to 'B' for the shipment of certain goods. The telegraph company mistaking the registered address of'C' for that of'B', delivered the telegram to 'C'. 'C', acting on the telegram sent the goods to 'A' who refused to accept the goods stating that he had ordered the goods not from 'C' but from 'B'. 'C' sued the Telegraph Company for damages for the loss suffered by him. *Held,* that *C' had no cause of action against the company for the company did not owe any duty of care to 'C' and no legal rights to 'C' could, therefore, be said to have been infringed.

Rogers Verses Rajendera Dutt. The plaintiff owned a tug which was employed for towing the ships in charge of Government Pilots in Hoogly. The plaintiff demanded exorbitant price for towing the ship. Consequently, the Superintendent of Marine issued an order prohibiting the use of that tug in future whereby the owner was deprived of the profits. *Held,* that they had no legal right to have their tug employed by the Government.

Town Area Committee Verses Prabhu Dayal, A legal act, though motivated by malice, will not make the defendant liable. The plaintiff can
get compensation only if he proves to have suffered injury because of an illegal act of the defendant. The plaintiff constructed 16 shops on the old foundations of a building, without giving a notice of intention to erect a building under section 178 of the Uttar. Pradesh Municipalities Act and without obtaining necessary sanction required under section 108 of that Act. The defendants (Town Area Committee) demolished this construction. In an action against the defendant to claim compensation for the demolition the plaintiff alleged that the action of the defendants was illegal as it was *malqfide,* the municipal commissioner being an enemy of his. It was held that the defendants were not liable as no *"injuria"* (violation of a legal right) could be proved because if a person constructs a building illegally, the demolition of such building by the municipal authorities would not amount to causing *"injuria"* to the owner of the property.

In **Acton Verses Blundell,** the defendants by digging a coalpit intercepted the water which affected the plaintiff's well, less than 20 years old, at a distance of about one mile. Held, they were not liable. It was observed, "The person who owns the surface may dug therein and apply all that is there found to his own purposes, at his free will and pleasure, and that in the exercise of such rights he intercepts or drains off the water collected from underground springs in the neighbour's well, this inconvenience to his neighbour falls within description *damnum absque injuria* which cannot become the ground of action."

Distinction between *Injuria sine damnum* and *Damnum sine injuria*

First on the basis of meaning,
Injuria sine damunm means violation of a legal right without actual loss or damages where as Damnum sine injuria means actual or substantial Damages without infringement of a legal right.

Second on the basis of action,
Injuria sine damunm is always actionable where as *Damnum sine injuria* is never actionable.

Third on the basis of nature of wrong,
Injuria sine damunm contemplates legal wrongs where there is a remedy where as *Damnum sine injuria* contemplates only moral wrongs without any remedy.

Fourth on the basis of act of defehdent,
In *Injuria sine damunm* defendant acts illegally to violate legal right of the plaintiff where as In *Damnum sine injuria* defendant acts legally and thereby causes harm to the plaintiff.

Crime

Distinction between 'Tort' and 'Crime'

Tort differs both in principle and procedure from a crime and there are basic differences between a tort and a crime which are as follows ,

First on the basis of nature of wrong,
tort is a private wrong. Private wrong is the infringement of civil right of an individual. It is comparatively less serious and labelled as civil wrong. where as crime is a public wrong. Public wrong is a violation or breach of rights and duties which affect the community, as a whole. It is a more serious wrong.

Second on the basis of nature of remedy,
The remedy in law of tort is damages where as the remedy in crime is punishment

Third on the basis of parties to suits,
In case of tort the suit is filed by injured or aggrieved party where as In case of crime the complaint is filed in the name of State.

Fourth on the basis of withdrawal of suits,
In case of tort the suit can be withdrawn at any time and compromise can be done with wrongdoer where as In case of crime the complaint cannot be withdrawn except in certain circumstances.

Fifth on the basis of codification,
There is no codification in Law of Torts where as The Criminal law is codified.

Sixth on the basis of bar of limitation,
There is bar of limitation of prosecution in Law of torts where as There is no bar of limitation of prosecution in crime.

Seventh on the basis of survival of action,
In case of death of tort-feaser his legal representative can be sued except when the tort is defamation, personal injury not causing a death where as In case of death of offender, the suit is put to an end.

Eighth on the basis of application of law,
There is no separate statute deals with tort. Tort is based on judicial decisions where as The crimes are dealt in Indian Penal Code, 1860.

Ninth on the basis of intention,

In tort, Intention is important but not in all cases, for example, in cases of negligence where as in crime, Intention is the crux of the offence.

Despite of these differences, the injunction may be granted in tort as well as in crime. There are various wrongs which fall under law of torts as well as under criminal law, for example, Assault, Defamation, Negligence, Nuisance and Conspiracy.

Breach of Contract

Distinction between Tort and Breach of Contract

First on the basis of fixation of duty

In tort, the duty is fixed by the law itself where as In contract, the duty is fixed by the party themselves.

Second on the basis of attribution of duty,

In tort, the duty is towards every person of the community or society where as In contract, the duty is towards specific person or persons.

Third on the basis of violation of rights,

A tort is a violation of a right in rem (that is, a right vested in some determinate person and available against the world at large) where as A breach of contract is an infringement of a right in personam (that is, of a right available only against some determinate person or party.

Fourth on the basis of need of privity,

In an action for tort, no Privity is needed or is required to be proved where as In a breach of contract, Privity between the parties must be proved.

Fifth on the basis of motive,

In tort, motive is often taken into account where as In breach of contract motive is not relevant.

Sixth on the basis of damages,

In tort, measure of damages is different in different circumstances which may be nominal or exemplary where as In Breach of contract, damages are awarded in the form of compensation for pecuniary loss suffered.

Seventh on the basis of suit by third party,

A third party can sue for tort even though there was no contract between the person causing injury and the person injured where as A third party to a contract cannot sue for breach of contract except in some exceptional cases.

Eighth on the basis of intention,

Intention is sometimes taken into consideration where as Intention, in case of breach of contract, is of no relevance.

Ninth on the basis of concern,

Law of tort is concerned with losses where as Contract law is concerned with promises.

Tenth on the basis of period of limitations,

Limitation begins to run from the date when damages occurs where as Limitation commences when the breach of obligation takes place.

Distinction between Tort and Breach of Trus

First on the basis of damages,
Damages in a tort are unliquidated where as Damages in breach of trust are liquidated.

Second on the basis of origin,
Law of torts has its origin as part of common law where as Breach of trust could be redressed in the court of Chancery.

Third on the basis of law of property,
Law of tort is not regarded as a division of the law of property where as Law of trust can be and is regarded as a division of the law of property.

Distinction between Tort and Quasi-Contract

When a person gains some advantage or benefit to which some other person was entitled to, or by such advantage another person suffers an undue loss, the law may compel the former to compensate the latter in respect of advantage so gained, even though there is no such contract. The law of quasi-contracts covers such obligations.

Distinction between Tort and Quasi-Contract

First on the basis of damages,
A claim for damages under law of tort is always for an unliquidated sum of money where as A claim for damages is for liquidated sum of money.

Second on the basis of attribution of duty,
Under law of torts the duty is towards persons generally where as In a quasi-contract, the duty is always towards a particular person.

The common point between tort and quasi-contract is that the duty in each case is imposed by the law. However, in certain cases, where a tort has been committed, the injured party has a choice of not bringing an action for damages in tort, but of suing the wrongdoer in quasi-contract to recover the value of the benefit obtained by the wrongdoer. When the injured party elects to sue in quasi-contract instead of tort, he is said to have 'waived the tort'.

Motive and Malice In Law of Torts

Difference between Motive and Intention

Motive is the ultimate object with which an act is done, while intention is the immediate purpose, for example, where a person rescues a girl from vagabonds, the intention of the person is to save her still the motive with which he might have done the act may be to seduce the girl.

Exceptions, There are certain categories of torts where malice may be an essential element and, therefore, relevant for purpose of determining liability.

(1) In cases of deceit, malicious prosecution, injurious falsehood and defamation, where defence of privilege or fair comment is available. The defence of qualified privilege is only available, if the publication was made in good faith.

(2) In cases of conspiracy, interference with trade or contractual relations.

(3) In cases of nuisance causing of personal discomfort by an unlawful motive may turn an otherwise lawful act into nuisance."

(3) Malice, Malice is usually classified into two divisions,

(a) **Malice in fact,** Express or actual malice, or malice in fact means an act done with ill-will towards an individual. It is, therefore, what is known as malice in the ordinary or popular sense, that is, ill-will, hatred, enmity against a person. But implied malice means a wrongful act done intentionally without any just cause or excuse.

(b) **Malice in law,** Malice in law or legal malice is a term which is practically superfluous as in law every tortious act is impliedly malicious on account of its being a legally wrongful act. The words 'malice in law' signifies either (1) the intentional doing of a wrongful act without just cause or excuse, or (2) an action determined by an improper motive. To act maliciously means sometimes to do the act intentionally, while at other times it means to do the act from some wrong and improper motive of which the law disapproves.

The distinction between malice in fact and malice in law is that,

(a) Express malice, or malice in fact is an act done with ill-will towards an individual, malice in law means an act done wrongfully and without reasonable and probable cause, and not, as in common parlance, an act dictated by angry feeling or vindictive motive. In order to constitute legal malice, the act done must be wrongful.

(b) Malice in fact depends upon motive, malice in law depends upon knowledge.

(c) Malice in fact means will or any improper motive against a person but in its legal sense, that is, malice in law means the concurrence of the mind with a wrongful act done without just cause or excuse.

DEFENCES AGAINST TORTIOUS LIABILITY

QUESTION. 1. What are the defences available against a tort committed?

Answer. Under certain conditions an act ceases to be wrongful, although in absence of those conditions the same act would amount to be a wrong. Under such conditions the act is said to be justified or excused. These conditions which excuse or justify an act which would, otherwise, have been a tort may be divided into two categories. *First*, those conditions which excuse or justify some specific tort but do not excuse or justify torts generally. for example truth and fair comment are defences available for the tort of defamation only. *Second*, those conditions which are applicable to all torts equally. for example, defence of consent can excuse any tort. Thus, the second category covers those "rules of immunity which limit the rules of liability" in general and are called general exceptions.

These general exceptions, or conditions, or justification of torts are,

1. Consent or Leave and Licence. *(Volenti nonfit injuria)*,
2. Act of God,
3. Inevitable accident,
4. Necessity,
5. Private Defence,
6. Acts causing slight harm,
7. Statutory Authority,
8. Act of State,
9. Judicial or Quasi-Judicial acts,

Volenti Non Fit Injuria

Volenti Non fit Injuria (Consent or Leave and Licence)

The maxim is based on the principle of common sense. If 1 invite you to my house, can I sue you for trespass. Answer is no, because I have consented to your entry upon my land. But if a guest who is to be entertained in the drawing room enters into my bedroom without my permission, he can be sued for trespass, because his entry into the bedroom is unauthorised. A postman entering into the house for delivering a letter cannot be sued if he remains within a permissible limit, because in such a case the consent is inferred but if the postman crosses that permissible limit he can be sued.
The consent may be either— (1) express, or (2) implied.

In **Dr. Laxman Balkrishan Verses Trimbak Bapu,** the Supreme Court held that if a doctor does not apply due care during the operation, he will be liable even after the patients' consent for suffering loss during operation. In the case the patient died because proper primary care was not taken while giving.anesthetia. **Essential Conditions of Doctrine of Volenti Non fit Injuria**
For the application of the maxim the following conditions should be fulfilled,
(1) **Consent must be freely given,** It is necessary for the application of this maxim that the consent must be freely given. The consent is not free, if it has been obtained by undue influence, coercion, fraud, misrepresentation, mistake or the like elements which adversely affects a free consent.

In **White Verses Blackmore,** the plaintiffs husband paid for admission of his family for witnessing a car race. During the race a car got entangled in the safety rope and the plaintiff was catapulated some twenty feet and died consequently. It was *held* that since the deceased did not have full knowledge of the risk he was running from the faulty lay out of the ropes, he did not willingly accept the risk.
(2) Consent cannot be given to an illegal act, No consent can legalise an unlawful act or an act which is prohibited by law and when the tort, is of such a character as to amount to a crime, for example, fighting with naked fists, duel with sharp swords are unlawful,

and even though the parties may have consented, yet the law will permit an action at the instance of the plaintiff.

(3) Knowledge of risk is not the same thing as consent to run the risk, The maxim is *volenti nonfit injuria* and not the *scinti non-fit injuria* — knowledge of danger does not necessarily imply a consent to bear that danger. This doctrine was for the first time enunciated in **Smith Verses Baker.** In this case, the plaintiff worked in a cutting on the top of which a crane was carrying heavy stone over his head while he was drilling the rock face in the cutting. Both he and employers knew that there was a risk of stones falling, but no warning was given to him of the moment at which any particular jibbing commenced. A stone from the crane fell upon him and injured. The House of Lords held that defendants were liable.

Thus, for the maxim *volenti nonfit injuria* to apply two things are necessary,

(1) knowledge that risk is there, and

(2) voluntary acceptance of the risk.

Meaning of "Rescue Cases", Winfield described rescue cases as under — Rescue cases are typified by *A's* death or injury in rescuing or endeavouring to rescue *B* from an emergency or danger to B's life or limb created by the negligence of C Is C liable to *A"!* Doctrine of assumption of risk does not apply where plaintiff has under an exigency caused by defendant's wrongful misconduct, consciously and deliberately, faced a risk, even of death to rescue another from imminent danger of personal injury or death, the defence of leave and licence is not applicable to the plaintiff, whether the person endangered was one to whom he owed a duty of protection as a member of his family, or was a mere stranger lo whom he owed no such duty.

In **Slaster Verses Clary Cross Company Limited,** the plaintiff was struck and injured by a train driven by the defendant's servant while she was walking along a narrow tunnel on a railway track owned by the defendant. The defendants, knew it that the tunnel was used by the members of public and, therefore, they had instructed their servants to drive vehicle slow while entering the tunnel, The accident took place because of the negligence of the servant as he did not observe the instructions. It was held that the defendants were liable. Denning, LJ, said, "It seems that when this lady walked in the tunned although it may be said that she voluntarily took the risk of danger from the running of the railway in the ordinary and accustomed way, nevertheless, she did not take the risk of negligence by the driver."

In **Dr. J.N. Srivastava Verses Ram Bihari Lal and others,** where the doctor observed after opening the abdomen cavity that patient's appendix was all right but the operation of Gall-bladder was needful. He proceeded with the operation— later on the patient died. The Court held that it was not possible to seek the consent for the Gall-bladder operation. In such situations doctor was not responsible.

If the plaintiff is not acting under compulsion of any duty, moral or legal he will not be entitled to recover anything. For instance, in **Cutler Verses United Dairies London Limited.,** the plaintiff saw a horse belonging to a driver getting out of his control and

voluntarily went to his assistance and was thrown back by the horse and hurt. It was held that the maxim applied and the plaintiff was disentitled from recovering damages, as he knew that the act was fraught with danger and he willingly undertook the same.

Volenti non fit injuria and contributory negligence, In case *of volenti non fit injuria* the plaintiff is always aware of the nature and extent of the danger which he encounters while it is not so in case of contributory negligence. *Volenti non fit injuria* is a complete defence while in contributory negligence the claim of the plaintiff is reduced to the extent the claimant himself was to blame for the loss.

2. Act **of God**

Act of God includes those consequences which are occasioned by elementary force of nature unconnected with the agency of man. Common examples of Act of God are the falling of a tree, a flash of lightening, a tornado or a flood.

The essential conditions of this defence are,

(1) the event causing damages was the result of natural forces without any intervention from human agency, and

(2) the event was such that the possibility of such an event could not be recognized by using reasonable care and foresight.

Whether a particular event amounts to an Act of God is question of fact. Today the scope of this defence is very limited because with the increase in knowledge the foresight also increases and it is expected that the possibility of the event could have been visualized.

Whether a particular circumstance or occurrence amounts to an act of God is a question of fact in each case and the criterion for deciding it "is no human foresight and prudence could reasonably recognise the possibility of such an event." There is a tendency on the part of courts to limit the application of the defence of act of God not because of the fact that its application in the cases of absolute liability is diminished but because advancement in the scientific knowledge which limits the unpredictable.

In Ramalinga Nadar Verses Narayana Reddiar, the Kerala High Court held that the criminal activities of the unruly mob cannot be considered to be an Act of God.

InSaraswati Parabhai Verses Grid Corporation of Orissa and Others, where an electric pole was uprooted and fell down with live wire which caused death of a person. Orissa High Court rejecting the defence of Act of God held that it was the responsibility of the Grid Corporation authorities to provide protection in such situation of storm and rain.

3. Inevitable Accident

All recent authorities support the view that 'inevitable accident'"negatives liability. An 'inevitable accident' is that which could not possibly be prevented by the exercise of ordinary care, caution and skill. It means an accident physically unavoidable. It does not apply to anything which either party might have avoided. It is an accident such as the defendant could not have avoided by use of the kind and degree of care nece'ssary to the exigency, and the circumstances, in which he was placed. If in the performance of a lawful act, done with all due care, damage ensues through some unavoidable reason, such damage affords no cause of action. "People must guard against reasonable probabilities, but they are not bound to guard against fantastic possibilities.

In A. Krishna Patra Verses Orissa State Electricity Board, the Court explained inevitable act and held that an inevitable accident is an event which happens not only without the concurrence of the will of the man, but in spite of all effects on his part to prevent it.

Limitations of this defence, In trespass as well as in negligence, inevitable accident has no place. Similarly, under the rule in Ryland Verses Fletcher, the defendant is liable even if he has taken reasonable care. In the same way the defence has no role in cases of absolute liability.

Distinction between "inevitable accident" and "act of God", Dr. Winfield says that "an act of God" is much older, much simpler and much more easily grasped by primitive people than is the idea of 'inevitable accident.' A falling tree, a flash of lightning, a tornado, or flood presents to the observer a simple and dramatic fact which a iayman would regard as an excuse for harm done without further argument.... But the accidents which are not convulsions of nature are a very different matter. To know whether injury from a run away horse was inevitable, one must ask 'would a careful driver have let it run away'..,. 'Inevitable accident' differs from the act of God in

(1) not depending on 'natural forces,

(2) being a general defence. All cases of 'inevitable accident' may be divided into two classes,

(1) those which are occasioned by the elementary forces of nature unconnected with the agency of man or other cause, and

(2) those which have their origin either in whole or in part in the agency of man, whether in the commission or omission, non-feasance or misfeasance, or in any other causes independent of the agency of natural forces. The term "act of God" is applicable to the former class. The latter type of accidents are termed 'inevitable accident' or "unavoidable accidents."

An act of God will be extraordinary occurrence due to natural cause, which is not the result of any human intervention, which could not be avoided by any foresight and care, for example, a fire caused by lighting. But an accidental fire, though it might not have resulted from any act or omission of common carrier, cannot be an act of God.

(4) Private Defence

Private defence is another ground of immunity well known to the law. No action is maintainable for damage done in the exercise of one's right of private defence of person or property provided that the force employed for the purpose is not out of proportion to the harm apprehended. And what may be lawfully done for oneself in this regard may likewise be done for a wife or husband, a parent or child, a master or servant. But the force employed must not be out of proportion to the apparent urgency of the occasion. Thus it is not justifiable to use a deadly weapon to repel a push or blow with the hand. "Honest and reasonable belief of immediate danger" is the test. Indian Penal Code extends the benefit of this defence even in case of causing death in certain circumstances.

In India the right of private defence has been given a statutory recognition in Sections 96 to 106 of the Indian Penal Code. Though provisions of these sections are applicable to the criminal law, the principles contained therein may profitably be imported into the Law of Torts. Self defence as a permissible defence against an action in torts has recently been discussed by Orissa High Court in **Devendra Bhai Verses Megha Bhai,** the principle

extends not only to the right of person to protect himself but also to protect others' life, his wife, his parents and his child. He is to use only necessary force or not to use force in excess of what is necessary.

Exceptions to The Defence of Maxim Volenti Nonfit Infuria

Exceptions/Limitations to the Maxim

There are certain exceptions or limitations to the application of this maxim,
(1) **Illegal Consent,** No consent can legalise an unlawful act for example, fighting with naked fists or duel with sharp swords. They are unlawful even if the parties may have consented. It was pointed out in Verses **Donovan,** that no person zcan license another to commit a crime.
(2) **Breach of statutory duty,** The maxim does not apply where the act of the plaintiff relied upon to establish the defence under the maxim is the very act which the defendant was under the duty to prevent. Thus, it is no answer to claim made by a workman against his employer for injury caused through a breach by the employer of a duty imposed on him by statute **(Wheeler Verses Mertor Board MillsLimited, Bradley Verses Earl Granville).** When a prisoner with known suicidal tendencies committed suicide while in the police custody as the police failed to take reasonable precautions for preventing suicide, the defence of the maxim could not be available to the police.
(3) **Negligence,** This maxim has no application to the cases of negligence. In order to cover a case of negligence the defence on the basis of the maxim must be based on implied agreement. But when the plaintiff has no choice or when the notice is given at a stage when it is beyond the ability of the plaintiff to make a choice, there can be no implied agreement[Burnelt Verses **British water ways Board,** The defence is available only when the plaintiff freely and voluntarily, with full knowledge of the nature and extent of the risk impliedly agreed to incur it and to waive any claim for injury. Thus, there are several cases where the driver of the vehicle gives a passenger a lift and, at the same time, gives him reasonable notice that he rides at his own risk. The passanger is bound by the notice and he cannot claim **[Buckpitt Verses Gates,**

(4) Consent and Knowledge, This maxim has no application where plaintiff has given the consent inspite of having the knowledge of risk involved. **South Indian IndustrialLimited Verses Aiamalu Animal** the employer used a method of breaking up cast iron which consisted of droping a heavy weight on pieces from a great height. Consequently a piece of iron hit and killed a workman. The court held that the defence of consent was not available, It was observed that the maxim *volenti nonfit injuria* was not applicable. In order to succeed under the maxim, it is necessary for the defendant to prove that the person injured knew of the danger, appreciated it and voluntarily took the risk. That he had some knowledge of the danger is not sufficient. A man cannot voluntarily undertake a risk to the extent of which he does not appreciate, When the defendant himself pleads that he did not anticipate and could not have anticipated pieces flying over a distance of 90 feet, he cannot plead that the deceased workman could possibly have anticipated it for himself.

(5) Rescue Cases, The defence *tf volenti nonfit injuria* is inapplicable in the rescue cases. Rescue cases are typified by A's death or injury in rescuing or attempting to rescue B from an emergency or danger to B's life or limb created by the negligence of C. Is C liable to A? or can C successfully plead
(1) *volenti nonfit injuria*\ or
(2) that A's conduct is a *novus actus intervenies* (new intervening act) which makes his injury too remote a consequence of C's initial negligence,
(3) that A's injury was due to contributory negligence on his own part.

(6) Unfair Contract Terms Act, In England, not in India, a new development took place in 1977, when the Parliament passed Unfair Contract Terms Act, which limits the right of a person to restrict or exclude his liability resulting from his negligence by a contract term or by notice. Section 2 of the Unfair Contract Terms Act, provides,
(1) A person cannot by reference to any contract term or to a notice given to person generally or to particular persons exclude or restrict his liability for death or personal injury resulting from negligence.
(2) In the case of other loss or damage, a person cannot so exclude or restrict his liability for negligence except in so far as the terms or notice satisfies the requirement of reasonableness.
(3) When a contract term or notice purports to exclude or restrict his liability for negligence a person's agreement to or awareness of it is not of itself to be taken 'as indicating his voluntary acceptance of any risk.
Thus, section 2 of the Unfair Contract Terms Act, 1977, is another limitation of the maxim ' *Volenti Non Fit Injuria'*.

Statutory Authority

Statutory Authority

A person cannot complain of a wrong which is authorised by the legislature. When a statute specially authorises a certain act to be done by a certain person which would otherwise be unlawful and actionable, no action will lie at the suit of any person for the doing of that act. "For such a statutory authority is also statutory indemnity taking away all the legal remedies provided by the law of torts for persons injuriously affected." (Salmond) If I construct a bridge under the authority of a statute and if anybody is denied his right of way and traffic through that way for a specific period, no suit can be brought against me for what I have done is in pursuance of statutory authority.

Therefore, if a railway line is constructed, there may be interference with private land when the trains are run, there may also be some incidental harm due to noise, vibration, smoke, emission of spark etc. No action can lie either for interference with the land or for incidental harm, except for payment of such compensation which the Act itself may provided.

In **Vaughan Verses Taff Valde Rail Company,** sparks from an engine of the respondent's Rail Company, set fire to the appellant's woods on adjoining land. Held, that since the respondent had taken proper care to prevent the emission of sparks and they were doing nothing more than that the statute had authorised them to do, they were not liable. Similarly, in **Hammer Smith Rail Coch Verses Brand**, the value of plaintiff's property had considerably depreciated due to the noise, vibration and smoke caused by the running of trains. The damage being vibration and smoke caused by the running of trains. The damage being necessarily incidental to the running of the trains authorised by the statute, it was held that no action lies for the same.

However, when an act authorised by the legislature is done negligently, then an action lies. In **Smith Verses London & South Western Railway Company,** the servants of a Railways Company negligently left trimmings of grass and hedges near a rail line. Sparks from an engine set the material on fire. By a heavy wind the fire was carried to the nearby plaintiff's

cottage which was burnt. Since it was a case of negligence on the part of the Railways Coch, they were held liable.

When a statute authorises the doing of an act, which would otherwise be a tort, the injured has no remedy except the one (if any) provided by the statute itself. An Indian case of this point is of **Bhogi Lal Verses The Municipality of Ahmedabad,**

The Municipality of Ahmedabad demolished the wall of the plaintiff under their statutory powers. The demolition of the wall also resulted in the falling of the roof of the defendant on the wall. On an action by the plaintiff for the damage to his property, it was held by the court that the defendant would not be liable. For no suit will lie on behalf of a man who sustain a private injury by the execution of powers given by a statute, these powers being exercised with judgment and caution.

But statutory powers are not charters of immunity for any injurious act done in the exercise of them. The act done in pursuance of the statutory powers must be done without negligence. If it is done negligently an action lies.

NEGLIGENCE – LIABILITY AT COMMON LAW AND STATUTORY LAW

Duty of Care Towards the Patient

When a doctor attends to his patient, he owes him certain duties of care *viz.*,

(1) a duty of care in deciding whether to undertake the case,

(2) a duty of care in deciding what treatment to give and

(3) a duty of care in the administration of treatment. A breach of any of the aforesaid duties gives a right of action for negligence to the patient. A breach of duty is committed by a doctor when he does not perform the standard and degree of care like reasonable doctor of his time or as a member of his class. A few cases on this point are as follows,

In Kusum Sharma Verses Batra Hospital, the Supreme Court held that a doctor is often called upon to adopt a procedure which involves higher element of risk, but which he honestly believes as providing greater chances of success for the patient rather than a procedure involving lesser risk but higher chances of failure and just because a doctor, in view of the gravity of illness, has taken higher element of risk to redeem the patient out of his/her suffering which did not yield the desired result may not amount to negligence.

In Malay Kumar Ganguly Verses Sukumar Mukherjee, the Supreme Court held that standard of care on the part of a medical professional involve the duty to disclose to patients about risks of serious side effects of medicines or about alternative treatments. If the doctor/hospital knowingly fail to provide some amenities that are fundamental for patients, it would certainly amount to medical malpractice. The Court further observed that an act which may constitute negligence or even rashness under torts may not amount to same under section 304AofIPC.

In Gian Chand Verses Vinod Kumar Sharma, though the victim was admitted to he surgical ward she was shifted to the children ward. Due to burn injuries she could not be clothed. She should have been kept in the warmest place available and probably for this reason on the first

night she was shifted to the children ward. She should not have been exposed to the vagaries of weather. The doctor offended to the fact-that the child had been kept in his ward without his permission and forced her to leave the ward. The doctor has riot given any explanation as to why he shifted her out. The doctor was not only negligent but also he was callous in his approach when he forced the parents to shift the child from the children ward to veranda outside in the cold rainy weather. Thus, the doctor is liable for the death of the child. Newly Born Child Missing

In Jasbir Kaur Verses State of Punjab, a newly born child was found missing in the night from the bed. The child was found profusely bleeding and with one eye totally gouged near the wash-basin of the bath room. The plaintiff contended replacement of the child whereas the hospital authorities contended that the child had been taken away by a cat which caused the damage to him. The court presumed that the hospital authorities were negligent and awarded compensation amounting Rs. 1 lakh.

Unsuccessful Sterilization

In **State of Haryana Verses Santra,** the facts are that Santra was having seven children and therefore approached the C.M.O. Gurgaon for sterilization which was done under the State sponsored family planning programme. She developed pregnancy after the operation and gave birth to a female child. Thus there was additional economic burden on the poor person. The Court held that the doctor was negligent *per se* as he obviously failed in his duty to take care and therefore both State and doctor were held liable to pay damages to the plaintiff.

Contributory Negligence

Contributory negligence is negligence in not avoiding the consequences arising from the defendant's negligence, when plaintiff has means and opportunity to do so. In fact, it is the non-exercise by the plaintiff of such ordinary care, diligence, and skill, as would have avoided the consequences of the defendant's negligence. It, therefore, means that in the case of contributory negligence both the parties (plaintiff and defendant) are negligent. Lord Halsbury has stated that the rule of Contributory Negligence is based on the maxim *In Pare Delicto Potior Est Conditio Defendants* which means where both parties are equally to blame, neither can hold \ the other liable. The much is justified in accordance with the natural justice also that where both the parties are equally negligent, neither can hold the other liable. But the question arises where both the parties arc not equally at fault then what is the criteria of holding the defendant liable? In English Law the rule of Contributory Negligence was demonstrated for the first time in 1809, in the case of Butterfield Verses **Forrester,**

The facts were that the defendant for the purpose of making some repairs to his house, wrongfully obstructed a part of the highway by putting a pole across it. The plaintiff who was riding on his horse very violently on the road in the evening j collided against the pole and injured. It was also found as a matter of fact that there I was sufficient light and the pole was visible from a distance of 100 yards. The court I held that the plaintiff had no cause of action against the defendant as he himself | could have avoided the accident by exercising due care. Ellenborough C.J., stated that "a party is not to cast himself upon an obstruction which has been made by the fault of another, and avail himself of it, if he

dies not himself use common and j ordinary caution to be in the right. One person in fault will not dispense with another's using ordinary care for himself."
The above rule caused a great hardship to the plaintiff because he may lose an action for a slight negligence on his part even if the defendant's negligence was the main cause of damage to the plaintiff. In such circumstances a new development took place and the court modified the law by introducing 'Last opportunity rule'. An important case of Devis Verses Mann, illustrate this rule.
The facts briefly were that the plaintiff left his donkey with its forelegs tied in a narrow public street. The defendant coming with his wagon at a smart pace negligently ran over and killed the donkey. The court held the defendant liable because he had the last opportunity to avoid the accident by the exercise of ordinary care that is, by going at such a pace as would be likely to avoid the mischief. It was observed by the court that "although the ass may have been wrongfully there, still the defendant was bound to go along the road at such a pace as would be likely to prevent mischief. Were this not so, a man may justify the driving over goods left on public high way, or even over a man lying asleep there, or purposely running against a carriage going on the wrong side of the road.

Essential Ingredients – Duty to Take Care

Essentials of Negligence

According to Winfield, in an action for negligence, the plaintiff has to prove the following essentials,
1. That the defendant owed duty of care to the plaintiff.
2. The defendant made a breach of that duty.
3. The plaintiff suffered damage as a consequence thereof. 1. Duty of care to the plaintiff[3]
The requirements for establishing a duty of care are as follows,
(a) Duty means a legal duty.
(b) Foreseeability of injury.
(c) No foreseeability, no liability of the defendant.
(d) Proximity in relationship, which implies that the parties are so related that it is just and reasonable that the duty should exist.
(e) Duty must be towards the plaintiff.
(f) Policy considerations do not negative the existence of duty.

(a) Legal Duty, It means a legal duty rather than a mere moral, religious or social duty. The plaintiff has to establish that the defendant owed to him a specific legal duty to take care of which he has made a breach. No general rule defining such duty is in existence. It is a question of fact which depends on each case. In Donoghue Verses Stevenson, the appellant drank a bottle of ginger beer which was bought from a retailer by her friend. The bottle in fact contained the decomposed body (the remains) of a snail. The plaintiff consumed a part of the contents which were poured in a tumbler. The bottle was of dark opaque glass sealed

with a metal cap so that its contents could not be a ascertained by inspection. The plaintiff brought an action against the manufacturer of the beer to recover damages which she suffered due to serious effects on her health by shock and severe gastro-entritis. The plaintiff, claimed that it was defendant's duty to have a system of work and inspection sufficient to prevent snails from getting into ginger beer bottles.

The suit was defended on the following two grounds,

(1) that the defendant did not owe any duty of care towards the plaintiff and,

(2) that the plaintiff was a stranger to the contract and thus her action was not maintainable.

The House of Lords rejected both the pleas of the defendant and held that the manufacturer of the bottle was responsible for his negligence towards the plaintiff. The following is the summary of the reasoning given by the House of Lords.

It was categorically stated that the defendant owed a duty of care to the plaintiff. It was the duty of the manufacturer to use reasonable diligence to ensure that the bottle did not contain any noxious or dangerous matter.

According to Lord Atkin,

"A manufacturer of products which he sell in such a form as to show that he intends them to reach the ultimate consumer in the form in which they left him with no reasonable possibility of intermediate examination and with the knowledge that the absence of the reasonable care in the preparation of putting up of the products will result in an injury to the consumer's life or property, owes a duty to the consumer to take that reasonable care."

The House of Lords also rejected the plea that there was no contractual relationship between the manufacturer of the bottle and the plaintiff and allowed the consumer of drink an action in tort. To quote Lord Atkin again, _

'.... The rule that you are to love your neighbour becomes in law 'you must not injure your neighbour' and ... who then in law is my neighbour? The answer seems to be that the persons who are so closely and directly affected by my act that I ought reasonably to have them in contemplation as being so affected when I am directing my mind to the acts or omissions which are called in question. This appears to me to be the doctrine of privity of contract. In Heaven Verses Fender, as laid down by Lord Esher, "when case established that under certain circumstances one may owe a duty to another, even though there is no contract between them. If one man is near to another or near to the property of another, a duty lies upon him not to do that which may cause a personal injury to that other or which injures his property."

Thus, the doctrine of privity of contract was established by this case. This case gave opening to the manufacturer's liability. The manufacturer's liability is also emphasised in the case of Grant Verses Australian Knitting MillsLimited, In the case, plaintiff contracted dermatitis as the result of wearing a woolen garment which, when purchased from the retailers, was in a defective condition owing to the presence of excess sulphites which had been negligently left in the process of manufacture. It was a hidden and latent defect and could not be detected by any examination that could reasonably be made. The garment was made by the manufacturers for the purpose of being worn exactly as it was worn by the plaintiff. [4] It was held that there was a duty to take care between the manufacturers and plaintiff for the breach of which the manufactures were liable.

(b) Foreseeability of injury, Reasonable foreseeability of the injury to the plaintiff decides that whether the defendant owes a duty to the plaintiff or not. If at the time of act or omission, the defendant could reasonably foresee injury to the plaintiff, he owes a duty to prevent that injury and failure to do that makes him liable. In Bourhill Verses Young, (1943) AC 92, it was held that a motor-cyclist who drove negligently at an excessive speed consequently collided with a motor car and was killed could not have reasonably foreseen that the plaintiff, a pregnant woman, seeing the accident, would suffer severe nervous shock resulting in birth of the still-born child and accordingly, he owed no duty to her to forsee that his negligence in driving might result in injury to her, for such a result could not reasonably and probably be anticipated. Thus, the defendant was not negligent in relation to her. So, defendant was not liable to her.

To decide culpability, one has to determine what a reasonable man would have foreseen and the useful test is to enquire how obvious the risk must have been to an ordinary prudent man. The reasonable man is presumed to be free from over-apprehension and from over-confidence, but there is a sense in which the standard of care of the reasonable man involves in its application a subjective element. It is the judge who decide what in the circumstances of the particular case, the reasonable man would have done in contemplation, and what, accordingly, the party sought to be made liable ought to have foreseen, **[Glasgow Corporation Verses Muir**

In **Rural Transport Service Verses Bezlum Bibi,** a passenger bus was overloaded and yet the conductor invited passengers on the roof of the bus to travel. On its way, while overtaking a cart, the bus swerved, a passenger on the roof was struck by an overhanging branch of a tree, fell down and received multiple injuries and in the end' succumbed to them. The act of conductor (of inviting the people of travel on the roof of the bus) and of the driver (act of leaving the metallic track by swerving on the right, close to the tree) was rash and negligent. The consequences of such an act, therefore, foreseeable.

In **Municipal Corporation of Delhi Verses Subhagwanti,** a clock tower situated in the heart of the city, /. *e.*, Chandni Chowk, Delhi, collapsed causing the death of a number of persons. The structure was 80 years old whereas its normal life was 40-45 years. The MCD, who was having control of it had obviously failed to get the periodical check up and the necessary repairs done pay compensation for the consequences of the collapse of the structure. Similarly, in **Municipal Corporation of Delhi Verses Sushila Devi,** where a person died because of fall of the branch of the tree standing on the road, on his head, the MCD was held liable for negligence and bound to .pay compensation.

In'Mata Prasad Verses Union of India, the gates of railway crossing were open. While the driver of the truck tried to cross the railway line, the truck was hit by incoming train. It was held that when the gates of the level crossing were open, the driver of the truck could assume that there was no danger in crossing the railway track. There was negligence on the part of the railway administration and they were, therefore, held liable. The position, however, would be different if the driver of a bus tries to cross through with a defective vehicle, knowing that the train is about to approach the place and in such a case the owner of the bus was liable for providing a defective bus and also liable vicariously for the negligence of its driver **(Orissa Road Transport CompanyLimited Verses Umakant Singh**.

In **Ishwar Devi Verses Union of India,** conductor and driver of the bus were held liable for the rash and negligent act. In this case, when the deceased placed his foot on the foot-board of the bus and had not yet gone in, the conductor in a very hasty manner rang the bell and the driver started the bus. All this was done in an attempt to overtake another bus as a result of which the deceased got squeezed or sandwiched between the two buses and sustained serious injuries and died. **Makbool Ahmed Verses Bhura Lal,** also explains the negligence of conductor and driver of the bus. In this case, the deceased was trying to whistle for starting the bus. The deceased, as the result of which, was crushed by the rear wheel of the bus, his body was dragged by the bus and the bus was stopped after covering a long distance. Held, that the conductor should stand at the gate of bus and driver should also run the bus by keeping in view the safety of passenger and failure to do so amounting to negligence on their part.

In **Sushma Mitra Verses Madhya Pradesh State Road Transport Corporation,** it was held that it is the duty of the driver to pass on the road at a reasonable distance from the other vehicle so as to avoid any injury to the passengers whose limbs might be protruding beyond the body of the vehicle in the ordinary course. In this case, where the plaintiff who was resting her elbow on the window still, suffered serious injuries to her elbow by a truck coming from the opposite side was entitled to compensation. The drivers of both, the bus and the truck, owed a duty of care for safety of the plaintiff as well as other passengers. Therefore, the defendants were held liable.

(c) **No foreseeability, no liability of the defendant,** When the injury to the plaintiff is not foreseeable, then the defendant is not liable. In **Gates Verses Mongini** Bros., the plaintiff, a lady visitor to a restaurant was injured by the falling of a ceiling fan on her. There was a latent defect in the fan which could not have been discovered by a reasonable man. Held, since the harm was not foreseeable, the defendants were not negligent, and therefore, were not liable.

In **Krishnappa Naidu Verses The Union of India,** the taxi of the plaintiff was hit by the railways train while passing through a level crossing. Plaintiff entered, at that place in spite of the warnings given by the gateman, and therefore, the plaintiff was a trespasser whose presence couldn't be anticipated by the defendant. The accident couldn't be averted. Held, that there was no negligence on the part of railway administration, the defendants were not liable.

When the accident is caused by the defendant's servant who died suddenly while driving, it was held to be an act of God and the defendant was held not liable for the same **Ryan Verses Youngs,**

In **Glasgow Corporation Verses Muir,** the managers of the defendant corporation tea-rooms permitted a picnic party to have their food in the tea-room. Two members of the picnic party were carrying a big urn containing 6-9 gallons of tea to a tea-room through a passage where some children were buying sweets and ice-creams. Suddenly one of the persons lost the grip of the handle of urn and six children, including the plaintiff, were injured. It was held that the managers could not anticipate that such an event would happen as a consequence of tea urn being carried through a passage and therefore, she

had no duty to take precautions. Hence, neither she nor the corporation could be held liable for injury.

(d) **Proximity in relationship, which implies that the parties are so related** that it is **just and resonable that the duty should exist,** To establish negligence itistei-enough to prove that the injury was foreseeable, but a reasonable likelihood of the injury has also to be shown. Reasonable foreseeability does not mean remote possibility. There must be proximity in relationship. The test of proximity may be described as foreseeability of a reasonable man. The relationship between the parties must have been such that in justice and fairness the defendant like a reasonable man ought to have kept the plaintiff in contemplation while doing the acts of which complaint is made. The duty of the defendant is to guard the plaintiff against reasonable probabilities rather than bare or fantastic possibilities. If the possibility which could never occur to the mind of the reasonable man, then there is no negligence in not having taken extraordinary precaution.

In Fardon Verses Harcourt Rivington, the defendant and his wife parked their car by the roadside. They left their dog inside the car and went for shopping. When they did not return, the dog jumped out of the car and broke the glass of the one of windows. A splinter from this glass injured the plaintiff when he was passing by the side of the car.

In an action for damages for negligence the court held that defendant was not liable. It was stated that people must guard against reasonable probabilities. In other words, this was such an extremely unlikely event that no reasonable man could be convicted of negligence. If the possibility of danger emerging is only a mere possibility then there is no negligence in not having taken extraordinary precautions.

Lord MacMillan observed,

In each case the question is whether there is any evidence of such carelessness in fact as amounts to negligence in law. That is breach of duty to take care. To fulfill this duty the user of the road is not bound to guard against every conceivable eventuality as a reasonable man ought to foresee as being within the ordinary range of human experience. The occurrence was of such an unprecedented and unlikely character that according to no reasonable standard could it be said that it ought to have been foreseen by the most careful owner of a motor car with a dog in it on a highway. There was accordingly in my view no neglect on the part of the respondent of duty owed by him to the appellant. It was in short a pure accident.

The proximity principle does not require physical proximity. A manufacturer has no physical proximity with the consumer of his product yet he owes a duty to the consumer (Donoghue Verses Stevenson). The drivers of motor-vehicles owe a duty of care to other road users and the claim of a road accident cannot be defeated on the ground that the defendant could not foresee that the plaintiff would be using the road on the date of the accident.

Similarly, if a plug in a pipeline, which has been working satisfactorily, bursts because of exceptionally severe frost which could not have been anticipated, and the water floods the premises of the plaintiff, the plaintiff cannot bring an action for negligence Blyth Verses Birmingham Waterworks Company.

(e) Duty must be towards the plaintiff It is essential to prove that the defendant owes a duty of care to the plaintiff otherwise the plaintiff cannot sue the defendant even if he might have been injured by the defendant's act.

In Palsgraf Verses Long Island Railroad Company, (1928) 284 NY 339, the passenger was trying to board a moving train. He seemed to be unsteady as if about to fall. A railway guard with a view to help him pushed the passenger from behind to get into the train. In doing so, the package in possession of passenger consisting of fireworks, fell and resulted in an explosion. The shock of the explosion threw down some scales about 25 feet away which fall upon the plaintiff and she was injured. She sued the defendants for negligence. Held, that the guard if negligent to the holder of the package was not negligent in relation to the plaintiff standing far away.

In Dickson Verses Reuter's Telegraph Company, a telegram meant for B was misdelivered to C. C acted on the telegram and sent goods to A but A refused to accept the goods as he had ordered the goods from B and not from C. On a suit by C upon the telegram company it was held that the company did not owe any duty of care-to C. C had, therefore, no cadse of action.

In Bourhill Verses Young also, it was held that the motorcyclist owed no duty to the appellant (who was standing 45 feet away from the place where a negligent motor-cyclist collided with a motor car) as she was not at the time of the collision within the area of potential danger caused by his negligence.

In King Verses Philips, the defendant, a taxi-driver, carelessly backed his taxi into a small boy on a tricycle. His mother heard his screams from the window of a nearby house and saw the tricycle under the taxi. She suffered nervous shock. Held, although the defendant was negligent vis-a-vis the boy, he owed no duty to the mother of the boy and was, therefore, not liable to her.

(f) Policy Considerations, Policy considerations are material in limiting the persons who'can claim that a duty of care not to cause economic los's was owed to them by a person committing a wrong. for example, if because of A's negligence, B, an artisian is injured and is unable to supply goods, which he makes, to his customers with whom he has contracts, not only B but also his customers may suffer foreseeable economic loss, but on policy considerations A cannot be held to owe any duty of care to the customers who cannot sue A, and B can sue A for loss of earnings which will include loss of profits. Earnings include fees and shares and profits [Philips Verses LSW Ry,].

Innuendo

lnnuendo

Where the words are not on the face of them defamatory or where the imputation is made in an oblique way or by way of question or exclamation or' conjecture or irony innuendo is necessary. When the words are not *prima facie* defamatory but innocent, the pleading of the plaintiff should contain the defamatory statement which the plaintiff attributes to it. Such a statement given by the plaintiff is called ah innuendo.

Thus, sometimes the statement may *prima facie* be innocent but because of some latent or secondary meaning, it may be considered to be defamatory. When the natural and ordinary meaning is not defamatory but the plaintiff wants to bring an action for defamation he must prove the latent or secondary meaning that is innuendo, which makes the statement defamatory. for example, X published a statement that, "Mrs. Y had given birth to a child." Here, the statement in its natural meaning is not defamatory. But it may become defamatory in certain circumstances that is when Mrs.Y pleads that she was married only two months ago. These particular or additional circumstances in her pleadings is called "innuendo'.

When the innuendo is proved by the plaintiff, the words which are not defamatory in the ordinary sense may become defamatory and the defendant will be liable. A case worth mentioning on this point is that of Cassidy Verses Daily Mirror. The defendants

published in a newspaper a photograph of Mr. M and Miss C, together with the words, "Mr. M, the race horse owner and Miss C, whose engagement has been announced." This statement was false as they were already married. In an action by the plaintiff, the wife of Mr. M, it was held by the Court that the publication was capable of conveying a meaning defamatory of the plaintiff, viz., that she was not the lawful wife of Mr. M and was living with him in immoral cohabitation. The defendants, therefore, held liable.

Proof of Negligence - Res Ipsa Loquitor

At the end, the important points related to this maxim can be summarised as follows,
(1) By applying this maxim the burden of proof is shifted from the plaintiff to the defendant. Instead of the plaintiff proving negligence the defendant is required disprove it. The maxim is not a rule or law. It is a rule of evidence benefiting the plaintiff by not requiring him to prove negligence.
(2) The maxim applies when—
(1) the injurious agency was under the management or control of the defendant, and
(2) the accident is such as in the ordinary course of things, does not happen if those who have the management use proper care.
(3) The rule that it is for the plaintiff to prove negligence is in some cases, of considerable hardship to the plaintiff, because it may be that the true cause of the accident lies solely within the knowledge of the defendant who cause it. The plaintiff can prove the accident but he cannot prove how it happened so as to show its origin in the negligence of the defendant. The hardship is avoided to considerable extent by the maxim.
(4) The rule of Rylands Verses Fletcher is not an illustration of the principle of *res ipsa loquitur*. The liability arising out of the principle can be repelled by proof that the defendant was not negligent, whereas under the *Rylands* rule it is not defence to say that defendant took every possible precaution to prevent the escape of the injurious thing.

(5) The principle of *res ipsa loquitur* has no application where the circumstances in which the accident has taken place indicate that there must have been negligence but do not indicate as to who was negligent or when the accident is capable of two explanations. Also, the maxim does not apply when the facts are sufficiently known.

(6) *Res ipsa loquitur* is a common sense approach, not limited by technical rules, to the assessment of the effect of evidence in certain circumstances. It means that a plaintiff *prima facie* establishes negligence where,

(1) it is not possible for him to prove precisely what was the relevant act or omission which began the events leading to the accident, but

(2) on the evidence as it stands, in the absence of any evidence from the defendant, it is more likely that the effective cause of accident was some act or omission of the defendant.

NERVOUS SHOCK

This branch of law of tort is of the recent origin. This is testified by the fact as far as 1888, the privy council in **Victorian Railway Commissioners Verses Coultas,** did not recognise injury caused by a shock sustained through the medium of eye or ear without direct contact. This view was, however, rejected and an action for nervous shock was recognised but with the limitation that the shock must arise from a reasonable fear of immediate personal injury to oneself. As in **Bourhill Verses Young,** Lord Macmillan observed in this regard, "The crude view that the law should tatce cognizance only of physical inj ury resulting from actual impact has been discarded, and it is now well recognised that an action will lie for injury by shock sustained through the medium of the eye or ear without direct contact."

Under the cases of nervous shock, the plaintiff has to prove the following things,

(1) Necessary chain of causation between nervous shock and the death or injury of one or more parties caused by the defendant's wrongful act.

(2) Plaintiff is required to prove shock caused to him by seeing or hearing something. Physical injury is not necessary.

(3) Close relationship of love and affection of plaintiff with the primary victim is necessary to be shown and also that his proximity to the accident was sufficiently close in time and space.

However, it has been held that the primary victim need not be a near relative of the plaintiff". Thus, a man who came up on a scene of serious accident for acting as a rescuer, when suffered a nervous shock, was allowed to claim the damages (Chadwick Verses British Transport Corporation. Also where a crane driver, the plaintiff, suffered a nervous shock when he saw that by the breaking of a rope of crane, its load fell into the hold of a ship where some men were at work, was allowed damages when the rope had broken due to the negligence of the defendants (Dooley Verses Commell Laird & Company.

Where the plaintiffs suffered nervous shock when disaster at a football match was televised live and in news bulletins but without depicting the suffering or dying of recognisable individuals, were held not entitled to damages (Aloock's Case).

(4) Damages for nervous shock were not limited to psychiatric damage resulting from witnessing personal injury, but could be recovered where the plaintiff witnessed destruction of his property caused by the defendant's wrongful act (Attia Verses British Gas Pic.).

REMOTENESS OF DAMAGES

Intervening Act or Events *(Novus actus interveniens)*

Damage resulting to the plaintiff after the chain of causation set in motion by the defendant's wrongful act is snapped is too remote and does not qualify for award of damages against the defendant. The proposition so stated is simple but the difficulty lies in formulating the principles as to when an act or event breaks the chain of causation. The snapping of the chain of causation may be caused either by a human action or a natural event.

As regards human action, two principles are settled, one that human action does not *per se* severe the connected sequence of acts, in other words, the mere fact that human action intervenes does not prevent the sufferer from saying that injury which is due to that human action as one of the elements in the sequence is recoverable from the original wrongdoer, and secondly that to break the chain of causation it must be shown that there is something ultroneous, something unwarrantable, a new cause which disturbs the sequence of events, something which can be described as either unreasonable or

extraneous or extrinsic. If there is a duty to avoid risk to children, their unexpected behaviour does not break the chain of causation "for their ingenuity in finding unexpected ways of doing mischief to themselves and others should never be underestimated."

Rescue cases illustrate the principle that a reasonable act done by a person in consequence of the wrongful act of the defendant does not constitute *novus actus* breaking the chain of causation. It is reasonably foreseeable that if the defendant's wrongful act has put a person in danger of death or personal injury some other person may come forward to effect a rescue even by exposing himself to the same risk whether or not the person endangered is one to whom he owes a duty to protect or is a mere stranger. The rescuer can, therefore, claim damages from the defendant for injury suffered by him in effecting a rescue unless his act was a foolhardy act or wholly unreasonable.

Where the *novus actus* is caused by an irresponsible actor, it does not break the chain of causation. Anyone who invites or gives opportunity to mischievous children to do a dangerous thing cannot escape liability on the ground that he did not do the wrong.

Recklessness of a third party as distinguished from his mere negligence may break the chain of causation and constitute *novus actus interveniens.* A car broke down at night in fog on dual carriageway. The driver of the car was negligent in leaving the car on the carriageway instead of moving the car onto the verge. A lorry driven not merely negligently but recklessly collided with the stationary car and then went out of control. The lorry ended up overturned on the opposite carriageway. This would not have happened but for the reckless driving. Two other cars collided with the overturned lorry. It was held that the lorry driver's reckless driving broke the chain of causation and it was the sole cause of the accident on opposite carriageway.

In Simmons Verses British Steel Pic., Lord Rodger summarized the principles involved in considering the question of remoteness of damage. The summary reads,

"These authorities suggest that, once liability is established, any question of the remoteness of damage is to be approached along the following lines which may, of course, be open to refinement and development.

(1) The "starting point is that a defender is not liable for a consequence of a kind which is not reasonably foreseeable.

(2) While a defender is not liable for damage that was not reasonably foreseeable, it does not follow that he is liable for all damage that was reasonably foreseeable, depending on the circumstances, the defender may not be liable for damage caused by a *novus actus interveniens* or unreasonable conduct on the part of the pursuer, even if it was reasonably foreseeable.

(3) Subject to the qualification in (2), if the pursuer's injury is of a kind that was foreseeable, the defender is liable, even if the damage is greater in extent than was foreseeable or it was caused in a way that could not have been forseen.

(4) The defender must take his victim as he finds him.

(5) Subject again to the qualification in (2), where personal injury to the pursuer was reasonably foreseeable, the defender is liable for any personal injury, whether physical or psychiatric, which the pursuer suffers as a result of his wrongdoing."

NO FAULT LIABILITY – STRICT AND ABSOLUTE LIABILITY

Difference between Rylands Rule and M.C. Metha's rule

First on the basis of conditions,
The Ryland's rule requires three conditions for its application they are dangerous thing, escape and non natural use of land where as The M.C. Mehta's rule is not dependant on these conditions, however, it deals with dangerous things.

Second on the basis of escape of thing from the premises,
The Ryland's rule does not cover the cases where harm is caused to persons within the premises as the rule requires escape of thing, which causes harm, from the premises where as The escape of thing from the premises is not a necessary condition for on the basis of as no distinction is made between persons within the premises, where the enterprise is carried on and persons outside the premises.

Third on the basis of liability,
The liability of the person according to the Ryiand's rule is not absolute as it is subject to many exceptions for example, act of third party, *vis major,* etc. The liability is not dependant on the negligence on the part of the defendant. It is called the rule of Strict Liability where as in M.C. Mehta's rule The owner of the industry would be liable even if the damage is caused due to the act of a stranger. M.C. Mehta's rule provides for absolute liability and not only strict liability. It is not subject to any exception. It provides for stricter than strict liability. It is called the rule of' Absolute Liability'.

Fourth on the basis of exceptions,
Ryland's rule is subjected to many exceptions such as plaintiffs own act, act of stranger, statutory authority, act of God and the act with the consent of plaintiff where as M.C. Mehta's rule is not subjected to any exception.

Fifth on the basis of damages,
Damages awarded under Ryland's rule are ordinary or compensatory where as Under M.C. Mehta's rule the court can award exemplary damages.
The quantum of compensation depends upon the size of the enterprise. The larger the enterprise, the greater would be the amount of compensation payable.

Strict Liability

QUESTION. 1. Examine the rule of strict liability as laid down in the case of *Rylands Verses Fletcher*. Discuss the applications and limits to this rule.

Answer. Man performs so many activities which are dangerous to person and property of others. State allow them on the condition that the doers of the activities have to compensate for the damage caused irrespective of any carelessness or fault on their part. The basis of liability is the magnitude of the risk which is foreseeable.

The case of Rylands Verses Fletcher which was decided in 1868 for the first time laid down the rule of absolute liability according to which plaintiff is not required to prove negligence, lack of care or wrongful intention on the part of the defendant.

Facts, Fletcher was running a coal mine unde'r a lease. On the neighbouring land, *Rylands* desired to erect a reservoir for storing water and for this purpose he employed a competent independent contractor whose workmen, while excavating the soil, discovered some disused shafts and passages communicating with old working and the mine in adjoining land. The shafts and passages had been filled with loose earth rubbish. The contractor did not take the trouble to pack these shafts and

passages with earth so as to bear the pressure of water in the reservoir when filled. Shortly after the construction of the reservoir even when it was partly filled with water, the vertical shafts gave way and burst downwards. The consequence was that the water flooded the old passages and also the plaintiffs mine, so that the mine could not be worked. The plaintiff sued for damages. No negligence on the part of the defendant was proved. The only question was whether the defendant would be liable for the negligence of the independent contractor who was admittedly a competent engineer. It was *held* that the question of negligence was quite immaterial. The defendant in bringing water into the reservoir was bound to keep it there at his peril and was therefore liable.

Rule laid down in the case, Blackburn, J., laid down the following proposition of law, "The true rule of law is, that the person, who for his own purposes, brings on his lands, and collects and keeps there anything likely to do mischief, if it escapes, must keep it in at his peril and if he does not do so, is *prima facie* answerable for all the damages which is the natural consequence of its escape." In the House of Lords it was laid down that,

"If a person brings or accumulates on his land anything which, if it would escape may cause damage to his neighbours if it does escape and cause damage he is responsible, however, careful he may have been, and whatever precaution he may have undertaken to prevent the damage."

However, in the House of Lords, Lord Cairns added one more element. He said that use of land by the defendant should be non-natural. And he said that in the instant case the defendant was using the land in a non-natural way.

The rule in Ry lands Verses Fletcher is the most important of the cases where a man acts at his peril and is the insurer of the safety of his neighbour against accidental harms. Here the duty is not merely the general negative duty to refrain from active injury, but a positive duty to guard and protect one's neighbours lest they suffer harm by reason of dangerous things artificially brought on one's land and the duty is absolute because it is independent of any negligence on the part of the defendant or his servants.

Applications of the Rule, The above rule, though enunciated in an action of nuisance as between two adjacent land owners, has become in course of time a general principle applicable in all cases where, apart from negligence, the defendant makes hazardous use of his property, and as a result the plaintiff sustains damage. But the rule is confined to dangerous things *per se.* The rule has now been held to govern the liability for fire. Though the case of Ryland Verses Fletcher was a case of water escaping to adjacent lands, the principle of liability is not confined to the escape of water, but has been extended to anything and everything which has a tendency to escape and cause mischief. As Salmond says, "It is not anything which is likely to do mischief, if it escapes, but rather anything which is likely to escape, and do mischief." For instance, dangerous animals, petrol, electricity, explosives,

poison, fire sewage, in fact, everything that has a tendency to escape and cause mischief may become the subject-matter of the application of the rule in **Rylands v.Fletcher.**

Limit or Conditions of the Rule, Lindley, LJ. in **Green Verses Chelsea Waterworks Company,** observed, "Since liability under it is imposed without proof of negligence, the Rule is not to be extended beyond the legitimate principle on which the House of Lords decided it. Otherwise it would be a very repressive decision." It is, therefore, most important to appreciate the limits of its operation. And the best approach to this is to cite from the

speech of Viscount Simon in **Read Verses Lyon *& Company*Limited,** "Now the strict liability recognised by this House in **Rylatids Verses Fletcher** is conditioned by two elements which I may call the condition of'escape' from the land of something likely to do mischief if it escapes, and the condition of "non-natural use of the land."

Escape, Liability will only be imposed if there is an "escape" of the object from land of which the defendant is in occupation or control. The essential point is that, starting on the defendant's land, the thing must do its damage beyond the confines of it, if the damage is within the defendant's boundaries the Rule cannot apply though of course there may be some other ground of liability, such as, negligence. Another thing which must be proved by the plaintiff is that the damage was the natural consequences of the escape.

Things likely to do mischief, Whether a thing which has been brought and kept by the defendant on his land is one which is likely to do mischief if it escapes is a question of fact and it is to be decided in each case. Therefore, one particular thing may come within the rule in one case but not in another.

"Non-natural uses", When the case of Rylands Verses **Fletcher** came before the House of Lords an important qualification was made to *Blackburn, J.S.* principle. It was held that the use of the object upon the land must be "non-natural". Practical difficulty lies in the determination of what is or what is not a "natural" or ordinary use of the land. Thus, *Rylands'* case decided that it is not "natural" to construct a reservoir for water for a mill, and it has been held not to be "natural

(1) to collect a large heap of colliery spoil upon unstable land,
(2) to use blow lamp to thaw frozen pipes in the vicinity of felt lagging, or
(3) to accumulate gas in large quantities in pipes, but it has often been held to be "natural"

(1) to keep a domestic water supply for ordinary purposes,
(2) to have electric wiring upon premises,
(3) to light a fire in a grate,
(4) to burn paper in a chiminey to test a flue,
(5) to operate an explosive factory in time of war.

In T.C. Balkrishna Menon Verses T.R. Subramanian, the court held that the use of explosives in an open field on the occasion of festival is a "non-natural" use of land. If a person stores or marks explosive substances in an open field even on the occasion of celebration of some festival, that would amount ,to non-natural use of land and the rule **of Rylands Verses Fletcher** would apply in such cases.

The retention of water by a person in a portion of his land to prevent its passing on to the other portions of his land is not an act done in the natural and usual course of employment and the person so doing is liable, for danger caused thereby. In **State of Punjab Verses Modern Cultivators,** damage was caused by overflow of water from a canal, the Apex Court held that use of land for construction of a canal system is a normal use and not a non-natural use.

Recently the Karnataka High Court also considered non-natural use of land inMukesh **Textile Mills Verses Subramanyam Sastry,** here the defendant was the owner of a sugar factory. Adjacent to the sugar factory the plaintiff owned large land. The defendant stored large quantities of molasses which escaped to the neighbour's land and caused

extensive damage to his crop. It was held that it was non-natural use of land and if a person collected such things on his land and escaped to neighbours' land, he had a liability.

Defendant's responsibility, The rule only applies to a person who "collects and keeps" the object on his land. Thus if the object is on the land and it escapes not by his efforts but in the "ordinary course of nature" he will not be responsible for it, under **Rylands Verses Fletcher.**

When a person constructs a dam on his land which has effect of diverting the water from its natural channel on the land of a neighbour and thereby he causes damage to it, he is liable to his neighbour. "An owner of property has no right to let off water which has naturally accumulated therein even for purpose of its preservation from damage therefrom if this will have the effect of transferring his misfortune to the property of another."

Damages, Although under **Rylands Verses Fletcher** there is no need for the plaintiff lo prove that his injury was caused by any default or lack of care on the part of the defendant, he must establish "damage as the natural consequence of the escape."

Basis of Liability

QUESTION. 1. What do you mean by vicarious liability in Tort? Whether a master is liable for committing fraud, theft by his servant during course of employment?

Or

What do you mean by vicarious liability? Explain with decided cases.

Answer. Vicarious Liability, As a general rule, a man is liable only for his own act but there are certain circumstances in which a person is liable for the wrong committed by others. This is called "vicarious liability", that is, liability incurred for another. The most common instance is the liability of the master for the wrong committed by his servants. In these cases liability is joint as well as several. The plaintiff can sue the actual wrong-doer himself, be he a servant or agent, as well as his principal. In the words *of Salmond,* "In general a person is

responsible only for his own acts, but there are exceptional cases in which the law imposes on him vicarious responsibility for the acts of another, however, blameless himself."
The doctrine of vicarious liability is based on principles which can be summed up in the following two maxims,
(a) **Qui facit per alium facit per se,** The maxim means, 'he who acts through another is deemed in law as doing it himself. The master's responsibility for the servant's act had also its origin in this principle. The reasoning is that a person who puts another in his place to do a class of acts in his absence, necessarily leaves to determine, according to the circumstances that arise, when an act of that class is to be done and trust him for the manner in which it is done, consequently he is answerable for the wrong of the person so entrusted either in the manner of doing such an act, or in doing such an act under circumstances in which it ought not to have been done, provided what is done is not done from any caprice of the servant but in the course of the employment.
(b) **Respondeat superior,** This maxim means that, the superior must be responsible or let the principal be liable. In such cases not only he who obeys but also he who command becomes equally liable This rule has its origin in the legal presumption that all acts done by the servant in and about his master's business are done by his master's express or implied authority and are, in truth, the act of the master. It puts the master in the same position as if he had done the act himself. The master is answerable for every such wrong of the servant as is committed in the course of his service, though no express command or privity is proved. Similarly, a principal and agent are jointly and severally liable as joint wrongdoers for any tort authorised by the former and committed by the latter.
Modern View, In recent times, however, the doctrine of vicarious liability is justified on the principle other than that embodied in the above-mentioned maxims. It is now believed that the underlying idea of this doctrine is that of expediency and public policy. Salmond has rightly remarked in this connection that "there is one idea which is found in the judgments from the time of Sir John Holt to that of LordGoddard, namely, public policy."
Modes **of vicarious liability,** The liability for others wrongful acts or omissions may arise in one of the following three ways,
(a) **Liability by ratification,** Where the defendant has authorised or ratified the particular wrongful act or omission.
(b) **Liability arising out of special relationship,** Where the defendant stands to the wrong-doer in a relation which makes the former answerable for wrongs .committed by the other, though not specifically authorised. This is the most important form of liability. Liability **arising out of master and Servant**

In order that the master may be held liable for the tort of his servant following conditions should be fulfilled,
(1) Tort is committed by the 'servant', and
(2) The servant committed the tort while acting in the course of employment of his master.
Who is servant?, Lord Thankerton has said that there must be contract of service between the master and servant has laid down the following four ingredients.
(1) the master's power of selection of his servant,
(2) the payment of wages or other remuneration,

(3) the master's right to control the method of doing the work, and
(4) the master's right of suspension or dismissal.
Thus, a servant may be defined as any person employed by another to do work for him on the terms that he is to be subject to the control and directions of his employer in respect of the manner in which his work is to be done. A servant is thus an agent who works under the supervision and direction of his employer, engaged to obey his employer's order from time to time. Applying this test, a son is not a servant of his father in the eye of law.

Difference between Servant and Independent Contractor

(1) A servant is an agent who works under the supervision and direction of his employer. Whare as An independent contractor is one who is his own master.
(2) A servant is a person employed to obey his master's directions from time to time. Whare as An independent contractor is a person engaged to do certain works, but to exercise his own discretion as to the mode and time of doing it!
(3) A servant is bound by the orders of his master but an independent contractor is bound by the terms of his contract.

Course of employment, A servant is said to be acting in the course of employment if,
(1) the wrongful act has been authorised by the master, or
(2) the mode in which the authorised act has been done is wrongful or unauthorised. It is the general rule that master will be liable not merely for what he has authorised his servant to do but also for the way in which he does that which he has authorised to do.

An employee in case of necessity is also considered as acting in the course of employment, if he is performing his employer's business. For instance, a Government employee was travelling in a jeep to deliver medicines in the course of his duties. He had licence to drive and had also been authorised to drive the Government's vehicle in the case of necessity. The driver of the jeep suddenly took ill and, therefore, he had to drive, in order to ensure the medicines reaching their destination, While driving the jeep he negligently run over the deceased, It was held that he was acting in the course of employment and thus the Government was liable,

The trend of the recent decisions of various High Courts is to allow compensation to the accident victim against the owner of the vehicle and through him, the insurance company. The aspect of the relationship of the independent contractor and employer between the mechanic or the workshop and the owner of the vehicle has been generally ignored, such liability has been recognised on the basis of the law of agency by considering the owners of the workshop or the mechanic as an agent of the owner of vehicle.

The recent trend in law to make the master liable for acts which do not strictly fall within the term 'in course of employment' as ordinarily understood. The owner is not only liable for the negligence of the driver if that driver is his servant acting in the course of the employment but also when the driver is with the owner's consent, driving, the car on the owner's business or for the owner's purposes.

Thus, although the particular act which gives the cause of action may not be authorised, yet, if the act is done in the course of employment which is authorised, the master is liable. In other words, "to hold master liable for the wrongful act of a servant it must be committed in the course of master's business so as to form part of it, and not merely, coincident in time

with it," but if the torts are committed in any manner beyond the scope of employment the master is liable only if he was expressly authorised or subsequently ratified them.
Main incidents of Master's Liability, There are six principal ways in which a master becomes liable for the wrong done by servants in the course of their employment.
1. *The wrong committed by the servant may be the natural consequence of something done by him with ordinary care in execution of his master 's specific orders.*
In Indian Insurance Corporation, Association Pool, Bombay Verses Radhabai, the driver of a motor vehicle belonging to the Primary Health Centre of the State was required to bring the ailing children by bus to the Primary Health Centre. The driver in the course of driving gave the control of the steering wheel to an unauthorised person. 'twas an unauthorised mode of doing the act authorised by the master. It was held that in such circumstances, the Government, *viz.,* the owner of the vehicle is vicariously liable for the negligence of the driver in permitting unauthorised person to drive the vehicle.
2. *Master will be liable for the negligence of his servant.*
In Baldeo Raj Verses Deowati, the driver of a Truck sat by the side of the conductor and allowed the conductor to drive. The conductor caused an accident with a rickshaw as a result of which a rikshaw passenger died. It was held that the act of the driver in permitting the conductor to drive the vehicle at the relevant time was a breach of duty by the driver, and that was the direct cause of the accident. For such negligence of the driver his master was held vicariously liable.
3. *Servant's wrong may consist in excess of mistaken execution of lawful authority. Here two things have to be established.*

In the first place, it must be shown that the servant intended to do on behalf of his master something which he was, in fact, authorised to do. Secondly, it has to be proted that the act if done in a proper manner, would have been lawful.
4. *Wrong' may be a wilful wrong but doing on the master's behalf and with the intention of serving his purpose.*
If a servant performs some act which indicates recklessness in his conduct but which is within the course of his employment and calculated to serve the interest of the master, then the latter will be saddled with the responsibility for it.
5. *Wrong may be due to the servant's fraudulent act.*
A master is liable also for the wrongful acts of his servants done fraudulently. It is immaterial that the servant's fraud was for his own benefit. The master is liable if the servant was having the authority to do the act, that is, the act must be comprehended within his ostensible authority. The underlying principle is that on account of the fraudulent act of the servant, the master is deemed to extend a tacit invitation to others to enter into dealings or transactions with him. Therefore, the master's liability for the fraudulent acts of his servants is limited to cases where the plaintiff has been invited by the defendant to enter into some sort of relationship with a wrong doer. Consequently, where there is no invitation, express or implied, the acts will be treated as the independent acts of his servant himself, and outside the scope of his employment,
6. *Wrong may be due to the Servant's Criminal Act.*

Though there is no such thing as vicarious liability in criminal proceedings, yet in a *civil* action, a master is liable in respect of the *criminal* acts of a servant, provided they are committed in the course of his employment.

Government Liability In Torts

Vicarious Liability of the State Position in England

At one time in England the maxim of the Common Law Was that "the King can do no wrong", and as such crown could not be sued for the tortious acts of its servants. The individual wrong-doer (that is, the official) was personally liable for the wrong committed by him, even when the wrong was actually authorised by the Crown or was committed in the course of his employment. Obviously, the position thus obtained was inequitable and

incompatible. However, with the expansion in the activities of the State, it became necessary that the State should shoulder liability for the acts of its servants without claiming any special immunity. With this object in view, the Crown Proceedings Act, 1947, was passed. Now, like a private employer, the Crown is liable for the torts committed by its servants in the course of their employment. **Position in India**

Article 300 of the Constitution of India stated the legal position of State as regards its liability for the tortious acts of its servants done in course of their employment.The Article provides that the Government of India may sue or be sued by the name of Union of India and the Government of a State may sue or be sued by the name of the State and may, subject to any provisions which may be made by Act of Parliament or of the legislature of such State enacted by virtue of powers conferred by this Constitution, sue or be sued in relation to their respective affairs in the like cases as the dominion of India and the corresponding provinces or the corresponding Indian states might have sued or been sued if this constitution had not been enacted.

Thus, the Union of India and the states are juristic persons by virtue of Article 300 but this Article does not mention those circumstances under which the Union of India and the State Governments can sue and be sued. This Article simply mandates to refer to the legal position prevailing before the commencement of the constitution. The legal position of the State before the Constitution came into force is to be found'in the Government of India Act, 1935, which again like the Constitution, said that the position prevailing before the Act of 1935, that is, position as obtaining under the Government of India Act, 1915, shall prevail. The Act of 1915 in a like manner made reference to the Government of India Act, 1858. The Act of 1858 made it clear that the Government was liable for acts of its servants in those cases in which the East India Company would have been liable.

East India Company, The East India Company was held to be liable for the tortious acts of its servants which were done in the exercise of its non-sovereign function, that is, the function which could have been performed by a private individual. It was held not to be liable for a tort committed by its servants if the act was done in exercise of sovereign power. The question of liability of East India Company was considered in the following case,

In **Peninsular & Oriented Steam Navigation Company Verses Secretary of State for** India, the plaintiff's horse was injured by the negligence ofthe servants of the Government. These were engaged at the time of the injury in carrying along a public road a heavy piece of iron for being placed on board a steamer. The plaintiff filed a suit against the Secretary of State for the recovery of damages. Held, the Government was liable as the act in question was not being done in the exercise of any Governmental or sovereign function. Peacock C.J., observed in this case,

"There is a great and clear distinction between acts done in exercise of what are usually termed sovereign powers and acts done in the conduct of undertakings which might be carried on by private individuals without having such powers delegated to them. Where the act is done or a contract is entered into, in the exercise of powers usually called sovereign powers, no action will lie."

In **State of Rajasthan Verses Vidhyawathi,** the driver of a Rajasthan Government's jeep which was meant for the use of the collector was taking it from the repair shop to the collector's residence. On way, owing to rash and negligent driving, a pedestrian was knocked down and killed. The widow of the victim sued the Government for damages. Held, the State

Government was vicariously liable for the tortious acts of its servants, like any other employer.

In **Fatima Begum Verses State of Jammu & Kashmir,** a truck belonging to the Government Transport Undertaking knocked (town a cyclist while it was engaged in transporting police personnel from the place of duty to barracks. The High Court rejected plea of defence of sovereign immunity and held the State Government liable.

Inlqbal **Kaur Verses Chief of Army Staff,** an accident occulted due to the negligent driving by a sepoy ofthe Government while he was going with a truck for imparting training in motor driving to new recruits. Held, the act did not constitute an act in exercise of sovereign power and the Union of India were liable for damages.

In **Union of India Verses Savita Sharma,** soldiers were being transported in an army vehicle. Negligence on the part of its driver resulted in an accident to a private tempo. An occupant of ths tempo was injured in the accident. Held, the State was liable for damages.

In **State of Tamil Nadu Verses M.N. Shamsuden,** the death of a person was caused by an ambulance belonging to the Government which was being used for transporting a patient for emergency treatment. The Madras High Court disallowed the protection of immunity on the ground that transporting of the patient to the hospital could be done even by private individuals.

In **Surjit Singh Bhatia Verses Segalla Ramula,** a military vehicle dashed against a motor cycle and caused injuries to the pillion rider. The Punjab & Haryana High Court rejected the plea of sovereign immunity.

In **Indian Insurance Corporation Asson Pool Verses Radhabai**, it has been held that taking ailing children to Primary Health Centre in a vehicle belonging to the State Government is not a sovereign function and the State is liable for the accident caused by the negligence of the driver of such vehicle. It was a case decided on the lines of Vidyawati's case.

In **Union of India Verses Harbans Singh,** meals were being carried from the cantonment, Delhi for being distributed to military personnel on duty. The truck carrying the meals belonged to the military department and was being driven by a military driver. It caused accident resulting in the death of a person. It was held that the act was being done in the exercise of sovereign powers, and therefore, the State was not liable for the same.

In **Pushpa Thakur Verses UOI,** where the truck involved in accident was engaged in carrying ration and sepoys within the country during peace time in the course of movement of troops after the hostilities were over, held that this is a "routine duty" not directly connected with carrying on of war, the traditional sovereign function.

In **Ram Ghulam Verses State of Uttar Pradesh,** the police authorities recovered some stolen property and deposited the same in the Malkhana. The property was again stolen from the Malkhana. The Government of U.P. was held not liable for the same to the owner of the property as the Government servants were performing obligations imposed by law. Similar decision was given in **Mohd. Murad Verses Govt. of Uttar Pradesh**.

In **State of U.P. Verses Hindustan Lever Limited,** the act of the Government servants was in exercise of statutory powers but the powers in that case were not sovereign powers, and therefore, the State was held liable.

In **People's Union for Democratic Rights Verses Police Commn, Delhi,** the State was ordered to pay compensation to victims of police firing.
The police fired without any warning on a group of poor peasants who had collected for a peaceful meeting.

Thus, from the above cases it can be concluded that sovereign powers means those powers which can be lawfully exercised by a person by virtue of delegated sovereign powers. It must include maintenance of the army, various departments of the Government for maintenance of public law, order, administration of the country. A easy test to consider that whether a function is a non-sovereign function or not is that if a private individual can be engaged in that function it is a non-sovereign function. Thus, functions relating to trade, business, commerce and the welfare activities are non-sovereign functions.

Question. 10. "Although the decision of the Supreme Court in Kasturi Lal Ralia Ram Jain Verses State of U.P. has not been over-ruled as such, yet subsequent decisions of the Apex Court have greatly undermined its authority and diminished the sphere of sovereign immunity." Explain with the help of decided cases.

Answer. 10. Vicarious Liability of the State: A Plea for a Review of The Existing Law.

We have seen that in some cases the State was held liable while in some other the State was held not liable. In particular the case of Kasturi Lal raised some doubts and their lordships of

the Supreme Court had to abide by and to decide the case strictly in accordance with the existing law. At the same time they made a passionate plea for a review of the law relating to the tortious acts committed by the employees of State, It was observed that many innocent citizens may be denied justice and be deprived of their actionable claims simply because the existing law would not help them.

A modern State is a welfare State. Unlike the situation which prevailed in the nineteenth century and prior thereto when the only function of the State was to maintain law and order and to defend the country against external or internal aggression the activities of the modern State have expanded manifold. The modern State has launched all sorts of welfare activities and such activities touch upon every aspect of the citizens life.

In recent times most of the States especially India have also taken a clue from private sector and have started purely commercial activities. Some of the earlier private activities have been completely taken over by the State. For example, Banking, life insurance, railway etc. Earlier the corporate sector was purely a private one: but now the State undertaking have started competing with the private undertaking. On similar lines many of the State have also promoted public undertaking in collaboration with non resident Indians or some foreign companies.

The question arises: are all these functions truely speaking the sovereign functions of the State? The answer is obviously not. Thus, a line has to be drawn somewhere between the functions which can be truely called the sovereign function of the State and the function which are ordinary commercial or routine. Now the Court of the law have been deciding each cases in the light of the facts and the circumstances of the case. Will the citizens remain in the dark as to when and under to circumstances the tortious acts of the servants/employees of the State would be liable for the damage or the injury caused to them or their property? Or would they always have to come to the Court of law simply to be told that they have no actionable claim?

Modern Developments in the Law of Torts

The maxim 'the king can do no wrong' is now outdated and it has become a point of purely an academic discussion. The State cannot now claim immunity from law just because it is sovereign. The State would logically be extended to millions of the employees working for the State. Would that mean all such employees are immune from law for all of tortious acts? Or does it mean a citizen can have no actionable claim against any of such employees of the State?

The law of torts as it prevails in India is mostly founded on the law prevailing in England. The Crown's Proceeding Act, 1947, has changed the law of torts to the considerable extent. It is unfortunate that in India the law relating to torts has not kept pace with the recent fast and ever-expanding activities of the State. We have borrowed all our laws from the English laws; similarly the law of torts which still prevails in our country and which the Courts still apply is the law which prevailed in England prior to the Crown Proceedings Act. It is to note that our wise Parliamentarians have not enacted any law on the lines of the said Act although our

Hon'ble Courts still rely on the cases relating to torts as decided by the English Courts. In many cases their Lordships of the Supreme Courts and of various High Courts have cited and relied upon the cases decided by the House of Lords, the privy council or the king's bench or the queen's bench divisions. But our Courts have shown reluctance to follow the law of torts as it now stands amended in the light of the Crown Proceedings Act, on the ground that our Parliament which is a sovereign body have not made a similar law. It was in some of the cases where the Courts felt helpless to grant relief to the Plaintiff because of the constraints of the existing law that their lordships made a passionate appeals to the Parliament to amend the law of torts on the lines of the English Law. (Kasturi Lal case).
The learned members of the law commission have made certain recommendations to the Government and have requested the Government to place a Bill in the Parliament in the light of the recommendation.

Vicarious Liability of the Government of India: Plea for Review

While in England, after the passing of the Crown Proceedings Act, 1947, it is no defence for the State that the tort committed by its servants was in discharge of obligations imposed by law, in India, the same has been considered to be a defence in a number of cases.

However, in order to exempt the State from liability it is further necessary that the statutory functions which are exercised by the Government servants were exercised by way of delegation of the sovereign power of the State. In case the tortious act committed by the servant was in discharge of non-sovereign functions die State would be liable for the same *(Kasturi Lal's* case; *State of U.P. Verses Hindustan Lever Ltd.*).

The palpable unjustness of the decision in *Kasturi Lal* case has led to its bypassing in recent times. Today, the State has been held liable in respect of loss or damage either to the property or to a person. Although the decision of the Supreme Court in *Kasturi La/'s* case is yet to be overruled, subsequent decisions of the court have greatly undermined its authority and reduced the strength of sovereign immunity In *Common Cause, A Registered Society Verses UOI* (AIR 1999 SC 2979), the court observed that "the doctrine of sovereign immunity has no relevance in the present day context Much of *Kasturilal's* efficacy as a binding precedent has been eroded".

The present law relating to the vicarious liability of State is not satisfactory in India. A proper legislation is lacking in this regard. It is left to courts to develop the law according to the views of the judges. The citizens are not in a position to know the law definitely. In *Kasturi Lal* case, die Supreme Court had expressed dissatisfaction at the prevailing position. It said that the remedy to cure this position lies in the hand of the Legislature. In TV. *Nagendra Rao's* case (1994) also, the Supreme Court suggested for enacting appropriate legislation to remove die uncertainty in this area.

The position prevailing before the commencement of the Constitution remains unchanged though the Parliament and the State Legislature have been empowered to pass law to change the position (Article 300 of Constitution). The unsatisfactory state of affairs in this regard is

against social justice in a welfare State. In the absence of legislation, it will be in consonance with social justice demanded by the changed conditions and the concept of welfare State that the courts will follow the recent decisions of the Supreme Court (discussed below) rather than *Kasturi Lal.*

It emerges from the various decisions (barring recent ones) that the Government is not liable for the torts committed by its servants in exercise of sovereign powers, but for the torts committed in the exercise of non-sovereign powers. Sovereign powers mean powers which can be lawfully exercised only by a sovereign or by a person to whom such powers have been delegated.

There are no well defined tests to know what are sovereign powers. Functions like maintenance of defence forces, maintenance of law and order and proper administration of the country, and the machinery for administration of justice can be included in sovereign functions. functions relating to trade, business and commerce and welfare activities *(viz.* running of hospital) are amongst the 'non-sovereign' functions. Broadly speaking such functions, in which private individuals can be engaged in, are *not* sovereign functions. Routine activities, such as maintenance of vehicles of officers of the government, also fall within the sphere of 'non-sovereign' functions.

The following are the instances of "sovereign" functions:

(1) Maintenance of defence force that is construction of a military road, distribution of meals to the army personnel on duty, checking army personnel on duty.
In *Baxi Amrik Singh Verses Union of India*, held that the checking of army personnel on duty was a function intimately connected with the army discipline and it could only be performed by a member of the Armed Forces and that too by such a member who is detailed on such duty and is empowered to discharge that function.

(2) Maintenance of law and order that is if die plaintiff is injured while police personnel are dispersing unlawful crowd *(State of Orissav Padmalochan*), or plaintiff's loudspeaker set is damaged when the police makes a lathi charge to quell a riot *(State of M.P. Verses Chironji Lal*).
The following are the instances of "non-sovereign" functions:
(1) Maintenance of dockyard (P. *& O. Steam Navigation Co.* case).
(2) A truck belonging to the public works department carrying material for the construction of a road bridge *(Rap Raw Verses The Punjab State*), Famine relief work *(Shyam Sunder Verses State of Rqjasthan*).

(3) A Government jeep car being taken from the workshop to the Collector's bungalow for the Collector's use *(State of Rajasthan Verses Vidjawati*).

(4) Taking ailing children to Primary Health Centre in a Government carrier *(Indian Insurance Co. Assn. Pool Verses Radbabai*).

(5) Carrying military *jawans* from Railway Station to the Unit Headquarters *(LJnion of India Verses Savita Sharma*). Similarly, carrying ration and *sepoys* within the country during peace time in the course of movement of troops after the hostilities were over *[Pushpa Tbakur Verses UOI*].

(6) Carrying Air Force officers from one place to another in Delhi for playing hockey and basket ball *(Satya Wati Devi Verses UOI*), or bringing back military officers from the place of exercise to the college of combat *(Nandram Heeralal Verses*).

(7) Taking a truck for imparting training to new M.T. Recruits *(Iqbal Kaur Verses Chief of Army Staff*).

(8) Transporting of a machine and other equipment to a military training school *(Union of India Verses Sugrabai*).

(9) Where some military *jawans* found some firewood lying by river side and carried the same away for purposes of camp fire and fuel *(Roop Lal Verses UOI*).

(10) A 'service' (facility) provided to a 'consumer' within the meaning of the Consumer Protection Act, 1986 is not a 'sovereign' function *(Lucknow Development Authority Verses M.K. Gupta*).

DEFAMATION

Definitions

According to Winfield, "Defamation is the publication of statement which tends to lower a person in the estimation of right thinking members of society generally or which tends to make them shun or avoid that person. It is libel if the statement be in permanent form, the slander if it consists in significant words or gestures."

In the words of Park B., defamation is "a publication without justification or lawful excuse, which is calculated to injure the reputation of another, by exposing him to hatred, contempt or ridicule".

Libel

Libel & Slander

The wrong of defamation is of two kinds—libel and slander. A libel is a defamatory statement which is addressed to the eye and is in permanent and visible form, for example, writing, picture, printing, caricature, effigy, statute or cinematography. A slander is the publication of a defamatory statement in some transient form, whether visible or audible, for example spoken words or gestures. However, in the present day environment it has become difficult to determine that whether a certain defamatory statement is a libel or slander, for example, the defamatory matter recorded on a *gramophone disc is addressed to the ear and not to the eye and it is a libel because it is in permanent form.*

Libel is, however, actionable per se, that is, *without the proof of special damage, whereas slander is actionable only on proof of special damage. There are certain exceptions where slander is actionable* per se,

(*1) Imputation of criminal offence to the plaintiff.*

(2) Imputation of a contagious disease to the plaintiff which has the effect of preventing others from associating with the plaintiff.

(3) Imputation that a person is incompetent, dishonest or unfit for any assigned job office, profession and so on.

(4) Imputation of adultery or unchastity.

This was, however, the position in English Law. In Indian Law, both libel and slander are actionable per se *and there is no need of proof of special damages.*

Difference between Lible and Slander

First on the basis of nature,

Liable, the defamatory matter is in some permanent form, for example, effigy, written articles, printing, picture, caricatures etc. It is addressed to the eye where as In Slander, defamatory matter is in some transient form, for example, gestures, gossips, rumuors. It is addressed to the ear.

Second on the basis of position in English law,

Liable is criminal offence as well as a civil wrong where as Slander is a civil wrong only.

Third on the basis of proof of special damage,

Liable is actionable per se where as Slander is actionable on the proof of special damage.

Fourth on the basis of innocence

In Liable, The speaker may not be innocent where as In Slander The speaker is not innocent.

Fifth on the basis of breach of peace,

Liable conduces to a breach of peace where as Slander is not so serious in consequence.

Sixth on the basis of period of limitations,

Under the English statutes of limitation, an action of libel is barred after 6 year. In India, the period of limitation is one year where as Under the English statutes of limitation, an action of slander is barred after 2 year. In India, the period of limitation is one year.

This is basically a position in English law, the above stated distinctions do not find place in India. In India, libel and slander are treated alike, both of them are actionable per se. *Both are considered to be an offfehre'undpr Indian Criminal Law.*

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The question arises: are all these functions truely speaking the sovereign talons of the State? The answer is obviously not. Thus, a line has to be drawn somewhere between the functions which can be truely called the sovereign function ofthe State and the function which are ordinary commercial or routine. Now the Court of the law have been deciding each cases in the light of the facts and the circumstances of the case. Will the citizens remain in the dark as to when and under to circumstances the tortious acts of the servants/employees ofthe State would kliable for the damage or the injury caused to them or their property? Or would ky always have to come to the Court of law simply to be told that they have no rtonable claim?

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