

TOP THE SEMESTER

by

ADV. MOHIT TANWR

ADV. SHIVANG VERMA

PREFACE

In the world of legal education, the Law of Torts and Consumer Protection stands as a vital field as it holds the potential to bridge the traditional doctrines with the contemporary societal needs. This book is meticulously crafted to meet the multifaceted demands of the law students by offering not just the theoretical clarity but also the practical guidance to ace their respective exams and understand the real world applications of the law. Our mission with this book is quite simple and that is to create an all encompassing, accessible and engaging resource that supports the law students at every step of their journey through the subject of torts and consumer protection laws. To achieve this, the book is organized into five distinctive tracks, where each track is designed to enrich the learning experience of the law students. The tracks are as follows:

Statute Station: A comprehensive hub for essential lecture notes, the first track of the Statute Station dives into almost each topic within the domain of tort and consumer protection law, and it is structured in such a manner that aids the students to navigate through the concerned subjects easily. From the foundational principles to the detailed analysis of the Law of Torts and Consumer Protection Act, 2019, this section provides a firm grasp of a very comprehensive university's syllabus essentials.

Decree Dome: Legal principles come alive through landmark and contemporary judgments. This track offers students the chance to analyze the most

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significant rulings by fostering a deeper understanding of how tort and consumer protection laws gets evolve and adapt. Each case is dissected to highlight crucial arguments, judicial reasoning and the practical implications that law students need to master.

Law Solutions: Answer writing is an art, one that can be mastered only with practice. Law Solutions is dedicated to helping the students prepare effectively for exams by providing them with detailed answers to past few years' examination questions. Each solution is crafted to meet the academic standards while ensuring that the students feel well equipped to tackle any question.

Mind Maps: With exams and other academic hurdles on the horizon, Mind Maps offer the perfect quick reference tool. Complex concepts are distilled into manually created flowcharts, tables and diagrams that holds the potential to make last minute revision effective not only possible but also productive. This track allows students to reinforce their knowledge in a format that promotes visual learning and rapid recalling.

Legal Brief: Recognizing the pivotal role of statutory reference, this book includes the full text of the Consumer Protection Act, 2019 as part of the Legal Brief. This inclusion transforms the book into a one stop resource as it allows the students to consult the Bare Act alongside the notes and case analyses by facilitating a seamless study experience.

This book goes beyond traditional academics, fostering critical thinking, practical understanding, and equipping

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students to excel in exams and future legal practice. The Law of Torts and Consumer Protection is designed with the law student's needs at its core. We hope that this book will inspire confidence, nurture curiosity and provide a lasting resource for the law students by empowering them to grasp the complexities of tort and consumer protection laws with clarity and comprehensive insights.

Mr. Mohit Tanwar

Founder & Mentor, Top The Semester (Formerly, Verdict Vault)

Mr. Shivang Verma

Co-Founder, Top The Semester (Formerly, Verdict Vault)



ॐ कृष्णाय वासुदेवाय हरये परमात्मने ।
प्रणतः क्लेशनाशाय गोविंदाय नमो नमः ॥

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DISCLAIMER AND LIMITATION OF LIABILITY

This book has been prepared and published solely for academic purposes and provides general information regarding the law of contracts as applicable under the Indian law. The content herein reflects the authors' understanding and interpretation of the law at the time of writing. Every effort has been made to ensure the accuracy of the material, however, laws and legal interpretations are subject to change and errors may occur despite the authors' best efforts.

The author expressly disclaims any liability or responsibility for any direct or indirect consequences, losses or damages resulting from reliance on the information presented in this bonafide book. Readers are advised to consult appropriate legal professionals or authoritative sources for adequate legal advices on specific law related matters. Any inaccuracies or errors present in this work are unintentional and made in good faith. By using this book, the reader or student acknowledges and accepts this limitation of liability.

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- B. DECREE DOME:** Explore case law analysis with our thorough dissection of university syllabus cases, presented in a simplified and structured format to enhance your understanding of legal precedents.
- C. LAW SOLUTIONS:** Preparing for exams? Our Law Solutions module offers a complete collection of past question papers and detailed solutions, along with sample papers for new subjects. This resource helps you familiarize yourself with exam patterns and improve your problem-solving skills.
- D. MIND MAPS:** Enhance information retention and last-minute revisions with our Mind Mapping & Training Module, which features tables and flowcharts to help you efficiently grasp and memorize key concepts.

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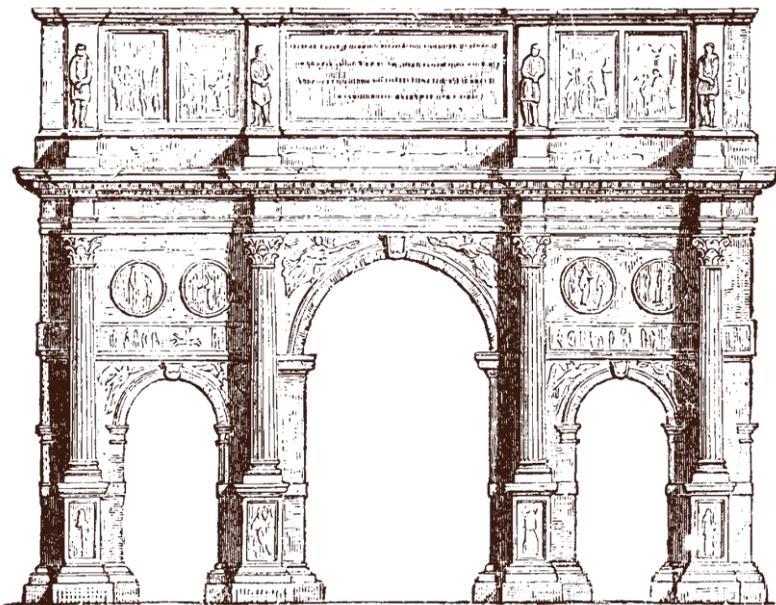
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STATUE STATION

**DELVE INTO THE INTRICACIES OF LAW WITH
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MATERIAL. THIS MODULE OFFERS A
SEAMLESS LEARNING EXPERIENCE,
ALLOWING YOU TO GRASP COMPLEX
SUBJECTS EFFORTLESSLY.**

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UNIT-I

INTRODUCTION AND PRINCIPLES OF LIABILITY IN TORT

The Law of Torts is a crucial area of civil law that governs relationships between individuals and entities. In India, tort law has evolved mainly through common law principles and judicial precedents. Although there is no specific legislation for torts, certain provisions in the Indian Penal Code, 1860, and the Indian Contract Act, 1872, address tortious liabilities. This article will provide an overview of tort law in India, the essentials of tortious liability, and the major categories of torts.

A tort can be defined as a civil wrong that causes damage or harm to another person, resulting in legal liability for the person committing the wrongful act. The primary purpose of tort law is to compensate the injured party for the harm suffered and to deter the wrongdoer from repeating the offense. Torts can be classified into two broad categories: intentional torts and unintentional torts.

Essentials of Tortious Liability: To establish tortious liability, three essential elements must be present:

- A wrongful act or omission by the defendant,
- Legal damage or injury to the plaintiff, and
- A direct causal relationship between the wrongful act and the damage suffered.

Some of the major categories of torts in India include:

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- **Negligence:** It occurs when a person breaches a duty of care, leading to harm or injury to another person.
- **Nuisance:** It is the unreasonable interference with a person's use or enjoyment of their property or rights.
- **Defamation:** It refers to the act of harming a person's reputation by making false statements.
- **Trespass:** It is an unlawful intrusion onto another's property, person, or goods.
- **Strict Liability:** It is the imposition of liability on a party without the need to prove negligence or fault.

Landmark Judgments: Several landmark judgments by the Supreme Court of India have helped shape and develop the law of torts in the country. Some of these cases include:

- ***M.C. Mehta v. Union of India (1987)*:** In this case, the principle of "absolute liability" was introduced. The court held that any enterprise engaging in hazardous activities has an absolute and non-delegable duty to ensure the safety of people and the environment.
- ***Kusum Ingots & Alloys Ltd. v. Union of India (2004)*:** The court expanded the scope of the tort of negligence to include economic torts and held that the breach of a statutory duty may give rise to a claim for damages.
- ***Jacob Mathew v. State of Punjab (2005)*:** The Supreme Court laid down guidelines to

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determine medical negligence and held that a doctor's liability is determined by the degree of skill and care that a reasonably competent doctor in the same field would have exercised under similar circumstances.

The Indian tort law system is dynamic and continues to evolve through judicial interpretations and precedents. The law of torts plays a critical role in upholding the rights and interests of individuals and businesses and ensuring that they are adequately compensated for any harm or loss caused by the wrongful acts of others.

1.1. DEFINITION AND ORIGIN OF TORTS

The term "tort" is derived from the Latin word "tortum," which means "twisted" or "wrong." In simple terms, a tort refers to a civil wrong that causes harm or injury to another person or party. The law of torts is a branch of civil law that deals with compensation for injuries or harm caused by the wrongful conduct of another party. The Indian legal system has adopted the law of torts from the British common law system.

Objectives of the Law of Torts: The primary objectives of the law of torts are:

- a. To provide compensation or damages to the injured party for the harm suffered.

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- b. To deter the wrongdoer and others from committing similar wrongful acts in the future.
- c. To restore the injured party to the position they were in before the tortious act occurred.

Elements of a Tort: There are three essential elements that constitute a tort:

- a. A wrongful act or omission by the defendant.
- b. The act or omission results in legal damage or injury to the plaintiff.
- c. The wrongful act or omission is of such a nature that it gives rise to a legal remedy in the form of compensation.

Landmark Judgments Some of the landmark judgments in the Indian law of torts include:

- ***Dr. Laxman Balkrishna Joshi v. Dr. Trimbak Bapu Godbole (1968)***: This case established the principles of medical negligence in India, stating that a doctor owes a duty of care to their patient and is liable for any harm resulting from a breach of that duty.
- ***Kasturi Lal Ralia Ram Jain v. State of U.P. (1965)***: The Supreme Court held that the state is not vicariously liable for the tortious acts of its employees if the acts are committed in the exercise

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of sovereign functions.

- ***Donoghue v. Stevenson (1932)***: Although not an Indian case, this British case is significant in Indian tort law as it established the principle of the duty of care in negligence cases. The "neighbor principle" from this case has been adopted in India and is widely applied in negligence cases.

1.2. DEVELOPMENT OF LAW OF TORTS

Colonial Era and Adaptation of English Common Law

During British rule, India adopted English common law principles, which laid the foundation for the law of torts in the country. The Indian courts followed the decisions and precedents set by English courts and applied these principles to Indian cases. This practice of following English precedents can be traced back to the 18th century when courts in Madras, Bombay, and Calcutta were established.

Post-Independence Era and Development of Indian Tort Law: After independence, the Indian courts began to develop and expand the law of torts to cater to the unique needs of Indian society. While the courts continued to rely on English precedents, they also started interpreting and modifying these principles to suit the Indian context. During this period, Indian courts delivered several landmark judgments that have had a significant impact on the development of tort law

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in the country.

Some of these landmark judgments include:

- ***M.C. Mehta v. Union of India (1987)***: In this case, the Supreme Court introduced the principle of "absolute liability" for industries engaged in hazardous activities. The court held that such industries have an absolute and non-delegable duty to ensure the safety of people and the environment. This decision has had a profound impact on the development of tort law in India, particularly in the area of environmental law.
- ***Nilabati Behera v. State of Orissa (1993)***: In this case, the Supreme Court recognized the liability of the state for the actions of its police officers, holding that the state has a duty to protect the fundamental rights of its citizens. This judgment expanded the scope of tort law in India, holding the state accountable for its actions.
- ***Indian Medical Association v. V.P. Shantha (1995)***: The Supreme Court held that medical professionals and hospitals are covered under the Consumer Protection Act, 1986, and can be held liable for negligence in providing services. This judgment has had a significant impact on the development of medical negligence as a distinct category of tort.

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3. **Contemporary Developments:** In recent years, Indian courts have continued to develop and refine the law of torts to address new and emerging issues. Examples of such developments include the recognition of privacy as a fundamental right, the expansion of liability for cyber torts, and the introduction of the concept of public interest litigation (PIL), which allows individuals and groups to approach the courts for the protection of public interest and the enforcement of collective rights.

1.3. DISTINCTION BETWEEN LAW OF TORT, CONTRACT, QUASI-CONTRACT AND CRIME

Distinction between Law of Tort and Contract

The law of torts and the law of contracts are two distinct branches of civil law. While both deal with the obligations and duties that arise between individuals, they differ in several crucial aspects. The following points outline the key differences between the law of torts and the law of contracts:

a) Basis of Liability

Tort Law: The basis of liability in tort law is a wrongful act or omission that causes harm or injury to another party. The injured party has the right to seek compensation from the wrongdoer for the damage suffered.

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Contract Law: In contract law, the basis of liability is the breach of a legally binding agreement between two or more parties. The aggrieved party can seek damages or specific performance for the breach of the terms of the contract.

b) Nature of Duty

Tort Law: The duty in tort law is imposed by the law itself. It is a general duty that every individual owes to others not to cause harm through wrongful conduct.

Contract Law: In contract law, the duty arises from the agreement between the parties. The obligations are specifically defined by the terms of the contract, and the parties are bound to fulfill their respective promises.

c) Creation of Rights

Tort Law: In tort law, the rights and obligations are created by the operation of law, not by the parties' agreement. These rights are available to all individuals who have suffered harm due to a wrongful act or omission.

Contract Law: In contract law, the rights and obligations are created by the agreement between the parties. The rights are only available to the parties to the contract and cannot be enforced by

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third parties, except in certain circumstances (e.g., rights under the Indian Contract Act, 1872).

d) Privity of Relationship

Tort Law: In tort law, there is no requirement for privity (i.e., a direct relationship) between the plaintiff and the defendant. Any person who has suffered harm due to the defendant's wrongful act or omission can bring a tort action against the defendant.

Contract Law: In contract law, the concept of privity is essential. Only the parties to the contract have rights and obligations under the contract, and a third party cannot sue for the breach of the contract.

e) Remedies

Tort Law: The primary remedy in tort law is monetary compensation, also known as damages. The aim of damages is to put the injured party in the position they were in before the tortious act occurred. In some cases, other remedies such as injunctions (an order to stop a harmful act) may also be available.

Contract Law: In contract law, the remedies available to the aggrieved party include damages, specific performance (an order to fulfill the terms of the contract), and rescission (cancellation of the

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contract). The aim of these remedies is to either restore the aggrieved party to the position they were in before the breach occurred or to enforce the terms of the contract.

f) Limitation Period

Tort Law: The limitation period for bringing a tort action in India is generally three years from the date the cause of action arises, as per the Limitation Act, 1963. However, specific torts may have different limitation periods.

Contract Law: The limitation period for bringing a breach of contract action in India is also generally three years from the date the breach occurs, as per the Limitation Act, 1963.

Therefore, while the law of torts and contract law both deal with obligations and duties between individuals, they differ significantly in terms of the basis of liability, nature of duty, creation of rights, privity of relationship, remedies, and limitation periods. Understanding these distinctions is crucial for navigating the complexities of civil law in

Distinction Between Law of Tort and Quasi-Contract

The law of torts and the concept of quasi-contracts are distinct areas of civil law. While tort law focuses on compensating for harm caused by wrongful acts, quasi-

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contracts address situations where one party has unjustly benefited at the expense of another, even though there is no formal contract between them. The following points outline the key differences between the law of torts and quasi-contracts:

a) Basis of Liability

Tort Law: In tort law, liability arises from a wrongful act or omission that causes harm or injury to another person. The injured party is entitled to seek compensation from the wrongdoer for the damage suffered.

Quasi-Contract: Quasi-contracts are not true contracts but rather legal obligations imposed by courts to prevent unjust enrichment. Liability arises when one party benefits unjustly at the expense of another, and there is no valid contract between them. The courts impose an obligation on the enriched party to compensate the other party, even in the absence of a formal contract.

b) Nature of Duty

Tort Law: In tort law, the duty is imposed by the law itself. It is a general duty that every individual owes to others not to cause harm through wrongful conduct.

Quasi-Contract: In the case of quasi-contracts, the

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duty arises from the specific circumstances of the case, and the obligation is imposed by the court to ensure fairness and justice. The duty is to restore the unjust benefit received by one party at the expense of another.

c) Creation of Rights

Tort Law: In tort law, the rights and obligations are created by the operation of law, not by the parties' agreement. These rights are available to all individuals who have suffered harm due to a wrongful act or omission.

Quasi-Contract: In quasi-contracts, the rights and obligations are created by the court to prevent unjust enrichment. The court creates an obligation on the enriched party to compensate the other party, even though there is no valid contract between them.

d) Privity of Relationship

Tort Law: In tort law, there is no requirement for privity (i.e., a direct relationship) between the plaintiff and the defendant. Any person who has suffered harm due to the defendant's wrongful act or omission can bring a tort action against the defendant.

Quasi-Contract: In the case of quasi-contracts, privity is not required, as the obligations are

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imposed by the court in the absence of a formal contract. The aggrieved party can seek relief from the enriched party, even if there is no direct contractual relationship between them.

e) Remedies

Tort Law: The primary remedy in tort law is monetary compensation, also known as damages. The aim of damages is to put the injured party in the position they were in before the tortious act occurred. In some cases, other remedies such as injunctions (an order to stop a harmful act) may also be available.

Quasi-Contract: The remedy in quasi-contracts is usually restitution, which requires the enriched party to return the unjust benefit to the aggrieved party. The aim of restitution is to restore the aggrieved party to the position they were in before the unjust enrichment occurred.

f) Limitation Period

Tort Law: The limitation period for bringing a tort action in India is generally three years from the date the cause of action arises, as per the Limitation Act, 1963. However, specific torts may have different limitation periods.

Quasi-Contract: The limitation period for bringing

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an action based on a quasi-contract in India is also generally three years from the date the cause of action arises, as per the Limitation Act, 1963.

Distinction between Law of Tort and Law of Crime

The law of torts and the law of crimes are two separate branches of the legal system, with each addressing different types of wrongful acts and providing distinct remedies. The following points outline the key differences between the law of torts and the law of crimes:

a) Nature of the Wrong

Tort Law: In tort law, the wrongful act or omission is a civil wrong that causes harm or injury to another person. The primary objective of tort law is to provide compensation to the injured party for the damage suffered.

Criminal Law: In criminal law, the wrongful act is considered an offense against society as a whole. The primary objective of criminal law is to maintain law and order by punishing the offender and deterring others from committing similar offenses.

b) Basis of Liability

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Tort Law: Liability in tort law arises from a wrongful act or omission that causes harm or injury to another person. The injured party has the right to seek compensation from the wrongdoer for the damage suffered.

Criminal Law: Liability in criminal law arises from the commission of a crime, as defined by the penal laws of the country. The accused is liable to be punished by the state for the offense committed.

c) Parties Involved

Tort Law: In tort law, the parties involved are the plaintiff (the injured party) and the defendant (the wrongdoer). The dispute is primarily between these two parties.

Criminal Law: In criminal law, the parties involved are the state (represented by the prosecution) and the accused (the person charged with the crime). The victim of the crime is not a direct party to the criminal proceedings, although they may have an important role as a witness or in providing evidence.

d) Proceedings

Tort Law: Tort cases are heard in civil courts, and the proceedings are initiated by the injured party (the plaintiff) by filing a civil lawsuit against the wrongdoer (the defendant).

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Criminal Law: Criminal cases are heard in criminal courts, and the proceedings are initiated by the state (through the prosecution) against the accused. The victim of the crime does not initiate the proceedings but may cooperate with the prosecution in building the case against the accused.

e) Burden of Proof

Tort Law: In tort law, the burden of proof lies with the plaintiff, who must prove their case by a preponderance of the evidence (i.e., it is more likely than not that the defendant committed the wrongful act and caused the plaintiff's harm).

Criminal Law: In criminal law, the burden of proof lies with the prosecution, which must prove the accused's guilt beyond a reasonable doubt. This is a higher standard of proof than in tort law, reflecting the potentially severe consequences of a criminal conviction.

f) Remedies

Tort Law: The primary remedy in tort law is monetary compensation, also known as damages. The aim of damages is to put the injured party in the position they were in before the tortious act occurred. In some cases, other remedies such as injunctions (an order to stop a harmful act) may also

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be available.

Criminal Law: In criminal law, the remedies are punitive in nature and include fines, imprisonment, probation, community service, and other forms of punishment. The aim of these remedies is to punish the offender and deter others from committing similar offenses.

g) Limitation Period

Tort Law: The limitation period for bringing a tort action in India is generally three years from the date the cause of action arises, as per the Limitation Act, 1963. However, specific torts may have different limitation periods.

Criminal Law: The limitation period for bringing a criminal action in India depends on the nature of the offense. The Code of Criminal Procedure, 1973 (CrPC) classifies offenses into three categories: cognizable, non-cognizable, and compoundable. There is no limitation period for cognizable offenses, which are generally more serious in nature and include offenses like murder, rape, and kidnapping. For non-cognizable and compoundable offenses, the limitation period varies depending on the severity of the offense. In general, less serious offenses have shorter limitation periods, while more serious offenses have longer limitation periods.

The law of torts and the law of crimes address different

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types of wrongful acts, with distinct objectives, parties involved, proceedings, burden of proof, remedies, and limitation periods. Understanding the differences between these two branches of law is essential for a comprehensive understanding of the legal system and its various components.

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Aspect	Law of Tort	Law of Contract	Quasi Contract	Law of Crime
Objective	Compensate injured party	Fulfill mutual promises	Prevent unjust enrichment	Punish wrongdoer, maintain public order
Nature of the Wrong	Civil wrong	Civil wrong	Civil wrong	Criminal wrong
Legal Relationship	Breach of legal duty owed to another person	Agreement between parties	Imposed by law, no agreement needed	Breach of legal duty owed to society
Consent of Parties	Not required	Required	Not required	Not required
Rights and Duties	Arise from breach of legal duty	Arise from the terms of the contract	Imposed by law to prevent unjust enrichment	Defined by criminal statutes
Parties Involved	Plaintiff and Defendant	Parties to the contract	Parties unjustly enriched and aggrieved	State (prosecution) and accused
Legal Proceedings	Civil courts	Civil courts	Civil courts	Criminal courts
Burden of Proof	Balance of probabilities	Balance of probabilities	Balance of probabilities	Beyond a reasonable doubt

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Remedies	Damages	Damages, specific performance, injunction, etc.	Restitution, compensation	Fines, imprisonment, community service
Limitation Period	3 years (India)	3 years (India)	3 years (India)	Varies depending on the offense

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1.4. CONSTITUENTS OF TORT: INJURIA SINE DAMNUM, DAMNUM SINE INJURIA

To understand the law of torts, it is important to know the constituent elements that form the basis of a tortious claim. There are two Latin maxims that help to explain these elements: "Injuria sine damnum" and "Damnum sine injuria."

1. **Injuria Sine Damnum:** Injuria sine damnum refers to a situation where there is a legal injury (injuria) without any actual damage (damnum). In other words, this principle is applicable when the defendant's act or omission violates the legal rights of the plaintiff, even if the plaintiff does not suffer any actual loss or harm. In such cases, the plaintiff is entitled to compensation because their legal rights have been infringed upon.

Example: The landmark case of **Ashby v. White (1703)** in England serves as an excellent illustration of injuria sine damnum. In this case, the plaintiff, a qualified voter, was wrongfully prevented from voting in an election by the defendant, a returning officer. Although the candidate the plaintiff intended to vote for won the election and there was no actual damage suffered, the court held that the plaintiff's legal right to vote had been infringed upon, and therefore, the plaintiff was entitled to compensation.

Example: **Bhim Singh v. State of J&K (1986 AIR 494)**; This is a classic example of injuria sine damnum in the Indian context. Bhim Singh, an MLA, was

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wrongfully detained by the police, causing him to miss an assembly session. The Supreme Court held that his fundamental right to personal liberty under Article 21 of the Indian Constitution was violated, even though he did not suffer any actual damage. The court awarded compensation to Bhim Singh for the violation of his legal right.

2. **Damnum Sine Injuria:** Damnum sine injuria refers to a situation where there is actual damage (damnum) suffered by the plaintiff, but there is no infringement of a legal right (injuria). In such cases, the plaintiff cannot claim compensation because the defendant's act or omission did not violate any legal rights. The loss suffered by the plaintiff is considered to be a consequence of lawful actions, and the defendant is not held liable.

Example: In the case of Gloucester Grammar School (1410) in England, the defendant, a schoolmaster, set up a rival school near the plaintiff's school, causing a decrease in the number of students attending the plaintiff's school and a subsequent loss of income. Although the plaintiff suffered actual damage, the court held that there was no legal injury because the defendant's actions were lawful and within his rights. The plaintiff was not entitled to compensation.

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1.5. JUSTIFICATION IN TORT, VOLENTI NON-FIT INJURIA, NECESSITY, PLAINTIFF'S DEFAULT, ACT OF GOD, INEVITABLE ACCIDENTS, PRIVATE DEFENSE

In tort law, justifications (or defenses) are legal grounds that excuse or limit a defendant's liability for an alleged tortious act. When a defendant successfully raises a justification, they can either avoid liability entirely or have their liability reduced. Justifications protect the rights and interests of individuals in specific situations where the harmful consequences of their actions are either necessary or unavoidable. Understanding the concept of justification and its various forms is crucial for a comprehensive understanding of tort law.

Justifications in tort law are typically based on the principles of reasonableness, necessity, and the balance of interests between the parties involved. They are designed to ensure fairness and justice by recognizing that certain actions, while potentially harmful, may be excusable under specific circumstances. Some common justifications in tort law include consent, self-defense, defense of property, necessity, and statutory authority.

Each justification has its own specific requirements and limitations, and the availability of a particular defense depends on the facts of the case and the applicable law. In the following sections, we will discuss each justification in more detail, exploring their

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elements, applications, and relevant case law from the Indian legal system.

VOLENTI NON-FIT INJURIA

Volenti non fit injuria is a Latin maxim that translates to "to a willing person, no injury is done." This legal principle serves as a defense in tort law, stating that when a plaintiff voluntarily consents to a known risk, they cannot claim compensation for any harm or injury resulting from that risk.

Elements of Volenti Non Fit Injuria

For the defense of volenti non fit injuria to succeed, the following elements must be established:

- a) **Knowledge of the Risk:** The plaintiff must have full knowledge and understanding of the nature and extent of the risk involved. Mere knowledge of the risk is not sufficient; the plaintiff must also appreciate the potential consequences of the risk.
- b) **Voluntary Assumption of Risk:** The plaintiff must have voluntarily and freely consented to assume the risk. If the plaintiff's consent was obtained through coercion, fraud, or misrepresentation, the defense will not succeed.
- c) **Free Will:** The plaintiff's consent must be an exercise of their free will. If the plaintiff was under the influence of drugs, alcohol, or any other factor that

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impairs their judgment, the defense may not be valid.

Application

Volenti non fit injuria has been recognized and applied by Indian courts in various cases. For instance, in the case of ***Padmavati v. Dugganaika (AIR 1971 Mys 140)***, the plaintiff was injured when an overloaded taxi in which he was traveling met with an accident. The court held that since the plaintiff had willingly traveled in an overloaded vehicle, he was aware of the risk and had voluntarily assumed it, thus the defense of volenti non fit injuria applied.

Limitations

There are certain limitations to the application of the volenti non fit injuria defense, including:

- a) **Emergency Situations:** The defense does not apply in emergency situations where the plaintiff has no choice but to assume the risk to avoid greater harm.
- b) **Employer-Employee Relationship:** The defense is generally not applicable in employer-employee relationships, as employees are not considered to have voluntarily assumed the risks associated with their employment.
- c) **Unlawful Acts:** The defense does not apply when the

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defendant's act is unlawful or against public policy.

- d) Negligence: If the defendant's negligence increases the risk beyond what the plaintiff consented to, the defense may not apply.

Volenti non fit injuria is a crucial defense in tort law that recognizes the plaintiff's voluntary assumption of risk as a justification for the defendant's actions. However, the defense has its limitations and is subject to the specific facts and circumstances of each case. Understanding the principles and application of volenti non fit injuria is essential for a comprehensive understanding of tort law and its various defenses in the Indian legal context.

Landmark Precedents on Volenti Non Fit Injuria

- a) ***Hall v. Brooklands Auto Racing Club (1933)***
1 KB 205: This English case is one of the leading authorities on the application of the volenti non fit injuria defense. In this case, the plaintiff was a spectator at a car racing event organized by the defendant. During the event, two cars collided on the track, resulting in debris being thrown towards the spectators, and the plaintiff was injured. The court held that the plaintiff had willingly attended the event and was aware of the risks associated with car racing, and therefore, the defense of volenti non fit injuria applied.

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- b) **Smith v. Baker (1891) AC 325**: In this English case, the plaintiff was employed by the defendant, and while working on a construction site, he was injured by a falling stone. The court held that the defense of *volenti non fit injuria* did not apply, as the plaintiff had not voluntarily assumed the risk of injury. The court further stated that an employee does not voluntarily assume the risks inherent in their employment, and the employer has a duty to provide a safe working environment.
- c) **N. Nagendra Rao & Co. v. State of Andhra Pradesh (1994) 6 SCC 205** (Indian case): In this Indian case, the plaintiff's goods were seized by the defendant under suspicion of adulteration. The plaintiff argued that the defendant had acted negligently, and the seizure had caused them financial loss. The defendant raised the defense of *volenti non fit injuria*, arguing that the plaintiff had voluntarily engaged in a regulated business and had assumed the risks associated with it. The Supreme Court of India rejected the defense, holding that the plaintiff had not voluntarily assumed the risk of the defendant's negligence.
- d) **Municipal Corporation of Delhi v. Sushila Devi (1999) 4 SCC 317** (Indian case): In this case, the plaintiff's husband was killed by a stray bull owned by the defendant. The defendant raised the defense of *volenti non fit injuria*, arguing that the plaintiff's husband was aware of the risks associated

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with walking on the streets where stray bulls were present. The Supreme Court of India rejected the defense, holding that the defendant had a duty to ensure that their bulls did not pose a danger to the public and that the plaintiff's husband had not voluntarily assumed the risk of injury.

NECESSITY

Necessity is a defense in tort law that allows a defendant to avoid liability for an otherwise tortious act, on the grounds that the act was necessary to prevent a greater harm. This defense is based on the principle that in certain exceptional situations, it is justifiable to cause harm to protect a greater interest or to prevent a more significant harm.

Elements of Necessity

For the defense of necessity to succeed, the following elements must be established:

- a) **Imminent Danger:** The defendant must have acted in response to an imminent danger or threat, either to themselves or to others.
- b) **No Reasonable Alternative:** The defendant must have had no reasonable alternative but to commit the otherwise tortious act to prevent the greater harm. If a less harmful alternative was available, the defense may not be applicable.
- c) **Proportionality:** The harm caused by the defendant's

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act must be proportional to the harm avoided. In other words, the harm caused should not be disproportionately greater than the harm that would have occurred if the defendant had not acted.

- d) Good Faith: The defendant must have acted in good faith, without any ulterior motive or intention to cause harm.

Application

Necessity has been recognized and applied as a defense in Indian tort law. In the case of ***Chiranjilal Srilal Goenka v. Jasjit Singh (1993) 2 SCC 507***, the defendant, a police officer, entered the plaintiff's property without a search warrant to apprehend a dangerous criminal. The court held that the defendant's actions were justified based on the defense of necessity, as the police officer had acted to protect the public from imminent harm.

Limitations

There are certain limitations to the application of the necessity defense, including:

- a) Self-Inflicted Danger: The defense does not apply if the defendant has created the danger or emergency themselves.
- b) Recklessness or Negligence: The defense may not be available if the defendant acted recklessly or negligently in creating the situation that led to

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the necessity.

- c) **Public Authorities:** The defense is generally not applicable when the defendant is a public authority acting in its official capacity. Public authorities are expected to act within the confines of the law and are generally not permitted to rely on necessity as a defense.

Necessity is an important defense in tort law that allows a defendant to avoid liability for an otherwise tortious act when the act was necessary to prevent a greater harm. The defense is based on the principles of reasonableness, proportionality, and the balance of interests. Understanding the concept of necessity and its application in the Indian legal context is essential for a comprehensive understanding of tort law and its various defenses.

Landmark Precedents on Necessity

- a) ***Cope v. Sharpe (No. 2) (1912) 1 KB 496*** (English case): In this English case, the defendant, a gamekeeper, set traps to catch rabbits on a public footpath. The plaintiff was injured when he accidentally stepped on one of the traps. The court held that the defense of necessity was applicable, as the defendant's actions were necessary to protect the landowner's property from damage caused by

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rabbits. The court reasoned that the defendant had acted reasonably, and the risk of harm to the public was minimal.

- b) ***R v. Dudley and Stephens (1884) 14 QBD 273*** (English case): This infamous English case involved a shipwrecked crew who killed and ate one of their members to survive. The defendants were charged with murder, and they raised the defense of necessity. The court rejected the defense, holding that necessity could not be used to justify taking another person's life. This case illustrates the limitations of the necessity defense and emphasizes the need for proportionality in weighing the harms involved.
- c) ***M.C. Mehta v. Union of India (1987) 1 SCC 395*** (Indian case): In this landmark Indian environmental case, the Supreme Court of India ordered the closure of several hazardous industries located near the Taj Mahal. The court held that the defense of necessity justified the closure of these industries, as the potential harm to the environment and the historical monument outweighed the economic interests of the industry owners.
- d) ***Chiranjilal Srilal Goenka v. Jasjit Singh (1993) 2 SCC 507*** (Indian case): As mentioned earlier, in this case, the defendant, a police officer, entered the plaintiff's property without a search warrant to apprehend a dangerous

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criminal. The court held that the defendant's actions were justified based on the defense of necessity, as the police officer had acted to protect the public from imminent harm.

These landmark precedents demonstrate the application and limitations of the necessity defense in various contexts. They emphasize the importance of considering the specific facts and circumstances of each case, along with the principles of reasonableness, proportionality, and the balance of interests, in determining the applicability of this defense.

PLAINTIFF'S DEFAULT

Plaintiff's default, also known as contributory negligence or comparative negligence, is a defense in tort law that asserts that the plaintiff's own negligence or wrongful conduct contributed to their injury or harm. This defense seeks to either reduce the defendant's liability or prevent the plaintiff from recovering damages, on the grounds that the plaintiff's own actions played a role in causing the harm suffered.

Elements of Plaintiff's Default

For the defense of plaintiff's default to succeed, the following elements must be established:

- a) Negligence or Wrongful Conduct: The plaintiff must have acted negligently or engaged in wrongful conduct that contributed to their injury or harm.

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- b) Causation: The plaintiff's negligence or wrongful conduct must have been a cause or a contributing factor to their injury or harm.
- c) Foreseeability: The plaintiff's injury or harm must have been a foreseeable consequence of their negligence or wrongful conduct.

Application in Indian Law

Plaintiff's default has been recognized and applied as a defense in Indian tort law. In the case of ***Nidamarti Maheshwaramma v. Nidamarti Jayaram Reddy (1986) 3 SCC 567***, the plaintiff was injured in a road accident involving the defendant's vehicle. The court found that the plaintiff had contributed to the accident by not following traffic rules and held that the defense of plaintiff's default applied, resulting in a reduction of the damages awarded to the plaintiff.

The Indian legal system generally follows the principle of contributory negligence, where the plaintiff's recovery is reduced in proportion to their degree of fault. However, in some cases, the courts may also apply the principle of comparative negligence, where the plaintiff's recovery is determined based on the relative degrees of fault of both parties.

Limitations

There are certain limitations to the application of the

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plaintiff's default defense, including:

- a) Last Opportunity Rule: The defense may not apply if the defendant had the last clear opportunity to avoid the harm, but failed to do so.
- b) Children and Incapacitated Persons: The defense may not be applicable, or may be applied with caution, when the plaintiff is a child or an incapacitated person who may not fully understand the consequences of their actions.
- c) No Fault Systems: In some jurisdictions or specific areas of law, such as workers' compensation or no-fault automobile insurance systems, the defense of plaintiff's default may not apply.

Plaintiff's default is an important defense in tort law that seeks to allocate responsibility for harm based on the plaintiff's own negligence or wrongful conduct. This defense serves to ensure fairness and justice by recognizing that the plaintiff's actions may have contributed to their injury or harm. Understanding the principles and application of plaintiff's default in the Indian legal context is essential for a comprehensive understanding of tort law and its various defenses.

Landmark Precedents on Plaintiff's Default

- a) *Butterfield v. Forrester (1809) 11 East 60*

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(English case): This English case is one of the earliest examples of the plaintiff's default defense. In this case, the defendant had negligently placed an obstruction on a public road. The plaintiff was injured after riding his horse into the obstruction. The court held that the plaintiff's default applied because the plaintiff was riding his horse too fast and not paying proper attention to the road. If the plaintiff had been more cautious, he could have avoided the accident.

b) ***Davies v. Mann (1842) 10 M&W 546***

(English case): In this English case, the defendant's negligence led to the plaintiff's donkey being killed. The plaintiff had left the donkey unattended on a public highway. The court held that even though the plaintiff had been negligent, the defendant had the last clear opportunity to avoid the harm and was, therefore, fully liable for the plaintiff's loss. This case is an example of the "last opportunity rule," which serves as a limitation to the plaintiff's default defense.

c) ***Municipal Corporation of Delhi v. Subhagwanti (1966) 3 SCR 649***

(Indian case): In this Indian case, the plaintiff's husband was killed when a clock tower owned by the defendant collapsed. The court held that the plaintiff's default did not apply, as there was no

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contributory negligence on the part of the deceased. This case demonstrates that the plaintiff's default defense is not applicable when the plaintiff or the deceased person has not contributed to the harm.

- d) ***Nidamarti Maheshwaramma v. Nidamarti Jayaram Reddy (1986) 3 SCC 567*** (Indian case): As mentioned earlier, in this case, the plaintiff was injured in a road accident involving the defendant's vehicle. The court found that the plaintiff had contributed to the accident by not following traffic rules and held that the defense of plaintiff's default applied, resulting in a reduction of the damages awarded to the plaintiff.

These landmark precedents demonstrate the application and limitations of the plaintiff's default defense in various contexts. They highlight the importance of considering the specific facts and circumstances of each case, along with the principles of fairness, justice, and the allocation of responsibility, in determining the applicability of this defense.

ACT OF GOD

Act of God, also known as vis major or force majeure, is a defense in tort law that allows a defendant to avoid liability for an otherwise tortious act, on the grounds that the harm suffered by the plaintiff was caused by a natural event or phenomenon that was beyond the

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defendant's control. This defense is based on the principle that a defendant should not be held liable for harm that was caused by circumstances that were unforeseeable and could not have been prevented by any reasonable human intervention.

Elements of Act of God

For the defense of Act of God to succeed, the following elements must be established:

- a) **Natural Event or Phenomenon:** The harm suffered by the plaintiff must have been caused by a natural event or phenomenon, such as a storm, flood, earthquake, or other extraordinary natural occurrences.
- b) **Unforeseeability:** The natural event or phenomenon must have been unforeseeable, meaning that it could not have been anticipated or predicted by a reasonable person in the defendant's position.
- c) **Irresistible Force:** The natural event or phenomenon must have been an irresistible force, meaning that it was so powerful that it could not have been prevented or mitigated by any reasonable human intervention.
- d) **Absence of Human Fault:** The harm suffered by the plaintiff must not be attributable to any negligence or wrongful conduct on the part of the defendant.

Application

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Act of God has been recognized and applied as a defense in Indian tort law. In the case of ***Ramalinga Nadar v. Narayana Reddiar (1961) 2 SCR 736***, the defendant's bus was washed away by a sudden flash flood, resulting in the death of the plaintiff's son. The court held that the defense of Act of God applied, as the flood was a natural event that was unforeseeable and could not have been prevented by any reasonable human intervention.

Limitation

There are certain limitations to the application of the Act of God defense, including:

- a) **Foreseeable Natural Events:** The defense does not apply if the natural event or phenomenon was foreseeable or could have been anticipated by a reasonable person in the defendant's position.
- b) **Human Intervention:** The defense may not be applicable if the harm suffered by the plaintiff was caused or exacerbated by human intervention or negligence on the part of the defendant.
- c) **Duty to Warn or Protect:** The defense may not apply if the defendant had a duty to warn the plaintiff of the potential danger or to take reasonable steps to protect the plaintiff from harm.

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Act of God is an important defense in tort law that allows a defendant to avoid liability for harm caused by natural events or phenomena that were unforeseeable and could not have been prevented by any reasonable human intervention. This defense is based on the principles of fairness, justice, and the allocation of responsibility. Understanding the concept of Act of God and its application in the Indian legal context is essential for a comprehensive understanding of tort law and its various defenses.

Landmark Precedents on Act of God

- a) ***Nichols v. Marsland (1876) 2 Ex D 1*** (English case): In this English case, the defendant owned several artificial lakes that were created by damming a stream. After an extraordinary rainfall event, the dams broke and the ensuing flood destroyed several bridges owned by the plaintiff. The court held that the defendant was not liable, as the rainfall was an unforeseeable and extraordinary act of God, and the defendant had not been negligent in maintaining the dams.
- b) ***Krell v. Henry (1903) 2 KB 740*** (English case): This English case involved a contract for the rental of a flat to view the coronation procession of King Edward VII. The coronation

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was unexpectedly postponed due to the King's illness, and the defendant refused to pay the rent. The court held that the postponement was an act of God, which frustrated the purpose of the contract, and the defendant was not liable for the rent.

- c) ***Ramalinga Nadar v. Narayana Reddiar (1961) 2 SCR 736*** (Indian case): As mentioned earlier, in this case, the defendant's bus was washed away by a sudden flash flood, resulting in the death of the plaintiff's son. The court held that the defense of Act of God applied, as the flood was a natural event that was unforeseeable and could not have been prevented by any reasonable human intervention.
- d) ***Lebeaupin v. Crispin (1920) 2 KB 714*** (English case): In this English case, a ship sank during a storm, and the cargo was damaged. The defendant, a stevedore, had negligently stored the cargo on the ship. The court held that the defense of Act of God did not apply, as the defendant's negligence had contributed to the damage. This case demonstrates the limitation of human intervention in the applicability of the Act of God defense.

Rylands v. Fletcher (1868) LR 3 HL 330

In this seminal English case, the plaintiff owned a mine

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adjacent to the defendant's property. The defendant constructed a reservoir on his land, which eventually leaked and flooded the plaintiff's mine. The court held the defendant strictly liable for the damage caused by the flooding, as the defendant had brought a non-natural use of the land by building the reservoir and had accumulated water that, if it escaped, would cause damage.

The rule of strict liability established in *Rylands v. Fletcher* states that a person who brings a non-natural use of land and accumulates something that is likely to cause harm if it escapes will be held strictly liable for any resulting damage, even if they were not negligent. However, the rule is subject to certain defenses, including the Act of God.

Act of God and *Rylands v. Fletcher*

The Act of God defense can be applied to strict liability cases, such as those falling under the rule of *Rylands v. Fletcher*. If the escape of the harmful substance (e.g., water, gas, or other hazardous materials) was caused by an extraordinary natural event that was unforeseeable and could not have been prevented by any reasonable human intervention, the defendant may successfully invoke the Act of God defense to avoid liability.

For example, if the flooding of the plaintiff's mine in *Rylands v. Fletcher* had been caused by an extraordinary

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and unforeseeable natural event, such as a massive storm or an earthquake, the defendant might have been able to rely on the Act of God defense to avoid liability. However, in the actual case, the flooding was caused by the defendant's construction and maintenance of the reservoir, and the Act of God defense did not apply.

The rule of strict liability established in Rylands v. Fletcher and the defense of Act of God are interconnected, as the Act of God defense can be applied to cases of strict liability when the harm suffered by the plaintiff is caused by an extraordinary and unforeseeable natural event beyond the defendant's control.

INEVITABLE ACCIDENT

Inevitable accident is a defense in tort law that allows a defendant to avoid liability for an otherwise tortious act, on the grounds that the harm suffered by the plaintiff was caused by an accident that was unavoidable and could not have been prevented by the exercise of reasonable care and skill. This defense is based on the principle that a defendant should not be held liable for harm that was caused by circumstances beyond their control, despite their taking all reasonable precautions.

Elements of Inevitable Accident

For the defense of inevitable accident to succeed, the following elements must be established:

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- a) **Absence of Negligence:** The defendant must not have been negligent in their actions or omissions leading to the accident.
- b) **Unavoidability:** The accident must have been unavoidable, meaning that it could not have been prevented by the exercise of reasonable care and skill by the defendant or any other person in the defendant's position.
- c) **Unforeseeability:** The accident must have been unforeseeable, meaning that it could not have been anticipated or predicted by a reasonable person in the defendant's position.

Application

Inevitable accident has been recognized and applied as a defense in Indian tort law. In the case of **Lakshmi Rajan v. Malarvizhi Ammal (1990) 3 SCC 13**, the defendant was driving a car when the brakes failed, causing the vehicle to collide with a pedestrian, who was the plaintiff's wife. The court held that the defense of inevitable accident applied, as the defendant had not been negligent in maintaining the vehicle and the brake failure was unforeseeable and unavoidable.

Limitations

There are certain limitations to the application of the inevitable accident defense, including:

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- a) Negligence or Fault: The defense does not apply if the defendant was negligent or at fault in any way that contributed to the accident.
- b) Reasonable Precautions: The defense may not be applicable if the defendant failed to take reasonable precautions to prevent the accident or to mitigate the harm caused by the accident.

Inevitable accident is an important defense in tort law that allows a defendant to avoid liability for harm caused by an accident that was unavoidable and could not have been prevented by the exercise of reasonable care and skill. This defense is based on the principles of fairness, justice, and the allocation of responsibility. Understanding the concept of inevitable accident and its application in the Indian legal context is essential for a comprehensive understanding of tort law and its various defenses.

Landmark Judicial Precedents on Inevitable Accident

- a) ***Smith v. London & South Western Railway Co. (1870) LR 6 CP 14*** (English case): In this English case, the defendant's railway employees were using a steam-powered crane to unload cargo when the crane accidentally discharged a large quantity of steam, causing harm to the plaintiff's property. The court held that the defense of

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inevitable accident applied, as the discharge of steam was a rare and unforeseeable occurrence, and the defendant's employees had taken all reasonable precautions in operating the crane.

- b) ***Stanley v. Powell (1891) 1 QB 86*** (English case): In this English case, the plaintiff was injured when the defendant accidentally shot him during a pheasant hunt. The shot had ricocheted off a tree before striking the plaintiff. The court held that the defendant was not liable, as the accident was unforeseeable and unavoidable, and the defendant had taken all reasonable precautions to ensure the safety of the hunt.
- c) ***Lakshmi Rajan v. Malarvizhi Ammal (1990) 3 SCC 13*** (Indian case): As mentioned earlier, in this Indian case, the defendant was driving a car when the brakes failed, causing the vehicle to collide with a pedestrian, who was the plaintiff's wife. The court held that the defense of inevitable accident applied, as the defendant had not been negligent in maintaining the vehicle and the brake failure was unforeseeable and unavoidable.
- d) ***Padmavati v. Dugganaika (1971) ILR (Kant) 1192*** (Indian case): In this Indian case, the defendant was driving a jeep when the rear wheel of the vehicle suddenly came off, causing the jeep to swerve and hit the plaintiff's husband, who was riding a bicycle. The court held that the defense of inevitable accident applied, as the defendant had not

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been negligent in maintaining the vehicle and the detachment of the wheel was unforeseeable and unavoidable.

These landmark judicial precedents highlight the importance of considering the specific facts and circumstances of each case, along with the principles of negligence, unavailability, and unforeseeability, in determining the applicability of this defense.

Private Defense

Private defense, also known as self-defense or defense of property, is a defense in tort law that allows a defendant to avoid liability for an otherwise tortious act on the grounds that the act was committed in defense of oneself, another person, or one's property against an imminent threat of harm or unlawful interference. This defense is based on the principle that an individual has the right to protect oneself, others, or one's property from harm or unlawful interference, within reasonable limits.

Elements of Private Defense

For the defense of private defense to succeed, the following elements must be established:

- a) **Imminent Threat:** The defendant must have been faced with an imminent threat of harm or unlawful interference to oneself, another person, or one's property.

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- b) Reasonable Force: The defendant must have used only reasonable and necessary force to defend against the threat, without using excessive or disproportionate force.
- c) No Intention to Cause Harm: The defendant must not have had the intention to cause harm or commit a wrongful act, but rather, the primary purpose must have been to defend oneself, another person, or one's property.

Application

Private defense is recognized and applied as a defense in Indian tort law. The Indian Penal Code (IPC) also recognizes the right to private defense under Sections 96 to 106, which set out the conditions under which the right can be exercised and the extent of the force that can be used.

Limitations

There are certain limitations to the application of the private defense defense, including:

- a) Unlawful Acts: The defense does not apply if the defendant was engaged in an unlawful act at the time the harm was inflicted.
- b) Excessive Force: The defense may not be applicable if the defendant used excessive or disproportionate force in defending oneself, another person, or one's property.
- c) Duty to Retreat: In some jurisdictions, the defense

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may not apply if the defendant had the opportunity to retreat or avoid the confrontation but chose not to do so.

Private defense is an important defense in tort law that allows a defendant to avoid liability for harm caused in defense of oneself, another person, or one's property against an imminent threat of harm or unlawful interference. This defense is based on the principles of individual rights and the reasonable use of force.

Landmark Judicial Precedents on Private Defense

- a) ***Bird v. Holbrook (1828) 4 Bing 628*** (English case): In this English case, the defendant set up a spring gun in his garden to protect his plants from theft. The plaintiff, who had trespassed into the garden to retrieve a lost bird, was injured by the spring gun. The court held that the defendant was liable for the plaintiff's injuries, as the use of a spring gun constituted excessive force, which is not permissible in the defense of property.
- b) ***Munshi Ram v. Delhi Administration (1968) 2 SCR 455*** (Indian case): In this Indian case, the accused, along with his brothers, was charged with the murder of three men who had unlawfully entered their house with the intention of committing theft. The Supreme Court of India held that the accused had a right to private defense under Section 100 of the Indian Penal Code (IPC), as they had used reasonable and necessary force to defend themselves

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and their property against an imminent threat of harm or unlawful interference.

- c) ***Darshan Singh v. State of Punjab (2010) 2 SCC 333*** (Indian case): In this Indian case, the accused was charged with the murder of a man who had trespassed onto his land and threatened him with a weapon. The Supreme Court of India held that the accused had a right to private defense under Section 97 of the IPC, as he had used reasonable and necessary force to defend himself against an imminent threat of harm or unlawful interference.
- d) ***Palani v. State of Tamil Nadu (2008) 12 SCC 465*** (Indian case): In this Indian case, the accused was charged with the murder of a man who had unlawfully entered his house and assaulted him. The Supreme Court of India held that the accused had a right to private defense under Section 96 of the IPC, as he had used reasonable and necessary force to defend himself against an imminent threat of harm or unlawful interference.

These landmark judicial highlight the importance of considering the specific facts and circumstances of each case, along with the principles of imminent threat, reasonable force, and the absence of an intention to cause harm, in determining the applicability of this defense.

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UNIT-II

SPECIFIC TORTS-I

Tort law encompasses a wide range of civil wrongs that cause harm or injury to another person, their property, or their reputation. While the law of torts is vast and diverse, certain torts are recognized as distinct categories, each with its own set of elements, principles, and defenses. These torts are known as specific torts, and they address particular types of wrongful acts or harms that arise from a variety of circumstances.

- a) **Negligence:** Negligence is a tort that arises when a person breaches a duty of care owed to another, causing harm or injury to the other person. The duty of care is generally based on the principle that a person should take reasonable care to avoid causing harm or injury to others.
- b) **Trespass to Person:** Trespass to person is a group of torts that involve the direct and intentional (or sometimes negligent) interference with a person's physical integrity, including assault, battery, and false imprisonment.
- c) **Trespass to Property:** Trespass to property is a tort that involves the direct and intentional (or sometimes negligent) interference with another person's property, including trespass to land and

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trespass to chattels (personal property).

- d) Nuisance: Nuisance is a tort that arises when a person's use of their property interferes with another person's use or enjoyment of their own property or with a public right. Nuisance can be classified into two types: private nuisance and public nuisance.
- e) Defamation: Defamation is a tort that involves the publication of a false statement that injures a person's reputation. Defamation can be classified into two types: libel (written defamation) and slander (spoken defamation).
- f) Strict Liability: Strict liability is a category of torts in which a person is held liable for harm or injury caused by their actions or omissions, regardless of whether they were negligent or intended to cause harm. Some examples of strict liability torts include product liability, liability for animals, and the rule of ***Rylands v. Fletcher***.

Understanding specific torts is essential for a comprehensive understanding of tort law and its various applications. By studying the elements, principles, and defenses associated with each specific tort, one can gain a deeper appreciation of the ways in which tort law seeks to redress harms and injuries arising from a wide range of wrongful acts and circumstances.

2.1. NEGLIGENCE

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Negligence is a fundamental tort in the field of law, as it addresses the civil liability that arises when a person breaches a duty of care, resulting in harm or injury to another person. It is crucial to understand the elements, principles, and defenses associated with negligence for a comprehensive understanding of tort law.

Elements of Negligence

To establish a claim for negligence, the plaintiff must prove the following elements:

- a) **Duty of Care:** The defendant owed a duty of care to the plaintiff. This duty arises when the relationship between the parties is such that the defendant is legally obliged to act with reasonable care to avoid causing harm to the plaintiff.
- b) **Breach of Duty:** The defendant breached the duty of care by failing to act with the level of care that a reasonable person would have exercised in similar circumstances.
- c) **Causation:** The defendant's breach of duty was the actual and proximate cause of the plaintiff's harm or injury. Actual causation (also known as "cause-in-fact") requires demonstrating that the defendant's actions were a necessary condition for the plaintiff's harm. Proximate causation (also known as "legal cause") requires showing

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that the harm was a reasonably foreseeable consequence of the defendant's breach.

- d) Damages: The plaintiff suffered actual harm or injury as a result of the defendant's breach of duty. This harm can be physical, emotional, or economic.

Application in Indian Law

Negligence is a well-established tort in Indian law. The Indian courts apply the principles and elements of negligence in a manner similar to that of English common law. Landmark judgments such as ***Donoghue v. Stevenson (1932) AC 562***, which established the modern concept of negligence, have been influential in shaping the development of negligence law in India.

Landmark Indian Cases on Negligence

- a) ***Poonam Verma v. Ashwin Patel (1996) 4 SCC 332***: In this case, the plaintiff suffered severe complications after being treated by the defendant, who claimed to be a qualified homeopathic doctor but was actually a registered medical practitioner of allopathy. The Supreme Court of India held the defendant liable for negligence, as he owed a duty of care to the plaintiff and breached that duty by practicing medicine outside his area of expertise.
- b) ***Jacob Mathew v. State of Punjab (2005) 6***

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SCC 1: In this case, the plaintiff's father died due to medical negligence by the defendant, a doctor. The Supreme Court of India clarified the standard of care expected from medical professionals, stating that a medical practitioner is expected to possess the skill and knowledge ordinarily possessed by practitioners in their field and to exercise that skill and knowledge with reasonable care and diligence.

- c) ***Nizam's Institute of Medical Sciences v. Prasanth S. Dhananka (2009) 6 SCC 1:*** In this case, the plaintiff suffered severe complications and permanent disability as a result of medical negligence during spinal surgery. The Supreme Court of India held the hospital and the doctors involved in the surgery liable for negligence and awarded substantial compensation to the plaintiff for the pain, suffering, and loss of amenities of life.
- d) ***Achutrao Haribhau Khodwa v. State of Maharashtra (1996) 2 SCC 634:*** In this case, the plaintiff's wife died due to medical negligence during a sterilization surgery. The Supreme Court of India held the doctors and the hospital liable for negligence, as they had failed to exercise the reasonable care and skill expected of medical professionals, and awarded compensation to the plaintiff.

By examining these landmark cases, one can better understand the application of negligence principles in various contexts, including medical negligence, and the

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standards of care expected from professionals in India.

Defenses to Negligence

Some common defenses to negligence include:

- a) **Contributory Negligence:** The plaintiff's own negligence contributed to their harm or injury. In some jurisdictions, contributory negligence may completely bar the plaintiff's claim, while in others, it may result in a proportionate reduction of damages.
- b) **Comparative Negligence:** The plaintiff's negligence is compared to the defendant's negligence, and the damages are apportioned accordingly.
- c) **Volenti Non Fit Injuria:** The plaintiff voluntarily assumed the risk of harm or injury.
- d) **Act of God:** The plaintiff's harm or injury was caused by a natural event or force that was unforeseeable and unavoidable.

Remedies for Negligence

When a plaintiff successfully establishes a claim for negligence, they may be entitled to various remedies, including:

- a) **Damages:** The primary remedy for negligence is

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the award of monetary damages to compensate the plaintiff for their harm or injury. Damages can be classified into several categories, such as compensatory damages (to compensate for actual losses), consequential damages (to compensate for foreseeable losses caused by the defendant's negligence), and, in some cases, punitive damages (to punish and deter the defendant for particularly egregious conduct).

- b) Injunction: In some cases, a court may grant an injunction to prevent further harm or injury to the plaintiff. An injunction is a court order that requires the defendant to cease engaging in a specific activity or to take certain actions to prevent future harm.
- c) Specific Performance: In rare cases, a court may order specific performance, requiring the defendant to perform a specific action to remedy the harm caused by their negligence.

Negligence is a central tort in the field of law, addressing a wide range of circumstances where a person's failure to exercise reasonable care results in harm to another. Understanding the elements, principles, and defenses of negligence, as well as its application in the Indian legal context, is essential for a comprehensive understanding of tort law and its various applications.

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Landmark Judicial Precedents on Negligence

- a) ***Donoghue v. Stevenson (1932) AC 562*** (English case influential in Indian law): This foundational case established the modern concept of negligence and the duty of care in English common law. The plaintiff fell ill after consuming a ginger beer that contained a decomposed snail. The House of Lords held that the manufacturer owed a duty of care to the plaintiff and was liable for negligence. This case has been influential in shaping the development of negligence law in India.
- b) ***M.C. Mehta v. Union of India (1987) 1 SCC 395*** (Oleum gas leak case): In this landmark case, the Supreme Court of India applied the principle of strict liability, which was later expanded to the doctrine of absolute liability, for harm caused by hazardous industrial activities. The court held that an enterprise engaging in hazardous activities has an absolute and non-delegable duty of care to ensure that no harm results from its operations.
- c) ***Kunal Saha v. AMRI Hospital (2013) 5 SCC 627***: In this case, the plaintiff's wife died due to medical negligence in a private hospital. The Supreme Court of India awarded the highest compensation ever granted in a medical negligence case in India. The judgment underscored the importance of maintaining high

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standards of care in the medical profession and holding healthcare providers accountable for negligence.

- d) ***Indian Medical Association v. V.P. Shantha (1995) 6 SCC 651***: In this case, the Supreme Court of India held that medical services fall within the purview of the Consumer Protection Act, 1986, allowing patients to seek redress for medical negligence through consumer courts. The decision expanded the scope of remedies available to victims of medical negligence in India.
- e) ***Paschim Banga Khet Mazdoor Samity v. State of West Bengal (1996) 4 SCC 37***: In this case, the Supreme Court of India emphasized the right to health as an integral part of the right to life under Article 21 of the Indian Constitution. The court held that the state has a duty to provide adequate medical facilities to all citizens and that failure to do so could result in liability for negligence.

These landmark judicial precedents demonstrate the evolution and application of negligence principles in Indian law. They highlight the importance of maintaining high standards of care in various fields, particularly in the medical profession, and the role of the judiciary in holding individuals and institutions accountable for negligence. These cases have shaped the development of negligence law in India and have had a

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significant impact on the rights and remedies available to victims of negligence.

Res Ipsa Loquitur in the Context of Negligence

Res ipsa loquitur, a Latin phrase meaning "the thing speaks for itself," is a legal doctrine that applies in negligence cases when the circumstances surrounding the harm or injury suggest that the defendant's negligence was the cause, even in the absence of direct evidence. This doctrine shifts the burden of proof from the plaintiff to the defendant, who must then provide evidence to refute the presumption of negligence.

To successfully invoke the doctrine of res ipsa loquitur, the plaintiff must establish the following conditions:

- a) The harm or injury is of a kind that ordinarily does not occur in the absence of negligence.
- b) The harm or injury was caused by an instrumentality or agency within the exclusive control of the defendant.
- c) The plaintiff did not contribute to the harm or injury.

If these conditions are satisfied, the court may infer negligence on the part of the defendant, and the burden of proof shifts to the defendant to provide evidence that the harm or injury was not due to their negligence.

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Application in Indian Law

The doctrine of res ipsa loquitur is recognized and applied in Indian tort law, following the principles established in English common law. Indian courts have invoked res ipsa loquitur in cases where the circumstances surrounding the harm or injury make it apparent that the defendant's negligence was the cause.

Landmark Indian Cases involving Res Ipsa Loquitur

- a) ***Aparna Dutta v. Apollo Hospitals (2002) 6 SCC 394***: In this medical negligence case, the plaintiff suffered severe burns during surgery due to the use of an electrocautery device. The Supreme Court of India applied the doctrine of res ipsa loquitur, holding that such burns would not ordinarily occur in the absence of negligence, and the hospital was in exclusive control of the surgical procedure. The burden of proof shifted to the hospital to prove that it was not negligent.
- b) ***Shyam Sundar v. State of Rajasthan AIR 1974 SC 890***: In this case, a transformer explosion caused a power outage, resulting in the plaintiff's injury. The Supreme Court of India applied the doctrine of res ipsa loquitur, holding that the transformer explosion would not ordinarily occur without negligence, and the

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electricity board was in exclusive control of the transformer. The burden of proof shifted to the electricity board to prove that it was not negligent.

- c) ***Laxman Thakur v. State of Bihar (1996) 2 SCC 229***: In this case, the plaintiff was injured during the course of an eye operation due to a faulty anesthesia injection. The Supreme Court of India applied the doctrine of *res ipsa loquitur*, holding that the injury would not have ordinarily occurred in the absence of negligence and the hospital was in exclusive control of the surgical procedure. The burden of proof shifted to the hospital to prove that it was not negligent.
- d) ***Municipal Corporation of Delhi v. Sushila Devi (1999) 4 SCC 317***: In this case, the plaintiff's husband died after being struck by a tree branch that fell on him while he was walking on a public road. The Supreme Court of India applied the doctrine of *res ipsa loquitur*, holding that the falling of a tree branch would not have ordinarily occurred in the absence of negligence, and the municipal corporation was responsible for maintaining the safety of public roads. The burden of proof shifted to the municipal corporation to prove that it was not negligent.
- e) ***Esso Petroleum Co. Ltd. v. Southport Corporation (1956) AC 218*** (English case influential in Indian law): In this case, a petrol

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station explosion caused damage to the plaintiff's property. The House of Lords applied the doctrine of *res ipsa loquitur*, holding that the explosion would not have ordinarily occurred in the absence of negligence, and the defendant was in exclusive control of the petrol station. The burden of proof shifted to the defendant to prove that it was not negligent.

These landmark precedents demonstrate the application of the doctrine of *res ipsa loquitur* in negligence cases in various contexts, including medical negligence and public safety. By understanding the principles and application of *res ipsa loquitur* in these cases, one can gain a deeper appreciation of the ways in which the law seeks to establish liability for negligence and protect the rights of those who have suffered harm or injury due to another's negligence.

2.2. NERVOUS SHOCK

Nervous shock, also known as mental or emotional distress, is a recognized cause of action in tort law. It refers to the psychological injury or harm caused to a person by witnessing or experiencing a traumatic event, or by learning about a close relative's suffering as a result of the defendant's negligence. Nervous shock can manifest itself in various forms, including post-traumatic stress disorder (PTSD), depression, anxiety,

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and other psychological conditions.

In Indian tort law, a claim for nervous shock is generally based on the principles of negligence. To succeed in a claim for nervous shock, the plaintiff must establish the following elements:

- a) Duty of care: The plaintiff must prove that the defendant owed them a duty of care not to cause them psychological harm.
- b) Breach of duty: The plaintiff must establish that the defendant breached this duty of care by acting negligently or failing to take reasonable precautions to prevent the foreseeable risk of nervous shock.
- c) Causation: The plaintiff must demonstrate a causal link between the defendant's breach of duty and the psychological harm suffered by the plaintiff. This typically involves showing that the defendant's negligence was the proximate cause of the plaintiff's nervous shock.
- d) Damages: The plaintiff must prove that they have suffered actual harm or injury as a result of the nervous shock, which may include medical expenses, loss of income, and pain and suffering.

Foreseeability and Proximity in Nervous Shock Claims

A critical issue in nervous shock claims is the

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foreseeability of the psychological harm and the proximity between the plaintiff and the defendant or the traumatic event. Indian courts have generally followed the English common law approach, which requires that the plaintiff be reasonably foreseeable to the defendant as being at risk of suffering nervous shock. This typically involves a close relationship between the plaintiff and the victim of the traumatic event, such as a family member or a close friend.

In addition, the plaintiff must have been in close proximity to the traumatic event, either by directly witnessing it or by experiencing its immediate aftermath. Indian courts have generally required that the plaintiff's nervous shock be caused by a sudden and direct perception of the traumatic event, rather than by learning about it from a third party or through other indirect means.

Landmark Indian Cases on Nervous Shock

- a) ***Dulieu v. White & Sons (1901) 2 KB 669*** (English case influential in Indian law): In this case, the plaintiff, a pregnant woman, suffered a miscarriage after witnessing a horse-drawn van crashing into the bar where she was working. The English court held that the defendant was liable for the plaintiff's nervous shock, as it was reasonably foreseeable that the plaintiff might suffer harm as a result of the defendant's

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negligence.

- b) **King v. Phillips (1953) 1 QB 429** (English case influential in Indian law): In this case, the plaintiff suffered nervous shock after hearing her daughter scream and finding her injured in a nearby field following a hit-and-run accident. The English court held that the defendant was liable for the plaintiff's nervous shock, as the plaintiff had a close relationship with the victim and had directly perceived the aftermath of the traumatic event.

In conclusion, nervous shock is a recognized cause of action in Indian tort law, based on the principles of negligence. To succeed in a claim for nervous shock, the plaintiff must establish a duty of care, breach of duty, causation, and damages, as well as meet the requirements of foreseeability and proximity. By understanding the principles and application of nervous shock in tort law, one can

2.3. NUISANCE

Nuisance is a recognized tort in Indian law that involves an unlawful interference with a person's use or enjoyment of their property or their right to personal comfort. Nuisance can be classified into two categories: public nuisance and private nuisance.

- a) Public Nuisance: A public nuisance is an act or

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omission that causes inconvenience, annoyance, or damage to the public in general. It usually affects a large number of people or an entire community. Under Section 268 of the Indian Penal Code (IPC), public nuisance is a criminal offense. However, an individual who has suffered particular harm or damage due to a public nuisance can also bring a civil action for damages or an injunction to stop the nuisance.

- b) Private Nuisance: A private nuisance is an act or omission that interferes with an individual's use and enjoyment of their property or their right to personal comfort. Unlike public nuisance, private nuisance is a civil wrong and does not constitute a criminal offense.

Elements of Nuisance

To establish a claim for private nuisance, the plaintiff must prove the following elements:

- a) Interference: The plaintiff must show that there has been an interference with their use or enjoyment of their property or their right to personal comfort. The interference can take various forms, such as noise, smoke, odor, vibrations, or encroachments on the plaintiff's land.
- b) Unreasonableness: The plaintiff must demonstrate that the interference is

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unreasonable. The court will consider various factors to determine the reasonableness of the interference, including the nature, duration, and extent of the harm caused, the character of the neighborhood, and the defendant's conduct.

- c) **Damage:** The plaintiff must prove that they have suffered actual harm or injury as a result of the nuisance, which may include physical damage to property, loss of use of property, or discomfort and annoyance.

Defenses to Nuisance Claims

Some common defenses to nuisance claims include:

- a) **Prescription:** If the defendant can prove that the alleged nuisance has been in existence for a continuous period of at least 20 years, they may have a defense of prescription. This means that the defendant has acquired a legal right to continue the nuisance.
- b) **Consent:** If the plaintiff has expressly or impliedly consented to the nuisance, they may be barred from bringing a nuisance claim.
- c) **Statutory Authority:** If the alleged nuisance is authorized by a statute or regulation, the defendant may be immune from liability for the nuisance.

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Landmark Indian Cases on Nuisance

- a) ***Ram Raj Singh v. Babulal AIR 1978 SC 533***: In this case, the Supreme Court of India upheld the plaintiff's claim for private nuisance due to the defendant's brick kiln, which emitted smoke and caused damage to the plaintiff's agricultural land. The court held that the defendant's operation of the brick kiln was an unreasonable interference with the plaintiff's property rights and awarded damages to the plaintiff.
- b) ***Ratlam Municipality v. Vardhichand AIR 1980 SC 1622***: In this case, the Supreme Court of India ordered the local municipality to take immediate steps to abate a public nuisance caused by the discharge of untreated sewage and industrial waste into a public drain. The court emphasized the importance of preserving the environment and the duty of public authorities to protect public health.

In conclusion, nuisance is a recognized tort in Indian law that involves an unlawful interference with a person's use or enjoyment of their property or their right to personal comfort. By understanding the principles and application of nuisance in tort law, one can appreciate the ways in which the law seeks to protect individuals from unreasonable interferences with their property rights and personal comfort.

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2.4. FALSE IMPRISONMENT AND MALICIOUS PROSECUTION

These are two distinct torts in Indian law, both of which concern the wrongful deprivation of an individual's personal liberty.

False Imprisonment:

False imprisonment is a tort that involves the unlawful restraint of a person's freedom of movement. It occurs when the defendant intentionally and without lawful justification confines the plaintiff within a limited area, causing the plaintiff to believe that they are not free to leave.

To establish a claim for false imprisonment, the plaintiff must prove the following elements:

- a) **Intentional act:** The defendant must have intentionally restricted the plaintiff's freedom of movement. This means that the defendant either acted with the purpose of confining the plaintiff or knew that their actions would likely result in confinement.
- b) **Unlawful restraint:** The restraint must be unlawful, meaning it is not authorized by any statute, court order, or the plaintiff's consent. It is important to note that even a brief restraint can constitute false imprisonment.
- c) **Consciousness of confinement:** The plaintiff must be aware of the confinement during the

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time it occurs. If the plaintiff is unaware of their confinement, they cannot bring a claim for false imprisonment.

- d) Damages: The plaintiff must prove that they have suffered harm or injury as a result of the false imprisonment, which may include physical injury, emotional distress, or economic loss.

Malicious Prosecution:

Malicious prosecution is a tort that involves the wrongful initiation of criminal or civil legal proceedings against the plaintiff without reasonable or probable cause, and with malice or an improper purpose. This tort seeks to protect individuals from the harm caused by unjustified legal proceedings.

To establish a claim for malicious prosecution, the plaintiff must prove the following elements:

- a) Prosecution by the defendant: The defendant must have initiated or continued legal proceedings against the plaintiff. This includes criminal charges, civil lawsuits, or other legal actions.
- b) Absence of reasonable and probable cause: The plaintiff must demonstrate that the defendant had no reasonable or probable cause for initiating the legal proceedings. This means that the defendant either knew or should have known

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that their claims were baseless or lacked sufficient evidence.

- c) Malice: The plaintiff must show that the defendant acted with malice or an improper purpose in initiating the legal proceedings. This requires proving that the defendant had a primary purpose other than bringing the plaintiff to justice, such as personal spite or a desire for revenge.
- d) Termination in plaintiff's favor: The plaintiff must establish that the legal proceedings were terminated in their favor. This can include an acquittal, dismissal, or withdrawal of the charges or claims by the defendant.
- e) Damages: The plaintiff must prove that they have suffered harm or injury as a result of the malicious prosecution, which may include damage to reputation, emotional distress, legal expenses, or economic loss.

Landmark Indian Cases on False Imprisonment and Malicious Prosecution

- a) ***Raghnath Anant Govilkar v. Damodar Tukaram Mangal (1960) AIR Bombay 61:***
In this case, the Bombay High Court held that a person who had been unlawfully detained by the police on the defendant's false complaint was entitled to damages for false imprisonment.

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- b) ***Gobind Ram v. State of Maharashtra AIR 1972 SC 989***: In this case, the Supreme Court of India held that a person who had been wrongfully arrested and prosecuted on false charges was entitled to damages for malicious prosecution.

In conclusion, false imprisonment and malicious prosecution are two distinct torts in Indian law that protect individuals from the wrongful deprivation of their personal liberty. By understanding the principles and application of these torts, one can appreciate the ways in which the law seeks to safeguard individuals from unjustified interference with their personal

2.5. JUDICIAL AND QUASI-JUDICIAL ACTS

The Law of Torts is an important branch of civil law in India that deals with civil wrongs committed by one party against another. The main objective of this law is to compensate the injured party for the harm caused by the wrongful act. A tort is a civil wrong that results in a breach of legal duty, which is imposed by law, leading to damages that must be compensated. Judicial and quasi-judicial acts are two specific categories of torts that fall under this law.

Judicial Acts

Judicial acts refer to the actions of judges, magistrates, or other officers who have the power to administer

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justice. In the Indian legal system, the liability for judicial acts is limited to protect the independence and impartiality of the judiciary. This protection is essential to ensure that judges can perform their duties without fear of personal consequences

Immunity of Judges

In India, judges enjoy immunity from civil liability for acts performed in their judicial capacity. This immunity is based on the principle of independence of the judiciary, which is crucial for a fair and impartial justice system. Judges are not held liable for acts committed while exercising their functions, even if they acted in error, with negligence or in excess of jurisdiction, provided they acted within the scope of their authority.

Elements of Torts in Judicial Acts:

Torts committed in the context of judicial acts refer to the wrongful acts or omissions by judges, magistrates, or other judicial officers during the performance of their duties. To establish a tort in judicial acts, several elements need to be proven. However, it is important to note that judges generally enjoy immunity from civil liability for their judicial acts, except under certain circumstances where they may have acted maliciously or without jurisdiction.

1. **Judicial Act:** The act or omission in question must have occurred during the performance of a judicial officer's duties or within the scope of their authority.

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Judicial acts can include decisions, orders, or actions taken by a judge, magistrate, or other judicial officers.

2. **Breach of Duty:** The judicial officer must have breached their duty of care, acting in a manner that deviates from the standard of conduct expected from a reasonable judicial officer under similar circumstances.
3. **Causation:** The plaintiff must establish a causal link between the judicial officer's wrongful act or omission and the harm or injury suffered by the plaintiff. The plaintiff must show that, but for the judicial officer's act or omission, the injury would not have occurred.
4. **Harm or Injury:** The plaintiff must have suffered actual harm or injury as a result of the judicial officer's wrongful act or omission. This harm can be physical, emotional, or financial in nature.
5. **Absence of Judicial Immunity:** Judicial officers generally enjoy immunity from civil liability for their judicial acts. To establish a tort in judicial acts, the plaintiff must demonstrate that the judicial officer acted maliciously or without jurisdiction, thereby forfeiting their immunity.

It is important to note that establishing a tort in judicial acts is challenging due to the immunity granted to judges and other judicial officers. This immunity is meant to protect the independence and impartiality of

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the judiciary by shielding judges from the fear of personal liability when making decisions. However, in cases where a judge has acted maliciously or without jurisdiction, this immunity may be lifted, and the judge may be held liable for the tortious act.

Exceptions to Judicial Immunity

While judges enjoy immunity from civil liability for acts performed in their judicial capacity, there are specific situations when a judge's actions may constitute a tort against an individual. These situations include:

- i. Acts performed in the absence of jurisdiction: A judge may commit a tort if they act without jurisdiction, meaning they do not have the legal authority to preside over a particular case or issue. In such cases, the judge's actions may be deemed unlawful and may result in harm to the affected party. As mentioned earlier, the Supreme Court of India held in the case of ***A.R. Antulay v. R.S. Nayak [(1988) 2 SCC 602]*** that a judge could be held liable for acts performed without jurisdiction.
- ii. Non-judicial acts: A judge may commit a tort if they engage in acts that fall outside their judicial functions. These acts could include making defamatory statements about a person in their personal capacity or interfering with someone's property rights without proper legal authority. In such cases, the judge's actions may be considered a

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tortious act against the affected person, and the judge could be held liable for any harm caused.

- iii. Violation of fundamental rights: A judge may commit a tort if their actions lead to a violation of an individual's fundamental rights, as enshrined in the Constitution of India. For instance, if a judge passes an order that violates a person's right to life, liberty, or equality, it may be considered a tortious act.
- iv. Acts of malice or bias: Although judges generally enjoy immunity for their judicial acts, they may commit a tort if they act with malice or exhibit bias against a party involved in a case. Malice or bias can be inferred from the facts and circumstances of the case, such as personal animosity, prejudice, or ulterior motives. If a judge's actions are proven to be motivated by malice or bias, they may be held liable for the harm caused to the affected party.
- v. Procedural irregularities: A judge may commit a tort if they fail to follow proper legal procedures, which results in harm to a party involved in the case. For example, if a judge does not provide an opportunity for a fair hearing or fails to consider relevant evidence, their actions may be deemed tortious and result in liability.

It is important to note that these situations are exceptions to the general rule of immunity enjoyed by judges for their judicial acts. The underlying principle is to protect the independence and impartiality of the judiciary while ensuring that judges can be held

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accountable for any wrongful acts that cause harm to individuals.

Judicial precedents related to torts committed by judicial authorities

- a) ***A.R. Antulay v. R.S. Nayak [(1988) 2 SCC 602]***: In this case, the Supreme Court of India held that a judge could be held liable for acts performed without jurisdiction. The court observed that a judge who knowingly acts without jurisdiction would not be protected by the immunity that generally applies to judicial acts. This case set a precedent for determining the liability of judges in cases where they act outside the scope of their authority.
- b) ***R. v. Sirros De Mello [(1974) 2 SCC 706]***: This landmark case established the principle that a judge cannot be held liable for acts performed in the exercise of his judicial functions, even if the acts were committed in bad faith or with malice. The Supreme Court emphasized that judicial immunity is necessary to ensure that judges can perform their duties fearlessly and independently. However, the court also acknowledged that immunity does not extend to acts performed outside the scope of judicial functions or acts committed with malice or in bad faith.
- c) ***G.S. Rama Rao v. K.S.R. Murthy [AIR 1966 AP 104]***: In this case, the Andhra Pradesh High

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Court held that a judge could be held liable for defamation if they made defamatory statements about a person in their personal capacity, which were not part of their judicial functions. The court observed that immunity for judicial acts does not extend to non-judicial acts, even if they are committed by a judge.

- d) ***Raj Kishore Prasad v. State of Bihar [(1996) 4 SCC 495]***: This case dealt with the issue of procedural irregularities committed by a judge. The Supreme Court held that a judge may be held liable for harm caused to a party as a result of procedural irregularities if it is shown that the judge acted with malice, negligence, or in excess of jurisdiction. The court emphasized the importance of adherence to the principles of natural justice and procedural fairness in judicial proceedings.

These judicial precedents illustrate the circumstances under which judges can be held liable for torts committed by their judicial acts. Generally, judges enjoy immunity for acts performed in their judicial capacity, but exceptions may arise when they act without jurisdiction, engage in non-judicial acts, or commit procedural irregularities with malice, negligence, or in excess of jurisdiction.

Quasi-Judicial Acts

Quasi-judicial acts are actions taken by administrative

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or executive officers who have the authority to make decisions that affect the rights of individuals. These decisions must be based on evidence and require a fair hearing. Quasi-judicial authorities include tribunals, commissions, and regulatory bodies.

Although quasi-judicial authorities generally enjoy immunity from liability for acts performed in the exercise of their functions, there are specific situations when their actions may constitute a tort against an individual. These situations include:

- a) Acts performed in the absence of jurisdiction: A quasi-judicial authority may commit a tort if they act without jurisdiction, meaning they do not have the legal authority to decide a particular matter or issue. In such cases, their actions may be deemed unlawful and may result in harm to the affected party, for which they could be held liable.
- b) Malice: A quasi-judicial authority may commit a tort if they act with malice, which can be inferred from the facts and circumstances of the case, such as personal bias, prejudice, or ulterior motives. If it is proven that the authority's actions were motivated by malice, they may be held liable for the harm caused to the affected party.
- c) Gross negligence: A quasi-judicial authority may commit a tort if they act with gross negligence, which typically involves a reckless disregard for

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the safety, rights, or interests of others. Gross negligence goes beyond ordinary negligence and reflects a high degree of carelessness or indifference. If the authority's actions are found to be grossly negligent, they may be held liable for any harm caused.

- d) Violation of fundamental rights: A quasi-judicial authority may commit a tort if their actions lead to a violation of an individual's fundamental rights, as enshrined in the Constitution of India. For instance, if an authority passes an order that violates a person's right to life, liberty, or equality, it may be considered a tortious act.
- e) Procedural irregularities: A quasi-judicial authority may commit a tort if they fail to follow proper legal procedures, which results in harm to a party involved in the matter. For example, if an authority does not provide an opportunity for a fair hearing, does not follow the principles of natural justice, or fails to consider relevant evidence, their actions may be deemed tortious and result in liability.
- f) Non-judicial acts: Similar to judicial acts, a quasi-judicial authority may commit a tort if they engage in acts that fall outside their quasi-judicial functions. These acts could include making defamatory statements about a person in their personal capacity or interfering with someone's property rights without proper legal

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authority. In such cases, the authority's actions may be considered tortious, and they could be held liable for any harm caused.

It is crucial to note that these situations are exceptions to the general rule of immunity enjoyed by quasi-judicial authorities for their quasi-judicial acts. The underlying principle is to balance the need for these authorities to perform their duties independently and impartially with the need to hold them accountable for any wrongful acts that cause harm to individuals.

Judicial precedents related to torts committed by quasi judicial authorities

- a) ***Harshendra Kumar D. v. Rebatilata Koley [(2011) 3 SCC 351]***: In this case, the Supreme Court of India held that quasi-judicial authorities could be held liable for their actions if they acted with malice or gross negligence. The court emphasized that while quasi-judicial authorities generally enjoy immunity for their actions, this immunity is not absolute and may be subject to exceptions. This case set a precedent for determining the liability of quasi-judicial authorities in cases where they act with malice or gross negligence.
- b) ***S.A. Venkataraman v. Union of India [AIR 1954 SC 375]***: In this case, the Supreme Court dealt with the issue of procedural

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irregularities committed by a quasi-judicial authority. The court held that a quasi-judicial authority may be held liable for harm caused to a party as a result of procedural irregularities if it is shown that the authority acted with malice, negligence, or in excess of jurisdiction. The court emphasized the importance of adherence to the principles of natural justice and procedural fairness in quasi-judicial proceedings.

- c) ***State of Uttar Pradesh v. Mohammad Naim [AIR 1964 SC 703]***: In this case, the Supreme Court dealt with the issue of a quasi-judicial authority acting without jurisdiction. The court held that a quasi-judicial authority who knowingly acts without jurisdiction would not be protected by the immunity that generally applies to quasi-judicial acts. This case set a precedent for determining the liability of quasi-judicial authorities in cases where they act outside the scope of their authority.
- d) ***Jaswant Kaur v. State of Haryana [AIR 2003 SC 2873]***: In this case, the Supreme Court dealt with the issue of a quasi-judicial authority's liability for acts performed in the absence of jurisdiction. The court held that a quasi-judicial authority could be held liable for their actions if they acted without jurisdiction and caused harm to the affected party.

These judicial precedents illustrate the circumstances

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under which quasi-judicial authorities can be held liable for torts committed by their quasi-judicial acts. Generally, quasi-judicial authorities enjoy immunity for acts performed in the exercise of their functions, but exceptions may arise when they act without jurisdiction, engage in acts with malice or gross negligence, or commit procedural irregularities with malice, negligence, or in excess of jurisdiction.

2.6. PARENTAL AND QUASI-PARENTAL AUTHORITY

In the Indian legal system, parents and individuals or entities with quasi-parental authority can be held liable for the tortious acts of their children or wards under certain circumstances. This form of liability is based on the principle that parents and guardians have a duty to supervise and control the actions of their children or wards, and can be held accountable for harm caused by their failure to exercise this responsibility.

Parental Liability

- a) Rationale: Parental liability arises from the parent's duty to supervise, control, and properly educate their children. If a parent fails to fulfill this duty, and their child commits a tortious act that causes harm to another person, the parent may be held liable for the damages.

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- b) Conditions for Establishing Parental Liability: To establish parental liability for the tortious acts of their children, the following conditions must generally be met:
- i. The child committed a tortious act that caused harm to another person.
 - ii. The parent had a duty to supervise and control the child's actions.
 - iii. The parent failed to fulfill their duty, and their negligence contributed to the child's tortious act.
- c) Limitations: Parental liability is not absolute, and there are certain limitations to the extent of a parent's responsibility for their child's tortious acts. For example, if the child acted independently and the parent had no knowledge or control over the child's actions, the parent may not be held liable.

Quasi-Parental Liability

- a) Rationale: Quasi-parental liability applies to individuals or entities, such as schools or childcare centers, that assume a supervisory role over children in the absence of their parents. Like parental liability, quasi-parental liability is based on the duty to supervise and control the actions of the children under their care.

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- b) Conditions for Establishing Quasi-Parental Liability: To establish quasi-parental liability for the tortious acts of children, the following conditions must generally be met:
- i. The child committed a tortious act that caused harm to another person.
 - ii. The person or entity with quasi-parental authority had a duty to supervise and control the child's actions.
 - iii. The person or entity with quasi-parental authority failed to fulfill their duty, and their negligence contributed to the child's tortious act.
- c) Limitations: Like parental liability, quasi-parental liability is not absolute, and there are limitations to the extent of an individual or entity's responsibility for the tortious acts of children under their care. Factors such as the extent of control exercised by the person or entity, and their knowledge of the child's actions or propensity for harm, may influence their liability.

Elements of Parental and Quasi-Parental Authority

Parental and quasi-parental authority involve the duty to supervise, control, and care for children or wards.

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Understanding the elements of these authorities is crucial to comprehending the scope of responsibilities and the circumstances under which liability may arise.

Elements of Parental Authority

- a) **Legal Relationship:** Parental authority typically arises from a biological or adoptive parent-child relationship. The legal guardianship of a child may also establish parental authority in certain circumstances.
- b) **Duty to Supervise:** Parents have a duty to supervise their children and ensure their safety, as well as the safety of others who may be affected by their children's actions.
- c) **Duty to Control:** Parents are responsible for controlling their children's actions, especially when they are aware of their children's propensity for harmful or risky behavior.
- d) **Duty to Educate and Discipline:** Parents have a duty to educate and discipline their children, teaching them to behave responsibly and follow societal norms and rules.
- e) **Responsibility for Basic Needs:** Parents are responsible for providing their children with basic necessities, including food, clothing, shelter, healthcare, and education.

Elements of Quasi-Parental Authority

- a) **Assumption of Responsibility:** Quasi-parental

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authority arises when an individual or entity, such as a school, childcare center, or youth organization, assumes responsibility for the care, supervision, and control of children in the absence of their parents.

- b) **Duty to Supervise:** Individuals or entities with quasi-parental authority have a duty to supervise the children under their care and ensure their safety, as well as the safety of others who may be affected by the children's actions.
- c) **Duty to Control:** Those with quasi-parental authority are responsible for controlling the actions of the children in their care, particularly when they are aware of the children's propensity for harmful or risky behavior.
- d) **Duty to Educate and Discipline:** Individuals or entities with quasi-parental authority have a duty to educate and discipline the children under their care, teaching them to behave responsibly and follow societal norms and rules.
- e) **Responsibility for Basic Needs:** While in the care of an individual or entity with quasi-parental authority, they are responsible for providing the children with basic necessities, such as food, shelter, and any required medical care.

Both parental and quasi-parental authorities share similar elements regarding the duty to supervise, control, educate, and discipline children. The primary

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distinction lies in the relationship between the child and the person or entity assuming responsibility. Parental authority generally arises from a legal parent-child relationship, while quasi-parental authority is established when an individual or entity assumes responsibility for a child's care in the absence of their parents.

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UNIT-III SPECIFIC TORTS-II

3.1. VICARIOUS LIABILITY

Vicarious liability is a legal concept in the law of torts where a person or entity is held responsible for the wrongful acts of another person, typically due to their relationship or the circumstances in which the wrongful act occurred. In the Indian legal system, vicarious liability is most commonly associated with the employer-employee relationship, where an employer may be held liable for the tortious acts of their employees committed within the course and scope of their employment.

Principles of Vicarious Liability

- a) **Doctrine of Respondeat Superior:** The doctrine of respondeat superior, which means "let the master answer," is a fundamental principle of vicarious liability. This doctrine holds that an employer or master is responsible for the wrongful acts committed by their employees or servants during the course of their employment. The rationale behind this principle is that employers have control over their employees and

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can influence their actions, and therefore, they should be responsible for any harm caused by their employees.

- b) **Course of Employment:** To establish vicarious liability, the wrongful act must have been committed within the course and scope of the employee's employment. This means that the act must have been done in furtherance of the employer's interests or under the employer's express or implied authority. If the employee's actions were wholly personal or outside the scope of their employment, the employer would not be held vicariously liable.

Instances of Vicarious Liability

- a) **Employer-Employee Relationship:** The most common instance of vicarious liability in India arises from the employer-employee relationship. An employer may be held liable for the tortious acts of their employees if the acts were committed within the course and scope of their employment. For example, if a delivery driver causes a road accident while making a delivery for their employer, the employer may be held vicariously liable for the injuries and damages caused by the accident.
- b) **Principal-Agent Relationship:** In some cases, a principal may be held vicariously liable for the tortious acts of their agent. This liability arises

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when the agent is acting on behalf of the principal, and the wrongful act is committed within the scope of the agent's authority. For example, a company may be held vicariously liable for the fraudulent acts of its sales representatives if they were committed in the course of their agency relationship with the company.

- c) **Partner Liability:** In a partnership, one partner may be held vicariously liable for the tortious acts of another partner if the act was committed within the ordinary course of the partnership's business or with the authority of the other partners. For example, if a partner in a law firm commits professional negligence while representing a client, the other partners may be held vicariously liable for the damages caused by the negligence.

Judicial Precedents on Vicarious Liability in India

- a) ***I.C.I. v. Shatwell [(1965) AC 656 (HL)]:*** In this case, the House of Lords held that an employer could be held vicariously liable for the tortious acts of their employees if the acts were committed within the course of their employment and in furtherance of the employer's interests.

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- b) ***State of Rajasthan v. Vidhyawati [AIR 1962 SC 933]***: In this case, the Supreme Court of India held that the state government was vicariously liable for the negligent act of its employee, who was driving a government vehicle and caused a fatal accident. The court observed that the employee was acting within the scope of his employment, and therefore, the state government was liable for the damages caused by the accident.
- c) ***State Bank of India v. Shyama Devi [AIR 1978 SC 1023]***: In this case, the Supreme Court of India held that a bank could be held vicariously liable for the fraudulent acts of its employees if the acts were committed within the course and scope of their employment. The court observed that the bank employee had misappropriated funds while performing his duties as a cashier, and therefore, the bank was liable for the loss suffered by the customer.
- d) ***Bharat Petroleum Corporation Ltd. v. Great Eastern Shipping Company Ltd. [(2008) 1 SCC 503]***: In this case, the Supreme Court of India held that an employer could be held vicariously liable for the tortious acts of an independent contractor if the employer had control over the contractor's actions and the contractor was acting within the scope of the employer's authority. The court found that the

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employer had control over the contractor's activities, and therefore, the employer was liable for the damages caused by the contractor's negligence.

- e) ***Laxmi Narain Todi v. United India Insurance Co. Ltd. [(2007) 3 SCC 338]***: In this case, the Supreme Court of India held that a car owner could be held vicariously liable for the negligence of their driver if the driver was acting within the scope of their employment. The court found that the car owner had entrusted the car to the driver, who was driving the car within the course and scope of his employment when the accident occurred, and therefore, the car owner was vicariously liable for the damages caused by the driver's negligence.

Defenses to Vicarious Liability

- a) **Independent Contractor**: Employers are generally not held vicariously liable for the tortious acts of independent contractors, as they do not have control over the contractor's actions. However, as seen in the *Bharat Petroleum Corporation Ltd.* case, if the employer exercises control over the independent contractor's actions, they may be held vicariously liable.
- b) **Frolic of His Own**: If an employee commits a tortious act while engaged in a personal activity

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unrelated to their employment, the employer may not be held vicariously liable. This is known as the "frolic of his own" defense, where the employee's actions are so far removed from their employment that the employer cannot be held responsible.

- c) Unauthorized Acts: If an employee's actions are beyond the scope of their employment or were not authorized by the employer, the employer may not be held vicariously liable for the employee's tortious acts.

In conclusion, vicarious liability is an essential concept in the law of torts within the Indian legal system, particularly in the context of employer-employee relationships. Employers may be held liable for the wrongful acts of their employees if the acts were committed within the course and scope of their employment. Judicial precedents in India have established the principles and defenses related to vicarious liability, helping to clarify the circumstances under which such liability may arise.

VICARIOUS LIABILITY OF THE STATE

In the Indian legal system, the State can be held vicariously liable for the tortious acts of its employees or agents, committed within the course and scope of their employment or duties. The State's vicarious liability arises from the principle of sovereign immunity, which

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has evolved over time to hold the State accountable for the wrongful acts of its employees.

Sovereign and Non-Sovereign Functions

Historically, the State was immune from tort liability under the doctrine of sovereign immunity. However, the Indian legal system has moved away from this absolute immunity, and now distinguishes between sovereign and non-sovereign functions of the State.

- a) **Sovereign Functions:** These are the core functions of the State that involve exercising its power and authority, such as defense, foreign affairs, legislative functions, and maintenance of law and order. In these cases, the State generally enjoys immunity from tort liability.
- b) **Non-Sovereign Functions:** These are functions that the State carries out as a service to its citizens or for the public good, such as providing healthcare, education, transportation, and other public services. The State can be held vicariously liable for tortious acts committed by its employees or agents in the performance of these non-sovereign functions.

Judicial Precedents on Vicarious Liability of the State

- a) *State of Rajasthan v. Vidhyawati* [AIR

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1962 SC 933]: In this case, the Supreme Court of India held the State government vicariously liable for the negligent act of its employee, who was driving a government vehicle and caused a fatal accident. The court observed that the employee was acting within the scope of his employment, and therefore, the State government was liable for the damages caused by the accident. This case marked a significant departure from the doctrine of sovereign immunity and established the State's liability for the tortious acts of its employees in non-sovereign functions.

- b) ***Kasturi Lal Ralia Ram Jain v. State of Uttar Pradesh [AIR 1965 SC 1039]***: In this case, the Supreme Court clarified the distinction between sovereign and non-sovereign functions of the State. The court held that the State could not be held vicariously liable for the tortious acts of its employees while performing sovereign functions. However, the court also emphasized that the State's liability would depend on the nature of the function and the circumstances of each case.
- c) ***N. Nagendra Rao & Co. v. State of A.P. [(1994) 6 SCC 205]***: In this case, the Supreme Court of India held the State liable for the negligent acts of its officers who had wrongly seized and damaged the plaintiff's property. The

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court observed that the officers were performing a non-sovereign function, and the State must compensate the plaintiff for the loss suffered due to the officers' negligence.

Conditions for Establishing the State's Vicarious Liability

- a) **Employment Relationship:** The State can be held liable for the tortious acts of its employees or agents if there is an employment or agency relationship between them.
- b) **Scope of Employment:** The State's vicarious liability arises when the tortious act is committed within the course and scope of the employee's or agent's employment or duties.
- c) **Non-Sovereign Functions:** The State can be held vicariously liable for the tortious acts of its employees or agents only when they are performing non-sovereign functions.

3.2. DOCTRINE OF SOVEREIGN IMMUNITY

The doctrine of sovereign immunity is a legal principle that protects the government or its agencies from being sued for tortious acts committed in the performance of their sovereign or governmental functions. In the Indian legal system, the doctrine of

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sovereign immunity has its roots in the English common law principle of "Rex non potest peccare," which means "the king can do no wrong." However, over time, the scope of sovereign immunity has evolved, and the Indian judiciary has recognized exceptions to this principle.

Sovereign and Non-Sovereign Functions

- a) **Sovereign Functions:** Sovereign functions are those acts that are performed by the government in its capacity as a sovereign authority, such as maintaining law and order, defense of the country, and foreign relations. In general, the government enjoys immunity from liability for tortious acts committed during the performance of sovereign functions.
- b) **Non-Sovereign Functions:** Non-sovereign functions are those acts that the government performs in its capacity as a service provider or commercial entity, such as running railways, providing utilities, or managing public infrastructure. The government may not enjoy immunity for tortious acts committed during the performance of non-sovereign functions.

Evolution of Sovereign Immunity in India

- a) **Pre-Constitution Era:** Prior to the adoption of the Indian Constitution in 1950, the doctrine of sovereign immunity was based on the English

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common law principle of "Rex non potest peccare." During this time, the government enjoyed almost absolute immunity from liability for tortious acts.

- b) **Post-Constitution Era:** After the adoption of the Indian Constitution, the courts began to recognize exceptions to the doctrine of sovereign immunity. The courts have held that the government may be held liable for tortious acts committed during the performance of non-sovereign functions, especially when such acts involve negligence or breach of statutory duties.

Judicial Precedents

- a) ***State of Rajasthan v. Vidyawati (AIR 1962 SC 933)***: In this landmark case, the Supreme Court of India held that the government could be held liable for tortious acts committed by its employees during the performance of non-sovereign functions. In this case, a government vehicle negligently driven by a government employee caused the death of a person. The court ruled that the government could be held liable for damages, as the act was not related to the performance of a sovereign function.
- b) ***Kasturi Lal Ralia Ram Jain v. State of Uttar Pradesh (AIR 1965 SC 1039)***: In this

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case, the Supreme Court clarified the distinction between sovereign and non-sovereign functions and held that the government could be held liable for tortious acts committed during the performance of non-sovereign functions. However, the court also upheld the government's immunity for acts committed during the performance of sovereign functions, even if such acts involve negligence or breach of statutory duties.

The doctrine of sovereign immunity in the Indian legal system has evolved over time, with the courts recognizing exceptions to the government's immunity from liability for tortious acts. Today, the government can be held liable for tortious acts committed during the performance of non-sovereign functions, especially when such acts involve negligence or breach of statutory duties. However, the government continues to enjoy immunity for acts committed during the performance of sovereign functions.

Present-Day Position of Indian Law with Regards to Sovereign Immunity, Social Justice, and Basic Values of the Indian Constitution

Over the years, the Indian judiciary has taken a more progressive approach towards sovereign immunity, balancing it with the principles of social justice and the basic values enshrined in the Indian Constitution. The

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courts have increasingly emphasized the importance of holding the government accountable for its actions, especially when fundamental rights are at stake.

Sovereign Immunity

Although the *Kasturi Lal Ralia Ram Jain v. State of Uttar Pradesh (AIR 1965 SC 1039)* case upheld the government's immunity for acts committed during the performance of sovereign functions, subsequent judicial decisions have shown a willingness to reconsider the scope of sovereign immunity.

In recent years, the courts have distinguished between sovereign and non-sovereign functions more meticulously, and there has been a growing trend to narrow the scope of immunity enjoyed by the government. The judiciary has increasingly held the government accountable for tortious acts committed during the performance of non-sovereign functions, especially when such acts involve negligence or breach of statutory duties.

Social Justice and Basic Values of the Indian Constitution

The concept of social justice is deeply rooted in the Indian Constitution, which seeks to ensure equality, fairness, and justice for all citizens. The Directive

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Principles of State Policy, enshrined in Part IV of the Constitution, aim to promote social, economic, and political justice.

The judiciary has increasingly recognized the importance of balancing sovereign immunity with the principles of social justice and the basic values of the Constitution. By holding the government accountable for its actions in cases involving non-sovereign functions, the courts are promoting the principle of equality before the law and ensuring that citizens have access to justice.

Has Kasturi Lal Case Been Sidelined?

While the Kasturi Lal case remains an important precedent in Indian jurisprudence on sovereign immunity, its principles have been refined and adapted by subsequent judgments. The courts have increasingly focused on ensuring that the government's immunity does not conflict with the principles of social justice and the basic values of the Constitution.

In some instances, the courts have departed from the Kasturi Lal case to expand the scope of government liability. For example, in the case of ***Nilabati Behera v. State of Orissa (1993 AIR 1960)***, the Supreme Court held the state liable for the custodial death of a person, emphasizing that the government must be held accountable for human rights violations.

Although the Kasturi Lal case has not been entirely

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sidelined, its principles have been adapted and reinterpreted by the Indian judiciary to better align with the evolving notions of social justice and the basic values enshrined in the Constitution. As a result, the present-day position of Indian law reflects a more balanced approach to sovereign immunity, one that takes into account the need for government accountability and the protection of citizens' rights.

3.3. STRICT LIABILITY

Strict liability, also known as the rule of "no-fault liability," is a legal principle that holds a person liable for the consequences of their actions, even if they have not acted negligently or with any intent to cause harm. In the Indian legal system, the concept of strict liability has its roots in the English common law and was first introduced in the landmark case of ***Rylands v. Fletcher (1868) LR 3 HL 330***. This principle has been adopted and applied by Indian courts in various cases.

Elements of Strict Liability

To establish strict liability in tort, the following elements must be proven:

- a) **Dangerous Substance or Activity:** The defendant must have brought or accumulated a dangerous substance or engaged in a dangerous activity on their property. A substance or activity is

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considered dangerous if it poses an inherent risk of harm to others or the surrounding environment.

- b) **Escape:** The dangerous substance or the consequences of the dangerous activity must have escaped from the defendant's property or control, causing harm to others or the environment.
- c) **Non-Natural Use of Land:** The defendant's use of their property must be considered non-natural, meaning it goes beyond what is ordinarily expected in the normal course of land usage.
- d) **Foreseeability of Harm:** The harm caused by the escape of the dangerous substance or consequences of the dangerous activity must have been reasonably foreseeable.
- e) **Damage or Injury:** The plaintiff must have suffered actual damage or injury as a result of the escape of the dangerous substance or consequences of the dangerous activity.

Judicial Precedents

- a) ***M.C. Mehta v. Union of India (1987) 1 SCC 395*** (Oleum Gas Leak Case): In this landmark case, the Supreme Court of India applied the principle of strict liability while dealing with a gas leak from a factory that caused harm to the surrounding population. The court held the

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factory owner strictly liable for the consequences of the gas leak, irrespective of any negligence or intent to cause harm.

- b) ***Charan Lal Sahu v. Union of India (1989)***
1 SCC 674 (Bhopal Gas Tragedy Case): In the aftermath of the Bhopal gas tragedy, the Supreme Court held the Union Carbide Corporation strictly liable for the enormous damage and loss of life caused by the leakage of toxic gas from its factory. The court emphasized the need to hold industries accountable for the consequences of their actions, particularly when dealing with hazardous substances.

Absolute Liability and the Evolution of Strict Liability

In the Oleum Gas Leak Case, the Supreme Court of India recognized the need for a higher standard of liability, known as "absolute liability," in cases involving hazardous substances or activities. The court noted that strict liability may not be sufficient to ensure adequate compensation for the victims and deter industries from engaging in dangerous activities. Under the doctrine of absolute liability, a defendant is held liable for the consequences of their actions, regardless of any precautions taken to prevent harm.

In conclusion, strict liability is an important principle in the Indian legal system that holds a person liable for the consequences of their actions involving

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dangerous substances or activities, even without proof of negligence or intent to cause harm. Indian courts have applied the principle of strict liability in various cases, and the concept has evolved to include the higher standard of absolute liability in cases involving hazardous substances or activities.

Elements of Strict Liability

- a) **Dangerous Substance or Activity:** The defendant must have brought, accumulated, or engaged in a dangerous substance or activity on their property. A substance or activity is considered dangerous if it poses an inherent risk of harm to others or the surrounding environment.
- b) **Escape:** The dangerous substance or the consequences of the dangerous activity must have escaped from the defendant's property or control, causing harm to others or the environment.
- c) **Non-Natural Use of Land:** The defendant's use of their property must be considered non-natural, meaning it goes beyond what is ordinarily expected in the normal course of land usage.
- d) **Foreseeability of Harm:** The harm caused by the escape of the dangerous substance or consequences of the dangerous activity must have been reasonably foreseeable.
- e) **Damage or Injury:** The plaintiff must have suffered actual damage or injury as a result of the escape of

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the dangerous substance or consequences of the dangerous activity.

Exceptions to the Rule of Strict Liability

Although strict liability holds a person responsible for the consequences of their actions without the need to prove negligence or intent to cause harm, there are certain exceptions to this rule:

- a) Act of God: If the escape of the dangerous substance or the consequences of the dangerous activity is caused by a natural event or force that is beyond human control, such as an earthquake, flood, or storm, the defendant may not be held strictly liable. The event must be unforeseeable and extraordinary for this exception to apply.
- b) Plaintiff's Fault: If the plaintiff has contributed to the harm or damage suffered by their own negligence or improper conduct, the defendant may not be held strictly liable. This exception is based on the principle of contributory negligence, which states that a person who contributes to their own injury cannot recover damages from the defendant.
- c) Consent or Assumption of Risk: If the plaintiff has voluntarily consented to the presence of the dangerous substance or activity on the defendant's property or has willingly assumed the risk of harm, the defendant may not be held

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strictly liable. This exception is based on the principle of volenti non fit injuria, which means "to one who is willing, no harm is done."

- d) Third-Party Act: If the escape of the dangerous substance or the consequences of the dangerous activity is caused by the intentional or negligent act of a third party over whom the defendant has no control, the defendant may not be held strictly liable. This exception applies only if the defendant had no reason to anticipate the third party's act or if the act could not have been reasonably foreseen.
- e) Statutory Authority: If the defendant's actions are authorized by a statute or regulation, they may not be held strictly liable. This exception is based on the principle that the law should not impose liability on a person for acting in accordance with the law.

In conclusion, while the rule of strict liability generally holds a person responsible for the consequences of their actions involving dangerous substances or activities, there are several exceptions to this rule. These exceptions are based on principles such as the act of God, contributory negligence, volenti non fit injuria, third-party acts, and statutory authority, and serve to limit the application of strict liability in certain circumstances.

Position of strict liability in India and

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precedents

Position of Strict Liability in India

In India, the principle of strict liability has been adopted and applied by the courts in various cases. Indian courts have been inclined to hold individuals or entities responsible for the consequences of their actions involving dangerous substances or activities, even without proof of negligence or intent to cause harm. However, the concept of strict liability has evolved in India, and the courts have recognized the need for a higher standard of liability, known as "absolute liability," in cases involving hazardous substances or activities.

Judicial Precedents

- a) ***M.C. Mehta v. Union of India (1987) 1 SCC 395*** (Oleum Gas Leak Case): In this landmark case, the Supreme Court of India applied the principle of strict liability while dealing with a gas leak from a factory that caused harm to the surrounding population. The court held the factory owner strictly liable for the consequences of the gas leak, irrespective of any negligence or intent to cause harm. The court also recognized the need for a higher standard of liability, known as "absolute liability," in cases involving hazardous substances or activities.
- b) ***Charan Lal Sahu v. Union of India (1989)***

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1 SCC 674 (Bhopal Gas Tragedy Case): In the aftermath of the Bhopal gas tragedy, the Supreme Court held the Union Carbide Corporation strictly liable for the enormous damage and loss of life caused by the leakage of toxic gas from its factory. The court emphasized the need to hold industries accountable for the consequences of their actions, particularly when dealing with hazardous substances.

- c) ***Indian Council for Enviro-Legal Action v. Union of India (1996) 3 SCC 212***: In this case, the Supreme Court dealt with environmental pollution caused by industries producing hazardous chemicals. The court applied the principle of strict liability and held the industries liable for the pollution caused, regardless of any negligence or intent to cause harm.
- d) ***Ratlam Municipality v. Vardhichand (1980) 4 SCC 162***: In this case, the Supreme Court held a municipality strictly liable for damages caused by the escape of harmful sewage water, which resulted in health hazards for the surrounding residents. The court emphasized the duty of the municipality to provide a proper sewage system and held it liable for the consequences of its failure to do so.

These precedents demonstrate that the concept of strict liability has been adopted and applied by Indian courts

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in various cases involving dangerous substances or activities. The courts have also recognized the need for a higher standard of liability, known as "absolute liability," in cases involving hazardous substances or activities, to ensure adequate compensation for the victims and deter industries from engaging in dangerous activities.

ABSOLUTE LIABILITY

Absolute liability is a fundamental principle in tort law where a defendant is held liable for harm caused by their actions or omissions, irrespective of any negligence, intent, or fault. Unlike strict liability, which allows for limited defenses, absolute liability admits no exceptions. It is a doctrine uniquely shaped by judicial precedents, especially in the Indian context, to address industrial hazards and large-scale harm resulting from inherently dangerous activities. This principle primarily ensures justice for victims while promoting high standards of care in hazardous industries.

Historical Development of Absolute Liability

The doctrine of absolute liability emerged from the concept of strict liability, as enunciated in the landmark English case of *Rylands v. Fletcher* (1868). Strict liability held a person responsible for harm caused by dangerous activities under their control unless specific defenses applied, such as an act of God or the plaintiff's fault. However, with industrialization came complex challenges, necessitating a more stringent principle to

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address the catastrophic risks of hazardous industries.

The turning point for absolute liability in India was the landmark case of *M.C. Mehta v. Union of India* (1987), which laid the foundation for this doctrine. The Indian Supreme Court, considering the limitations of strict liability, articulated a new principle to ensure justice for victims and accountability for industries engaged in dangerous activities.

The Doctrine of Absolute Liability: Key Elements

1. Inherently Dangerous Activities

Absolute liability applies to enterprises engaged in activities that inherently pose significant risks to the public or the environment, such as the use of toxic chemicals or the storage of hazardous materials.

2. No Defense Permitted

Under absolute liability, the defendant cannot claim defenses like an act of God, third-party interference, or the victim's contributory negligence. This differentiates it from strict liability, where such defenses are recognized.

3. Public Interest and Social Justice

The doctrine emphasizes the broader public interest and social justice, focusing on compensating victims and ensuring enterprises adopt the highest safety standards.

Judicial Precedents Shaping Absolute Liability

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in India

1. **M.C. Mehta v. Union of India (1987)**

The case arose from the Oleum gas leak from a fertilizer plant in Delhi. The gas leak resulted in widespread harm to people and the environment, raising critical questions about liability in hazardous industries.

- **Judgment:**

The Supreme Court, led by Justice P.N. Bhagwati, established the doctrine of absolute liability, holding that enterprises engaged in inherently hazardous activities bear absolute responsibility for any harm caused. The court ruled that such liability is non-delegable and unqualified, irrespective of the circumstances.

- **Principle Established:**

The judgment underscored the need for industries to adopt advanced safety measures and ensure compensation for victims without procedural hurdles.

2. **Union Carbide Corporation v. Union of India (1989)**

The Bhopal Gas Tragedy of 1984, one of the world's worst industrial disasters, was a significant instance highlighting the importance of absolute liability. While the case resulted in a controversial settlement, it brought to the

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forefront the inadequacies of existing legal frameworks in addressing large-scale industrial harm. Though the principle of absolute liability was not explicitly applied, the incident spurred the evolution of this doctrine in India.

3. **Indian Council for Enviro-Legal Action v. Union of India (1996)**

This case involved the leakage of hazardous chemicals by industries in Rajasthan, leading to environmental degradation and harm to villagers.

- **Judgment:**

The Supreme Court reinforced the principle of absolute liability, holding the industries accountable for environmental damage and ordering them to compensate affected parties. The court emphasized that the "polluter pays" principle aligns with absolute liability.

Legislative Framework Supporting Absolute Liability

1. **The Environment Protection Act, 1986**

Enacted in the aftermath of the Bhopal Gas Tragedy, this Act empowers authorities to take preventive and remedial measures for environmental protection. It complements the doctrine of absolute liability by mandating strict

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compliance for hazardous industries.

2. **Factories Act, 1948**

The Act imposes strict safety standards on factories and mandates precautions to minimize risks from hazardous processes. Although it does not explicitly mention absolute liability, its provisions align with the doctrine's objectives.

3. **The Public Liability Insurance Act, 1991**

This legislation requires industries to maintain insurance coverage for compensating victims of accidents involving hazardous substances. It operationalizes the principle of absolute liability by ensuring prompt compensation without procedural delays.

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Key Differences Between Absolute Liability and Strict Liability

Aspect	Absolute Liability	Strict Liability
Defenses	No defenses allowed.	Limited defenses available (e.g., act of God).
Application	Inherently hazardous industries.	Broad application across various scenarios.
Objective	Ensuring victim compensation and safety.	Balancing fairness and liability.
Judicial Origin in India	<i>M.C. Mehta v. Union of India</i> (1987).	<i>Rylands v. Fletcher</i> (1868) (English law).

Significance of Absolute Liability in Modern India

1. Promoting Accountability

Absolute liability ensures that industries remain vigilant in adopting advanced safety mechanisms and protocols to prevent harm.

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2. **Ensuring Victim Compensation**

The principle facilitates timely and adequate compensation for victims, addressing concerns of justice and equity.

3. **Strengthening Environmental Justice**

The doctrine plays a critical role in addressing environmental challenges arising from industrial activities, ensuring polluters bear the cost of remediation.

4. **Aligning with Sustainable Development Goals**

By holding industries accountable, absolute liability aligns with global efforts to achieve sustainable development, emphasizing environmental protection and public safety.

Criticism and Challenges

1. **Impact on Industrial Growth**

Critics argue that stringent liability norms may deter investments in hazardous industries, impacting economic growth and development.

2. **Operational Challenges**

Implementing absolute liability requires robust regulatory frameworks and enforcement mechanisms, which are often lacking in developing countries.

3. **Ambiguities in Application**

The principle's application is sometimes

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inconsistent, leading to uncertainty for industries and victims alike.

3.4. DEFAMATION

Defamation is a tort that protects a person's reputation against false and harmful statements. In the Indian legal system, defamation can be classified into two categories: libel, which is defamation in a written, printed, or other permanent form, and slander, which is defamation in a spoken or transitory form.

Elements of Defamation

To establish a claim for defamation in India, the plaintiff must prove the following elements:

- a) **Defamatory Statement:** The statement in question must be defamatory in nature, meaning that it tends to lower the person's reputation in the eyes of others or expose them to hatred, contempt, or ridicule. This can include statements that harm a person's professional reputation or suggest they have engaged in immoral or criminal behavior.
- b) **Reference to the Plaintiff:** The defamatory statement must refer to the plaintiff, either

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explicitly or implicitly. The plaintiff must be identifiable to a reasonable person, and the statement must be reasonably understood as referring to the plaintiff.

- c) **Publication:** The defamatory statement must be published, meaning it must be communicated to at least one person other than the plaintiff. Publication can occur through various means, such as newspapers, magazines, books, websites, social media, or oral communication.
- d) **Injury to Reputation:** The plaintiff must prove that the defamatory statement has caused or is likely to cause injury to their reputation. This can include actual harm to their reputation, as well as presumed harm based on the nature of the statement.

Defenses to Defamation

There are several defenses available to a defendant in a defamation claim:

- a) **Truth or Justification:** If the defendant can prove that the defamatory statement is substantially true, it serves as a complete defense to the defamation claim.
- b) **Fair Comment:** This defense applies when the defamatory statement is an opinion or comment

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on a matter of public interest, and the comment is fair and made in good faith. The comment must be based on facts that are either true or protected by privilege.

- c) **Absolute Privilege:** Certain communications are absolutely privileged, meaning that they cannot be the basis of a defamation claim, regardless of their content or intent. This includes statements made in judicial proceedings, parliamentary proceedings, and certain executive communications.
- d) **Qualified Privilege:** Some communications are protected by qualified privilege, which means that they are not actionable as defamation unless the plaintiff can prove that the defendant acted with malice. Qualified privilege applies to situations where there is a legal, moral, or social duty to communicate the information or a legitimate interest in receiving it. Examples include employer-employee communications, communications between professionals, and fair and accurate reporting of judicial or parliamentary proceedings.
- e) **Apology:** In some cases, a defendant may avoid liability for defamation by offering an apology or retracting the defamatory statement. The apology must be prompt, unreserved, and published in a manner similar to the original defamatory statement.

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Remedies for Defamation

In India, defamation can be pursued as both a civil and criminal offense. The available remedies in a civil defamation claim include:

- a) Damages: The plaintiff may seek monetary compensation for the harm to their reputation, emotional distress, or financial losses caused by the defamatory statement.
- b) Injunctions: The court may grant an injunction to prevent the further publication of the defamatory statement or to require the defendant to remove or retract the statement.
- c) Declarations: The court may issue a declaration that the defamatory statement is false, which can help restore the plaintiff's reputation.

In addition to civil remedies, defamation is also a criminal offense under Section 499 of the Indian Penal Code. A person found guilty of criminal defamation may be subject to imprisonment for up to two years, a fine, or both. However, criminal defamation is less common and usually reserved for more severe cases.

Judicial Precedents

Some notable defamation cases in the Indian legal system include:

- a) ***R. Rajagopal v. State of Tamil Nadu (1994) 6 SCC 632***: In this case, the Supreme

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Court of India recognized the right to privacy as an aspect of the right to life and personal liberty under Article 21 of the Indian Constitution. The court held that public figures have a limited right to privacy and that any publication of defamatory material about their private life must be weighed against the public interest in the information.

- b) ***Subramanian Swamy v. Union of India (2016) 7 SCC 221***: In this case, the Supreme Court upheld the constitutionality of criminal defamation provisions under Sections 499 and 500 of the Indian Penal Code. The court held that the right to freedom of speech and expression under Article 19(1)(a) of the Constitution is not absolute and can be restricted to protect the reputation and dignity of individuals.
- c) ***Ram Jethmalani v. Subramanian Swamy (2006) 83 DRJ 61***: In this case, the Delhi High Court awarded Rs. 5 lakhs as damages to Ram Jethmalani, a well-known lawyer and politician, in a defamation suit filed against Subramanian Swamy, another politician. The court found that Swamy's statements were defamatory and caused harm to Jethmalani's reputation.

In conclusion, defamation is a tort that protects a person's reputation against false and harmful statements. In the Indian legal system, defamation can be classified into libel and slander. To establish a claim

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for defamation, the plaintiff must prove a defamatory statement, reference to the plaintiff, publication, and injury to reputation. Several defenses are available to a defendant, including truth or justification, fair comment, absolute privilege, qualified privilege, and apology. Remedies for defamation in India include damages, injunctions, declarations, and, in some cases criminal penalties.

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UNIT-IV

THE CONSUMER PROTECTION

ACT, 1986

The Consumer Protection Act, 2019, is a comprehensive legal framework designed to protect the rights and interests of consumers in India. It aims to address various consumer-related issues, such as unfair trade practices, defective goods, deficiency in services, and other consumer disputes. The Act also establishes regulatory bodies, like the Central Consumer Protection Authority (CCPA), to enforce consumer rights and facilitate the resolution of consumer disputes.

Background

The Consumer Protection Act, 2019 (hereinafter referred to as "the Act") is an important piece of legislation aimed at safeguarding the rights and interests of consumers in India. It was enacted to replace the earlier Consumer Protection Act of 1986, which was deemed insufficient in addressing the contemporary challenges faced by consumers due to the rapidly evolving market dynamics, technology, and globalization.

The Act came into force on July 20, 2020, and has been formulated to provide better protection for

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consumers by addressing issues such as unfair trade practices, defective goods, deficiency in services, and e-commerce-related disputes. The Act also establishes regulatory bodies and introduces new concepts like product liability, which help in strengthening consumer protection in India.

Some of the key factors that led to the enactment of the Consumer Protection Act, 2019, include:

- a) **Changing market dynamics:** With the growth of e-commerce and digital transactions, the consumer landscape has undergone a significant transformation. The earlier Act did not adequately address the challenges faced by consumers in the digital age.
- b) **Need for stronger enforcement mechanisms:** The Consumer Protection Act, 1986, lacked an effective enforcement mechanism for consumer rights, leading to an increase in consumer disputes and dissatisfaction.
- c) **Global best practices:** The Act was formulated considering international best practices in consumer protection, making it more effective and in line with global standards.
- d) **Increased consumer awareness:** As consumers become more aware of their rights and the legal remedies available to them, the need for a comprehensive consumer protection framework became more apparent.

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The Consumer Protection Act, 2019, addresses these concerns and has been designed to offer a more robust and comprehensive framework for consumer protection in India. The Act aims to promote consumer welfare and ensure that consumer rights are protected in a more effective manner.

Key Definitions

Understanding the key definitions used in the Consumer Protection Act, 2019, is essential to comprehending the scope and applicability of the Act. Some of the important definitions are as follows:

- a) **Consumer:** A consumer is any person who buys goods or services for personal use or consumption and not for commercial or resale purposes. The Act extends the definition of a consumer to include any person who buys goods or avails services through electronic means or by teleshopping.
- b) **Goods:** Goods refer to any tangible, movable property, excluding money, and including stocks, shares, growing crops, grass, and actionable claims.
- c) **Services:** Services cover any activity carried out by a person for another person for a consideration, including banking, insurance, transportation, processing, supply of electricity, housing construction, and other services related

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to the use of goods.

- d) **Unfair Trade Practices:** Unfair trade practices include misleading advertisements, false representation of goods or services, making false claims or guarantees, withholding important information from consumers, and other practices that exploit consumer vulnerabilities.
- e) **Deficiency:** Deficiency refers to any fault, imperfection, shortcoming, or inadequacy in the quality, nature, or manner of performance of a service that is required by law or has been agreed to by the parties.
- f) **Product Liability:** Product liability refers to the legal responsibility of a product manufacturer, seller, or distributor for any harm caused to a consumer due to a defective product, inadequate instructions, or warnings.
- g) **Advertisements:** Advertisements include any audio or visual publicity, representation, endorsement, or pronouncement made by means of light, sound, smoke, gas, print, electronic media, internet, or website, which is intended to promote the sale, use, or supply of goods or services.

These definitions form the basis of understanding the scope and applicability of the Consumer Protection Act, 2019, and help in determining the rights and responsibilities of various stakeholders involved in

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consumer transactions.

Scope of Consumer Protection Act, 2019

The scope of the Consumer Protection Act, 2019, is broad and aims to provide comprehensive protection to consumers in India. The Act applies to all goods and services, excluding goods purchased for resale or commercial purposes and services rendered free of charge or under a contract of personal service. It covers various aspects of consumer transactions, including unfair trade practices, defective goods, deficiency in services, and e-commerce-related disputes.

Constitutional Mandate and Jurisprudence

The Consumer Protection Act, 2019, is grounded in the constitutional mandate and jurisprudence of India. The Constitution of India, under Article 39(a) of the Directive Principles of State Policy (DPSP), requires the State to direct its policy towards securing that the citizens have the right to an adequate means of livelihood, and under Article 39(b), it mandates the State to ensure that the ownership and control of the material resources of the community are so distributed as best to serve the common good.

Furthermore, Article 47 of the DPSP requires the State to raise the level of nutrition and the standard of living and to improve public health. These constitutional provisions reflect the State's commitment to ensuring the welfare and well-being of its citizens, including their rights as consumers.

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The jurisprudence behind the Act is rooted in the recognition of consumers' vulnerability in the market and the need to provide them with legal remedies and protection against unscrupulous practices by manufacturers, sellers, and service providers. The Act seeks to empower consumers by granting them specific rights, establishing regulatory bodies to enforce those rights, and providing accessible dispute resolution mechanisms.

Who is Covered under the Act

- a) Consumers: As discussed in the previous response, a consumer is any person who buys goods or hires services for personal use or consumption, and not for commercial purposes or resale. The definition includes users or beneficiaries of goods or services, as long as they use or benefit from them with the approval of the person who initially bought the goods or hired the services.
- b) Manufacturers: The Act covers manufacturers of goods, whether they are small-scale producers or large multinational corporations. Manufacturers have a responsibility to ensure that their products are free from defects and comply with the applicable standards and regulations.
- c) Sellers and Service Providers: The Act applies to sellers of goods and providers of services,

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including retailers, wholesalers, and e-commerce platforms. These parties must ensure that they do not engage in unfair trade practices, provide accurate information about their products or services, and address any deficiencies or defects in a timely manner.

- d) Advertisers and Endorsers: The Act also covers advertisers and endorsers who are responsible for promoting goods or services. They are required to ensure that their advertisements and endorsements are truthful, accurate, and not misleading or deceptive.
- e) E-commerce Platforms: The Act specifically extends its coverage to e-commerce platforms, recognizing the growing importance of online transactions in the consumer landscape. E-commerce platforms must comply with the Act's provisions on transparency, disclosure, and consumer grievance redressal.

Overall, the Consumer Protection Act, 2019, aims to provide comprehensive protection to consumers across various market sectors and transactions. It incorporates the constitutional mandate and jurisprudence to safeguard consumer rights and promote consumer welfare in India.

Derivation of the Consumer Protection Act, 2019

The Consumer Protection Act, 2019, derives its essence

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from the Constitution of India, particularly from the Directive Principles of State Policy (DPSP) enshrined in Part IV of the Constitution. While the DPSPs are not enforceable by any court, they are fundamental in the governance of the country, and the State is duty-bound to apply these principles while making laws.

The Consumer Protection Act, 2019, can be related to the following provisions of the DPSP:

- a) Article 38: Article 38 states that the State shall strive to promote the welfare of the people by securing a social order in which justice - social, economic, and political - shall inform all the institutions of national life. The Consumer Protection Act seeks to promote economic justice by ensuring fair and equitable treatment of consumers in the marketplace.
- b) Article 39(a): Article 39(a) requires the State to direct its policy towards securing that the citizens have the right to an adequate means of livelihood. By protecting consumer interests and ensuring they receive value for their money, the Act contributes to the right to an adequate means of livelihood.
- c) Article 39(b): Article 39(b) mandates the State to ensure that the ownership and control of the material resources of the community are so distributed as best to serve the common good. The Consumer Protection Act contributes to this directive by regulating business practices and

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ensuring consumer rights are protected and promoted.

- d) Article 43: Article 43 requires the State to endeavor to secure a living wage, a decent standard of life, and full enjoyment of leisure and social and cultural opportunities for all workers. By protecting consumers from unfair trade practices, the Consumer Protection Act helps improve the standard of living for workers and their families.
- e) Article 47: Article 47 requires the State to raise the level of nutrition and the standard of living and to improve public health. The Consumer Protection Act contributes to this objective by ensuring that goods and services provided to consumers are of acceptable quality and do not pose any health risks.

These provisions of the Constitution provide the foundation for the Consumer Protection Act, 2019, guiding its objectives and principles. The Act aims to promote consumer welfare and rights in line with the constitutional mandate, thus contributing to the overall socio-economic development of the country.

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4.1. DEFINITIONS OF CONSUMER, GOODS AND SERVICES

Consumer

A consumer is any person who:

- a) Buys any goods for a consideration that has been paid or promised or partly paid and partly promised, or under any system of deferred payment. It includes any user of such goods, other than the person who buys such goods for consideration paid or promised, or partly paid and partly promised, or under any system of deferred payment, when such use is made with the approval of such person.
- b) Hires or avails of any services for a consideration that has been paid or promised or partly paid and partly promised, or under any system of deferred payment. It includes any beneficiary of such services, other than the person who hires or avails of the services for consideration paid or promised, or partly paid and partly promised, or under any system of deferred payment, when such services are availed of with the approval of the first-mentioned person.

However, it does not include a person who obtains such goods for resale or for any commercial purpose or avails of such services for any commercial purpose. But, it does include any person who buys goods or avails services

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through electronic means or by teleshopping or direct selling, or through a multi-level marketing scheme.

In simpler terms, a consumer, according to the Act, is an individual who purchases goods or hires services for personal use or consumption, and not for commercial purposes or resale. The definition also covers users or beneficiaries of goods or services, as long as they use or benefit from them with the approval of the person who initially bought the goods or hired the services.

The inclusion of persons who buy goods or avail services through electronic means, teleshopping, direct selling, or multi-level marketing schemes reflects the Act's intention to adapt to the changing market dynamics and protect consumers in the digital age.

Landmark judgments that have helped shape the definition and understanding of the term "consumer" under the Consumer Protection Act:

- a) ***Laxmi Engineering Works vs. PSG Industrial Institute, (1995) 3 SCC 583***: In this case, the Supreme Court held that a person purchasing goods for commercial purposes would not be considered a consumer. However, the Court made an exception for cases where the goods purchased are used by the buyer in a small-scale or ancillary industry, self-employment, or to earn his livelihood.

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- b) ***Spring Meadows Hospital vs. Harjot Ahluwalia, (1998) 4 SCC 39***: The Supreme Court held that a patient who hires the services of a medical practitioner or a hospital for treatment would be considered a consumer under the Consumer Protection Act.
- c) ***Indian Medical Association vs. V.P. Shantha, AIR 1996 SC 550***: In this landmark case, the Supreme Court expanded the scope of the term "consumer" to include patients who receive free medical services at a hospital if the hospital charges other patients for the same services, deeming such patients beneficiaries of the services.
- d) ***Morgan Stanley Mutual Fund vs. Kartick Das, (1994) 4 SCC 225***: The Supreme Court held that an investor in a mutual fund would be considered a consumer, as the investor is availing the services of the asset management company for a consideration.
- e) ***Bangalore Water Supply & Sewerage Board vs. A. Rajappa, AIR 1978 SC 548***: In this case, the Supreme Court held that a person who avails water supply services from a government body for a consideration would be considered a consumer.
- f) ***Maharshi Dayanand University vs. Surjeet Kaur, (2010) 11 SCC 159***: The Supreme Court held that a student who has paid

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fees for educational services would be considered a consumer under the Consumer Protection Act.

These precedents have played a crucial role in shaping the understanding of the term "consumer" and determining its scope under the Consumer Protection Act. They highlight the judiciary's intent to provide comprehensive protection to consumers by including various categories of individuals and transactions within the ambit of the Act.

E-Commerce

E-commerce, or electronic commerce, refers to the buying and selling of goods or services, as well as the transfer of money or data, over the internet or other electronic networks. E-commerce transactions can occur between businesses, individuals, or a combination of both, such as business-to-consumer (B2C), business-to-business (B2B), consumer-to-consumer (C2C), or consumer-to-business (C2B) transactions.

In the context of the Consumer Protection Act, 2019, e-commerce is explicitly addressed under the Act to ensure that consumers who engage in online transactions are adequately protected. Although the Act does not provide a specific definition for e-commerce, it does define "electronic service provider" and "e-commerce entity" which helps to understand the scope of e-commerce under the Act.

According to Section 2(17) of the Consumer

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Protection Act, 2019, an "electronic service provider" is defined as follows:

"Electronic service provider" means any person who provides technologies or processes to enable a product seller to engage in advertising or selling goods or services to a consumer and includes any online market place or online auction sites.

Section 2(16) of the Act defines an "e-commerce entity" as:

"E-commerce entity" means any person who owns, operates or manages a digital or electronic facility or platform for electronic commerce, but does not include a seller offering his goods or services for sale on a marketplace e-commerce entity.

These definitions, along with the provisions of the Act, provide a framework for understanding e-commerce within the context of consumer protection in India. The Act aims to regulate e-commerce entities and ensure that consumers engaging in online transactions have the same protections as those participating in traditional offline transactions.

The Consumer Protection Act, 2019, includes several provisions aimed at safeguarding the interests of consumers engaging in e-commerce transactions. Some of the key provisions related to e-commerce are:

- a) Duties of e-commerce entities (Section 24): E-commerce entities are required to fulfill certain duties under the Act, including:

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- i. Providing information about the legal name of their business, principal geographic address, contact details, and a customer care number.
 - ii. Displaying clear and accurate information about the goods and services, including their prices, any applicable fees or taxes, and the terms and conditions of the sale.
 - iii. Ensuring that advertisers and sellers on their platforms do not engage in unfair trade practices, such as false or misleading advertising, or withholding essential product information from consumers.
 - iv. Establishing a grievance redressal mechanism and appointing a grievance officer to address consumer complaints.
- b) Liabilities of e-commerce entities (Section 49): E-commerce entities can be held liable for any harm caused to a consumer due to a defective product, deficiency in services, or a false or misleading advertisement. However, an e-commerce entity can avoid liability by proving that it exercised due diligence and was not negligent in fulfilling its duties under the Act.
- c) Unfair contracts in e-commerce (Section 2(47)): An unfair contract is one that causes a significant change in the rights of a consumer, such as requiring excessive security deposits,

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imposing disproportionate penalties, or limiting the consumer's legal rights. The Act prohibits e-commerce entities from engaging in unfair contracts with consumers.

- d) Central Consumer Protection Authority (CCPA) and e-commerce rules (Chapter III):The Act establishes the CCPA, which has the power to regulate matters related to the violation of consumer rights, unfair trade practices, and false or misleading advertisements in e-commerce. The CCPA can also recommend the Central Government to frame rules and regulations for the prevention of unfair trade practices in e-commerce.

In addition to the provisions of the Consumer Protection Act, the Central Government has framed the Consumer Protection (E-Commerce) Rules, 2020, which provide further guidelines for e-commerce entities, sellers, and consumers engaging in online transactions. These rules focus on issues such as transparency, platform liability, return and refund policies, and consumer grievance redressal.

By incorporating these provisions and rules, the Consumer Protection Act, 2019, aims to ensure that consumers engaging in e-commerce transactions are provided the same level of protection as those participating in traditional brick-and-mortar transactions. The Act reflects the growing importance of e-commerce in the Indian market and the need to adapt

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consumer protection laws to the digital age.

The Consumer Protection (E-Commerce) Rules, 2020, further elaborate on the rights and responsibilities of e-commerce entities, sellers, and consumers. Here are some important aspects of these rules:

- a) Duties of marketplace e-commerce entities (Rule 4): Marketplace e-commerce entities are required to provide essential information about sellers, such as their legal name, address, contact details, and tax identification number. They must also establish a framework for handling user-generated content and provide a mechanism for users to report any unlawful content or advertisements.
- b) Duties of inventory e-commerce entities (Rule 5): Inventory e-commerce entities must ensure that the descriptions of their goods and services are accurate and correspond to the actual product. They must also disclose the terms and conditions of the sale, including any warranties or guarantees, and provide a transparent return, refund, and exchange policy.
- c) Duties of sellers on marketplace e-commerce entities (Rule 6): Sellers on marketplace e-commerce platforms must provide accurate information about their goods and services, including the total price, any additional fees, and the terms and conditions of the sale. They must also provide a mechanism for customers to

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report any grievances and respond to such complaints in a timely manner.

- d) Consumer complaint mechanism (Rule 7): E-commerce entities must establish an efficient complaint handling mechanism and appoint a grievance officer to address customer complaints. They must also provide information on how consumers can file complaints and the process for resolving disputes.
- e) Prohibition of unfair trade practices (Rule 8): E-commerce entities and sellers are prohibited from engaging in unfair trade practices, such as manipulating search results or product rankings, falsely representing themselves as consumers, or posting misleading reviews or ratings.
- f) Prohibition of "flash sales" (Rule 9): E-commerce entities are prohibited from organizing "flash sales" or similar promotional events that involve fraudulent or unfair practices, such as selling goods or services at significantly reduced prices for a limited period.

These rules, along with the provisions of the Consumer Protection Act, 2019, create a robust framework for regulating e-commerce transactions in India and protecting the rights of consumers. They address the unique challenges posed by online transactions and help ensure a level playing field for both traditional and online businesses.

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As e-commerce continues to grow and evolve, it is essential for consumer protection laws and regulations to keep pace with these changes. The Consumer Protection Act, 2019, and the Consumer Protection (E-Commerce) Rules, 2020, represent significant steps towards achieving this goal and safeguarding the interests of consumers in the digital age.

Consumer Disputes

Consumer disputes, as per the Consumer Protection Act, 2019, refer to disputes arising from the purchase or use of goods and services by consumers. A consumer dispute occurs when a consumer has a disagreement or complaint about the quality, quantity, potency, purity, or standard of the goods or services purchased or hired, or when the consumer feels that they have been subjected to unfair or deceptive trade practices.

Section 2(11) of the Consumer Protection Act, 2019, defines "consumer dispute" as follows:

"Consumer dispute" means a dispute where the person against whom a complaint has been made, denies or disputes the allegations contained in the complaint.

In simpler terms, a consumer dispute arises when a consumer files a complaint against a seller, manufacturer, or service provider, and the accused party denies or disputes the allegations made by the consumer.

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Consumer disputes can involve a wide range of issues, such as:

- a) Defective goods: When the goods purchased by a consumer have a manufacturing defect, are damaged, or do not conform to the standards or specifications claimed by the seller or manufacturer.
- b) Deficiency in services: When the services availed by a consumer are inadequate, substandard, or do not meet the promises made by the service provider.
- c) Unfair trade practices: When a seller or service provider engages in deceptive or fraudulent practices, such as false advertising, misrepresentation, or price manipulation.
- d) Restrictive trade practices: When a seller or service provider imposes unjustified conditions or restrictions on the purchase or use of goods and services, which may result in a denial of market access or limited choices for the consumer.
- e) E-commerce disputes: When a consumer faces issues related to online transactions, such as non-delivery of goods, delivery of counterfeit products, or unauthorized charges.

The Consumer Protection Act, 2019, establishes a three-tiered consumer dispute redressal mechanism consisting of the District Consumer Disputes Redressal

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Commission, the State Consumer Disputes Redressal Commission, and the National Consumer Disputes Redressal Commission. These bodies provide a platform for consumers to seek redressal for their disputes through an accessible and efficient process.

Advertisement

Advertisement, in general, refers to the process of promoting or publicizing a product, service, or event through various means, such as print, broadcast, or digital media. Advertisements are designed to inform potential customers about the features and benefits of a product or service and persuade them to make a purchase.

In the context of the Consumer Protection Act, 2019, advertisements play a significant role in shaping consumer choices and expectations. The Act seeks to protect consumers from false, misleading, or deceptive advertisements that may lead to the purchase of substandard, defective, or harmful products or services.

Section 2(1) of the Consumer Protection Act, 2019, defines "advertisement" as follows:

"Advertisement" means any audio or visual publicity, representation, endorsement or pronouncement made by means of light, sound, smoke, gas, print, electronic media, internet or website and includes any notice, circular, label, wrapper, invoice or such other documents.

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This definition covers a wide range of promotional materials and methods, including traditional print and broadcast media, as well as digital and online platforms. The Act aims to ensure that advertisements are accurate, transparent, and do not mislead or deceive consumers.

The Consumer Protection Act, 2019, has provisions to address false and misleading advertisements:

- a) Section 10: The Act establishes the Central Consumer Protection Authority (CCPA), which has the power to investigate and take action against false or misleading advertisements.
- b) Section 21: The CCPA can issue directions or penalties to the advertiser, publisher, or endorser of a false or misleading advertisement, including requiring the removal of such advertisements and the payment of a monetary penalty.
- c) Section 89: The Act provides for penalties for false or misleading advertisements, which may include imprisonment, fines, or both.

By including these provisions, the Consumer Protection Act, 2019, seeks to hold advertisers, endorsers, and publishers accountable for the content of their advertisements and ensure that consumers are provided with accurate and reliable information to make informed choices.

Product

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In general terms, a product refers to any tangible item, article, or commodity that is manufactured, produced, or assembled for sale or use by consumers. Products can be physical goods, such as electronics, clothing, or food items, or digital goods, like software or e-books.

In the context of the Consumer Protection Act, 2019, a product is an essential component of consumer transactions, and the Act aims to protect consumers from defective, hazardous, or substandard products that can cause harm or financial loss.

Section 2(36) of the Consumer Protection Act, 2019, defines "product" as follows:

"Product" means any article, goods, material, commodity, or any other thing capable of being produced or reproduced and, but does not include human tissue, blood, blood products, and organs.

This definition broadly covers a wide range of items, goods, and materials that can be part of a consumer transaction. The Act aims to ensure that products sold to consumers meet certain quality, safety, and performance standards and that consumers have access to remedies in case they suffer from any harm or loss due to defective products.

The Consumer Protection Act, 2019, includes provisions related to product liability:

- a) Chapter VI (Section 82 to Section 87): The Act establishes a framework for product liability, making manufacturers, sellers, or service

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providers liable for any harm caused to a consumer by a defective product or a deficiency in services.

- b) Section 84: The Act outlines the circumstances under which a product can be considered defective, such as when it contains a manufacturing defect, is not fit for its intended purpose, or does not conform to express warranties.
- c) Section 85: The Act provides for exceptions to product liability, such as when the consumer misused the product or when the defect was known to the consumer at the time of purchase.
- d) Section 86: The Act details the factors that a consumer must establish to claim compensation for harm caused by a defective product or a deficiency in services.

By including these provisions, the Consumer Protection Act, 2019, seeks to ensure that consumers have access to safe, high-quality products and that they are protected from any harm or financial loss resulting from defective products.

Restrictive trade practice

Restrictive trade practice refers to any action or behavior by sellers, manufacturers, or service providers that can limit competition, restrict consumer choice, or negatively impact the market. Restrictive trade practices

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can take various forms, such as price-fixing, exclusive dealings, or agreements that prevent or reduce competition among businesses.

In the context of the Consumer Protection Act, 2019, the focus is on safeguarding consumer rights and ensuring fair market practices. The Act aims to protect consumers from restrictive trade practices that may result in a denial of market access, limited choices, or unfair conditions being imposed on the purchase or use of goods and services.

Section 2(41) of the Consumer Protection Act, 2019, provides the definition of "restrictive trade practice":

"Restrictive trade practice" means any trade practice which requires a consumer to buy, hire or avail of any goods or, as the case may be, services as a condition precedent for buying, hiring, or availing of other goods or services.

In simpler terms, a restrictive trade practice occurs when a seller or service provider imposes a condition on the consumer that requires them to purchase, hire, or avail of specific goods or services in order to be able to purchase, hire, or avail of other goods or services. This type of practice can limit consumer choice and create an unfair market advantage for the seller or service provider.

The Consumer Protection Act, 2019, aims to protect consumers from such restrictive trade practices by ensuring that they have the freedom to choose the goods

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or services they want to buy, hire, or avail of without any unjustified conditions or restrictions. The Act empowers the Central Consumer Protection Authority (CCPA) to investigate and take action against restrictive trade practices, as well as other unfair trade practices, to safeguard consumer rights and promote a fair and competitive market.

Unfair trade practice

The Consumer Protection Act, 2019, defines "unfair trade practice" to address any unethical or deceptive business practices that can negatively impact consumers. Unfair trade practices can include false advertising, misrepresentation of products, deceptive pricing, or other practices that can deceive or exploit consumers.

Section 2(47) of the Consumer Protection Act, 2019, defines "unfair trade practice" as follows:

"Unfair trade practice" means a trade practice which, for the purpose of promoting the sale, use, or supply of any goods or for the provision of any service, adopts any unfair method or unfair or deceptive practice.

The Act further provides a non-exhaustive list of examples of unfair trade practices, including but not limited to:

- a) False representation: Making false or misleading statements about the nature, quality, or standard

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of goods or services.

- b) False warranty or guarantee: Offering a false warranty or guarantee for goods or services.
- c) Misleading advertisement: Promoting goods or services through false or misleading advertisements.
- d) Deceptive pricing: Charging a price for goods or services that is not justified by the actual cost or value of the product or service.
- e) Unjustified tie-in sales: Requiring consumers to buy, hire, or avail of any goods or services as a precondition for buying, hiring, or availing of other goods or services (restrictive trade practices).

The Consumer Protection Act, 2019, empowers the Central Consumer Protection Authority (CCPA) to investigate and take action against unfair trade practices. The Act also allows consumers to file complaints against such practices in the District Consumer Disputes Redressal Commission, State Consumer Disputes Redressal Commission, or the National Consumer Disputes Redressal Commission, depending on the value of the goods or services in question and other relevant factors.

By addressing unfair trade practices, the Consumer Protection Act, 2019, seeks to protect consumers from unethical business practices, ensure fair competition in the market, and promote transparency and

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accountability among sellers and service providers.

To further elaborate on unfair trade practices, the Consumer Protection Act, 2019, provides additional examples in Section 2(47), which include:

- a) Refusing to sell goods or provide services: Refusing to sell goods or provide services to a consumer without justifiable cause, especially if such refusal is intended to raise the price of goods or services.
- b) Materially misleading the public: Making any statement, whether orally or in writing, which materially misleads the public or is likely to mislead the public concerning the price at which goods or services have been or are ordinarily sold or provided.
- c) Falsely representing second-hand goods as new: Falsely representing that goods are new, original, or unused when they are, in fact, second-hand, reconditioned, or previously used.
- d) Giving false or misleading facts disparaging another's goods or services: Disparaging the goods or services of another person by making false or misleading statements or representations.
- e) Offering gifts, prizes, or other items with the intention of not providing them: Promising to give gifts, prizes, or other items to consumers with the intention of not providing such gifts,

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prizes, or items as promised, or creating the impression that something is being given or offered free of charge when it is fully or partly covered by the price of another item.

These examples further illustrate the various ways in which businesses may engage in unfair trade practices to deceive, exploit, or manipulate consumers. The Consumer Protection Act, 2019, seeks to address these practices by empowering the Central Consumer Protection Authority (CCPA) to investigate and take action against violators, as well as allowing consumers to file complaints and seek redressal through the consumer dispute redressal mechanism.

The Act encourages businesses to engage in ethical and transparent practices and promotes a fair and competitive market that benefits both consumers and businesses alike. By addressing unfair trade practices, the Consumer Protection Act, 2019, helps ensure consumer protection, promote consumer awareness, and foster a culture of fair business practices in India.

4.2. RIGHTS AND DUTIES OF THE CONSUMER

The Consumer Protection Act, 2019, outlines a set of rights and duties for consumers in India to ensure they are treated fairly and protected from unethical or deceptive business practices. These rights and duties empower consumers to make informed choices and seek

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redressal in case of any grievances related to goods or services purchased or availed.

Rights of the Consumer

- a) Right to Safety (Section 18): Consumers have the right to be protected against the marketing of goods and services that are hazardous to life and property. Manufacturers and service providers are required to adhere to safety and quality standards set by relevant laws and regulations.
- b) Right to Information (Section 10 & Section 18): Section 10 establishes the Central Consumer Protection Authority (CCPA), which has the power to ensure that consumers receive accurate and complete information about goods and services. Section 18 deals with the right to information, requiring sellers and service providers to disclose accurate information about their products and services.

Precedent: In "**Laxmi Engineering Works v. P.S.G. Industrial Institute**" (AIR 1995 SC 1428), the Supreme Court of India held that the consumer has the right to be informed about the product's price, quality, and performance.

- c) Right to Choose (Section 18 & Section 2(41)): Consumers have the right to choose from a variety of products and services at competitive prices. Section 18 guarantees the right to choose,

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and Section 2(41) defines "restrictive trade practices," which the Act seeks to prevent to ensure consumer choice.

- d) Right to be Heard (Section 35 to Section 37): Sections 35 to 37 of the Act establish the District Consumer Disputes Redressal Commission, State Consumer Disputes Redressal Commission, and National Consumer Disputes Redressal Commission, respectively. These forums allow consumers to be heard and have their interests represented.
- e) Right to Redressal (Sections 35 to 37 & Chapter VI): The consumer dispute redressal commissions (Sections 35 to 37) provide accessible and efficient mechanisms for dispute resolution. Additionally, Chapter VI of the Act outlines the product liability framework, enabling consumers to seek compensation for harm caused by defective products or deficient services.
- f) Right to Consumer Education (Section 10 & Section 18): Section 10 empowers the CCPA to promote consumer awareness, while Section 18 emphasizes the right to consumer education. These provisions aim to ensure that consumers have access to necessary information and resources to make informed decisions.

Duties of the Consumer

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- a) **Be Informed & 2. Choose Wisely:** Although the Act does not explicitly mention these duties, they are implied responsibilities of consumers to make informed decisions and choose products and services that best suit their needs.
- b) **Seek Redressal:** Consumers should utilize the dispute redressal mechanisms provided under Sections 35 to 37 of the Act and approach the appropriate commission based on the jurisdiction and the value of the goods or services in question.
- c) **Be Aware of Rights & 5. Spread Awareness:** The Act, through the establishment of the CCPA (Section 10) and emphasis on consumer education (Section 18), encourages consumers to be aware of their rights and share their knowledge and experiences with others.

Precedents related to consumer rights and duties are primarily related to specific disputes and may not apply universally. However, the mentioned sections of the Consumer Protection Act, 2019, serve as the foundation for understanding and exercising consumer rights and duties in India.

4.3. AUTHORITIES UNDER THE ACT

The Consumer Protection Act, 2019, establishes several authorities to ensure consumer rights are

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protected and to address consumer grievances. These authorities play a vital role in enforcing the provisions of the Act and ensuring a fair and transparent marketplace. The primary authorities under the Act are:

- a) Central Consumer Protection Authority (CCPA) - Section 10: The CCPA is a regulatory body established at the national level to protect and promote consumer rights. Its functions include:
 - i. Investigating violations of consumer rights, initiating class-action suits, and enforcing consumer protection laws
 - ii. Ordering recall of unsafe goods and services and discontinuation of unfair trade practices
 - iii. Imposing penalties on those involved in false or misleading advertisements
 - iv. Promoting consumer awareness and education
- b) District Consumer Disputes Redressal Commission (DCDR) - Section 35: The DCDRC is established at the district level and has jurisdiction to handle consumer complaints where the value of the goods or services, and the compensation claimed, does not exceed ₹1 crore. Functions of the DCDRC include:
 - i. Adjudicating consumer complaints and disputes within its jurisdiction
 - ii. Granting appropriate relief to aggrieved

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consumers

iii. Ensuring the execution of its orders and decisions

c) State Consumer Disputes Redressal Commission (SCDR) - Section 36: The SCDRC is established at the state level and has jurisdiction to handle consumer complaints where the value of the goods or services, and the compensation claimed, is between ₹1 crore and ₹10 crores. Functions of the SCDRC include:

i. Adjudicating consumer complaints and disputes within its jurisdiction

ii. Hearing appeals against the orders of the DCDRs within the state

iii. Ensuring the execution of its orders and decisions

d) National Consumer Disputes Redressal Commission (NCDRC) - Section 37: The NCDRC is the highest consumer dispute redressal authority in India. It has jurisdiction to handle consumer complaints where the value of the goods or services, and the compensation claimed, exceeds ₹10 crores. Functions of the NCDRC include:

i. Adjudicating consumer complaints and disputes within its jurisdiction

ii. Hearing appeals against the orders of the

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SCDRCs

- iii. Reviewing its own orders, as prescribed under the Act
- iv. Ensuring the execution of its orders and decisions

These authorities work together to address consumer grievances, promote consumer awareness, and ensure businesses adhere to the principles of fair trade and ethical practices outlined in the Consumer Protection Act, 2019.

In addition to the primary authorities mentioned earlier, the Consumer Protection Act, 2019, also establishes other bodies and mechanisms to support the enforcement of consumer rights and address consumer grievances:

- a) Consumer Protection Councils (Sections 7-9):

The Act provides for the establishment of Consumer Protection Councils at the central, state, and district levels. These councils serve as advisory bodies, aiming to protect and promote consumer rights. Their main function is to advise and make recommendations on consumer protection policies and promote consumer welfare.

- i. Central Consumer Protection Council (Section 7): Constituted by the Central Government, this council advises on consumer protection policies at the national

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level.

- ii. State Consumer Protection Council (Section 8): Constituted by the respective State Governments, these councils advise on consumer protection policies at the state level.
- iii. District Consumer Protection Council (Section 9): Constituted by the respective District Collectors, these councils advise on consumer protection policies at the district level.

b) Mediation (Section 74-81):

The Act also introduces a mediation mechanism to facilitate the resolution of consumer disputes in a timely and cost-effective manner. Sections 74-81 of the Act provide for the establishment of consumer mediation cells attached to the District Consumer Disputes Redressal Commission, State Consumer Disputes Redressal Commission, and National Consumer Disputes Redressal Commission. The mediation process is voluntary and aims to resolve disputes through mutual agreement between the parties involved.

These additional bodies and mechanisms work in conjunction with the primary authorities, ensuring a comprehensive approach to consumer protection. The Consumer Protection Act, 2019, aims to create an efficient and effective framework for addressing consumer grievances, promoting consumer awareness,

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and ensuring a transparent and accountable marketplace in India.

4.4. DISPUTE SETTLEMENT METHODS – CONSUMER COURTS, ARBITRATION & MEDIATION, ONLINE DISPUTE RESOLUTIONS

Consumer court

Consumer courts, also referred to as consumer dispute redressal commissions, are established under the Consumer Protection Act, 2019, to address consumer grievances and disputes related to goods and services. These courts aim to provide a simple, speedy, and affordable mechanism for resolving consumer complaints. There are three tiers of consumer courts in India, based on the value of the goods or services in question and the compensation claimed:

- a) District Consumer Disputes Redressal Commission (DCDRC) - Section 35: Established at the district level, the DCDRC has jurisdiction to handle consumer complaints where the value of the goods or services and the compensation claimed does not exceed ₹1 crore. The DCDRC is presided over by a president and assisted by at least two other members, one of whom must be a woman. Functions of the DCDRC include:

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- i. Adjudicating consumer complaints and disputes within its jurisdiction
 - ii. Granting appropriate relief to aggrieved consumers, including compensation, refund, replacement, or removal of defects
 - iii. Ensuring the execution of its orders and decisions
- b) State Consumer Disputes Redressal Commission (SCDR) - Section 36: Established at the state level, the SCDRC has jurisdiction to handle consumer complaints where the value of the goods or services and the compensation claimed is between ₹1 crore and ₹10 crores. The SCDRC is presided over by a president and assisted by at least four other members, two of whom must be women. Functions of the SCDRC include:
- i. Adjudicating consumer complaints and disputes within its jurisdiction
 - ii. Hearing appeals against the orders of the DCDRs within the state
 - iii. Ensuring the execution of its orders and decisions
- c) National Consumer Disputes Redressal Commission (NCDRC) - Section 37: The NCDRC, established at the national level, is the highest consumer dispute redressal authority in India. It has jurisdiction to handle consumer complaints

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where the value of the goods or services and the compensation claimed exceeds ₹10 crores. The NCDRC is presided over by a president and assisted by at least four other members, two of whom must be women. Functions of the NCDRC include:

- i. Adjudicating consumer complaints and disputes within its jurisdiction
- ii. Hearing appeals against the orders of the SCDRCs
- iii. Reviewing its own orders, as prescribed under the Act
- iv. Ensuring the execution of its orders and decisions

Consumers can file complaints with the appropriate consumer court based on the value of the goods or services in question and the compensation claimed. These consumer courts provide a crucial platform for consumers to seek redressal against unfair trade practices, restrictive trade practices, or any other forms of exploitation.

Arbitration and Mediation

Arbitration and mediation are alternative dispute resolution (ADR) mechanisms that provide parties with an opportunity to resolve their disputes outside the traditional court system. Both methods are popular due

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to their potential for being less time-consuming, more cost-effective, and less adversarial than litigation. The Consumer Protection Act, 2019, introduces mediation as a means of resolving consumer disputes.

a) Mediation (Section 74-81):

The Act provides for the establishment of consumer mediation cells attached to the District Consumer Disputes Redressal Commission, State Consumer Disputes Redressal Commission, and National Consumer Disputes Redressal Commission. The mediation process is voluntary and aims to resolve disputes through mutual agreement between the parties involved. Some key aspects of mediation under the Act include:

- i. Referral to mediation: The consumer courts may refer a dispute to mediation, where they believe that the dispute can be settled through mediation, with the consent of both parties (Section 74).
- ii. Mediators: Qualified and trained individuals are appointed as mediators to facilitate the mediation process (Section 75).
- iii. Mediation process: Mediation proceedings are confidential, and the mediator helps the parties find a mutually acceptable resolution to their dispute (Section 76).
- iv. Settlement and enforcement: If the parties reach a settlement, the mediator prepares a

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settlement agreement, which is then signed by the parties and submitted to the consumer court. The consumer court will then pass an order in terms of the settlement agreement (Section 78).

b) Arbitration:

Though arbitration is a widely recognized ADR mechanism, it is not explicitly mentioned in the Consumer Protection Act, 2019. Arbitration is a process where disputing parties agree to refer their dispute to a neutral third party, known as the arbitrator. The arbitrator hears both sides and renders a decision, which is usually binding on both parties.

However, arbitration clauses in consumer agreements may not always be enforceable in India. In the landmark judgment of "***Emaar MGF Land Limited v. Aftab Singh***" (2019 SCC OnLine NCDRC 81), the National Consumer Disputes Redressal Commission (NCDRC) held that an arbitration clause in a consumer agreement cannot oust the jurisdiction of consumer courts. The Supreme Court of India upheld this decision.

In summary, while the Consumer Protection Act, 2019, does not specifically provide for arbitration as an ADR mechanism for resolving consumer disputes, it introduces mediation as a viable option. Mediation offers consumers and businesses an opportunity to resolve their disputes in a more flexible, confidential, and cost-effective manner than traditional litigation.

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Online dispute resolution

Online Dispute Resolution (ODR) is an innovative approach to dispute resolution that leverages technology to facilitate the resolution of disputes between parties. It involves the use of various online tools and platforms to resolve conflicts, making the process more accessible, efficient, and cost-effective. ODR can encompass various alternative dispute resolution (ADR) mechanisms, such as negotiation, mediation, and arbitration, adapted to an online environment.

While the Consumer Protection Act, 2019, does not specifically mention ODR, the growing popularity and effectiveness of ODR in resolving disputes have led to its increased adoption in India, including consumer disputes.

Benefits of ODR for Consumer Disputes:

- a) **Accessibility:** ODR allows parties to participate in dispute resolution processes from anywhere, as long as they have access to the internet. This is especially beneficial in consumer disputes, where the parties may be located in different regions or countries.
- b) **Time and Cost Efficiency:** ODR can be more time and cost-efficient compared to traditional dispute resolution mechanisms, as it eliminates the need for physical meetings and reduces travel

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expenses. The use of technology also allows for faster communication and decision-making.

- c) Flexibility: ODR platforms can offer various ADR mechanisms, such as online mediation, arbitration, or even hybrid processes, giving parties more flexibility in choosing the most suitable method to resolve their dispute.
- d) Confidentiality: ODR platforms often provide secure and encrypted communication channels, ensuring the confidentiality of the dispute resolution process.

Challenges in Implementing ODR for Consumer Disputes:

- a) Digital Divide: The effectiveness of ODR depends on the parties' access to and familiarity with technology. In countries like India, where the digital divide still exists, this can be a challenge.
- b) Trust and Security: Ensuring trust in the ODR process and guaranteeing the security of sensitive information shared on online platforms are critical concerns that need to be addressed.
- c) Legal Recognition: The enforceability of ODR outcomes, such as settlement agreements or arbitral awards, may vary depending on the jurisdiction and the specific dispute resolution mechanism used.

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Despite these challenges, ODR is increasingly being recognized as a valuable tool for resolving consumer disputes in India. The government and various stakeholders have started exploring the potential of ODR in the context of consumer disputes. For instance, the National Consumer Disputes Redressal Commission (NCDRC) has initiated a pilot project to facilitate online mediation in select consumer disputes. This development indicates a growing interest in harnessing technology to improve access to justice and enhance consumer protection in India.

4.5. PRODUCT LIABILITY

Product liability

Product liability refers to the legal responsibility of a manufacturer, seller, or distributor for any harm caused by a defective or unsafe product. The Consumer Protection Act, 2019, introduces specific provisions on product liability in India, aiming to protect consumers from defective products and hold those responsible for any harm caused due to such products.

Section 2(34) of the Act defines "product liability" as the responsibility of a product manufacturer, product service provider, or product seller, to compensate for any harm caused to a consumer by a defective product or a deficiency in the services related to that product.

Under the Act, product liability claims can be brought against the following parties:

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- a) Product manufacturer (Section 84): A product manufacturer is liable for any harm caused by a defective product due to:
- i. A manufacturing defect
 - ii. A design defect
 - iii. A deviation from manufacturing specifications
 - iv. Inadequate instructions or warnings relating to the use of the product
- b) Product service provider (Section 85): A product service provider is liable for any harm caused due to:
- i. A fault or negligence in providing services related to the product
 - ii. Inadequate instructions or warnings related to the service
- c) Product seller (Section 86): A product seller, who is not the product manufacturer, is liable for any harm caused by a defective product if:
- i. The seller has exercised substantial control over the product's design, testing, manufacture, packaging, or labeling
 - ii. The seller has altered or modified the product, causing the defect
 - iii. The seller was aware or should have been

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aware of the defect but continued to sell the product

Exceptions to Product Liability

The Consumer Protection Act, 2019, also outlines certain exceptions where a product manufacturer, service provider, or seller will not be held liable for harm caused by a defective product (Section 87). These include:

- i. The consumer was aware of the defect or deficiency and still chose to use the product or service
- ii. The product was misused, altered, or modified by the consumer, leading to the defect
- iii. The product's harm resulted from the consumer's failure to follow the instructions or warnings provided by the manufacturer or seller
- iv. The product liability claim is brought after the expiration of the product's life as mentioned on the product or determined by the product manufacturer

The introduction of product liability provisions in the Consumer Protection Act, 2019, signifies a significant step towards ensuring consumer safety and holding manufacturers, service providers, and sellers

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accountable for the products they introduce into the market. Consumers can now seek compensation for any harm caused by defective products, which further strengthens their rights and protection under the Act.

To further understand the implications of product liability provisions under the Consumer Protection Act, 2019, it is important to consider the rights and remedies available to consumers and the processes involved in seeking compensation for harm caused by defective products.

Rights and Remedies

- a) Right to seek compensation: A consumer has the right to seek compensation from the product manufacturer, service provider, or seller for any harm caused due to a defective product or deficiency in services related to the product (Section 82).
- b) Types of compensation: The compensation awarded to the consumer can include expenses incurred for medical treatment, physical or mental suffering, loss of wages, damage to property, or any other losses resulting from the defective product or service (Section 2(6)).
- c) Filing a complaint: A consumer can file a complaint with the appropriate consumer dispute redressal commission (district, state, or national) depending on the value of the claim

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and other jurisdictional factors (Section 34-38). The complaint should provide details of the product, the defect, the harm caused, and the compensation sought.

Processes and Procedures

- a) Filing a complaint: Once the complaint is filed, the consumer court will examine the merits of the case and may admit or dismiss the complaint. If admitted, the court will issue notices to the parties involved and begin the adjudication process.
- b) Evidence and arguments: Both the consumer and the product manufacturer, service provider, or seller will have an opportunity to present their evidence and arguments in support of their claims and defenses.
- c) Court's decision: The consumer court will consider the evidence and arguments presented and determine whether the product manufacturer, service provider, or seller is liable for the harm caused by the defective product. If the court finds the defendant(s) liable, it will order the payment of compensation to the consumer.
- d) Appeals: Parties dissatisfied with the consumer court's decision can appeal to the higher consumer dispute redressal commissions (state

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or national) within the stipulated time frame.

The product liability provisions under the Consumer Protection Act, 2019, aim to create a safer marketplace for consumers by holding manufacturers, service providers, and sellers accountable for the products they introduce into the market. This not only incentivizes these entities to ensure the quality and safety of their products but also empowers consumers to seek redressal and compensation for any harm caused by defective products.

4.6. CRIMINAL AND CIVIL REMEDIES

In the context of the Consumer Protection Act, 2019, both civil and criminal remedies are available to consumers to protect their rights and seek redressal against unfair trade practices, restrictive trade practices, or any form of exploitation. Here is an overview of the civil and criminal remedies available under the Act:

a) Civil Remedies:

Civil remedies under the Act primarily involve filing a complaint with the appropriate consumer court (District, State, or National Consumer Disputes Redressal Commission) to seek redressal for any harm caused due to a defective product or deficiency in services. These civil remedies include:

- i. Compensation: Consumers can seek compensation for any damages incurred as a result of a defective product or deficient

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service, such as medical expenses, loss of wages, damage to property, or any other financial losses (Section 49, 58, and 67).

- ii. Refund: If a product or service is found to be deficient, the consumer can seek a full or partial refund of the amount paid (Section 49, 58, and 67).
- iii. Replacement: The consumer court can order the replacement of a defective product with a new, non-defective one (Section 49, 58, and 67).
- iv. Removal of defects: In case of a defective product or deficient service, the consumer court can order the removal of the defects and the provision of the product or service as per the agreed terms (Section 49, 58, and 67).

b) Criminal Remedies:

While the Consumer Protection Act, 2019, primarily deals with civil remedies, it also provides for certain criminal sanctions to deter businesses from engaging in unfair or exploitative practices. Some of the criminal remedies under the Act include:

- i. Penalty for false or misleading advertisement (Section 89): If a person is found guilty of publishing a false or misleading advertisement, they can be penalized with imprisonment for up to two years and/or a fine of up to INR 10 lakhs for the first

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offense. For subsequent offenses, the imprisonment can be extended to five years, and the fine may increase to INR 50 lakhs.

- ii. Penalty for manufacturing, selling, or distributing spurious goods (Section 90): If a person is found guilty of manufacturing, selling, or distributing spurious goods, they can be punished with imprisonment for up to seven years and/or a fine of up to INR 10 lakhs for the first offense. For subsequent offenses, the imprisonment can be extended to life, and the fine may increase to INR 50 lakhs.

The Consumer Protection Act, 2019, provides consumers with various civil and criminal remedies to protect their rights and seek redressal for any harm caused by defective products or deficient services. These remedies serve as a deterrent against businesses engaging in unfair practices and help to ensure a safe and fair marketplace for consumers.

The Consumer Protection Act, 2019, aims to empower consumers and promote their welfare by providing an effective legal framework for addressing consumer grievances. The availability of both civil and criminal remedies under the Act sends a strong message to businesses to prioritize consumer rights and ensure the quality and safety of their products and services.

The following are some additional aspects related to the civil and criminal remedies under the Act:

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The Act also empowers the consumer courts to order the attachment and sale of the defaulting party's property to recover the compensation awarded to the complainant (Section 73).

- e) **Mediation:** The Act introduces mediation as an alternative dispute resolution mechanism for consumer disputes. Consumer courts may refer a dispute to mediation, with the consent of both parties, to facilitate an amicable settlement (Section 74-81).

In conclusion, the Consumer Protection Act, 2019, offers a robust framework for the protection of consumer rights in India. The civil and criminal remedies available under the Act not only provide consumers with effective means to seek redressal for their grievances but also encourage businesses to adopt fair practices and prioritize consumer safety and satisfaction.

Process for filing complaints and seeking redressal

The Consumer Protection Act, 2019, provides a comprehensive framework for filing complaints and seeking redressal for consumer grievances. Here is an outline of the process for filing a complaint under the Act, including appeals:

- a) **Determine the appropriate forum:** Depending on the value of the claim and other jurisdictional factors, consumers must determine the

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appropriate forum to file their complaint. The District Consumer Disputes Redressal Commission has jurisdiction over claims valued up to INR 1 crore, the State Consumer Disputes Redressal Commission for claims valued between INR 1 crore and INR 10 crores, and the National Consumer Disputes Redressal Commission for claims valued above INR 10 crores.

- b) Prepare the complaint: The complaint should be written, and it must include the following information:
- i. Name and full address of the complainant and the respondent
 - ii. Date of purchase or availing of the service
 - iii. Details of the product or service, including the price paid
 - iv. Nature of the defect or deficiency
 - v. Supporting documents, such as invoices, receipts, warranty cards, etc.
 - vi. The relief sought, such as compensation, refund, replacement, or removal of defects
 - vii. A statement that the complaint is within the jurisdiction of the consumer court and within the limitation period (two years from the date of the cause of action)
- c) File the complaint: The complaint should be filed

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with the appropriate consumer court in person, by registered post, or electronically (if available), along with the required fee and supporting documents. A copy of the complaint must also be sent to the respondent.

- d) Admission of the complaint: The consumer court will examine the merits of the complaint and may admit or dismiss it. If admitted, the court will issue notices to the parties involved and begin the adjudication process.
- e) Presentation of evidence and arguments: Both the complainant and the respondent will have an opportunity to present their evidence and arguments in support of their claims and defenses.
- f) Court's decision: The consumer court will consider the evidence and arguments presented and pass an order accordingly. If the court finds the respondent liable, it may order the payment of compensation, refund, replacement, or removal of defects, as appropriate.
- g) Appeals:
 - i. Appeal to the State Commission: If a party is dissatisfied with the District Commission's decision, they can appeal to the State Consumer Disputes Redressal Commission within 45 days from the date of the order (Section 41).

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- ii. Appeal to the National Commission: If a party is dissatisfied with the State Commission's decision, they can appeal to the National Consumer Disputes Redressal Commission within 45 days from the date of the order (Section 51).
- iii. Appeal to the Supreme Court: If a party is dissatisfied with the National Commission's decision, they can appeal to the Supreme Court of India within 45 days from the date of the order (Section 71). It is important to note that the Supreme Court's jurisdiction is limited to cases involving substantial questions of law.

The Consumer Protection Act, 2019, provides a clear and structured process for filing complaints and seeking redressal for consumer grievances. By following the established procedures and adhering to the prescribed timelines, consumers can effectively exercise their rights and obtain the necessary remedies under the Act.

Features of the CONSUMER PROTECTION COUNCILS, their objective, their constitution

The Consumer Protection Act, 2019, provides for the establishment of Consumer Protection Councils at the national, state, and district levels. These councils serve as advisory bodies to promote and protect consumer

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rights and interests.

a) Objectives

The primary objectives of the Consumer Protection Councils are to (Section 7):

- i. Protect consumer rights, as enshrined in the Act •
- ii. Promote and support the adoption of measures for consumer education, awareness, and welfare
- iii. Encourage and facilitate the resolution of consumer disputes
- iv. Advise the government on matters related to consumer protection and welfare
- v. Review and monitor the implementation of consumer protection policies and laws

b) Constitution of the Consumer Protection Councils

- ii. Central Consumer Protection Council (Section 3):
 - i) The Central Council is headed by the Minister in charge of consumer affairs in the Central Government, who serves as its Chairperson.
 - ii) It consists of such members as may be

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prescribed by the Central Government, representing various interests, such as consumers, consumer organizations, trade and industry, and other relevant sectors.

iii. State Consumer Protection Council (Section 6):

i) The State Council is headed by the Minister in charge of consumer affairs in the State Government, who serves as its Chairperson.

ii) It consists of such members as may be prescribed by the State Government, representing various interests, such as consumers, consumer organizations, trade and industry, and other relevant sectors.

iv. District Consumer Protection Council (Section 9):

i) The District Council is headed by the Collector or District Magistrate or the Additional District Magistrate, who serves as its Chairperson.

ii) It consists of such members as may be prescribed by the State Government, representing various interests, such as consumers, consumer organizations, trade and industry, and other relevant

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sectors.

c) Functions

The Consumer Protection Councils are responsible for (Section 7):-

- i. Advising and making recommendations to the government on consumer-related issues
- ii. Reviewing the implementation of consumer protection laws and policies
- iii. Encouraging the adoption of best practices in consumer protection
- iv. Coordinating with other consumer protection organizations and agencies
- v. Organizing consumer awareness programs and campaigns

In summary, the Consumer Protection Councils play a crucial role in promoting and protecting consumer rights under the Consumer Protection Act, 2019. They function as advisory bodies that facilitate collaboration between the government, consumers, and various stakeholders, with the ultimate goal of ensuring a fair and safe marketplace for consumers.

Features of the CONSUMER PROTECTION AUTHORITY, their objective, their constitution

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The Consumer Protection Act, 2019 establishes the Central Consumer Protection Authority (CCPA) as a powerful regulatory body to promote, protect, and enforce the rights of consumers. The CCPA is entrusted with various functions, powers, and duties to safeguard consumer interests and ensure a fair marketplace.

a) Objectives:

The primary objectives of the Central Consumer Protection Authority are to (Section 10):

- i. Protect consumer rights by preventing violations and promoting consumer interests
- ii. Investigate and take action against any unfair trade practices or false/misleading advertisements
- iii. Ensure timely and effective administration and settlement of consumer disputes
- iv. Enforce consumer protection laws and regulations

b) Constitution of the Central Consumer Protection Authority (Section 11):

- i. The CCPA consists of a Chief Commissioner, who acts as the head of the authority, and other Commissioners, as may be prescribed by the Central Government.
- ii. The Chief Commissioner and other

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Commissioners are appointed by the Central Government based on their qualifications, experience, and expertise in consumer protection, law, public affairs, or other related fields.

- c) Functions and Powers of the Central Consumer Protection Authority (Section 18):
- i. Inquire or investigate into violations of consumer rights, either on its own or based on a complaint received
 - ii. Order the recall of unsafe goods and services that pose a risk to consumer safety
 - iii. Order the discontinuation of unfair trade practices or misleading advertisements
 - iv. Impose penalties on manufacturers or endorsers for publishing false or misleading advertisements
 - v. Prohibit the endorser of a misleading advertisement from endorsing any product or service for a specified period
 - vi. Issue guidelines and directions to prevent unfair trade practices or false/misleading advertisements
 - vii. Conduct investigations and launch prosecutions under the Act

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The Central Consumer Protection Authority has a significant role in ensuring a fair and safe marketplace for consumers. Its proactive approach to addressing consumer grievances, taking action against unfair trade practices, and creating consumer awareness makes it a critical component of the consumer protection framework in India.

Difference between Consumer Protection Act and Sales of Goods Act

The Consumer Protection Act, 2019, and the Sale of Goods Act, 1930, are two distinct legislations in India, each with its own purpose and scope. While both acts address issues related to consumers, they differ in their focus and approach.

a) Scope and Focus

The Consumer Protection Act, 2019, is a comprehensive legislation designed to protect consumer rights, promote consumer interests, and provide a framework for the redressal of consumer grievances. It covers a wide range of goods and services, including e-commerce transactions, and applies to various forms of trade practices and consumer disputes.

The Sale of Goods Act, 1930, is a commercial law that primarily governs the sale and purchase of goods, including the rights and obligations of buyers and sellers in a sales contract. It does not

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specifically address consumer protection or consumer disputes but does outline certain implied conditions and warranties that apply to the sale of goods.

b) Redressal Mechanism

The Consumer Protection Act, 2019, establishes a three-tier consumer dispute redressal mechanism, comprising the District Consumer Disputes Redressal Commission, the State Consumer Disputes Redressal Commission, and the National Consumer Disputes Redressal Commission. Consumers can file complaints and seek redressal for their grievances through these dedicated forums.

The Sale of Goods Act, 1930, does not provide a specific redressal mechanism for consumer grievances. In cases of breach of contract, consumers may have to approach civil courts, which can be a more time-consuming and expensive process compared to the consumer courts under the Consumer Protection Act.

c) Remedies

The Consumer Protection Act, 2019, offers a wide range of remedies for consumers, including compensation, refund, replacement, repair, and removal of defects. It also covers product liability and provides for both civil and criminal

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remedies, including penalties and imprisonment for non-compliance with the provisions of the Act.

The Sale of Goods Act, 1930, primarily provides remedies in the form of damages for breach of contract. It does not explicitly address consumer-specific remedies, such as product liability or unfair trade practices.

For consumer grievance redressal, the Consumer Protection Act, 2019, is better suited as it specifically focuses on consumer rights and interests, provides a dedicated redressal mechanism, and offers a wider range of remedies. The Sale of Goods Act, 1930, is a commercial law that may be relevant in determining the rights and obligations of buyers and sellers in sales contracts, but it does not specifically address consumer protection or provide a consumer-centric redressal mechanism.

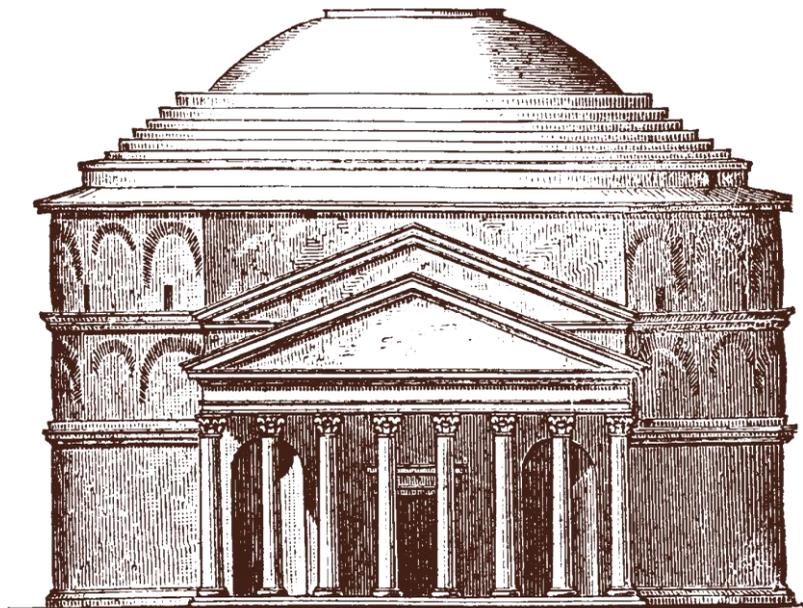
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REQUIRED CASE READINGS CASE BRIEFS AND ANALYSIS

1. **DONOGHUE V. STEVENSON (1932) A.C. 562**
2. **ASHBY V. WHITE (1703) 2 LORD RAYN, 938**
3. **GLOUCESTER GRAMMAR SCHOOL CASE (1410) Y.B. HILL 11 HEN, 4 OF 47, P. 21, 36**
4. **HALL V. BROOKLANDS AUTO RACING CLUB (1932) ALL E.R. REP. 208: (1932) 1 K. B. 205**
5. **CASSIDY V. MINISTRY OF HEALTH (1951) 1 ALL E.R. 574**
6. **KLAUS MITTELBACHERT V. EAST INDIA HOTELS LTD., 1997 AIR 201 DELHI**
7. **BHIM SINGH V. STATE OF J& K, 1986 AIR 494**
8. **D.P. CHOUDHARY V. MANJULATA, 1997 AIR 170 RAJ.**
9. **KASTURI LAL V. STATE OF U.P., AIR 1965 SC 1039**

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1.

DONOGHUE V. STEVENSON (1932) A.C. 562

Facts in Brief

Mrs. Donoghue consumed a ginger beer in a café in Paisley, Scotland. The ginger beer was manufactured by Mr. Stevenson. The beer was sold in a dark opaque bottle so the contents couldn't be seen. When Donoghue's friend poured the rest of the ginger beer into the glass, a decomposed snail was seen in the bottle. Mrs. Donoghue fell ill, and she sued Mr. Stevenson.

Issues

The primary question before the court was whether a duty of care could be owed by a manufacturer to the ultimate consumer in cases where the product was not bought directly from the manufacturer but through an intermediary party.

Arguments

For Mrs. Donoghue: It was argued that Mr. Stevenson owed a duty of care to Mrs. Donoghue, as it was reasonably foreseeable that failure to ensure product safety could lead to harm to consumers.

For Mr. Stevenson: The defence argued that he didn't owe Mrs. Donoghue any duty of care as there was no direct contractual relationship between them.

Held

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The House of Lords held in favor of Mrs. Donoghue. It was stated that a manufacturer owes a duty of care to the consumer to ensure that manufactured goods are free of defects. The absence of a contract between Mrs. Donoghue and Mr. Stevenson was irrelevant. The case established the principle of duty of care in negligence.

Legal Principles with Relevant Sections

This case established the modern law of negligence, laying the foundation of the duty of care principle. There aren't specific sections to quote, as this was a case law principle, not a statutory one.

Obiter Dictum

The court's broader reflection on the responsibility of manufacturers towards consumers, even in the absence of a contractual relationship, was a significant obiter dictum. This commentary has subsequently been applied in various situations, giving rise to the evolution of product liability principles.

Important Para from Judgment

"The rule that you are to love your neighbour becomes in law you must not injure your neighbour; and the lawyer's question, 'Who is my neighbour?' receives a restricted reply. You must take reasonable care to avoid acts or omissions which you can reasonably foresee would be likely to injure your neighbour."

Subsequent Impact

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The decision had a profound effect on tort law by establishing the tort of negligence outside of contractual relationships. It expanded the potential for claims by injured parties and influenced product safety and quality standards worldwide. Manufacturers are now duty-bound to ensure their products are safe for consumer use, and if they fail in this duty, they may be liable for any harm caused.

2.

ASHBY V. WHITE

(1703) 2 LORD RAYN, 938

Facts in Brief

Mr. Ashby, a qualified voter, sought to cast his vote in an election, but was wrongfully prevented from doing so by Mr. White, a constable. Even though Ashby's candidate won the election, Ashby sued White for damages for the violation of his legal right to vote.

Issues

The main issue before the court was whether Ashby could sue for damages even though he suffered no material loss, as his preferred candidate won despite his being prevented from voting.

Arguments

For Ashby: Ashby's counsel argued that, regardless of the election outcome, White's action violated Ashby's

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fundamental legal right to vote.

For White: White's defense contended that since Ashby's preferred candidate won, and Ashby suffered no actual loss, there was no cause for a lawsuit.

Held

The House of Lords held in favor of Ashby. It was ruled that the mere violation of Ashby's legal right (i.e., his right to vote) was sufficient to claim damages, regardless of whether there was a tangible loss or not. This case established the principle that the infringement of a right itself constituted a loss.

Legal Principles with Relevant Sections

The legal principle established was that "infringement of a right is a damage itself". The case isn't based on a statutory section but instead lays the groundwork for the principle of *injuria sine damno* (injury without damage) in tort law.

Obiter Dictum

The court's commentary on the sanctity of legal rights was noteworthy. The observation that the violation of a right in itself constitutes a loss, regardless of whether there's tangible harm or not, was a significant obiter dictum that would influence future case law and legal principles.

Important Para from Judgement

"Surely every injury imports a damage, though it does

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not cost the party one farthing, and it is impossible to prove the contrary; for a damage is not merely pecuniary, but an injury imports a damage, when a man is thereby hindered of his right."

Subsequent Impact

The ruling in *Ashby v. White* has had a significant impact on the development of tort law, establishing a precedent for the principle of *injuria sine damno*. It has been quoted and followed in numerous cases to affirm the principle that mere infringement of a legal right entitles the person to bring a suit, even though he has not suffered any actual harm or loss. This case continues to play a fundamental role in upholding the importance of safeguarding individual rights.

3.

GLOUCESTER GRAMMAR SCHOOL

CASE (1410) Y.B. HILL 11 HEN, 4 OF 47, P. 21, 36

Facts in Brief

The defendant, a schoolmaster, set up a rival grammar school near the plaintiff's school in Gloucester, England. This resulted in fewer students attending the plaintiff's school and thus a reduction in income. The plaintiff sued, arguing that the defendant's action caused him financial harm.

Issues

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The issue before the court was whether the plaintiff had a right to claim damages due to the competition introduced by the defendant, even though the defendant had not engaged in any unlawful activity.

Arguments

For the Plaintiff: The plaintiff argued that the defendant, by setting up a rival school, caused him financial harm.

For the Defendant: The defendant contended that he had the right to set up a school and that competition was not a wrongful act.

Held

The court held in favor of the defendant. It found that the defendant had every right to establish a school and compete with the plaintiff. The court held that causing harm by lawful competition could not be considered an unlawful or tortious act.

Legal Principles with Relevant Sections

The ruling in this case formed the basis of the principle of *damnum sine injuria* (damage without injury) in the law of torts, whereby a loss or harm that is caused legally without violating any rights is not actionable in court.

Obiter Dictum

The court's commentary on the nature of competition and the implications for the economy and the public were important obiter dicta in the judgment. The court pointed out that competition, even if it causes harm to

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another, cannot be seen as unlawful if it brings benefits to the public.

Important Para from Judgement

"Loss or harm to one individual is not actionable if it is a by-product of competition that serves the larger public interest."

Subsequent Impact

The Gloucester Grammar School case is one of the foundational cases in the development of tort law, particularly concerning economic torts and the principle of *damnum sine injuria*. It set the precedent that harm caused by lawful competition is not actionable, a principle that continues to be referenced in court decisions concerning competition and economic torts. The case underscores the significance of competition for the public good, even if it may result in financial harm to individuals.

4.

HALL V. BROOKLANDS AUTO RACING CLUB

(1932)

All E.R. Rep. 208: (1932) 1 K. B. 205

a) Facts in Brief

In this case, the plaintiff, Mr. Hall, was a spectator at a car racing event organized by the Brooklands Auto Racing Club. During the event, two cars collided, with one of them veering off the track and injuring Mr. Hall.

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b) Issues

The primary issue was whether the Brooklands Auto Racing Club could be held liable for the injuries suffered by Mr. Hall, given the inherent risks involved in auto racing.

c) Arguments

- For Mr. Hall: The plaintiff's counsel argued that the Brooklands Auto Racing Club, as the event organizer, had a duty of care to ensure the safety of the spectators. They contended that the club had failed in that duty.

- For Brooklands Auto Racing Club: The defense argued that the plaintiff knowingly attended a dangerous event and therefore voluntarily assumed the risk involved.

d) Held

The court held in favor of the defendant, Brooklands Auto Racing Club. It ruled that the club had taken sufficient precautionary measures to ensure spectator safety. Therefore, any remaining risk was part of the inherent danger in car racing, which the spectator assumed by choosing to attend the event.

e) Legal Principles with Relevant Sections

This case applies to the tort law principle of *volenti non fit injuria*, which means "to a willing person, injury is not done". This principle implies that if someone willingly places themselves in a position where harm might result, knowing that some risk is involved, they are not able to bring a claim against the other party in

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tort.

f) **Obiter Dictum**

The court made broader comments about the expectation of safety in inherently risky activities and the limitations of a duty of care under such circumstances. It acknowledged that while organizers have a responsibility to take reasonable steps to ensure safety, they cannot eliminate all risks inherent in certain activities.

g) **Important Para from Judgement**

The language of the judgement is as follows: "Those who go to watch these races are accepting of the risks that come with it. There are certain dangers which are so obvious that anyone who attends such an event is assumed to have accepted them."

h) **Subsequent Impact**

The judgement in Hall v. Brooklands Auto Racing Club has been a landmark case in the law of torts, particularly with respect to the principle of *volenti non fit injuria*. It has influenced numerous subsequent cases involving accidents at sporting events, concerts, and other activities where there is an inherent risk involved. The case provides a clear precedent for the limits of liability in situations where risks are understood and accepted by participants or spectators.

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CASSIDY V. MINISTRY OF HEALTH (1951)

1 All E.R. 574

Facts in Brief

The plaintiff, Mr. Cassidy, went to a hospital for a surgical operation on his hand, which was supposed to be performed by the surgeon. After the operation, instead of getting better, his condition worsened, and he lost the use of his hand. He sued the Ministry of Health, which was running the hospital.

Issues

The primary issue was whether the Ministry of Health could be held vicariously liable for the negligence of its employees, which in this case included the surgeons, doctors, and other hospital staff.

Arguments

- For Mr. Cassidy: The plaintiff argued that the Ministry of Health, being the employer, should be held vicariously liable for the negligent acts of its employees.
- For Ministry of Health: The defense argued that the surgeons, doctors, and other hospital staff were not employees but independent contractors, and therefore, the Ministry could not be held liable for their actions.

Held

The court ruled in favor of Mr. Cassidy, finding that the Ministry of Health was vicariously liable for the negligent acts of its employees. The court held that the

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surgeons, doctors, and other hospital staff were not independent contractors but employees of the hospital.

Legal Principles with Relevant Sections

This case is relevant to the legal principle of vicarious liability in tort law. Vicarious liability is a situation where someone is held responsible for the actions or omissions of another person. In a workplace context, an employer can be liable for the acts or omissions of its employees, provided it can be shown that they took place in the course of their employment.

Obiter Dictum

The court emphasized the duty of care that hospitals owe to their patients and the significance of the principle of vicarious liability in maintaining this duty of care. It noted that when a person is accepted as a patient in the hospital, the hospital staff owes a duty of care to that person, irrespective of their employment status.

Important Para from Judgement

"Once it is established that there is a duty of care owed by the defendants to the plaintiff, it is immaterial whether the contract of employment was made with the doctor or with the hospital management, the hospital is liable."

Subsequent Impact

The ruling in Cassidy v. Ministry of Health has had a significant impact on the law relating to vicarious liability, particularly in the context of medical

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negligence. It set a precedent that health authorities could be held vicariously liable for the negligence of their staff. This case continues to be a leading authority in cases involving medical negligence and has greatly influenced the operations of medical establishments, enforcing a greater degree of responsibility in patient care.

6.

**KLAUS MITTELBACHERT V. EAST INDIA
HOTELS LTD.,
1997 AIR 201 DELHI**

Facts in Brief

Klaus Mittelbacht, a German national and a co-pilot in Lufthansa, was staying at the Hotel Oberoi Intercontinental in New Delhi during a layover period from August 11, 1972, to August 14, 1972. On the afternoon of August 13, 1972, he visited the hotel's swimming pool and met with an accident while diving, hitting his head on the bottom of the pool. This resulted in paralysis in his arms and legs. He was immediately taken to Holy Family Hospital for treatment and later flown to Germany under medical escort. His condition did not improve despite continuous treatment. The accident led to a lawsuit filed on August 11, 1975, against the hotel for recovery of an amount of Rs.50 lacs by way of damages with interest calculated @ 12% from the date of the filing of the suit until payment and costs. The plaintiff argued that the accident was caused by what amounted to a trap, as the diving board suggested a

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proper depth of water for diving, which was not the case. The hotel, according to the plaintiff, failed in its duty to ensure his safety and was therefore liable for negligence.

Issues

The main issues in the case revolve around whether the hotel was negligent in ensuring the safety of its guests, particularly in the context of the swimming pool and diving board. The plaintiff argued that the hotel had a duty of care towards him, which it failed to uphold. The defendants, on the other hand, argued that the plaintiff was negligent in his actions, including performing dangerous acrobatics and diving while allegedly under the influence of alcohol. They also suggested that the plaintiff may have suffered an epileptic attack while diving, which they claimed was the cause of the accident.

Arguments

The plaintiff argued that the hotel was negligent in its duty of care towards him. He claimed that the diving board at the swimming pool suggested a proper depth of water for diving, which was not the case, and this amounted to a trap. He also argued that he had not consumed any alcohol before the dive, contrary to the defendants' claims.

The defendants argued that the plaintiff was negligent in his actions. They claimed that he had been drinking and

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performing dangerous acrobatics in the pool, and that he had been warned by the hotel staff not to perform such dangerous acts. They also suggested that the plaintiff may have suffered an epileptic attack while diving, which they claimed was the cause of the accident. The defendants also pointed out that there was a notice at the foot of the diving board reading "dive at your own risk".

Held

The court held that the hotel was liable for the accident. The court found that the plaintiff was not drunk at the time of the accident and that it was the first dive itself that had resulted in injuries to him. The court also found that the hotel had failed in its duty of care towards the plaintiff. The court rejected the defendants' argument that the plaintiff's hands would have sustained an injury before his head could strike the bottom of the pool if he had dived with his hands above his head. The court found that common sense answered this argument, as it was possible for the hands to be above the head and yet not sustain an injury.

Legal principles with relevant sections

- The court applied the principle of negligence and duty of care. The hotel, as the defendant, owed a duty of care to its guests, including the plaintiff. The hotel was found to have breached this duty by having a swimming

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pool that was unsafe for diving, leading to the plaintiff's accident. This is a fundamental principle in tort law.

- The court also applied the principle of strict liability, stating that the hotel, being a five-star establishment, owed a high degree of care to its guests. Any latent defect in its structure or service, which is hazardous to guests, would attract strict liability to compensate for consequences flowing from its breach of duty to take care.

- The doctrine of *res ipsa loquitur* was also considered. This doctrine applies when an accident is of such a nature that it would not ordinarily occur without negligence, the instrumentality causing the accident was under the control of the defendant, and the plaintiff did not contribute to the accident. The court found these conditions satisfied in this case.

- The court also discussed the principle of contributory negligence, but found that it did not apply in this case as the plaintiff was not found to have contributed to his accident.

Obiter dictum

- The court made several observations that can be considered *obiter dicta*, or remarks that are not essential to the decision. For example, the court observed that a five-star hotel must update itself with the latest and advanced standard of safety. It also noted that one does not have to wait for an accident or series of accidents

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before a system can be condemned as unsafe.

Important para from judgement

- One of the key paragraphs from the judgement is the conclusion, where the court decreed the suit in favor of the plaintiff, awarding him Rs. 50 lacs against the defendants 1 and 3 (the hotel and its owner). The court found that the defendants were negligent and breached their duty of care, leading to the plaintiff's accident and subsequent injuries.

Subsequent Impact

The judgement does not discuss the subsequent impact of the case. However, it can be inferred that the decision would have significant implications for hotels and similar establishments, emphasizing their duty of care towards guests and the need for safety in their premises. It could also potentially influence the standards of safety that are expected from such establishments.

7.

BHIM SINGH V. STATE OF J& K

1986 AIR 494

Facts in brief

Bhim Singh, a Member of the Legislative Assembly of Jammu & Kashmir, was arrested on his way from

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Jammu to Srinagar on the night of 9th-10th September 1985. The arrest was made to prevent him from attending the session of the Legislative Assembly of Jammu & Kashmir, which was to meet on 11th September 1985. His wife, Smt. Jayamala, filed a petition on his behalf to declare his detention illegal and to set him at liberty .

Issues

The main issue was the illegal arrest and detention of Bhim Singh. The police officers acted in a high-handed way, and there was a gross violation of Bhim Singh's constitutional rights under Articles 21 and 22(2). The police officers, the Executive Magistrate, and the Sub Judge acted without any sense of responsibility or genuine concern for the liberty of the subject.

Arguments

The police officers argued that Bhim Singh was wanted in a case registered under Section 153-A of the Ranbir Penal Code. However, the court found that the police officers acted deliberately and mala fide, and the Magistrate and the Sub Judge aided them either by colluding with them or by their casual attitude. The court also noted that the police officers acted in a most high-handed way and without any sense of responsibility or genuine concern for the liberty of the subject.

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Held

The court held that the constitutional rights of Bhim Singh were violated with impunity. Since he was no longer in detention, there was no need to make any order to set him at liberty, but he must be suitably and adequately compensated. The court directed the first respondent, the State of Jammu and Kashmir, to pay to Shri Bhim Singh a sum of Rs. 50,000/- within two months from the date of the judgment.

Legal principles with relevant sections

The Bhim Singh case is a landmark judgment that established the principle of compensatory jurisprudence in India. The Supreme Court, in this case, held that the State is liable to pay compensation to a person who has been illegally detained. This was a significant departure from the traditional view that the State could not be held liable for the tortious acts of its servants. The court relied on Articles 21 and 22 of the Indian Constitution to arrive at this conclusion.

Article 21 of the Indian Constitution guarantees the right to life and personal liberty, stating that "No person shall be deprived of his life or personal liberty except according to the procedure established by law."

Article 22 provides protection against arrest and detention in certain cases. It mandates that every person

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who is arrested and detained in custody shall be produced before the nearest magistrate within a period of twenty-four hours of such arrest.

Obiter dictum

The court observed, "Police Officers who are the custodians of law and order should have the greatest respect for the personal liberty of citizens and should not flout the laws by stooping to such bizarre acts of lawlessness. Custodians of law and order should not become depredators of civil liberties. Their duty is to protect and not to abduct."

Important para from judgement

An important paragraph from the judgment where the court stated, "We have no doubt that the constitutional rights of Shri Bhim Singh were violated with impunity. Since he is now not in detention, there is no need to make any order to set him at liberty, but suitably and adequately compensated, he must be. That we have the right to award monetary compensation by way of exemplary costs or otherwise is now established by the decisions of this court."

Subsequent Impact

The Bhim Singh case had a profound impact on the

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development of human rights jurisprudence in India. It established the principle that the State could be held liable to pay compensation for the violation of a person's fundamental rights. This principle has been followed and expanded upon in subsequent cases, leading to the development of a robust body of law on compensatory jurisprudence in India. It also served as a stern reminder to the law enforcement agencies about the sanctity of personal liberty and the consequences of its violation.

8.

D.P. CHOUDHARY V. MANJULATA

1997 AIR 170 RAJ.

Facts in brief

The case of D.P. Choudhary And Ors. vs Kumari Manjulata was heard by the Rajasthan High Court on 4th April 1997. The case was a civil appeal against a judgment passed by Additional District Judge No. 2, Jodhpur, who decreed a defamation suit .

Kumari Manjulata, the daughter of Mohan Singh, was around 17 years old at the time and belonged to a distinguished, educated family in Jodhpur. The defendants, Durga Prasad (the principal Editor of DainikNavjyoti), DeenBahdhu Choudhary (the Managing Editor), and the Printer and Publisher of DainikNavjyoti, were held responsible for the publication of false and defamatory news in the daily newspaper.

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On 18th December 1977, DainikNavjyoti published a news item about Manjulata with unfair comments and false imputations. The news item was largely untrue and was published negligently and maliciously, which led to hatred against Manjulata and ridicule for her and her family. The publication of this news item created problems for arranging Manjulata's marriage, caused her to suffer from an inferiority complex, and led to disrespect for her parents in society.

The defendants claimed that they did not know the plaintiff personally and that the news item was correct, as it was collected by their reporter. However, the court found in favor of Manjulata.

Issues

The main issues in the case were:

- Whether the defendants were responsible for publishing false and defamatory news in the daily newspaper.
- Whether the news item published about Manjulata was largely untrue and was published negligently and maliciously.
- Whether the publication of this news item led to hatred against Manjulata, ridicule for her and her family, and problems for arranging Manjulata's marriage.
- Whether the defendants knew the plaintiff personally and whether the news item was correct.

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Arguments

The defendants argued that they did not know the plaintiff personally and that the news item was correct, as it was collected by their reporter. They also claimed that there was no intention to defame or harass the plaintiff.

On the other hand, the plaintiff argued that the news item was false, defamatory, and published negligently and maliciously. She claimed that the publication of the news item led to hatred against her, ridicule for her and her family, and problems for arranging her marriage.

Held

The court held in favor of Manjulata, finding that the defendants were responsible for publishing false and defamatory news in the daily newspaper. The court found that the news item was largely untrue and was published negligently and maliciously. The court also found that the publication of this news item led to hatred against Manjulata, ridicule for her and her family, and problems for arranging Manjulata's marriage. The court awarded Manjulata Rs. 10,000 in damages.

Legal principles with relevant sections

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The case of D.P. Choudhary And Ors. vs Kumari Manjulata primarily dealt with the law of defamation. The legal principle involved in this case is that if defamatory words are published, they are presumed to be false and the burden to prove that they are not so is upon the defendant. Even if the defendant bonafidely believed in the truth of the words published, he will still be liable unless the defence of privilege is raised.

The court also emphasized that the object of law of defamation is to protect an individual's interest in his reputation. It is no defence in a suit for defamation that the defendant did not intend to injure the plaintiff's reputation, if, in fact, it has been injured.

Obiter dictum

The court noted that in defamation cases, a man may be liable although he had not a particle of malice against the person defamed. The intention or motive with which the words were employed is, as a rule, immaterial. If the defendant has in fact injured the plaintiff's reputation, he is liable, although he did not intend so to do, and had no such purpose in his mind when he wrote or spoke the words. Every man must be presumed to know and to intend the natural and ordinary consequences of his acts. The words are actionable if false and defamatory, although published accidentally or inadvertently.

Important para from judgement

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One of the key paragraphs from the judgement is:

"From the evidence on record it is proved that Shri Bajrang Singh Shekhawat did not verify the news from the mother of Manjulata as was alleged by him. It is expected of the correspondents of newspapers that they would not send such news items without verification. From the evidence on record it is proved that Shri Bajrang Singh Shekhawat did not verify the news from the mother of Manjulata as was alleged by him."

Subsequent Impact

The case of D.P. Choudhary And Ors. vs Kumari Manjulata has had a significant impact on the law of defamation in India. It has set a precedent for future cases involving defamation, emphasizing the importance of verifying information before publishing it and the potential consequences of publishing false information. The case has also highlighted the importance of an individual's reputation and the need for it to be protected.

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9.

**KASTURI LAL V. STATE OF U.P., AIR 1965 SC
1039**

Facts in Brief

The appellant, M/s. Kasturilal Ralia Ram Jain, a firm dealing in bullion and other goods at Amritsar, had one of its partners, Ralia Ram, arrive at Meerut on the 20th September, 1947, with the intention of selling gold, silver, and other goods. He was taken into custody by three police constables, his belongings were searched, and he was taken to the Kotwali Police Station. His belongings, which consisted of gold and silver, were seized from him and kept in police custody. He was released on bail on the 21st September, 1947, and the silver seized from him was returned. However, the gold was not returned despite repeated demands. As a result, he filed a suit against the respondent, the State of Uttar Pradesh, claiming the return of the gold or its value. The trial court decreed in favor of the appellant, but the High Court dismissed the suit on appeal.

Issues

The main issue in this case was whether the respondent, the State of Uttar Pradesh, is liable to compensate the appellant for the loss caused by the negligence of the police officers employed by the respondent.

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Arguments

The appellant argued that once negligence of the police officers is established, there should be no difficulty in decreeing the appellant's claim against the respondent. The appellant cited the case of State of Rajasthan v. Mst. Vidhyawati and Anr., where the Court held that the liability of the State for damages in respect of a tortious act committed by its servant within the scope of his employment and functioning as such was the same as that of any other employer.

The respondent, on the other hand, argued that the power to arrest a person, to search him, to seize property found with him, are powers conferred on specified officers by statute and are powers which could be properly characterized as sovereign powers. Therefore, though the negligent act was committed by the employees of the respondent-State during the course of their employment, the claim against the State could not be sustained, because the employment in question was of the category which could claim the special characteristic of sovereign power.

Held

The Supreme Court held that the power to arrest a person, to search him, to seize property found with him,

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are powers conferred on specified officers by statute and are powers which could be properly characterized as sovereign powers. Therefore, though the negligent act was committed by the employees of the respondent-State during the course of their employment, the claim against the State could not be sustained, because the employment in question was of the category which could claim the special characteristic of sovereign power. The Court also suggested the passing of legislative enactments to regulate and control the liability of the State for the negligent acts of its servants.

Legal principles with relevant sections

The legal principle that was highlighted in the case of *Kasturi Lal v. State of U.P.* is the doctrine of sovereign immunity. This principle states that the state cannot be held liable for the tortious acts of its servants while performing their duties. The relevant section in this case is Article 300(1) of the Constitution of India, which deals with the legal proceedings for the actions of the servants of the Union or of a State.

Obiter dictum

The obiter dictum in this case is the court's observation that the current legal position where a citizen, whose property was seized by process of law, has to be told when he seeks a remedy in a court of law on the ground that his property has not been returned to him, that he

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can make no claim against the State, is not a very satisfactory position in law. The court suggested that the remedy to cure this position lies in the hands of the Legislature.

Important para from judgement

An important paragraph from the judgement is: "The power to arrest a person, to search him, to seize property found with him, are powers conferred on specified officers by statute and are powers which could be properly characterised as sovereign powers. Therefore, though the negligent act was committed by the employees of the respondent-State during the course of their employment, the claim against the State could not be sustained, because, the employment in question was of the category which could claim the special characteristic of sovereign power."

Subsequent Impact

The case of *Kasturi Lal v. State of U.P.* has had a significant impact on the legal landscape in India. It has been cited in numerous subsequent cases and has been instrumental in shaping the doctrine of sovereign immunity in India. The judgement has also sparked debates and discussions about the need for legislative changes to address the issues raised in the case.

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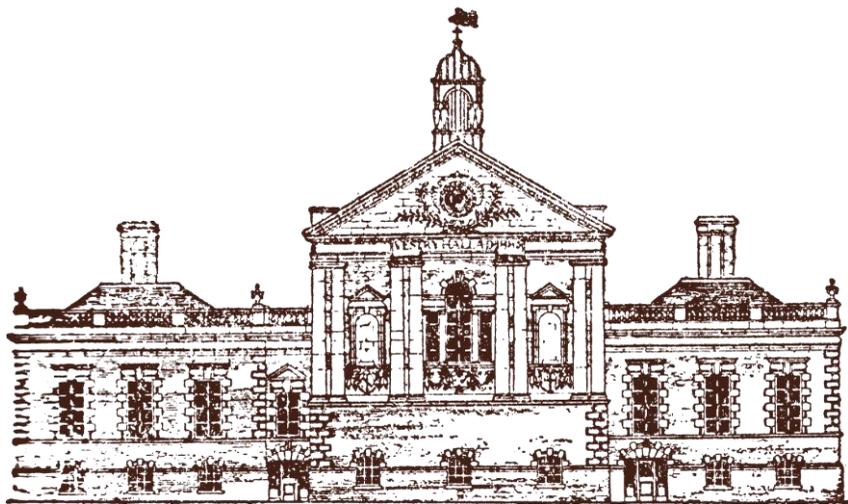
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PAPER 1

PART A

QUESTION 1: WRITE SHORT NOTES ON THE FOLLOWING:

PART-A (5-MARKERS)

QUESTION (A): TEMPORARY AND PERPETUAL INJUNCTION

An **injunction** is an equitable remedy in the form of a court order that compels a party to do or refrain from doing specific acts. A party that fails to comply with an injunction faces criminal or civil penalties, including possible monetary sanctions and even imprisonment. They can also be charged with contempt of court.

In the realm of injunctions, there exist two types: **temporary** (interlocutory) and **perpetual** (permanent).

Temporary Injunction

A temporary injunction, also known as an interlocutory injunction, is a provisional remedy granted by the court while the suit is still pending. Its purpose is to maintain

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the status quo and to prevent any harm or injustice that might result before judgment is rendered. The principle governing the grant of a temporary injunction is encapsulated in. The primary purpose of granting an interlocutory injunction is to maintain the status quo.

The guidelines for granting a temporary injunction are enshrined under Order 39 Rule 1 & 2 of the Code of Civil Procedure, 1908. It is a discretionary power that must be exercised judiciously, in a way that furthers the ends of justice.

Perpetual Injunction

On the other hand, a perpetual injunction, sometimes referred to as a permanent injunction, is one that is issued by the court at the time of the final decision of the suit. It is provided for under Section 38 of the Specific Relief Act, 1963. A perpetual injunction can only be granted by the decree made at the hearing and upon the merits of the suit; the defendant is thereby perpetually enjoined from the assertion of a right, or from the commission of an act, which would be contrary to the rights of the plaintiff.

A classic example of a perpetual injunction is the landmark case of ***M.C. Mehta v. Union of India*** (1987), where the Supreme Court ordered the closure of several tanneries near the Ganga River, which were discharging toxic effluents into the river, thereby polluting it.

Thus, while both temporary and perpetual injunctions play a crucial role in safeguarding the rights of individuals, they differ in their timing and permanency.

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A temporary injunction serves as a stopgap arrangement to prevent further harm until the court can make a final determination, while a perpetual injunction is a final and binding order that is issued once the rights of the parties have been definitively ascertained by the court.

QUESTION (B): DEFECT AND DEFICIENCY

The terms 'defect' and 'deficiency' have significant importance in the context of Consumer Protection Laws in India.

Defect

A defect is generally defined in terms of any fault, imperfection or shortcoming in the quality, quantity, potency, purity or standard which is required to be maintained by or under any law for the time being in force or as is claimed by the trader in any manner. This definition is encapsulated under Section 2(1)(f) of the Consumer Protection Act, 1986.

The landmark case of ***Spring Meadows Hospital v. Harjol Ahluwalia*** (1998) clearly illustrates this concept. In this case, the Supreme Court held that due to the negligent actions of the hospital and its staff, a minor child suffered irreversible mental damage, which was deemed to be a 'defect in service' provided by the hospital.

Deficiency

On the other hand, deficiency is defined in terms of any fault, imperfection, shortcoming or inadequacy in the quality, nature and manner of performance which is required to be maintained by or under any law for the

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time being in force or has been undertaken to be performed by a person in pursuance of a contract or otherwise in relation to any service. This definition is provided under Section 2(1)(g) of the Consumer Protection Act, 1986.

In the case of ***Lucknow Development Authority v. M.K. Gupta*** (1994), the Supreme Court held that housing construction was a 'service' within the meaning of the Consumer Protection Act, 1986, and that any delay in the delivery of possession or construction of poor quality was a 'deficiency in service'.

While the terms 'defect' and 'deficiency' are both used to denote a failure on the part of the trader or service provider to meet the standards required by law or promised by them, 'defect' is used in the context of goods, while 'deficiency' is used in the context of services. This distinction is crucial in understanding the application and scope of consumer protection laws in India.

QUESTION (C): MALICIOUS PROSECUTION AND FALSE IMPRISONMENT

Both malicious prosecution and false imprisonment are tortious actions that impinge on an individual's personal liberty and reputation. However, their nature and scope vary significantly.

Malicious Prosecution

Malicious prosecution refers to a civil action taken by an individual who has been unjustly subjected to unsuccessful criminal or bankruptcy proceedings. The

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tort is concerned with abuse of the legal process by wrongfully setting the law in motion out of malice and without reasonable or probable cause.

The essentials of malicious prosecution which the plaintiff must prove:

1. He was prosecuted by the defendant.
2. The proceedings were instigated without any reasonable or probable cause.
3. The proceedings terminated in favor of the plaintiff.
4. The prosecution was instituted with malice.
5. The prosecution caused damage to the plaintiff's reputation, freedom, or property.

False Imprisonment

False imprisonment, on the other hand, is a total restraint on an individual's freedom of movement for some time, however short, without a lawful excuse. The restraint may be physical or mental, and it may also be actual or constructive.

The important elements of false imprisonment, highlighted in the seminal case of ***Bird v. Jones*** (1845) 7 QB 742, are:

1. The direct restraint of the plaintiff.
2. The restraint is complete.
3. The absence of a lawful justification for the defendant's act.

A well-known instance of false imprisonment is ***Bhim Singh v. State of J&K*** (AIR 1986 SC 494), in which the Supreme Court awarded compensation to Bhim Singh, a member of the J&K Legislative Assembly, who

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was wrongfully arrested by the police.

Malicious prosecution and false imprisonment both are designed to prevent and redress violations of personal liberty, though they have distinct elements and implications. The former aims to deter abuse of the legal process by vexatious litigation, whereas the latter protects the individual's right to freedom of movement from unlawful interference. Both, nonetheless, uphold the principle of legal justice by imposing liabilities on parties whose acts harm others, either by misusing legal procedures or by unjustly restraining others.

QUESTION (D): UNFAIR TRADE PRACTICES AND RESTRICTIVE TRADE PRACTICES

These two terms are pivotal in understanding competition law and consumer protection in India.

Unfair Trade Practices

Unfair Trade Practices (UTPs) generally refer to the use of various deceptive, fraudulent, or unethical methods to obtain business. UTPs could lead to consumer harm or could create unfair competition in the market.

The Consumer Protection Act, 2019, in Section 2(47), defines unfair trade practices as trade practices which, for the purpose of promoting the sale, use or supply of any goods or services, adopts any unfair method, or unfair or deceptive practice. Examples of UTPs include false representation, false offer of gifts, misleading advertisements, and withholding vital product information from the consumer.

The case of *Laxmi Engineering Works v. PSG*

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Industrial Institute (1995) illustrated unfair trade practice when the defendant misrepresented the manufacturing process of its product, causing detriment to the plaintiff's business.

Restrictive Trade Practices

Restrictive Trade Practices (RTPs) involve practices that restrict or distort competition. These practices can take various forms, such as collusion, exclusive dealing, or price fixing. RTPs were initially governed under the Monopolies and Restrictive Trade Practices Act, 1969 (MRTP Act), which was later repealed and replaced by the Competition Act, 2002.

Section 3 of the Competition Act, 2002, prohibits any agreement which causes or is likely to cause an appreciable adverse effect on competition within India. Such agreements could include practices like tie-in arrangements, exclusive supply or distribution agreements, and cartels.

The case of **Excel Crop Care Limited v. Competition Commission of India** (2017) marked a significant development in India's anti-cartel enforcement regime. The Supreme Court affirmed the orders of the Competition Commission of India and held that even 'hub-and-spoke' cartels come within the purview of RTPs.

QUESTION (E): CONTRIBUTORY NEGLIGENCE AND COMPOSITE NEGLIGENCE

Contributory Negligence

Contributory negligence arises when the plaintiff's own

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lack of care played a part in causing the plaintiff's injury. This principle acts as a defense for the defendant, although its successful application leads to a complete bar to recovery in some jurisdictions, while in others (including India), it leads to a proportionate reduction in damages.

A prime case illustrating contributory negligence is ***Jagdishwari Prasad v. State of Bihar*** (2002). In this case, the deceased was riding a motorcycle without a helmet and collided with a car. It was held that the deceased was 25% contributory negligent, which led to a reduction in the compensation awarded.

Composite Negligence

Composite negligence refers to the situation where more than one person contributes to the negligent act, resulting in damage. In such a case, the injured person or the plaintiff can sue all or any one of the joint tortfeasors for full compensation. The burden of sharing the damages will be on the joint tortfeasors themselves.

In the case of ***Municipal Corporation of Delhi v. Sushila Devi*** (1999), it was held that when injury is caused due to the composite negligence of two or more persons, the victim has the choice of proceeding against both or any one of them. In this case, an accident occurred due to the combined negligence of the driver and the municipal corporation. The plaintiff was entitled to recover the full amount of damages from either of them.

Contributory negligence and composite negligence are two significant doctrines under the Law of Torts which

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deal with situations where the negligence is not entirely attributable to one person. They are vital in determining liability and apportioning damages

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PART-B (12.5 MARKERS)

Q2. "EVEN WHEN A PLAINTIFF PROVIDES PROOF FOR THE EXISTENCE OF ALL THE ESSENTIAL ELEMENTS OF A TORT, IT IS POSSIBLE IN SOME CASES FOR THE DEFENDANT TO TAKE CERTAIN PLEA WHICH CAN REMOVE HIS LIABILITY". DESCRIBE THE GENERAL EXCEPTIONS REGARDING THE TORTS THAT ARE NOT ACTIONABLE WITH THE HELP OF DECIDED CASE LAWS.

ANSWER: Even when a plaintiff has substantiated all the essential elements of a tort, there exist a variety of defenses that a defendant may invoke to mitigate or absolve their liability. The essence of these defenses is that even though the defendant's act might have resulted in damage, certain justifications exist that makes it non-actionable. Some of the notable exceptions to actionable torts are:

1. Volenti Non Fit Injuria (Consent):

Volenti Non Fit Injuria is a Latin term which means 'to a willing person, injury is not done'. This principle postulates that if a person willingly places themselves in a position where harm might result, knowing that some degree of harm might result, they are not able to bring a claim against the other party in tort or delict.

The classic case demonstrating this defense is *Hall v Brooklands Auto Racing Club* (1933). In this case, a spectator at a car race was injured due to a collision between two racing cars. The court held that the defendant was not liable because the spectator, who had

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voluntarily come to the race, had consented to the risk.

2. Plaintiff the Wrongdoer:

This defense applies when the plaintiff has engaged in an illegal act which contributes to their injury. This principle is summed up as, "no action arises from an immoral cause," (Ex turpi causa non oritur actio).

An exemplar case is **Ashton v Turner** (1981). Here, two thieves after robbing a house crashed their getaway car. The passenger thief attempted to sue the driver for injuries caused by his negligent driving. The court denied the claim, as both were involved in an illegal act.

3. Act of God (Vis Major):

This defense exonerates a defendant when the damage is caused by natural forces such as storms, earthquakes, or floods, which are unforeseeable and unpreventable. The act of God must be so unexpected that no amount of human foresight and skill could have anticipated it.

The principle was famously applied in **Nichols v Marsland** (1876). In this case, exceptionally heavy rainfall - such as had never been witnessed - led to the overflowing of artificial lakes. The defendant, who was the owner of the lakes, was held not liable for the damage caused to the plaintiff's property by the flood.

4. Inevitable Accident:

This defense applies when an accident is caused by something which the defendant could not prevent by taking any amount of care. The action must have been unforeseeable and unpreventable.

The case of **Stanley v Powell** (1891) illustrates this principle. Here, a woodman was not held liable when a

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pellet ricocheted off a tree and hit a fellow worker. This was considered an inevitable accident as it was unforeseeable and unpreventable.

5. Necessity:

This defense applies when damage is caused to prevent a greater harm. The defendant may not be held liable if they acted out of necessity to avoid a greater evil.

The seminal case is **Cope v Sharpe** (1912). In this case, a gamekeeper set fire to a peat moss to prevent the spread of a larger fire. He was held not liable for the damage caused to the plaintiff's land due to the defense of necessity.

6. Private Defense:

A person may repel force by force in defense of their person, habitation, or property against one who manifests an intention to commit a felony or who manifests an intention to enter violently or by surprise.

The case of **Bird v Holbrook** (1828) helped establish this principle. A person set up spring guns in his garden to prevent intruders. The court held that a person is not entitled to set traps to cause harm to trespassers, except in cases where life is in danger.

7. Statutory Authority:

If the act causing harm is authorized by legislation, the defendant may be exonerated from tortious liability.

The principle is illustrated in **Vaughan v Taff Vale Railway Co.** (1860). Here, the railway company was held not liable for the nuisance caused by the noise and vibration of the trains because the railway was constructed under the statutory authority.

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These defenses, when successfully invoked, absolve the defendant from liability for the damage caused by their actions or omissions. They underscore the fact that tort law is not just about compensating victims but also about balancing competing interests in society, such as the individual's interest in freedom from harm and the community's interest in progress, development, and individual freedom.

Q3. "MR. RAM ASKS FOR A LIFT FROM A MOTORIST BALRAM. RAM IS TOLD BY BALRAM 'I AM NOT AN EXPERT DRIVER. I AM WITHOUT A DRIVING LICENCE TOO. YOU MAY TRAVEL AT YOUR OWN RISK'. RAM TRAVELS WITH BALRAM. LATER, THE MOTOR VEHICLE COLLIDES WITH A BUS DUE TO DEFECTIVE BRAKES OF BALRAM'S VEHICLE. RAM SUES BALRAM FOR INJURIES SUFFERED BY HIM IN THE ACCIDENT. BALRAM TAKES THE PLEA OF 'VOLENTI NON FIT INJURIA'. DECIDE, THE MAXIM IN LIGHT OF THE LEGAL PROVISIONS."

ANSWER: To establish the defense of 'volenti non fit injuria' ('to a willing person, injury is not done'), it needs to be shown that the plaintiff voluntarily agreed to incur the harm, understanding fully the nature and extent of the risk. In essence, this defense requires the consent to risk, not just the consent to the act.

In the provided scenario, Mr. Ram was aware that Balram was not an expert driver and did not possess a

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driving licence. Balram had explicitly warned Mr. Ram that he would be travelling at his own risk. By choosing to travel with Balram nonetheless, Mr. Ram could be said to have accepted the risk associated with Balram's driving skills and experience. In such circumstances, the defense of 'volenti non fit injuria' may seem applicable.

However, it's important to note that 'volenti non fit injuria' does not simply refer to any consent or acceptance of risk, but to an informed consent, i.e., consent given with full knowledge of the nature and extent of the risk. The critical question is whether Mr. Ram knew and accepted the specific risk that led to his injury – the defective brakes. Balram's warning pertained to his driving skills and lack of a licence, but there was no mention of defective brakes.

Notwithstanding Mr. Ram's acceptance of the risks associated with Balram's poor driving skills, it does not necessarily follow that he accepted the risk of injury due to the defective brakes. From the facts provided, it can be inferred that Mr. Ram was not informed about the defective brakes and, therefore, could not have consented to the risk arising from them.

The English case **Nettleship v Weston** (1971) provides a pertinent parallel. In this case, a learner driver crashed the car during a driving lesson, injuring her instructor. The court held that the instructor had not accepted the risk of injury due to the learner's negligence by merely agreeing to teach her to drive. The court noted that consent to the risk of injury due to another's negligence cannot be easily inferred.

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By analogy, in the case at hand, even though Mr. Ram agreed to travel with Balram knowing his poor driving skills and lack of a licence, it cannot be easily inferred that he consented to the risk of injury due to defective brakes.

Therefore, based on the information available, the plea of 'volenti non fit injuria' is not likely to be successful in absolving Balram from liability for Mr. Ram's injuries. Balram had a duty of care to his passenger, Mr. Ram, and he breached this duty by failing to ensure the vehicle's brakes were in proper working condition. This breach of duty caused harm to Mr. Ram, fulfilling the essential elements of the tort of negligence. As such, Mr. Ram would have a strong case for claiming damages from Balram for his injuries.

'Volenti non fit injuria' is a common law principle that has been accepted and applied in various legal jurisdictions, including Indian law. It falls under the umbrella of general defenses in the law of torts and typically applies when a person willingly and knowingly assumes the risk of potential harm.

However, consent under 'volenti non fit injuria' is not assumed lightly by the courts. It requires a full understanding and appreciation of the risk at hand. Mere knowledge of a generic risk is not enough; the plaintiff must have consented to the specific risk that caused the harm. This is evident in the decision in **Smith v Baker** (1891), where the plaintiff was aware of the general risk but was held not to have consented to the negligent act that caused the injury.

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Furthermore, the 'volenti' defence is usually ineffective when there is a statutory duty involved. For instance, under the Motor Vehicles Act 1988 in India, it is a statutory duty for a driver to have a valid driving license and to maintain their vehicle in a fit and safe condition. This suggests that Balram could not escape his duty to keep his car, specifically its brakes, in a safe condition, and Mr. Ram's consent would not override this responsibility.

In the landmark case **Murray v Harringay (Greyhound) Ltd** (1947), it was held that even though the plaintiff knew about the general risks, he did not consent to the negligence of the defendant. Similarly, in the case at hand, Mr. Ram may have consented to travel with a novice, unlicensed driver but did not consent to travel in a car with defective brakes.

Moreover, 'volenti non fit injuria' doesn't apply where a relationship of contract exists. In the case of **Bowater v Rowley Regis Corp** (1944), the plaintiff was an employee who was instructed to ride on the step of a dustcart which was not designed for carrying passengers. He was injured when he fell off. The court held that 'volenti non fit injuria' did not apply as the plaintiff was only doing his job. Applying this rationale to our case, if there was any sort of contractual relationship between Ram and Balram (like Ram paying for the lift), then Balram's plea of 'volenti' would be even weaker.

Consequently, taking into account the legal provisions and precedents, it seems that Balram's plea of 'volenti

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non fit injuria' may not absolve him from liability for Mr. Ram's injuries. His lack of a driving licence, his admission to not being an expert driver, and the defective condition of the brakes, all breach the statutory duties imposed upon him under road traffic regulations. Despite Mr. Ram's agreement to travel at his own risk, the specific risk he faced – that of defective brakes – was not disclosed to him. Hence, it could be strongly argued that his consent did not extend to this risk. Consequently, Balram could be held liable under the law of torts for negligence.

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Q4. A.) DISCUSS THE LEGAL PRINCIPLE RELATING FOR THE TORT OF NEGLIGENCE
B.) GAUTAM WAS GOING ON MOTOR CYCLE ON A ROAD ADJOINING A PIECE OF LAND OWNED BY CHARANJEET. SOME CHILDREN WERE PLAYING FOOTBALL ON THAT LAND WITH THE PERMISSION OF CHARANJEET. THE BALL, WHEN KICKED BY A CHILD, CROSSED THE BOIUNDARY OF THE LAND AND WENT ON THE ROAD. THE BALL CAUSED GAUTAM TO HAVE AN ACCIDENT WHICH RESULTED IN HIS DEATH. THE WIDOW OF GAUTAM FILED A SUIT FOR DAMAGES AGAINST CHARANJEET WHO WAS NEGLIGENT IN ALLOWING THE CHILDREN TO PLAY ON HIS LAND WITHOUT TAKING PROPER PRECAUTIONS SO AS TO PREVENT THE BALL FROM GOING TO THE ROAD. DECIDE THE LIABILITY OF CHARANJEET. YOUR ANSWER MUST BE SUPPORTED WITH THE DCIDED CASE LAWS.

a. The Legal Principle Relating to the Tort of Negligence

Negligence is a tort, a civil wrong that causes harm or injury due to a breach of a legal duty owed by the defendant to the plaintiff. The English case *Donoghue v Stevenson* (1932) is the foundation of the modern law of negligence, where Lord Atkin established the "neighbor principle": one must take reasonable care to

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avoid acts or omissions which could reasonably be foreseen to injure their 'neighbour', who is anyone who may be affected by the act or omission.

Negligence is predicated on three fundamental elements:

1. **Duty of Care:** The defendant owed a duty of care to the plaintiff. This duty exists when the relationship between the parties could reasonably lead one to foresee that their actions could cause harm to the other.
2. **Breach of Duty:** The defendant breached that duty by not conforming to the required standard of conduct (the standard of a 'reasonable man').
3. **Damage:** The defendant's negligent conduct caused harm to the plaintiff. This harm must be a direct result of the breach and must have been foreseeable.

In addition, the plaintiff must prove that the harm was not too remote a consequence of the breach of duty - the "proximate cause" principle. In *The Wagon Mound (No. 1)* (1961), it was held that the defendant could only be held liable for damage which was reasonably foreseeable.

b. The Liability of Charanjeet

In the presented case, the widow of Gautam filed a suit against Charanjeet alleging negligence. To establish negligence, we must examine if Charanjeet owed a duty of care, if he breached this duty, and if this breach caused Gautam's death.

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Firstly, did Charanjeet owe a duty of care to road users like Gautam? This hinges on whether it was foreseeable that a ball from the land could enter the road and cause an accident. If this was reasonably foreseeable, Charanjeet had a duty to take adequate precautions to prevent such an occurrence.

Secondly, was there a breach of this duty? This would depend on whether Charanjeet took reasonable precautions to prevent the ball from entering the road. If no precautions were taken despite the foreseeability of the risk, this could be deemed a breach of duty.

Finally, did this breach cause Gautam's death? Was it foreseeable that such a breach could result in fatal harm to a road user? If so, Charanjeet could potentially be found negligent.

However, a key aspect to consider is whether Gautam contributed to the accident by not acting as a reasonable road user himself. This concept of "contributory negligence" may reduce or even eliminate Charanjeet's liability if it is found that Gautam also acted negligently.

To determine the outcome, we can reference a similar case, **Pearce v Brooks** (1866), where it was stated that an individual can only be found liable for negligence if their actions directly cause harm to another individual and if it was foreseeable that their actions could have such an effect.

It should also be mentioned that **Bolton v Stone** (1951) is a pertinent case. Here, the defendants were not held liable when a cricket ball struck a passer-by outside the cricket ground, as such an incident was considered so

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unlikely that a reasonable person wouldn't have taken precautions.

Given the complexities of this case, the court would have to weigh multiple factors, including the foreseeability of the accident, the precautions taken by Charanjeet, and the actions of Gautam. It is plausible that Charanjeet could be found partially or entirely liable for Gautam's death due to his negligence, depending on the specific circumstances and factual determinations made by the court. If Charanjeet knew or should have known that the children's play posed a danger to road users and did not take reasonable steps to prevent this risk, he could be found liable.

However, factors such as the frequency of balls going onto the road, the proximity of the play area to the road, whether incidents like this happened before, the time of the day, visibility, and other conditions might all be relevant considerations to determine the foreseeability of the risk and whether Charanjeet should have taken extra precautions. Furthermore, it's also relevant to consider whether Gautam was driving attentively, or if there were other contributory factors that caused the accident.

In the English case of *Miller v Jackson* (1977), the court held that the defendant was not liable for the cricket balls frequently landing in the plaintiff's garden, as the cricket ground had been there before the plaintiff's house was built and the community benefit of the cricket ground was taken into account. The plaintiff was aware of the cricket ground when moving in and

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had to accept the associated risks.

If a case analogous to *Miller v Jackson* was decided in the Indian context, considering factors like usage of land, the benefit of the community, and the plaintiff's awareness of the situation, the court might hold that Charanjeet was not liable if such factors exist.

In conclusion, determining Charanjeet's liability involves balancing the duty of care he owed to road users and the standard of care he should have taken, based on the risk's foreseeability and the specific circumstances. There's no categorical rule and the court will examine all evidence and factors in detail to decide whether Charanjeet was indeed negligent and is, thus, liable for Gautam's untimely death.

Q5. A.) WHAT IS "NO FAULT LIABILITY"

B.) A AND B CO. LTD. WAS ENGAGED IN HAZARDOUS AND INHERENTLY DANGEROUS ACTIVITY. DEADLY TOXIC GAS LEAKED AS A RESULT OF AN EARTHQUAKE. EXPOSURE TO THE TOXIC GAS CAUSED DEATH OF ATLEAST ONE THOUSAND PERSONS IN AND AROUND THE PLANT PREMISES. EXPLAIN THE LAW TO BE APPLIED FOR DECIDING THE LIABILITY OF A AND B CO. LTD. WITH HELP OF DECIDED CASE LAWS

a.) No Fault Liability

"No Fault Liability" refers to a legal principle in which

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liability for damages is imposed regardless of any actual negligence or intent to harm. It is a strict liability concept where the defendant is held liable for the damages caused, not due to any wrongful act on their part, but merely due to the fact that they were responsible for the act that caused the damage.

In a no-fault liability claim, the injured party does not need to prove that the person responsible for the injury was negligent or at fault to be eligible for compensation. It's a concept generally applied in circumstances involving hazardous activities where, due to the nature of the activity, harm could be caused even when all reasonable precautions have been taken.

An example of no-fault liability in law is the Motor Vehicles Act of India. Under Section 140 of the Act, compensation is provided to victims or their families in case of death or permanent disablement due to accidents involving motor vehicles, regardless of any wrongful act, neglect, or default of the person who suffered the accident.

b.) Liability of A and B Co. Ltd.

The case presented seems to involve the principle of Strict Liability and its evolved version, Absolute Liability, as it relates to hazardous activities.

The doctrine of Strict Liability was first laid out in ***Rylands v Fletcher*** (1868), where it was held that a person who brings onto his land and collects and keeps there anything likely to cause mischief if it escapes, must keep it at his peril, and, if he fails to do so, is prima facie liable for the damage caused by the escape.

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However, this doctrine has exceptions, such as act of God, third party's act, the plaintiff's own fault, consent of the plaintiff, and statutory authority. In the given case, A and B Co. Ltd. might attempt to use the 'act of God' exception, arguing that the earthquake was an unforeseeable natural event that they had no control over.

However, Indian jurisprudence has advanced from Strict Liability to Absolute Liability, particularly in cases dealing with hazardous and inherently dangerous industries. This was famously established in the **M.C. Mehta v Union of India case** (1987), also known as the Oleum Gas Leak case, where the Supreme Court of India evolved the principle of Absolute Liability.

The Court held that an enterprise, which is engaged in a hazardous or inherently dangerous industry, has an absolute and non-delegable duty to ensure that no harm results to anyone on account of the hazardous nature of the activity. Any harm caused on account of such activity will make the enterprise absolutely liable to compensate for such harm.

Importantly, such liability is not subject to any exceptions, unlike the rule in **Rylands v Fletcher**. An enterprise can't escape liability by arguing that they had taken reasonable care and the incident occurred due to an unforeseen event or factor beyond their control.

Applying this to the case of A and B Co. Ltd., despite the earthquake being an 'act of God', the company may still be held absolutely liable for the deaths caused by the toxic gas leak, given the inherently dangerous nature of

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their activity. The company has a strict and absolute duty to the community to ensure that no harm results from their activities, and any harm caused would make the company absolutely liable to compensate for the same. Hence, the law to be applied for deciding the liability of A and B Co. Ltd. would likely be the principle of Absolute Liability as established in ***M.C. Mehta v Union of India***.

the concept of "No Fault Liability" is closely tied to the doctrine of "Strict Liability" and its evolved version, "Absolute Liability".

Strict liability originated in English law with the case of ***Rylands v. Fletcher*** (1868), where the court ruled that a person who maintains a hazardous substance on their property is liable for damage caused if that substance escapes, regardless of whether they were negligent in permitting the escape. The justification for this rule was that the person who makes "non-natural" use of their land and brings onto it something likely to cause harm if it escapes, should be held accountable for any resulting damage, since they're making a special use of the land for their own benefit.

Yet, the strict liability rule under ***Rylands v. Fletcher*** allowed for several exceptions, including act of God, the plaintiff's own fault, the act of a third party, and statutory authority, which could absolve a defendant of liability.

However, Indian tort law has evolved beyond this principle to the more stringent doctrine of "Absolute Liability" or "No Fault Liability". This development was

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most prominently seen in the case of ***M.C. Mehta v Union of India*** (1987), also known as the **Oleum gas leak case**, following the Bhopal gas tragedy.

The Supreme Court of India, in this case, held that an enterprise which is engaged in hazardous or inherently dangerous activities, must ensure that no harm results to anyone on account of such activities. The enterprise is "absolutely" or "strictly" liable to compensate for such harm, irrespective of whether they were at fault or not. This is what's now termed as "No Fault Liability".

Justice Bhagwati, delivering the judgment, explained that such hazardous enterprises are a potential threat to the health and wellbeing of people working in the enterprise and residing in surrounding areas. They owe an absolute and non-delegable duty to the community to ensure safety and integrity of people and the environment. If any harm occurs, they must be absolutely liable to compensate those affected and such liability isn't subject to any exceptions.

Thus, the principle of No Fault Liability in the context of tort law essentially means that a party is liable for the damages caused by their actions, regardless of any fault or negligence on their part. It's particularly applicable in cases where the activities involved are inherently hazardous or dangerous. The party cannot avoid liability by showing that they had taken all reasonable care and that the mishap was an accident or act of God.

No Fault Liability doctrine under Indian tort law is about ensuring that businesses or individuals engaged in hazardous activities are held responsible for any harm

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caused, regardless of fault, thereby encouraging them to prioritize safety and risk management. It reflects a societal decision to protect innocent victims who suffer harm due to such activities, without the burden of proving negligence, which can often be challenging and time-consuming.

Q6. A.) CRITICALLY EXAMINE THE DEVELOPMENT OF THE LAW RELATING TO VICARIOUS LIABILITY OF THE STATE. ALSO STATE THE MAIN FEATURES OF THIS LIABILITY

B.) ONE QUINTAL OF SILVER WAS STOLEN FROM THE SHOP OF A. THE WHOLE QUANTITY OF SILVER WAS RECOVERED BY THE POLICE FROM B WHO WAS PROSECUTED FOR OFFENCE OF THEFT. PENDING DECISION OF THE PROSECUTION THE SILVER WAS DEPOSITED IN THE POLICE MALKHANA FROM WHERE THE SAME WAS AGAIN STOLEN BY SOMEONE DUE TO THE NEGLIGENCE OF THE OFFICER IN CHARGE OF THE MALKHANA. DECIDE THE LIABILITY OF THE STATE WITH THE HELP OF DECIDED CASE LAWS.

a.) Development of the Law Relating to Vicarious Liability of the State

The doctrine of vicarious liability, in simple terms, holds one person accountable for the actions of another. In the

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context of state, it means the government can be held responsible for the tortious acts of its servants or agents, while they are in the course of performing their duties.

Historically, the British Common Law principle was to immunize the Crown, as epitomized by the maxim, "the King can do no wrong". However, over time, recognizing the need for just and equitable treatment of its citizens, this principle has evolved, and the state is now held accountable for the wrongful acts of its servants.

In India, this transition is evident in the constitutional provisions. Article 300 of the Indian Constitution provides that the Government of India or of a State may sue or be sued by the name of the Union of India or the State, respectively. However, this doesn't automatically establish vicarious liability for all acts of government employees.

The landmark case of ***Kasturi Lal Ralia Ram Jain v. State of Uttar Pradesh*** (1965) helped to refine the scope of the state's liability. The Supreme Court held that the state can only be held vicariously liable for tortious acts of its employees if the act was committed during the course of an activity which can be undertaken by a private individual or a non-sovereign body. The state isn't vicariously liable for acts committed during the exercise of sovereign functions that can only be performed by a state, such as maintaining law and order, arresting criminals, or conducting searches.

However, this doesn't mean that citizens have no recourse in case of tortious acts committed by state officials during the exercise of sovereign functions. The

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government officer can be sued in their personal capacity, and disciplinary action can be taken against them by the state.

Main Features of State's Vicarious Liability

1. **Based on the employer-employee relationship:** The state can only be held vicariously liable for the actions of its servants or employees, not for independent contractors or non-state actors.
2. **Acts must be committed during the course of employment:** The wrongful act must have been committed while the employee was performing their official duties.
3. **Sovereign vs Non-Sovereign Functions:** If the tortious act was committed while performing a sovereign function, the state generally isn't held vicariously liable, whereas it can be held liable for tortious acts committed during non-sovereign functions.

b. Liability of the State in the given Scenario

Based on the *Kasturi Lal* case and subsequent jurisprudence, the key question to determining the state's liability is whether the negligent act – in this case, the silver being stolen from the police Malkhana due to officer negligence – was committed during the course of a sovereign or non-sovereign function.

The safekeeping of confiscated or recovered property, like the stolen silver in this case, can be seen as a regular policing duty. Policing, as a whole, is typically classified

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as a sovereign function. Thus, following the *Kasturi Lal* doctrine, the state may not be held vicariously liable for the silver's theft.

However, there's a growing judicial trend towards a narrower interpretation of sovereign functions and expanding the scope of the state's liability to ensure justice. In ***State of Rajasthan v. Mst. Vidhyawati*** (1962), the Supreme Court held the state liable for the negligence of a government driver, even though he was a government servant, as driving a vehicle isn't a sovereign function.

If this progressive interpretation is applied, the court could hold the state vicariously liable, reasoning that safekeeping of property isn't a uniquely sovereign function, as it could also be performed by a private security firm, for example.

Nonetheless, the definitive answer would depend on how the court interprets the nature of the function in this specific case. Regardless, the negligent officer can be held personally liable for the loss due to negligence, and disciplinary action can be initiated against them by the state.

While there's a clear framework for determining the state's vicarious liability, there's room for interpretation, and each case is decided on its individual facts and circumstances. The principle of fairness and justice often guides these interpretations, balancing the need for state accountability with practical considerations.

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Q7. "ABSENCE OF KNOWLEDGE THAT A MATTER IS DEFAMATORY OF ABSENCE OF INTENTION TO INJURE THE PLAINTIFF'S REPUTATION IS, BY ITSELF, AN EXCUSE FOR THE DEFENDANT IN TORT." DISCUSS THIS STATEMENT WITH APPROPRIATE LEGAL PROVISIONS AND DECIDED CASE LAWS.

ANSWER: The statement provided refers to the legal principle of defamation in tort law, specifically to the role of knowledge and intention on the part of the defendant. In defamation law, a defendant's knowledge or intention is generally not considered a deciding factor in determining liability.

Defamation is a statement that injures a third party's reputation. The tort of defamation includes both spoken (slander) and written statements (libel). The essential elements that constitute defamation include:

1. The statement must be defamatory.
2. It must refer to the plaintiff.
3. It must be published, meaning that it must be communicated to at least one person other than the plaintiff.

Under the law of torts, defamation is generally considered a strict liability tort. This means that if the essential elements of defamation are proven, the defendant is liable regardless of whether they intended to defame or even knew that the statement was defamatory. This is aligned with the principle that every person has a duty to be aware of the potential consequences of their actions, especially when they can

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harm others.

The well-known English case ***Pullman v. Hill & Co.*** (1891) clarifies this principle. In this case, a letter containing defamatory content was mistakenly sent to the wrong party due to a clerical error. Even though the defendant did not intend to publish the letter to a third party, the court held that they were still liable for defamation because the letter had been published.

However, it is essential to note that the defendant has available defenses in a defamation suit, such as truth, fair comment, absolute privilege, qualified privilege, and apology. These defenses may be applicable even if the defendant did not know the statement was defamatory or did not intend to defame.

The defense of truth, for instance, which is considered the absolute defense in defamation, operates on the basis that a statement, no matter how damaging, cannot be defamatory if it is true. This was established in the case of ***Alexander v. North Eastern Railway Co.*** (1865). The court held that the truth of the defamatory statement is a complete defense, regardless of the intention to defame.

While the absence of knowledge that a matter is defamatory or absence of intention to injure the plaintiff's reputation could potentially sway the court towards a more lenient view, it is not an absolute defense in defamation. Under strict liability torts like defamation, it is generally the act itself, rather than the defendant's state of mind or intention, that is the basis of liability. Therefore, the statement as given is generally

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accurate under the law of torts, subject to the application of defenses.

Q8. EVEN THOUGH THERE IS PREVAILING CONSUMER PROTECTION ACT, IT IS STILL DOUBTFUL AS TO HOW FAR THE OBJECTIVES OF THE ACT ARE ACHIEVED. IN THE LIGHT OF THIS STATEMENT, COMMENT ON THE OBJECT, SCOPE AND NATURE OF CONSUMER PROTECTION ACT, 1986

ANSWER: The Consumer Protection Act, 1986 (CPA), was enacted to provide a simple, speedy, and inexpensive redressal to consumers' grievances, acknowledging the unique vulnerability of consumers in the marketplace. It emerged in response to the growing complexities of the modern marketplace, recognition of the consumers' rights and the need to protect and promote those rights.

Objectives of the Consumer Protection Act, 1986

The primary objective of the Act is to ensure the protection of consumers from unfair trade practices and to provide for a mechanism to address consumer complaints effectively. Some of the key objectives include:

1. **Protecting Consumer Rights:** The Act aimed to protect the interests of consumers against deficient goods and services, unfair trade practices, and other forms of exploitation.
2. **Redressal Mechanism:** The Act set up a

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unique three-tier consumer dispute redressal mechanism at the district, state, and national levels, providing a forum for consumers to seek redressal of their grievances.

3. **Promoting Fair Trade Practices:** The Act aimed to curb unfair trade practices and ensure that goods and services supplied in the market meet the necessary standards.
4. **Consumer Awareness:** The Act also aimed to educate and inform consumers about their rights and responsibilities.

Scope and Nature of the Consumer Protection Act, 1986

The Act's scope extends to all goods and services until explicitly exempted by the Central Government, and covers private, public, and cooperative sectors. It provides remedies for 'unfair trade practices,' 'defects,' 'deficiencies,' and 'excess prices,' providing consumers with a range of protections.

It provides a broad definition of 'consumers.' A consumer is not only a person who buys goods or hires services for personal use but also includes beneficiaries of such goods and services when used with the approval of the person who bought the goods or hired the services.

Its nature is inherently remedial and welfare-oriented. It is a social welfare legislation aiming to protect the economic interests of the society's weaker and vulnerable sections.

Effectiveness of the Consumer Protection Act,

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1986

The Act has indeed been a significant legislative milestone. It has provided a forum for consumers to seek redressal for their grievances, which has led to significant judgments against corporations, public utilities, hospitals, real estate companies, etc.

However, despite the Act's objectives and provisions, the ground reality indicates some challenges and gaps:

1. **Awareness:** A significant percentage of the Indian population is unaware of their rights and the protections offered by the Act, hampering its effective implementation.
2. **Access and Speed of Justice:** Although the Act envisaged a speedy redressal mechanism, cases often get stuck in procedural complexities, leading to delays.
3. **Inadequate Infrastructure:** The consumer forums set up under the Act face issues like vacancies, inadequate staff, and infrastructure, which impede their functioning.
4. **Unscrupulous Traders:** Despite the provisions of the Act, unscrupulous and unfair trade practices continue, exploiting the ignorance or vulnerability of consumers.

These challenges necessitated amendments to the Act to strengthen consumer rights. The Consumer Protection Act, 2019, replaced the 1986 Act, intending to overcome these challenges, further empower consumers, and address emerging consumer issues in a digital era.

While the objectives of the Consumer Protection Act,

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1986, are laudable, their realization has been a mixed bag. Both the legal framework and the societal awareness need to work in tandem for the effective realization of consumer rights. With the new Act of 2019, there is hope for better consumer protection in the evolving market dynamics.

(ADDITIONAL)

The Consumer Protection Act of 2019 was enacted to address the deficiencies of the 1986 Act and to better adapt to the new market realities shaped by digital technology and e-commerce. Here are a few significant improvements made in the 2019 Act:

1. **Wider Definition of Consumer:** The 2019 Act has expanded the definition of a consumer. The Act now includes any person who buys any goods, whether through offline or online transactions, through electronic means, teleshopping, direct selling, or multi-level marketing. This is a significant change, reflecting the realities of the modern digital marketplace.
2. **Establishment of Central Consumer Protection Authority (CCPA):** The 2019 Act has provisioned for a regulatory authority known as CCPA, giving it powers to take suo-moto actions when necessary, recall products, order reimbursement of the price of goods/services, and discontinue unfair trade practices.
3. **E-Commerce Regulations:** The Act introduces rules for e-commerce and provides for penalizing e-commerce entities for non-

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compliance. It mandates e-commerce platforms to disclose direct selling entities on their platforms, thereby increasing transparency.

4. **Product Liability & Penal Consequences:** For the first time, the concept of 'Product Liability' has been introduced in India. A manufacturer, service provider, or seller can be made liable to compensate for harm caused to the consumer due to defective products or deficiency in services.
5. **Unfair Contracts:** The Act provides for the circumstances in which contracts will be deemed unfair and sets out the rights of consumers in these cases. This is a new addition compared to the 1986 Act.
6. **Dispute Resolution:** The 2019 Act, aiming for quicker disposal of cases, has revised the pecuniary jurisdiction of the District Commissions, State Commissions, and the National Commission, thus reducing the burden on these forums and allowing for quicker disposal of complaints.
7. **Mediation:** Another new feature of the 2019 Act is the provision of mediation as an Alternate Dispute Resolution mechanism. A separate chapter on mediation has been included, which will help in the speedy resolution of disputes.

In conclusion, the 2019 Act is a significant improvement over the 1986 Act, providing more comprehensive and effective protection to consumers in light of

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contemporary challenges. It reflects the changing dynamics of the marketplace and aims to address the newer types of disputes and issues arising in the digital age. However, the effectiveness of the Act will depend on how well its provisions are executed and how it manages to protect consumer interests in the ever-evolving market landscape.

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Q9. DEFINE THE FOLLOWING TERMS AS PER SECTION 2 OF THE CONSUMER PROTECTION ACT, 1986 WITH THE HELP OF DECIDED CASE LAWS:

A.) CONSUMER

B.) COMPLAINT

C.) GOODS AND SERVICES

A.) Consumer

As per Section 2(1)(d) of the Consumer Protection Act, 1986, a consumer is defined as any person who:

1. Buys any goods for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any user of such goods other than the person who buys such goods for consideration paid or promised or partly paid or partly promised, or under any system of deferred payment, when such use is made with the approval of such person.
2. Hires or avails of any services for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any beneficiary of such services other than the person who hires or avails of the services for consideration paid or promised, or partly paid and partly promised, or under any system of deferred payment when such services are availed of with the approval of the first-mentioned person.

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Case Law: In the case of **Laxmi Engineering Works vs PSG Industrial Institute** (1995 AIR 1428), the Supreme Court held that if a person buys goods for commercial purpose i.e., for use in business to earn profits, he/she is not a consumer under the Act. However, if goods are bought for self-employment, then he/she is considered a consumer.

B.) Complaint

As per Section 2(1)(c) of the Act, "complaint" means any allegation in writing made by a complainant that:

1. An unfair trade practice or a restrictive trade practice has been adopted by any trader or service provider;
2. The goods bought by him or agreed to be bought by him suffer from one or more defects;
3. The services hired or availed of or agreed to be hired or availed of by him suffer from deficiency in any respect;
4. A trader or service provider, as the case may be, has charged for the goods or for the services mentioned in the complaint, a price in excess of the price fixed by or under any law for the time being in force or displayed on the goods or any package containing such goods;
5. Goods which will be hazardous to life and safety when used are being offered for sale to the public.

Case Law: In **Spring Meadows Hospital vs Harjot Ahluwalia** (AIR 1998 SC 1801), the Supreme Court defined deficiency in service and observed that there can

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be a 'deficiency in service' by medical practitioners. Services which are availed of for a price can also be deficient, and thus a complaint under the Act would be maintainable.

C.) Goods and Services

As per Section 2(1)(i) of the Act, "goods" means every kind of movable property other than actionable claims and money; and includes stock and shares, growing crops, grass, and things attached to or forming part of the land which are agreed to be severed before sale or under the contract of sale.

As per Section 2(1)(o) of the Act, "service" means service of any description which is made available to potential users and includes the provision of facilities in connection with banking, financing, insurance, transport, processing, supply of electrical or other energy, board or lodging or both, housing construction, entertainment, amusement or the purveying of news or other information, but does not include the rendering of any service free of charge or under a contract of personal service.

Case Law: In the case of **Indian Medical Association vs V.P. Shantha & Others** (AIR 1996 SC 550), the Supreme Court interpreted the term 'service' to include a profession and held that medical practitioners also render service. Hence, they can be held liable under the Act for their services. The court also observed that where a patient is charged fees for a consultation, it would amount to a service under the Consumer Protection Act.

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PAPER 2

PART A

QUESTION 1: WRITE SHORT NOTES ON THE FOLLOWING:

QUESTION (A): ACT OF GOD

The **Act of God** or "vis major" refers to a legal concept describing events that are outside of human control, such as natural disasters like hurricanes or earthquakes, which no one can reasonably be held accountable for.

In the law of torts, the principle of Act of God serves as a defence for the tortfeasor when damage is caused by natural and inevitable catastrophes. The act of God defence is based on the premise that no human foresight can reasonably predict and therefore prevent such disasters.

Essentials of Act of God

The following elements constitute an act of God:

1. **Natural Occurrence:** The event must be a natural disaster, such as an earthquake, cyclone, heavy rain, etc.
2. **Unpredictability:** The event must be unexpected and not foreseeable.
3. **Irresistible Force or Event:** The event could

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not have been prevented even with the application of reasonable care and skill.

Legal Provisions and Case Law

In India, Section 56 of the **Indian Contract Act, 1872**, also reflects on the principle of the Act of God. It states that an agreement to do an impossible act is void. If the act becomes impossible due to the act of God, it will be considered as void.

The principle was well-discussed in the landmark case of **Nichols v. Marsland (1876)**, where the defendant had artificial lakes on his land. An unprecedented amount of rainfall, which was termed an Act of God, led to the bursting of the artificial lakes and destruction of four bridges downstream. The defendant was held not liable as he could not foresee the extraordinary rainfall.

In another example, a bus accident caused by soil erosion due to heavy rains constituted an Act of God. The Court ruled that the bus owner would not be liable because the event was unforeseeable and no amount of human care and skill could have averted it.

However, it's important to note that the Act of God defence can't be claimed if human activity contributed to the damage, as was established in the case of **Rylands v. Fletcher (1868)**, where the defendant was held liable for the flooding caused by his reservoir despite an unusual amount of rain.

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QUESTION (B) VICARIOUS LIABILITY

Vicarious liability is a legal doctrine that assigns liability for an injury to a person who did not cause the injury but who has a particular legal relationship to the person who did act negligently. It's commonly applied to employers, who can be held liable for the damages caused by their employees during the course of employment.

Principles of Vicarious Liability

The following are the basic principles of vicarious liability:

1. **Course of Employment:** The wrongful act must be committed by an employee during the course of their employment. The employer is not liable for a wrongful act done by the employee outside the scope of his employment.
2. **Employer-Employee Relationship:** There must be a relationship of employer and employee. The principle of vicarious liability doesn't apply on an independent contractor.
3. **Wrongful Act:** A wrongful act or omission by the employee which gives rise to the legal damage.

Legal Provisions and Case Law

The doctrine of vicarious liability is largely a creation of common law principles.

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One example could be that the liability of the employer is based on the principle “qui facit per alium facit per se”, meaning, "he who does an act through another is deemed in law to do it himself".

The principle was also emphasized in the famous English case of **Limpus v. London General Omnibus Co. (1862)**, where a bus company was held liable for the wrongful act of its employee despite explicit instructions against such behaviour.

In another case, the driver of the vehicle owned by the Electricity Board killed a pedestrian. It was held that the owner of the vehicle is liable as the accident occurred due to negligence of the driver during the course of his employment.

Thus, while Act of God serves as a valid defence against liability in certain unforeseen and unpreventable circumstances, vicarious liability imposes an obligation on employers to be held responsible for their employees' negligent actions during the course of their employment.

QUESTION (C) FALSE IMPRISONMENT

False imprisonment is a tort that protects an individual's right to freedom of movement. It is an act of the defendant which causes the unlawful confinement of the plaintiff.

Essentials of False Imprisonment

1. **Unlawful Detention:** The plaintiff must be

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detained and cannot leave a particular area due to the conduct of the defendant.

2. **Knowledge of Confinement:** The plaintiff must be aware of his confinement, or at least harmed by it.
3. **No Legal Justification:** The defendant must have no legal justification or authority to confine the plaintiff.

Legal Provisions and Case Law

In India, false imprisonment can be both a crime and a tort. The wrongful restraint and wrongful confinement are recognized under the **Indian Penal Code (Sections 339 and 340)**.

The principle of false imprisonment was clearly established in the case of **Meering v Grahame White Aviation Co. (1919)**. In this case, the plaintiff was held in a room by the defendant's employees until the arrival of a police officer. The court held that even though the plaintiff did not know at the time that he was being confined, the defendant was liable for false imprisonment.

In another notable case, **Bird v Jones (1845)**, the defendant blocked off part of a public walkway, thereby restraining the plaintiff's movement. The court held that this did not constitute false imprisonment as there were alternative routes available to the plaintiff.

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QUESTION (D) DIFFERENCE BETWEEN SLANDER AND LIBEL

Defamation is a false statement that harms the reputation of an individual. It is divided into two categories: **slander** and **libel**.

1. **Slander:** Slander is the spoken or oral defamatory statement. Slander is transitory and non-physical, making it harder to prove. The plaintiff must prove special damages, i.e., some financial loss, in order to successfully claim slander.
2. **Libel:** Libel is the defamatory statement made in a fixed medium, such as writing, pictures, or broadcast. Libel is more permanent and can often be proven more easily. In libel cases, damage is presumed, and the plaintiff doesn't necessarily have to prove special damages.

Legal Provisions and Case Law

In India, defamation is both a civil tort and a criminal offence, punishable under **Section 499 of the Indian Penal Code**.

In the landmark case of **Monson v Tussauds Ltd. (1894)**, the defendant exhibited a waxwork of the plaintiff labelled as a notorious criminal. The court held it to be libel as it harmed the plaintiff's reputation.

The distinction between slander and libel was well-explained in the case of **Theogaraj v. Subramaniam**

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(AIR 1959 Mad 410), where the Madras High Court observed that slander is spoken defamation and libel is written, and the latter is considered more serious because of its permanency.

Therefore, while both false imprisonment and defamation infringe on personal rights, they do so in very different ways. False imprisonment infringes on the right to freedom of movement, while defamation (including both slander and libel) infringes on the right to a good reputation.

QUESTION (E) PRINCIPLE OF STRICT LIABILITY

The **Principle of Strict Liability**, also known as the **Rylands v. Fletcher Rule**, is a legal doctrine in the law of torts that holds a defendant liable for harm caused by their activities, irrespective of any negligence or intent to harm. This principle applies when the defendant's activities were dangerous and the defendant had knowledge of the potential risk involved.

Essentials of Strict Liability

1. **Dangerous Thing:** The defendant must have brought, collected or stored a dangerous thing on his land.
2. **Escape:** The dangerous thing must escape from the area where the defendant has occupation or control.

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3. **Non-Natural Use of Land:** The use of the land by the defendant is considered non-natural or special if it increases the danger to others.
4. **Damage:** Some damage must result from the escape of the dangerous thing.

Legal Provisions and Case Law

The principle of strict liability originated from the landmark English case **Rylands v. Fletcher (1868)**. In this case, the defendant owned a mill and built a reservoir on his land. The water from the reservoir broke into a mine owned by the plaintiff. The court held that the defendant was liable as he had made a non-natural use of his land which led to the accumulation of water, a dangerous thing, that eventually caused damage when it escaped.

This principle was further explained in the case of **M.C. Mehta v. Union of India (1986)**, known as the Oleum Gas Leak Case. The Supreme Court of India, while applying and redefining the principle of strict liability, stated that industries engaged in hazardous activities owe an absolute and non-delegable duty to the community to ensure safety and if harm results on account of such activity, the enterprise must be held to be under an obligation to compensate.

However, there are certain exceptions to the rule, such as act of God, the plaintiff's own fault, act of a third party, consent of the plaintiff, statutory authority, etc., where the defendant may not be held liable under the

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principle of strict liability.

The principle of strict liability is an important doctrine in the law of torts, providing a measure of protection against the harm caused by inherently dangerous activities. It assigns liability to defendants not based on any fault or negligence on their part, but simply because they were engaged in a dangerous activity that caused harm.

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PART-B (12.5 MARKERS)

Q1. "IN THE TORT, THE RIGHTS AND OBLIGATIONS ARE CREATED BY THE COURTS APPLYING COMMON LAW". ELABORATE THE STATEMENT BY ENUMERATING THE DIFFERENCES BETWEEN TORTS AND LAW OF CONTRACTS.

The quoted statement is a reflection of the inherent characteristic of tort law, which largely originates from the principle of common law. Common law, also known as case law or precedent, is law developed by judges through decisions of courts and similar tribunals, as opposed to statutes adopted through the legislative process. **Tort law** is primarily based on judgments made in the past and the principle of 'stare decisis' (to stand by things decided) is applied, which ensures that cases with similar facts and issues are approached in a consistent manner.

Contract law, on the other hand, is primarily codified and statutory in nature. The obligations and rights arising out of contracts are governed by the provisions of the contract and the laws which regulate them, such as the **Indian Contract Act, 1872**, in India.

There are several key differences between tort law and contract law, which are outlined below:

1. Basis of Law

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As aforementioned, tort law is primarily derived from common law, established through court decisions over time. It is a branch of law that has evolved from societal norms and customs. Contract law, however, is primarily statutory, derived from legislation, with obligations and rights expressly agreed upon by the parties involved.

2. Origin of Duty

In tort law, duties are imposed by the law itself. These duties are owed to persons generally and their breach is redressible by an action for unliquidated damages. The duty in tort is towards persons generally, owed to the community at large.

In contrast, in contract law, the duties are created by the agreement between the parties. They are owed to specific individuals or parties, and their breach is redressible by an action for agreed, or liquidated, damages.

3. Consent of Parties

In tort, the consent of parties to the act is irrelevant as the duties are imposed by law. However, in contract law, consent is fundamental. Contracts are based on a mutual agreement between the parties and the obligations are consensual.

4. Damage and Remedy

In tort law, damage is not necessary for some torts, such as trespass, where the court may award nominal damages. Remedies in tort are unliquidated damages,

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injunctions, or specific restitutions.

However, in contract law, a breach of contract without damage does not generally give rise to an action. Remedies for breach of contract are typically liquidated damages or specific performance.

5. Limitation Period

The limitation period in tort law is generally shorter than in contract law. For example, in India, as per the Limitation Act, 1963, the limitation period for filing a suit for torts is one year, whereas for contracts, it is three years.

Case Laws Illustrating the Differences

A famous case that illustrates the distinction between tort and contract law is **Donoghue v Stevenson (1932)**. The plaintiff suffered gastric illness after consuming a ginger beer that contained a decomposed snail. She sued the manufacturer, even though there was no contractual relationship between them. The House of Lords held that the manufacturer owed a duty of care to her, which had been breached, leading to the establishment of the principle of negligence in tort law.

On the other hand, the case of **Carlill v Carbolic Smoke Ball Co. (1893)** demonstrates a contractual obligation. The defendant company had advertised that anyone who used their product but still contracted influenza would be awarded £100. The plaintiff used the product, contracted influenza, and claimed the reward. The court held the defendant liable, stating that the advertisement

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amounted to a unilateral contract, which the plaintiff had accepted by performance.

In conclusion, tort law and contract law, though both integral parts of civil law, fundamentally differ in their origin, nature of obligations, and remedies provided. These differences are a testament to the intricate balance in the legal system between codified law and law derived from societal norms and judicial precedents. Understanding these differences is crucial in determining the correct legal approach and resolution for a given situation.

Q2. IN STATE OF RAJASTHAN V. VIDYAWATI, THE HON'BLE SUPREME COURT HELD, "ACT DONE IN THE COURSE OF EMPLOYMENT BUT NOT IN CONNECTION WITH SOVEREIGN POWERS OF THE STATE, STATE LIKE ANY OTHER EMPLOYER IS VICARIOUSLY LIABLE". IN LIGHT OF THE STATEMENT, DISCUSS WHEN THE STATEMENT CANNOT BE HELD VICARIOUSLY LIABLE FOR ITS FUNCTIONS.

To delve into the concept of the state's vicarious liability, it is crucial to understand the judgment in the seminal case of **State of Rajasthan v. Vidyawati (AIR 1962 SC 933)**. This landmark decision played a pivotal role in determining the State's responsibility for tortious acts committed by its employees.

In this case, a government vehicle driven by a driver

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employed by the government hit a pedestrian, causing his death. The government contended that it could not be held liable for the acts committed by its employees. The Hon'ble Supreme Court, however, ruled that the government would be liable like any private employer, as the driver was not exercising any sovereign function when the accident occurred.

This leads us to the crux of the matter: the delineation between sovereign and non-sovereign functions of the state. Sovereign functions are those that are traditionally and exclusively performed by the state and are core to its governance. These functions include defence of the country, maintenance of law and order, administration of justice, conducting foreign affairs, etc. Non-sovereign functions, on the other hand, include commercial activities or services that the state might undertake, like running a transport service or a factory, which could also be carried out by a private individual or organization.

As per the principle laid down in Vidyawati's case, the state is not vicariously liable for tortious acts committed during the exercise of sovereign functions by its employees. This is because such acts are deemed necessary for the functioning and preservation of the state, and imposing liability could potentially impede these critical operations.

A further examination of this principle can be found in the case of **Kasturilal Ralia Ram Jain v. State of U.P. (AIR 1965 SC 1039)**. In this case, gold belonging to the plaintiff was seized by the police, but it was later

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found to be stolen from the police custody. The Supreme Court held that the act of the police in seizing the gold was a sovereign function. Therefore, despite the fact that the act was done negligently, the state was not held liable.

However, the line between sovereign and non-sovereign functions has become increasingly blurred in recent times as the state has expanded its role and taken up various welfare and commercial activities. The courts have increasingly leaned towards the principle of 'strict liability' for the state, recognizing that the binary of sovereign and non-sovereign functions may not be suitable in a modern welfare state.

In the case of **Common Cause, A Registered Society v. Union of India (1999 AIR 2979)**, it was held that the State, like any other employer, can be vicariously liable for the tortious act of its employee. The court held that the concept of immunity of the State for sovereign functions has no relevance in the modern era.

The principle of vicarious liability of the state in India is complex, with the traditional division between sovereign and non-sovereign functions undergoing a transformation in the face of a changing governance paradigm. While the state cannot be held vicariously liable for tortious acts committed during the exercise of its sovereign functions, the reach of this immunity is being progressively narrowed by judicial interpretation. As a result, the trend is increasingly towards holding the state accountable for the acts of its employees, in

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keeping with the tenets of justice, fairness, and the modern notion of the welfare state.

Q3. WHAT ARE THE GENERAL DEFENCES THAT CAN BE USED TO JUSTIFY THE COMMISSION OF A TORTIOUS ACT? WHAT IS THE RELEVANCE OF THE MAXIM “NULLUS COMMODUM CAPERE POTEST DE INJURIA SUA PROPRIA” IN THIS REGARD?

Tort law, as a branch of civil law, recognises certain defences which the defendant can invoke to absolve or mitigate liability for the tortious act committed. These defences play a crucial role in maintaining the balance between the plaintiff's rights and the defendant's liberties.

General Defences in Tort Law

- 1. Volenti Non Fit Injuria (Consent):** This maxim translates to "to a willing person, injury is not done". It applies when the plaintiff consented to the risk of harm. The defendant must prove that the plaintiff fully understood the nature and extent of the known risk.
- 2. Plaintiff the Wrongdoer:** This defence applies when the plaintiff was involved in a wrongdoing at the time the alleged tort was committed. The maxim "ex turpi causa non oritur actio" (no action arises from an immoral cause) encapsulates this principle.
- 3. Inevitable Accident:** This defence applies when the

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accident could not have been avoided despite reasonable care and skill. The burden is on the defendant to prove that all possible precautions were taken.

4. Act of God: This defence can be invoked when the injury was caused by natural causes directly without human intervention, and could not have been prevented by any amount of foresight or precautions.

5. Private Defence: The use of reasonable force to protect one's person or property is a valid defence. The force must not be excessive and should be proportionate to the threat.

6. Necessity: It can be invoked when the tortious act was committed under circumstances which made it necessary to avert a greater evil.

7. Statutory Authority: When a statute authorises a particular act, it often serves as a complete defence against tortious liability, even if it causes harm. This is encapsulated in the principle "actio personalis moritur cum persona" (a personal action dies with the person).

Maxim "Nullus Commodum Capere Potest De Injuria Sua Propria"

The maxim "Nullus commodum capere potest de injuria sua propria" translates to "no one can take advantage of his own wrong". This legal principle posits that a person cannot benefit or seek remedy from a situation he has created through his own wrongful act.

This principle is relevant in tort law because it provides

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a rationale for certain defences, particularly 'Plaintiff the Wrongdoer' and 'Volenti Non Fit Injuria'. In the first instance, a plaintiff cannot claim damages for an injury suffered as a result of his own illegal act. Similarly, in the case of 'Volenti Non Fit Injuria', a plaintiff who has voluntarily agreed to a risk cannot later complain about a harm resulting from it.

Relevance in Case Law

For instance, in the case of **Smith v. Baker (1891)**, the plaintiff, a construction worker, was injured by a stone falling from a crane. He had been working in proximity to the crane and was aware of the risk involved. However, the court held that mere knowledge of the danger did not amount to consent, and 'Volenti Non Fit Injuria' could not be applied. The maxim "Nullus commodum capere potest de injuria sua propria" was relevant here in determining whether the plaintiff could take advantage of his own wrong.

General defences in tort law provide a balance to ensure that liability is fairly attributed and that individuals cannot benefit from their own wrongful conduct. The maxim "Nullus commodum capere potest de injuria sua propria" serves to underscore this important legal and moral principle. Understanding the complexities of these defences and principles is essential to the equitable administration of justice.

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Q4. WRITE SHORT NOTES ON THE FOLLOWING: (A) VOLENTI NON-FIT INJURIA (B) INEVITABLE ACCIDENTS

(a) Volenti Non-Fit Injuria

'Volenti Non-Fit Injuria', a Latin term, translates to 'no injury is done to the person who consents'. It is a fundamental principle in tort law, which dictates that if someone willingly places themselves in a position where harm might result, they are not able to bring a claim against the other party in tort or delict.

The doctrine of Volenti Non-Fit Injuria works on the premise that a person is not legally permitted to complain of harm which has been consented to, thereby precluding the right to any claim for damages. However, for this principle to apply, it's important to establish that the person consenting was fully aware of the nature and extent of the potential risk.

To illustrate, let's consider the case of **Hall v Brooklands Auto Racing Club (1933)**. In this case, the claimant, a spectator at a car race, was injured when two cars collided and crashed where the claimant was standing. The court held that the doctrine of Volenti Non-Fit Injuria applied as the claimant, by attending the race, had impliedly accepted the risk of injury from the race.

However, the application of Volenti Non-Fit Injuria has its limitations. For example, it doesn't apply in cases where the defendant owes a duty of care to the claimant,

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as in the relationship between an employer and employee. The employer cannot escape liability for injury to an employee on the grounds of this defence.

Additionally, the concept of 'implied consent' is also crucial to the principle of Volenti Non-Fit Injuria. For example, in the case of **Smith v Baker & Sons (1891)**, the plaintiff was injured while engaged in his employment, having been struck by a stone. The defendant argued that the plaintiff had willingly accepted the risks of his employment. The court held that the plaintiff's awareness of the danger did not equate to consent.

(b) Inevitable Accident

An inevitable accident refers to an event that could not have been prevented or avoided despite taking reasonable care and precaution. It is a defence in tort law where the defendant can argue that the accident occurred without his fault and despite exercising all due care and diligence. It implies that the event was beyond human foresight and prediction.

To successfully invoke this defence, the defendant must demonstrate that the incident was not foreseeable and the precautions taken were reasonable. Further, it must be proven that the accident couldn't have been prevented by any degree of human care and skill.

The principle of inevitable accident comes into play primarily in cases of negligence. For instance, in the case of **Stanley v Powell (1891)**, a pheasant was shot, and

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the bullet, upon ricochet, hit a person. The court concluded it was an inevitable accident as the defendant could not have foreseen or prevented the injury.

However, the burden of proving an inevitable accident is quite high. The defendant must show that the accident was solely due to an external cause, with no contributing negligence on their part. It must also be established that despite exercising all due care, the accident was not avoidable.

Both these allow the defendant to mitigate or escape liability. Both principles underscore the complexity and balance in tort law, reflecting the need to protect individuals' rights and interests, while ensuring accountability and justice in cases of harm or injury.

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Q5. HOW IS PUBLIC NUISANCE DIFFERENT FROM PRIVATE NUISANCE? SUPPORT YOUR ANSWER WITH RELEVANT CASE LAW ON THE TOPIC.

Nuisance as a tort refers to an act causing unreasonable and unlawful interference with a person's use or enjoyment of his property or his rights over it. It is categorised into two distinct types: Private Nuisance and Public Nuisance.

Private Nuisance

Private nuisance is an interference with a person's enjoyment and use of his land. This interference must be substantial and unreasonable, and could be in the form of noise, smoke, smell, fumes, water, vibration, etc. The damage could be physical damage to the land or discomfort and inconvenience to the occupier. The principle underlying the tort of private nuisance is "use your own property in such a manner as not to injure that of another" (*Sic utere tuo ut alienum non laedas*).

A well-cited case is **St. Helen's Smelting Co. v. Tipping (1865)**. In this case, the defendant's copper smelting activities caused physical damage to the trees on the claimant's land and also caused discomfort to the claimant. The House of Lords held that the defendant was liable for the physical damage caused, irrespective of the location. For the discomfort caused, the claimant's right to comfort was to be balanced against the defendant's actions.

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Public Nuisance

Public nuisance, on the other hand, is a crime as well as a tort, which affects an individual's rights extending over the community at large or a considerable number of persons, even though the extent of the annoyance or damage inflicted upon individuals may be unequal. It affects public health, safety, peace, comfort, or convenience. It must affect a class of people and not merely one individual.

An example is **Attorney General v PYA Quarries Ltd (1957)** where the defendant's quarrying operations produced dust and noise affecting several hundred residents in the locality. The court held that the operations constituted a public nuisance as they affected a significant number of people in the community.

Differences between Private and Public Nuisance

The primary difference between the two lies in the class of persons it affects. Private nuisance concerns interferences with an individual's enjoyment of land, while public nuisance is about activities which affect a section of the public.

Another key difference is the nature of the harm. Private nuisance generally causes inconvenience or harm to a specific person in their use or enjoyment of land. Public nuisance, on the other hand, may cause a wide array of harms affecting health, comfort, and convenience of the public generally.

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Also, remedies differ. In private nuisance, an individual can directly bring an action and claim damages or seek an injunction. However, in public nuisance, usually, an action is brought by the Attorney General in the name of the Crown. An individual can only sue if they have suffered 'particular damage', i.e., damage above and beyond that suffered by the general public.

While both types of nuisances concern interference with comfort or property, the scope and nature of the interference determine the categorisation and the applicable legal remedies.

Q6. WITH THE ADVENT OF SOCIAL MEDIA, PUBLICATION OF DEFAMATORY STATEMENTS HAS NEVER BEEN EASIER. WHAT ARE THE INGREDIENTS OF DEFAMATION UNDER LAW OF TORTS AND HOW ARE THESE INGREDIENTS FULFILLED IN CASES OF DEFAMATION OVER SOCIAL MEDIA.

Defamation is a tort that involves the making of a false statement about a person, which damages their reputation. It's designed to protect an individual's reputation from unfair attack. In tort law, defamation can either be libel (defamation in written form, including images) or slander (defamation in spoken word).

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Ingredients of Defamation

There are four essential ingredients to establish a case of defamation:

1. **Defamatory Statement:** A statement can be considered defamatory if it tends to lower the claimant in the estimation of right-thinking members of society generally or tends to make them shun or avoid the claimant.
2. **Identification of the Plaintiff:** The defamatory statement must be in reference to the person who is claiming defamation. It should be such that those who know or know of the claimant could believe that the statement was about them.
3. **Publication:** The defamatory statement must have been communicated to at least one person other than the plaintiff.
4. **Damage to the Plaintiff's Reputation:** There must be some injury to the plaintiff's reputation as a result of the defamatory statement. Libel is actionable per se (i.e., without proof of actual damage), whereas slander usually requires proof of actual damage.

Defamation over Social Media

In the context of social media, these ingredients are fulfilled in the following ways:

1. **Defamatory Statement:** A defamatory

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statement could be a post, comment, video, or image that negatively affects the reputation of an individual. This could be something as straightforward as a false accusation, or as nuanced as an insinuation or innuendo.

2. **Identification of the Plaintiff:** On social media, this can occur when a person is tagged, their username is used, their photo is included, or even when they are indirectly alluded to but identifiable to those familiar with them or the context.
3. **Publication:** Sharing the defamatory content on a social media platform, which is accessible to others, constitutes publication. Given the potential for viral spread on social media, the scope for extensive publication is enormous.
4. **Damage to the Plaintiff's Reputation:** The wide reach of social media means that damage can be significant and immediate. It can affect a person's relationships, employment, and social standing.

Courts are increasingly dealing with defamation cases emanating from social media. For instance, the 2012 case of **Brett Wilson LLP v Persons Unknown** demonstrated the English High Court's willingness to award substantial damages for defamatory tweets.

While the ingredients of defamation remain the same, their application in the context of social media has

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introduced new complexities. The easy dissemination of information on these platforms means that defamatory statements can spread quickly and widely, causing significant harm to individuals' reputations. The law continues to evolve to tackle these challenges and ensure that individuals are protected against unjust defamation.

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Q7. WHAT IS THE DEFINITION OF 'GOODS' AND 'SERVICES UNDER THE CONSUMER PROTECTION ACT, 1986? IN THE RECENT TIMES, NEWER BUSINESS MODELS HAVE EMERGED WHERE AGGREGATORS LIKE UBER AND AMAZON ARE SERVING AS CHANNELS BETWEEN SELLERS/SERVICE PROVIDERS AND THE END CONSUMERS. ARE THE SERVICES RENDERED BY THESE AGGREGATORS MAKE THEM LIABLE IN A CONSUMER COURT? WRITE YOUR OPINION.

According to the Consumer Protection Act, 1986:

- **Goods** are defined under Section 2(i) as 'every kind of movable property other than actionable claims and money; and includes stock and shares, growing crops, grass, and things attached to or forming part of the land which are agreed to be severed before sale or under the contract of sale'. This broad definition encompasses virtually all kinds of movable property, whether tangible or intangible.
- **Services** are defined under Section 2(o) as 'service of any description which is made available to potential users and includes the provision of facilities in connection with banking, financing insurance, transport, processing, supply of electrical or other energy, board or lodging or both, housing construction, entertainment, amusement or the purveying of

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news or other information, but does not include the rendering of any service free of charge or under a contract of personal service'. Services, therefore, include a vast array of facilities provided to consumers, except those provided free of charge or under a personal service contract.

In recent years, the advent of aggregators like Amazon and Uber has added a new layer of complexity to consumer protection laws. As intermediaries, they act as a link between consumers and sellers/service providers, facilitating transactions without necessarily providing the goods or services themselves.

The liability of these aggregators under consumer law has been a subject of debate and litigation in many jurisdictions. The key question is whether these aggregators merely provide a platform for transactions (and hence fall outside the scope of 'service provider') or whether they play a more active role that makes them liable under consumer law.

In the case of **Uber India Systems Pvt. Ltd. Vs. Competition Commission of India (2019)**, the Delhi High Court held that Uber is an 'enterprise' providing radio taxi services and falls within the purview of the Consumer Protection Act. It stated that the algorithm used by Uber to determine pricing is controlled by Uber and not the driver, suggesting a more significant role than a mere facilitator.

Similarly, Amazon has faced litigation across the globe

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regarding its liability for defective or harmful products sold on its platform. A notable case is **Amazon.com Inc. vs. Erie Insurance Co. (2020)** in the U.S., where the appellate court held that Amazon could be held liable for defective goods sold on its marketplace, reversing a lower court ruling.

In India, the recent **Consumer Protection Act, 2019**, which replaced the older 1986 Act, introduces the concept of 'e-commerce entities' and recognises them as 'electronic service providers'. This can be seen as a step towards making aggregators liable for goods and services provided through their platforms.

In my opinion, given the influence and control these aggregators exercise over transactions (through reviews, ratings, pricing, terms and conditions, etc.), they can and should be held liable under consumer law. Their role goes beyond merely providing a platform, influencing both the buyer's decision and the quality of the goods or services provided. Hence, holding them accountable would strengthen consumer rights and ensure a higher standard of goods and services in the digital marketplace.

However, it's also essential to balance this with the need to promote business innovation and not overburden these platforms with undue liability, which could stifle growth and competition. Therefore, it's crucial to clearly define their responsibilities and liabilities in line with their level of control and influence over transactions.

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Introduction

The Consumer Protection Act, 2019 ("CPA, 2019") is a comprehensive legal instrument in India, established to safeguard consumers' interests, providing a legal framework for consumer rights and redressal mechanisms. Ramesh's situation is a classic example of a dispute that falls under this Act, as it pertains to a disagreement over the obligations of a service provider towards a consumer.

Ramesh's Legal Stand

Ramesh has a strong case under the CPA, 2019. As a consumer, he is entitled to protection against unfair trade practices and the right to be informed about the quality, quantity, potency, purity, standard and price of goods or services, as the case may be, as required under section 2(9) and 2(10) of the CPA, 2019. Here, Geartel Communications' refusal to repair Ramesh's phone under the insurance cover can be construed as an unfair trade practice as per section 2(47) of the CPA, 2019, which includes any failure to fulfill express warranties or obligations under a contract.

The Insurance Contract

The nature and extent of the insurance cover are vital factors in this case. As a rule of thumb, insurance contracts should be interpreted according to the rule of 'contra proferentem', that is, any ambiguity should be interpreted in favor of the insured (Ramesh in this case), and against the insurer (Geartel Communications).

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Thus, if the insurance contract was not clear in defining "accidental damage," Ramesh could argue that his understanding was a reasonable one. It is crucial that the policy wording is explicit and comprehensible to a layman, failing which the benefit of doubt goes to the insured.

Remedies Available to Ramesh

Ramesh has the right to seek redressal under the CPA, 2019, which could involve:

1. **Removal of the Defect:** Ramesh can demand that Geartel Communications honour its promise and repair the damaged phone at its cost.
2. **Replacement:** If the phone is beyond repair, Ramesh can demand a replacement phone of the same model and specifications.
3. **Return of the price or charges:** If none of the above is feasible, Ramesh can demand a refund of the amount he paid for the phone.
4. **Compensation:** Ramesh can seek compensation for any loss or injury suffered due to the negligence of Geartel Communications.
5. **Cease and desist orders:** Ramesh can also demand that Geartel Communications discontinue its unfair trade practices, and not repeat them in the future.
6. **Punitive damages:** If the court is convinced that Geartel Communications' actions were

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egregious, it might impose punitive damages on them.

Approach to the Competent Forum

The first step is to determine the appropriate forum for Ramesh to file his complaint. The CPA, 2019 provides for a three-tiered structure of consumer dispute redressal forums based on the value of the claim:

1. District Consumer Disputes Redressal Commission: If the value of the claim is up to INR 1 crore.
2. State Consumer Disputes Redressal Commission: If the value of the claim is between INR 1 crore and INR 10 crore.
3. National Consumer Disputes Redressal Commission: If the value of the claim is above INR 10 crore.

Once the appropriate forum is determined, Ramesh should file a formal complaint. The complaint must contain details of the dispute, the unfair trade practice or defect alleged, and the relief sought. It is advisable to attach any relevant documentation, such as the purchase receipt of the phone, the insurance policy, and any correspondence with Geartel Communications. The complaint must be signed by Ramesh or his authorized agent and should be filed within two years from the date of the dispute.

Mediation

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The Consumer Protection Act, 2019, has also introduced the provision of mediation as an alternate dispute resolution mechanism, aiming to resolve consumer disputes in a timely and cost-effective manner. The consumer commission, after admission of the complaint, if it deems fit, may refer the matter to mediation. The Act has mandated the establishment of a consumer mediation cell attached to each commission.

If Ramesh and Geartel agree to mediation, the dispute could potentially be resolved without proceeding to a formal trial. However, it is essential for Ramesh to understand that mediation will only be successful if Geartel is willing to negotiate in good faith and accept a mutually agreeable solution.

Establishment of Central Consumer Protection Authority (CCPA)

Another significant provision of the CPA, 2019 is the establishment of the CCPA, a regulatory authority to promote, protect, and enforce the rights of consumers. CCPA is vested with wide-ranging powers, including the power to take suo-motu actions, recall products, order reimbursement of the price of goods or services, and discontinue unfair trade practices. Ramesh can bring his dispute to the attention of the CCPA, which can provide him another avenue for redressal.

Understanding the New E-Commerce Rules

Considering that most of the purchases nowadays are made online, it would be pertinent to note that the CPA,

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2019 and the Consumer Protection (E-Commerce) Rules, 2020 have also made provisions regulating e-commerce entities. If Ramesh purchased the phone online, he could invoke the rules which mandate e-commerce entities to acknowledge the receipt of any consumer complaint within forty-eight hours and redress the complaint within one month from the date of receipt under Rule 4.

Role of Advocacy

Ramesh, through his legal counsel, needs to establish a few things in court. Firstly, he needs to show that he is a consumer within the meaning of the Act, and that Geartel Communications is a service provider. Secondly, he needs to establish that the phone was insured and that the accident falls within the purview of the insurance contract. Lastly, he must establish that Geartel's refusal to repair the phone was unjust, thus constituting an unfair trade practice.

Judicial Precedents

A significant case involving consumer rights and unfair trade practice is the **Laxmi Engineering Works v. P.S.G. Industrial Institute** (AIR 1995 SC 1428).

In this landmark case, the Supreme Court held that when services are rendered free of charge, a person will not be deemed to be a 'consumer.' However, if a person pays for goods or services, regardless of whether a profit is made, they will be considered a consumer. Further, it was also clarified that the nature of the defect or

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deficiency in the goods or services would need to be demonstrated by the complainant before the Consumer Forum.

This case sets the precedent on the definition of the consumer and the burden of proof, which could provide important context for Ramesh's situation. It emphasizes the importance of demonstrating a deficiency in the goods or services – in Ramesh's case, the refusal of Geartel Communications to honor its insurance claim could constitute such a deficiency.

The Consumer Protection Act, 2019, has significantly empowered consumers by recognizing their rights and providing them with effective redressal mechanisms. Ramesh, with the help of the Act, can ensure that Geartel Communications fulfill its obligations and compensate him for the loss he has suffered. As his lawyer, it would be essential to guide him through the process and represent his interests effectively in the appropriate forum. The success of his case would, however, depend on the interpretation of the insurance contract, the evidence, and the jurisprudence of the consumer court.

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PAPER 3

PART A

QUESTION 1: WRITE SHORT NOTES ON THE FOLLOWING:

QUESTION. (A) WRITE SHORT NOTE ON DISTINGUISH BETWEEN STRICT LIABILITY AND ABSOLUTE LIABILITY.

Strict Liability Vs Absolute Liability

The concepts of strict and absolute liability are integral to the understanding of Tort law, serving to assign responsibility for harm or damages even in the absence of intent or negligence. However, significant differences exist between these two concepts, which are apparent when examining their definitions, principles, exceptions, and legal precedent.

Strict Liability

The rule of strict liability was initially articulated in the seminal English case of **Rylands v Fletcher** [1868] UKHL 1. The defendant is held liable for damages caused by a non-natural use of land, which results in the escape of a dangerous thing from his premises, even if he was not negligent.

The essentials for invoking strict liability include:

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1. **Non-natural use of land:** The defendant's use of land must be special, extraordinary, or unnatural.
2. **Escape:** A dangerous thing from the defendant's land must escape and cause damage.
3. **Damage:** The plaintiff must suffer some form of damage.

However, there are exceptions to the rule of strict liability, which absolve the defendant of liability. These exceptions include:

1. **Plaintiff's own fault:** If the harm was caused due to the plaintiff's own mistake.
2. **Act of God:** If the harm resulted from natural causes beyond human control, such as storms or earthquakes.
3. **Consent of the plaintiff:** If the plaintiff had given consent for the activity.
4. **Statutory authority:** If the act causing the damage was permitted by a statute.
5. **Act of third party:** If the harm was due to the independent act of a third party.

Absolute Liability

In contrast, the rule of absolute liability, first established in the Indian case of **M.C. Mehta v. Union of India** AIR 1987 SC 1086, does not offer such exceptions. The court held that any enterprise engaged in a hazardous or

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inherently dangerous activity, which results in harm to anyone, would be absolutely liable to compensate those affected, irrespective of the precautions taken.

The key elements for absolute liability are:

1. **Hazardous or inherently dangerous activity:** The defendant is involved in a hazardous or inherently dangerous activity.
2. **Escape:** Something dangerous escapes from the defendant's premises.
3. **Damage:** This escape causes harm to the plaintiff.

The rule of absolute liability is more stringent and has a wider scope than strict liability. Unlike strict liability, absolute liability doesn't recognize any exceptions – even the Act of God or third party intervention cannot absolve the defendant from liability.

Comparative Analysis

The difference between these two concepts lies in their foundational principles and applications. While strict liability is based on the doctrine of fault, absolute liability transcends this concept, holding entities responsible regardless of their negligence or fault.

Furthermore, the exceptions in strict liability provide the defendant with a potential escape route from liability. In contrast, absolute liability adheres to a 'no-fault liability' principle and doesn't allow any exceptions. This principle was upheld in the Indian case of Bhopal

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Gas Leak Disaster (**Union Carbide Corporation vs Union Of India** 1991 SCR (1) 251), where Union Carbide was held absolutely liable for the catastrophic incident, reinforcing that in highly hazardous enterprises, the responsibility for harm is absolute and unequivocal.

Thus, while both strict and absolute liability serve to hold entities accountable for damages they cause, the degree of liability and the circumstances under which they are invoked vary significantly.

QUESTION: (B) WRITE SHORT NOTE ON VOLENTI NON-FIT INJURIA

Volenti Non-Fit Injuria

The maxim 'Volenti Non-Fit Injuria', translated as 'to a willing person, no injury is done', is a fundamental principle in the Law of Torts. It suggests that if a person willingly places themselves in a position where harm might result, knowing that some risk is involved, they are not able to bring a claim against the other party in tort.

Essentials of Volenti Non-Fit Injuria

The application of the principle requires two key elements:

1. **Consent:** The plaintiff should have consented to

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the act which has caused the injury.

2. **Knowledge:** The plaintiff had knowledge of the risk involved in the act.

Consent here should be free and voluntary, and not obtained through fraud, force, or under a mistake. And the knowledge should be of the full extent of the risk involved, even if it is reckless.

Application and Exceptions

This doctrine typically applies in situations where the plaintiff has voluntarily accepted the risks associated with the activity, such as in sports (**Hall v Brooklands Auto Racing Club** [1933] 1 KB 205) or where the plaintiff willingly goes into a dangerous situation (**Haynes v Harwood** [1935] 1 KB 146).

However, several exceptions to this rule exist, including:

1. **Rescue cases:** The doctrine doesn't apply where the claimant was injured while coming to the aid of someone else in danger, as confirmed in *Haynes v Harwood*.
2. **Involuntary consent:** Consent obtained under compulsion or duress is not considered as voluntarily given.
3. **Illegal Acts:** If the activity consented to is illegal, the defendant cannot invoke this defense.
4. **Negligence:** If an employer does not provide a safe environment for an employee, the defense of

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volenti non-fit injuria cannot be used, as in Smith v Baker (1891) AC 325.

'Volenti Non-Fit Injuria' represents an important defense in the law of torts, limiting liability in cases where the plaintiff voluntarily accepted a known risk. However, this principle is not absolute, with several exceptions curtailing its application. These exceptions ensure that the principle is not used to justify negligence or to escape liability where it is due. Thus, a balance is struck between personal responsibility and the need for redress in cases of unjust harm.

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QUESTION. (C) WRITE SHORT NOTE ON ASSAULT AND BATTERY

Assault and Battery

The concepts of assault and battery represent two interrelated, yet distinct, forms of intentional torts in the domain of personal injury law. They involve intentional, non-consensual interference with the personal integrity or liberty of others.

Assault

Assault in tort law refers to the intentional act that causes the apprehension of harmful or offensive contact. Unlike in criminal law, actual physical contact is not necessary for an assault to be established in tort; it is the fear or apprehension of such contact that matters.

The essential elements of an assault include:

1. **Intention:** The defendant must have intended to cause apprehension of harmful or offensive contact.
2. **Apprehension:** The plaintiff must have apprehended immediate harmful or offensive contact.
3. **Reasonable belief:** The apprehension must be reasonable under the circumstances.

A leading case illustrating assault is **Rixon v Star City Pty Ltd** [2001] NSWCA 265, where it was held that a security guard grabbing at the plaintiff's arm constituted

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an assault even though no physical contact occurred.

Battery

Battery is the intentional and direct application of force to another person without their consent. Unlike assault, battery requires actual physical contact, which can range from a mere touch to severe violence.

The essential elements of battery are:

1. **Intention:** The defendant must have intended to cause physical contact.
2. **Direct Physical Contact:** There must be direct physical contact with the plaintiff.
3. **Lack of Consent:** The physical contact must occur without the consent of the plaintiff.

The English case of *Collins v Wilcock* [1984] 1 WLR 1172 is a significant precedent for the tort of battery, where a police officer grabbed a woman's arm without lawful reason, and it was held to be a battery.

Assault Vs Battery

While assault and battery are closely related and often occur together, the primary difference lies in the presence or absence of physical contact. An act could be an assault, a battery, or both depending on the circumstances. For instance, raising a fist in a threatening manner (causing apprehension) would be an assault, while actually striking with the fist (causing contact) would be a battery.

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QUESTION. (D) WRITE SHORT NOTE ON REMEDIES AVAILABLE UNDER THE CONSUMER PROTECTION ACT.

Remedies under the Consumer Protection Act

The Consumer Protection Act, 2019 (India), provides an elaborate mechanism for consumer redressal and confers various rights to consumers. The following remedies are available under the Act:

- 1. Removal of Defects:** The concerned authority can order the manufacturer or service provider to remove the defect pointed out by the laboratory and rectify the goods or services in question.
- 2. Replacement of Goods:** If the goods are defective beyond repair, the authority may direct the manufacturer or trader to replace the goods with new goods of similar description.
- 3. Return of Price or Charges:** If the defect in the goods or deficiency in services is not rectified within a stipulated period or if it is not feasible, the consumer may be directed to return the price of the goods or charges for the services.
- 4. Compensation:** The authority can also direct the manufacturer, trader or service provider to compensate the consumer for any loss or injury suffered due to negligence. This compensation can also account for mental agony and emotional distress suffered by the

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consumer.

5. Discontinue Unfair Trade Practices: The authority can direct the cessation of unfair trade practices or restrictive trade practices and can also prohibit them from being repeated in the future.

6. Withdrawal of Hazardous Goods: The Act provides for withdrawal of goods which are hazardous to life and safety.

7. Cease Manufacture of Hazardous Goods and Services: It also provides for the discontinuation of practices which are hazardous to the safety of consumers.

The landmark case of *Indian Medical Association v V.P. Shantha & Ors* (AIR 1996 SC 550) expanded the scope of the Act and ensured medical practitioners and hospitals fell within the definition of 'service', thus enabling patients to seek these remedies in case of medical negligence.

The Consumer Protection Act, 2019 offers a wide range of remedies to protect consumer rights and interests, and to counteract unfair trade practices. These remedies not only correct individual injustices but also serve to deter future violations.

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QUESTION. (E) WRITE SHORT NOTE ON FAIR COMMENT AS A DEFENCE IN DEFAMATION.

Fair Comment as a Defence in Defamation

Defamation, a tort involving injury to one's reputation due to false statements, has several defences, one of which is 'Fair Comment'. This defence is particularly pertinent in cases involving freedom of speech and expression, and primarily applies to statements of opinion rather than fact.

Definition and Elements of Fair Comment

Fair comment is a defence asserting that the alleged defamatory statement was a comment or opinion, rather than an assertion of fact, and it was based on facts that were accurately stated, related to matters of public interest, and was a viewpoint that any person could honestly hold based on those facts.

The essential elements of this defence are:

1. **Comment:** The statement in question must be a comment or an expression of opinion, rather than a statement of fact.
2. **Based on Facts:** The comment must be based on actual, true facts which are either stated explicitly or clearly indicated or well-known.
3. **Public Interest:** The comment must be on a matter of public interest, such as politics, public

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figures, or public works and projects.

4. **Honest Opinion:** The comment, even if it's exaggerated or prejudiced, must be one that a fair-minded person could honestly make based on the facts.

Fair Comment in Case Law

In the case of *Joseph v Spiller* [2010] UKSC 53, the UK Supreme Court clarified that the defence of fair comment requires the comment to be on a matter of public interest, it must be recognizable as comment and must be based on facts which are true or protected by privilege, and the comment must explicitly or implicitly indicate at least in general terms what are the facts on which the comment is being made.

In *Tse Wai Chun Paul v Albert Cheng* [2001] EMLR 777, the Hong Kong Court of Appeal adopted the "objective test" for fair comment, whereby a comment will be protected if it could have been made by any reasonable person, irrespective of the actual motive of the defendant.

The fair comment defence seeks to strike a balance between the right to freedom of speech and the right to protect one's reputation. It upholds the principle that individuals should be able to express honestly held opinions on matters of public interest without fear of a defamation claim, as long as the comments are not based on false facts or made maliciously. This defence underscores the commitment to open dialogue and robust debate in a democratic society.

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PART-B (12.5 MARKERS)

Q2. WHAT IS MEANT BY THE SOVEREIGN IMMUNITY OF THE STATE? EXPLAIN THE VICARIOUS LIABILITY OF THE STATE FOR THE TORT COMMITTED BY ITS SERVANTS IN THE LIGHT OF DECIDED CASES.

Sovereign Immunity and the Vicarious Liability of the State

The concept of sovereign immunity and the vicarious liability of the state in tort are two fundamental principles in the legal system that shape the contours of the relationship between the state and its citizens. In essence, sovereign immunity refers to the principle that the state cannot be sued without its consent, while the doctrine of vicarious liability refers to the legal responsibility of the state for torts committed by its employees or agents.

Sovereign Immunity

Historically, the concept of sovereign immunity finds its roots in the maxim "Rex non potest peccare," which means "The King can do no wrong." This principle encapsulates the idea that the sovereign, or the state, is immune from civil suit or criminal prosecution. The rationale behind this doctrine is to prevent the functioning of government from any obstruction due to potential legal suits.

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In the context of English law, this doctrine has been modified, and presently the Crown Proceedings Act 1947 makes the state liable for torts committed by its servants in the course of their employment, which is akin to the liability of an employer for the torts of its employees.

In contrast, in Indian jurisprudence, the application of the concept of sovereign immunity has been selective and nuanced. Under Article 300 of the Indian Constitution, the Government of India may sue or be sued by the name of the Union of India and the Government of a State may sue or be sued by the name of the State. However, the right to sue the state does not include the right to sue for actions carried out in its sovereign capacity.

Vicarious Liability of the State

The doctrine of vicarious liability refers to the liability that a supervisory party, such as an employer, bears for the actionable conduct of a subordinate or associate, such as an employee, based on the relationship between the two parties. The rationale behind this doctrine is that an employer can exercise control over the employee and should therefore be held responsible for the employee's actions undertaken in the course of employment.

The liability of the state for the tortious act of its servants has been an evolving concept. This was crystallized in the landmark case of **State of Rajasthan v Vidhyawati** AIR 1962 SC 933, where the Supreme Court of India held that in the context of

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tortious liability, the state cannot enjoy the same level of immunity as a private employer and that the government has a responsibility to compensate for damages caused by its employees in the course of their employment.

However, this rule is not absolute and there have been instances where the court has exempted the state from liability by distinguishing between sovereign and non-sovereign functions of the state. In the landmark case of *Kasturilal Ralia Ram Jain v State of Uttar Pradesh* AIR 1965 SC 1039, the Supreme Court held that the state was not liable for the tortious act of its employees, as the function in question was a sovereign function.

The court, in this case, reiterated the principle that the vicarious liability of the state is not applicable to acts committed during the exercise of sovereign functions. This was further echoed in the case of *N. Nagendra Rao & Co. v State of Andhra Pradesh* (1994) 6 SCC 205, where the court held that only functions which are closely related to the core sovereign functions of the state are exempt from liability.

In recent years, the judiciary has been more inclined to narrow the scope of the concept of sovereign immunity, thereby expanding the sphere of vicarious liability of the state. This has been done with a view to uphold the rights of the citizens and to ensure that the state is held accountable for the actions of its employees.

The doctrines of sovereign immunity and vicarious liability of the state play a crucial role in balancing the

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interests of the state and its citizens. While sovereign immunity safeguards the state from frivolous or obstructive legal action, the principle of vicarious liability ensures that citizens have a remedy for wrongs committed by state employees. This balance is critical to upholding the rule of law and maintaining public trust in state institutions. In recent years, the trend towards narrowing the scope of sovereign immunity and expanding the liability of the state is indicative of a more rights-centric approach, which augurs well for a democratic society.

Q3. DISTINGUISH BETWEEN TORT AND BREACH OF CONTRACT, TORT FROM CRIME AND GIVE EXAMPLES FROM DECIDED CASES.

Tort, Breach of Contract, and Crime: A Comparative Analysis

The concepts of tort, breach of contract, and crime, although all under the ambit of law, differ significantly in their nature, purpose, and the remedies they offer. Each of these legal constructs address and regulate different facets of human behaviour and societal interaction.

Tort vs Breach of Contract

A tort is a civil wrong that causes harm or loss, resulting in legal liability for the person who commits the tortious act. It can be intentional or due to negligence. The purpose of tort law is to restore the injured party to the

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position they were in prior to the occurrence of the tort, through monetary compensation or an injunction.

A breach of contract, on the other hand, occurs when one party to a contract fails to fulfil their contractual obligations, thereby injuring the other party. The purpose of contract law is to enforce the promises made in a contract, and to put the injured party in the position they would have been in had the contract been performed properly.

The primary differences between tort and breach of contract are:

1. **Origin of Duty:** In a tort, the duty is imposed by the law and is owed to the public in general. In a contract, the duty is voluntarily undertaken and is owed to the specific parties to the contract.
2. **Breach and Damage:** In tort, the act itself is a wrongful act, even if no damage is caused. In a contract, however, breach without damage does not constitute a cause of action.
3. **Measure of Damages:** In tort, damages are generally unliquidated and based on the principle of *restitutio in integrum*, i.e., restoration to the original condition. In contract law, damages are typically liquidated and aim to put the party in the position they would have been in if the contract had been performed.

An illustrative case is ***Donoghue v Stevenson*** [1932] AC 562, a foundational case in tort law where a snail

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found in a bottle of ginger beer led to the evolution of the modern concept of negligence. On the contrary, in **Hadley v Baxendale** (1854) 9 Exch 341, a leading case in contract law, the court developed the rule of foreseeability in contract damages after the defendant failed to deliver a crankshaft on time, causing the plaintiff to lose business.

Tort vs Crime

While both torts and crimes can constitute wrongful acts, there are significant differences between the two.

1. **Nature of Wrong:** A tort is a civil wrong against an individual, whereas a crime is a wrong against society as a whole.
2. **Legal Action:** A tort action is brought by the injured individual, while a criminal action is usually brought by the state.
3. **Standard of Proof:** In tort law, the standard of proof is "on the balance of probabilities," whereas in criminal law, the standard is "beyond a reasonable doubt."
4. **Punishment or Remedy:** The remedy for a tort is usually monetary compensation (damages), while the punishment for a crime can include fines, imprisonment, probation, or other penalties.

An example of the difference can be drawn from the case of **R v Dudley and Stephens** (1884) 14 QBD 273 DC.

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In this case, the defendants were charged with murder (a crime) after killing and eating a young boy while stranded at sea. The case resulted in criminal punishment (imprisonment). If the victim's family had brought a civil suit for wrongful death (a tort), the result might have been an order to pay damages.

Tort, breach of contract, and crime each have distinct origins, purposes, and legal consequences. While there are instances where a single act may fall into more than one category, understanding these fundamental differences is crucial in the study and practice of law. These distinctions help to shape the scope of each area of law, ultimately ensuring that justice is served in a manner appropriate to each specific case.

Q4. EXPLAIN BRIEFLY INEVITABLE ACCIDENT AND NECESSITY AS DEFENCE AGAINST LIABILITY IN TORT. SUBSTANTIATE YOUR ARGUMENT BY CITING DECIDED CASES.

Inevitable Accident and Necessity as Defences Against Liability in Tort

Inevitable accident and necessity are two distinct defences used in tort law that help limit liability in cases where the defendant's actions were beyond his control or necessary under the circumstances. Understanding these defences is crucial in appreciating the nuanced nature of tort law, which seeks to balance individual

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rights with broader societal interests.

Inevitable Accident

Inevitable accident as a defence posits that the event causing the harm was unavoidable and occurred despite the defendant exercising reasonable care and skill. It suggests that the event was not preventable by any reasonable precaution, foresight or care, and thus, liability cannot be imposed as no negligence was involved.

The use of this defence has been illustrated in the case of **Stanley v Powell** [1891] 1 QB 86. In this case, a pheasant hunter shot at a bird, and the bullet, after hitting a tree, ricocheted and hit a fellow hunter. The court held it to be an 'inevitable accident', recognising that the defendant could not have reasonably foreseen the bullet's deflection and thus was not liable.

Necessity

The defence of necessity operates on the principle that a lesser harm may be inflicted to prevent a greater one. This means that actions which would typically be considered tortious are excused if they were necessary to prevent a more significant harm.

The defence of necessity was prominently recognised in the case of **Cope v Sharpe** (No 2) [1912] 1 KB 496. Here, a gamekeeper set spring guns to protect pheasants from poachers, injuring the plaintiff. The court allowed the defence of necessity as the gamekeeper's actions were found necessary and reasonable to prevent the

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greater harm of rampant poaching.

It's worth noting that this defence is only available when the act was reasonable, proportionate to the threat, and no more than what was necessary under the given circumstances. Also, this defence may not be applicable if there was an alternative course of action available that could have reasonably been taken to avoid causing harm.

The defences of inevitable accident and necessity underscore the principle that liability in tort is not absolute. They bring to the fore the recognition that human behaviour and incidents occur within a broader societal context, where not every act can be controlled, and some actions, though causing harm, may be necessary to prevent a greater harm. These defences reflect the nuanced nature of tort law, which seeks to balance individual rights and societal interests while ensuring fairness and justice.

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Q5. WHAT IS PRIVATE DEFENCE AS A JUSTIFICATION IN TORT? WHAT IS THE EXTENT TO WHICH PROTECTIVE DEVICES CAN BE USED AGAINST TRESSPASSERS? CITE DECIDED CASES.

Private Defence and Use of Protective Devices Against Trespassers

Private defence is a concept in tort law which allows individuals to protect themselves, their property, and others from harm. The idea is that a person should not be penalized for actions reasonably taken in self-defence or the defence of their property. However, this principle needs to be balanced against the rights of others, including those who might be trespassing.

Private Defence as a Justification in Tort

The defence of private defence or self-defence arises from the need for immediate protection against harm when recourse to the protection of the law is not immediately available. The use of force in private defence is not an infringement of the legal rights of the person against whom force is used but is an exercise of one's own right.

The underlying principle is that a person has the right to defend oneself, others, and one's property against the immediate threat of harm. This has been reflected in numerous cases throughout the common law world. For example, in *Bird v Holbrook* [1828] 4 Bing 628, it was held that a person was entitled to use reasonable force to

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protect themselves from an attack.

Extent of Using Protective Devices Against Trespassers

While a person has the right to defend their property from intrusion, the law also recognizes that this right must be balanced against the risk of causing harm to others. Therefore, any protective measures used should be reasonable and proportionate to the threat posed.

In ***Katko v. Briney***, 183 N.W.2d 657 (Iowa 1971), the defendant set a spring gun in an unoccupied house to protect against repeated trespassers. When the plaintiff trespassed and triggered the device, resulting in severe injury, the court held that the defendant was liable. This is because an individual cannot use deadly force to protect their property unless they are also protecting their life or the life of another.

Similarly, in ***Bird v Holbrook***, the defendant was held liable for injuries caused to the plaintiff by a spring gun set in his garden to deter thieves. The court held that no person can do indirectly what he is forbidden to do directly. If trespassers could be expelled by the use of force, it does not imply they can be injured by means of traps.

These cases show that while protective devices can be used to deter trespassers, their use is limited. Extreme measures that may cause injury, particularly lethal injury, are not permitted, and a person who uses such measures may be held liable in tort for any harm they

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cause.

The defence of private defence in tort law reflects the right of individuals to protect themselves, their property, and others from harm. However, this right is not absolute, particularly when it comes to using protective devices against trespassers. The law strives to balance the individual's right to protect their property with the duty not to cause harm to others, even those who may be trespassing. The use of protective devices that could cause injury, especially lethal injury, are generally not permitted, and the person using such measures may be held liable for any resulting harm.

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Q6 WHAT ARE THE ESSENTIAL INGREDIENTS OF DEFAMATION? GIVE EXAMPLES FOR DECIDED CASES.

ANSWER: **Defamation: Essential Ingredients and Decided Cases**

Defamation is a tort that protects an individual's reputation from false statements that might harm it. A statement is considered defamatory if it lowers the plaintiff's reputation in the eyes of right-thinking members of society or leads them to be shunned or avoided. The essence of this tort lies in balancing the right to reputation, a facet of Article 21 of the Indian Constitution, and the right to freedom of speech and expression under Article 19(1)(a).

Defamation can be classified into two types: libel, which is a defamatory statement in a fixed medium, especially writing but also a picture, sign, or electronic broadcast, and slander, which is a harmful statement in a transitory form, such as speech.

The essential ingredients to establish a case of defamation include:

1. Defamatory Statement:

A statement can be considered defamatory if it tends to lower the plaintiff in the estimation of right-thinking members of society generally. It can harm the reputation of the plaintiff by exposing him to hatred, contempt, or ridicule or cause him to be shunned or avoided. In the case of ***Sim v Stretch*** [1936] 2 All ER 1237, Lord Atkin

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defined a defamatory statement as one which “tends to lower the plaintiff in the estimation of right-thinking members of society generally.”

2. The Statement Refers to the Plaintiff:

The defamatory statement must refer to the plaintiff. If a reasonable man who sees or hears the statement would believe that it refers to the plaintiff, this requirement is fulfilled. In the case of *Hulton v Jones* [1910] AC 20, the defendant published a fictional article referring to Artemus Jones. An actual person named Artemus Jones sued for defamation, and the court held the defendants liable as reasonable people knowing the plaintiff could understand that the article referred to him.

3. The Statement is Published:

Publication means the communication of the defamatory matter to some person other than the person defamed. A person can only be defamed if the defamatory matter is communicated to a third party, i.e., a person other than the person defamed. In *Theaker v Richardson* [1962] 1 WLR 151, the court held that the defendant's act of writing a defamatory letter to the plaintiff's husband constituted publication as it was a communication to a third person.

4. In Case of Slander, Prove Damage:

In the case of slander, except for certain categories (slander per se), the plaintiff must prove that they have suffered actual damage as a result of the defamatory statement. This is not required for libel, as damages are

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presumed. In ***Wong v Parkside NHS Trust*** [2001] EWCA Civ 1721, it was held that the plaintiff had to show actual loss in a case of slander.

Defamation is a complex area of law that seeks to balance the right to reputation and the freedom of expression. While it provides a crucial remedy for protection of reputation, it also emphasizes the need for careful and responsible communication to prevent unnecessary harm. The precise application of the elements of defamation depends on the specific facts of each case, and it is essential to refer to decided cases and legal principles to understand the nuances involved in this tort.

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Q7 “NEGLIGENCE AS A TORT IS THE BREACH OF A LEGAL DUTY TO TAKE CASE WHICH RESULTS IN DAMAGE, UNDESIRE BY THE DEFENDANT, TO THE PLAINTIFF”. EXPLAIN IN THE LIGHT OF DECIDED CASES.

Negligence as a Tort: An Analysis through Decided Cases

Negligence is one of the most prominent and widely applied torts in the modern legal system. It refers to a failure to exercise appropriate care towards others, which a reasonable or prudent person would do in the same circumstances. The legal concept of negligence arose as a way to balance individual freedom of action with social responsibility, by holding individuals accountable for the harmful consequences of their carelessness.

Understanding the Concept of Negligence

Negligence is defined as a breach of a legal duty to take care, which results in damage undesired by the defendant to the plaintiff. Essentially, the concept of negligence revolves around three core elements:

1. The existence of a duty of care owed by the defendant to the plaintiff,
2. The breach of that duty, and
3. Damage or injury caused to the plaintiff due to the breach.

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Establishment of Duty of Care

The concept of a 'duty of care' was first established in ***Donoghue v Stevenson*** [1932] UKHL 100, often referred to as the 'snail in the bottle' case. The House of Lords held that a manufacturer owed a duty of care to the ultimate consumer of the product. This duty was defined as the responsibility to avoid acts or omissions which one can reasonably foresee would likely injure one's 'neighbour', where 'neighbour' was defined as persons who are closely and directly affected by one's acts.

Breach of the Duty

Once a duty of care has been established, it is then necessary to demonstrate that the defendant breached this duty. This often involves proving that the defendant's actions did not align with what a reasonable person would do under the same circumstances. In ***Blyth v Birmingham Waterworks*** [1856] 11 Ex Ch 781, Alderson B defined negligence as the omission to do something which a reasonable man, guided upon those considerations which ordinarily regulate the conduct of human affairs, would do, or doing something which a prudent and reasonable man would not do.

Damage Due to the Breach

Finally, it must be shown that the plaintiff suffered some form of harm as a direct result of the defendant's breach. This harm can be physical, financial, or psychological in

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nature. The principle of 'but for' causation, meaning the damage would not have occurred 'but for' the defendant's breach, is often used in this context. The case of ***Barnett v Chelsea & Kensington Hospital*** [1969] 1 QB 428 illustrated this concept. The plaintiff's husband died of arsenic poisoning, but the defendant hospital had negligently sent him home without treatment. The court found no liability because the man would have died whether he was treated or not, hence the negligence did not cause the harm.

The concept of negligence in tort law embodies the principle that individuals must exercise a reasonable standard of care in their actions, by considering the potential harm that they might foreseeably cause to other people. Failure to uphold this duty, resulting in harm to another, makes one liable for negligence. While the individual facts of each case will determine the application of these principles, understanding the landmark cases provides the cornerstone for the application and understanding of the principles of negligence in tort law.

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Q8 ELUCIDATE THE DEFINITION OF THE TERM "SERVICE" UNDER THE CONSUMER PROTECTION ACT. EXPLAIN THE JUDGMENT OF THE SUPREME COURT BRINGING THE MEDICAL PROFESSION UNDER THE AMBIT OF THE CONSUMER PROTECTION ACT

Definition of "Service" under the Consumer Protection Act

The Consumer Protection Act, 2019 (which replaced the older Consumer Protection Act, 1986) aims to provide consumers with an effective mechanism to address their grievances against defective goods and deficient services. The definition of the term "service" under this Act is crucial to understand the extent of its scope and application.

As per Section 2(42) of the Consumer Protection Act, 2019, "service" means service of any description which is made available to potential users and includes, but not limited to, the provision of facilities in connection with banking, financing, insurance, transport, processing, supply of electrical or other energy, telecom, boarding or lodging or both, housing construction, entertainment, amusement or the purveying of news or other information, but does not include the rendering of any service free of charge or under a contract of personal service.

This definition is very broad and inclusive, designed to

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encompass a wide variety of services that are provided to consumers. However, it specifically excludes services rendered free of charge and services rendered under a contract of personal service.

Medical Profession under the Ambit of the Consumer Protection Act

The question of whether medical services fall within the ambit of the Consumer Protection Act was addressed by the Supreme Court of India in the landmark judgment **of Indian Medical Association v V.P. Shantha & Ors.** (AIR 1996 SC 550). This case had a significant impact on the relationship between the medical profession and consumer law in India.

In this case, the Supreme Court held that medical services, except where services are rendered free of charge to a patient or during a patient's service under a contract of personal service, fall within the ambit of 'service' as defined under the Consumer Protection Act, 1986. The Court included both governmental and private hospitals under the scope of the Act, as long as the service is not rendered free of charge.

The Court also provided that where a part of the service is rendered free of charge and the other part is chargeable, then the service would fall within the ambit of the Act. This included cases where hospitals provide free service to some patients and chargeable service to others, or where charges are high for some beds and nominal for others, the service rendered would be considered as service under the Consumer Protection

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Act.

The Court's judgment extended the applicability of consumer law to the medical profession and provided a means for patients to seek redressal for grievances against negligent medical services. However, it also placed a responsibility on the patients to use this remedy judiciously, ensuring not to use it as a tool for harassment of the medical professionals.

The term "service" under the Consumer Protection Act is inclusive and broad, encompassing a wide array of services available to the consumers. The Supreme Court of India, in its landmark judgment, brought the medical profession within the ambit of the Act, providing patients with an effective remedy against negligent medical services. However, this also necessitates the judicious use of this remedy to ensure the protection of the medical profession from unfounded and vexatious claims.

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Q9. WRITE NOTE ON:

**(A) LUCKNOW BRIEFLY DEVELOPMENT ON:-
AUTHORITY V. M.K.GUPTA (1994) ISCC 243**

**(B) POONAM VERMA V. ASHWIN PATEL (1996)
4SCC332.**

**(a) Lucknow Development Authority v.
M.K.Gupta (1994) 1 SCC 243**

In *Lucknow Development Authority v. M.K.Gupta*, the Supreme Court of India delivered a landmark judgment that significantly expanded the scope of 'service' under the Consumer Protection Act, 1986.

In this case, the respondent, M.K. Gupta, had booked a house with the Lucknow Development Authority (LDA). However, there was a considerable delay in the delivery of possession by the LDA. Consequently, Gupta filed a complaint before the State Consumer Disputes Redressal Commission, which directed the LDA to give possession of the house and also pay compensation. This decision was upheld by the National Consumer Disputes Redressal Commission. Aggrieved by the decision, the LDA appealed to the Supreme Court.

The pivotal question before the Supreme Court was whether the 'housing construction' could be considered a 'service' within the meaning of the Consumer Protection Act, 1986.

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The Court held that 'housing construction' could be considered a service under the Act. In delivering its judgment, the Court observed that the legislative intent of the Consumer Protection Act was to cover all sectors providing services to consumers, where the service is rendered for a consideration. The Court held that the term 'service' does not only include activities carried out by professionals or through contractual obligations, but also the statutory functions carried out by statutory bodies.

The Court also noted that if the services provided by statutory bodies like the LDA are deficient, causing harm to a consumer, they should be held liable. Thus, the Court upheld the orders of the State and National Commissions.

The judgment in ***Lucknow Development Authority v. M.K.Gupta*** reaffirmed the intent of the Consumer Protection Act, to provide relief to consumers from deficient services across various sectors, including those rendered by statutory bodies.

(b) Poonam Verma v. Ashwin Patel (1996) 4 SCC 332

Poonam Verma v. Ashwin Patel is another landmark case in the realm of Indian medical negligence law. The case sets important legal precedent concerning liability in cases of medical negligence, especially in situations where the practitioner is not qualified for the service he/she is rendering.

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In this case, the plaintiff's husband was treated by the defendant, who claimed to be a qualified homeopathic doctor. However, the defendant had prescribed allopathic medicines to the plaintiff's husband, leading to his death due to renal failure.

The issue before the Court was whether the defendant could be held liable for negligence in this scenario. The Court, in its judgment, held that when a person professes to be a practitioner of a certain system of medicine (in this case, homeopathy), he/she must only use that system in treatment. The defendant had stepped outside his bounds of competence by administering allopathic drugs.

The Court held that this was not a simple case of negligence; it was a case of gross negligence or rashness, which amounted to an offence under section 304A of the Indian Penal Code (causing death by negligence). Therefore, the defendant was held liable for the death of the plaintiff's husband.

Poonam Verma v. Ashwin Patel underscored the principle that medical practitioners must strictly adhere to their professed system of treatment and that deviation from it, especially when leading to harm to a patient, would attract liability. The case acts as a stern reminder to medical practitioners about the significance of staying within their professional boundaries and the consequences of crossing those lines.

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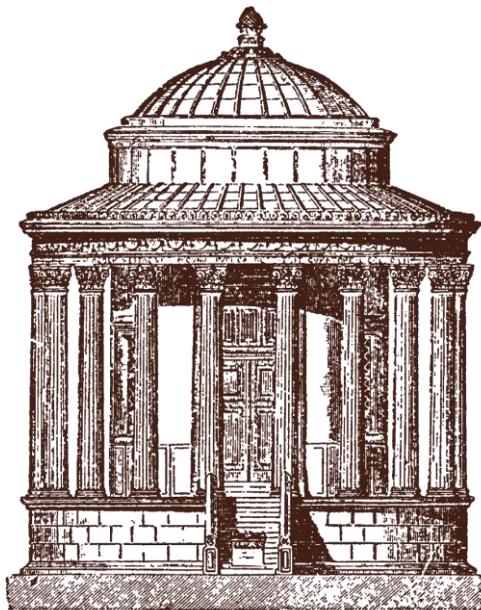
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UNIT 1

INTRODUCTION AND PRINCIPLES OF LIABILITY IN TORT

Overview

- Governs relationships between individuals and entities.
- Primarily evolves through common law principles and judicial precedents.
- No specific legislation for torts in India.
- Provisions in Indian Penal Code, 1860, and Indian Contract Act, 1872 address certain tortious liabilities.



Definition of Tort

- A civil wrong that causes damage or harm to another person.
- Results in legal liability for the wrongdoer.
- Primary purpose:
 - Compensate the injured party for the harm.
 - Deter the wrongdoer from repeating the offense.

Essentials of Tortious Liability

1. Wrongful act or omission by the defendant.
2. Legal damage or injury to the plaintiff.
3. Direct causal relationship between the wrongful act and the damage.

Major Categories of Torts

1. Negligence
 - Breach of a duty of care, causing harm or injury.
2. Nuisance
 - Unreasonable interference with a person's property or rights.
3. Defamation
 - Harming a person's reputation through false statements.
4. Trespass
 - Unlawful intrusion onto another's property, person, or goods.
5. Strict Liability
 - Imposition of liability without proving negligence or fault.

Landmark Judgments in Indian Tort Law

- M.C. Mehta v. Union of India (1987)
- Introduced the principle of absolute liability.
 - Held that enterprises engaging in hazardous activities have an absolute and non-delegable duty to ensure safety.
- Kusum Ingots & Alloys Ltd. v. Union of India (2004)
- Expanded the scope of negligence to include economic torts.
 - Breach of a statutory duty may give rise to a claim for damages.
- Jacob Mathew v. State of Punjab (2005)
- Laid down guidelines for determining medical negligence.
 - A doctor's liability depends on the skill and care exercised by a reasonably competent doctor in the same field.

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DEFINITION AND ORIGIN OF TORTS

Elements of a Tort

- Wrongful act or omission by the defendant.
- Legal damage or injury caused to the plaintiff.
- The wrongful act gives rise to a legal remedy in the form of compensation.

Objectives of the Law of Torts

- Compensation: Provide damages to the injured party for harm suffered.
- Deterrence: Prevent the wrongdoer and others from committing similar acts.
- Restoration: Restore the injured party to their pre-injury position.

Definition of Tort

- Derived from the Latin word "tortum", meaning "twisted" or "wrong."
- Refers to a civil wrong causing harm or injury to another person or party.
- A branch of civil law focused on compensation for injuries or harm caused by wrongful conduct.
- Adopted in India from the British common law system.

Landmark Judgments in Tort Law

- Dr. Laxman Balkrishna Joshi v. Dr. Trimbak Bapu Godbole (1968)
 - Established principles of medical negligence.
 - A doctor owes a duty of care to their patient and is liable for harm due to breach of duty.
- Kasturi Lal Ralia Ram Jain v. State of U.P. (1965)
 - Supreme Court held that the state is not vicariously liable for tortious acts of employees committed in the exercise of sovereign functions.
- Donoghue v. Stevenson (1932)
 - British case adopted in Indian tort law.
 - Introduced the duty of care principle in negligence cases.
 - "Neighbor principle" widely applied in Indian negligence cases.

DEVELOPMENT OF LAW OF TORTS

Colonial Era and Adaptation of English Common Law

- British Influence: India adopted English common law principles during British rule.
- Courts' Practices: Indian courts followed decisions and precedents of English courts.
- Historical Application: Traced to the 18th century with courts in Madras, Bombay, and Calcutta.

Contemporary Developments

Evolving Issues:

- Recognition of privacy as a fundamental right.
- Cyber torts and liability expansion.
- Public Interest Litigation (PIL):
 - Facilitates legal redress for collective rights and public interest.

Post-Independence Era and Development of Indian Tort Law

- Indian Adaptation: Courts expanded tort law to meet India's societal needs.
- Reliance and Modification: Continued using English precedents but adapted them to the Indian context.

Landmark Judgments:

- M.C. Mehta v. Union of India (1987):
 - Established absolute liability for hazardous industries.
 - Focus on ensuring safety and environmental protection.
 - Influenced environmental law development.
- Nilabati Behera v. State of Orissa (1993):
 - Recognized state liability for actions of police officers.
 - Expanded the scope of tort law to hold the state accountable.
- Indian Medical Association v. V.P. Shantha (1995):
 - Covered medical professionals under the Consumer Protection Act, 1986.
 - Developed medical negligence as a distinct category.

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DISTINCTION BETWEEN LAW OF TORT AND CONTRACT

01

Basis of Liability

- Tort: Arises from wrongful acts or omissions causing harm.
- Contract: Based on breach of a legally binding agreement.

02

Nature of Duty

- Tort: General duty imposed by law.
- Contract: Specific duties defined by the agreement.

03

Creation of Rights

- Tort: Created by law for harm caused by wrongful acts.
- Contract: Rights arise from mutual agreement.

04

Privity of Relationship

- Tort: No privity required; harm suffices for legal action.
- Contract: Privity essential; only parties to the contract can sue.

05

Remedies

- Tort: Primarily monetary compensation (damages) or injunctions.
- Contract: Includes damages, specific performance, or rescission.

06

Limitation Period

- Tort: Three years from the date the cause arises (Limitation Act, 1963).
- Contract: Three years from the breach (Limitation Act, 1963).

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DISTINCTION BETWEEN LAW OF TORT AND QUASI-CONTRACT

01

Basis of Liability

- Tort: Arises from harm caused by wrongful acts.
- Quasi-Contract: Prevents unjust enrichment in absence of a contract.

02

Nature of Duty

- Tort: Imposed by law for general conduct.
- Quasi-Contract: Arises from specific circumstances requiring fairness.

03

Creation of Rights

- Tort: By law, for harm caused.
- Quasi-Contract: By court order to address unjust benefit.

04

Privity of Relationship

- Tort: No privity required for action.
- Quasi-Contract: Privity not essential; obligations are court-imposed.

05

Remedies

- Tort: Damages or injunctions.
- Quasi-Contract: Restitution to prevent unjust enrichment.

06

Limitation Period

- Tort: Three years under the Limitation Act, 1963.
- Quasi-Contract: Same limitation period applies.

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Distinction Between Law of Tort and Crime

01

Nature of the Wrong

- Tort: Civil wrong causing harm to individuals.
- Crime: Offense against society as a whole.

02

Basis of Liability

- Tort: Arises from harm due to wrongful acts.
- Crime: Based on offenses defined under penal laws.

03

Parties Involved

- Tort: Plaintiff (injured party) vs. Defendant (wrongdoer).
- Crime: State (prosecution) vs. Accused.

04

Proceedings

- Tort: Initiated by the injured party in civil courts.
- Crime: Initiated by the state in criminal courts.

05

Burden of Proof

- Tort: Proved by preponderance of evidence.
- Crime: Guilt must be proven beyond reasonable doubt.

06

Remedies

- Tort: Damages or injunctions for compensation.
- Crime: Punishment (fines, imprisonment, probation) for deterrence.

07

Limitation Period

- Tort: Three years for civil actions (Limitation Act, 1963).
- Crime: Varies; no limitation for serious offenses (CrPC, 1973).

CONSTITUENTS OF TORT

Damnum Sine Injuria (Actual Damage Without Legal Injury)

- Definition: Actual harm occurs, but no legal right is violated. Loss is non-actionable.
- Significance: Harm alone doesn't constitute a tort unless rights are breached.

Illustrations:

1. Gloucester Grammar School Case (1410)
 - Facts: Defendant's rival school caused financial loss to plaintiff.
 - Judgment: No liability as actions were lawful.
 - Principle: Lawful competition causing loss is not actionable.
2. Indian Context:
 - Economic loss due to lawful trade or competition is non-actionable unless a legal right is breached.

Injuria Sine Damnum (Legal Injury Without Actual Damage)

- Definition: Legal rights are violated without tangible harm. Compensation is granted for infringement of rights.
 - Significance: Protects legal rights irrespective of harm.
- Ashby v. White (1703)
- Facts: Plaintiff was unlawfully barred from voting. No actual harm occurred.
 - Judgment: Defendant held liable for violating the right to vote.
 - Principle: Legal rights are enforceable even without damage.
- Bhim Singh v. State of J&K (1986)
- Facts: MLA was unlawfully detained, missing an assembly session.
 - Judgment: Supreme Court awarded compensation for violating Article 21.
 - Principle: Breach of fundamental rights is actionable despite no damage.

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AUTHORITIES AND MECHANISMS FOR CONSUMER DISPUTE RESOLUTION

Length and Detail

- National body responsible for investigating consumer rights violations, enforcing laws, and promoting consumer awareness (Section 10).

Online Dispute Resolution (ODR)

- Accessibility: Parties can engage in dispute resolution from anywhere with internet access.
- Time and Cost Efficiency: ODR eliminates physical meetings and reduces travel expenses.
- Flexibility: Various ADR mechanisms like online mediation and arbitration can be offered through ODR platforms.
- Confidentiality: ODR platforms provide secure and encrypted communication, ensuring the confidentiality of proceedings.

Mediation (Sections 74-81)

- Voluntary, confidential process to resolve consumer disputes efficiently, with courts referring cases to mediation cells.

Secularism and Judiciary

- Three-tier system (District, State, and National) to adjudicate consumer complaints based on the value of goods/services and compensation claimed (Sections 35-37).

Adaptability and Amendments

- Advisory bodies at the central, state, and district levels to advise on policies and promote consumer welfare (Sections 7-9).

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VOLENTI NON-FIT INJURIA (CONSENT TO RISK)

1

- Meaning: "To a willing person, no injury is done."
- Application: Plaintiff consents to a known risk, waiving claims for resulting harm.

Elements:

- Knowledge: Plaintiff must understand and appreciate the risk.
- Voluntary Assumption: Consent must be given freely.
- Free Will: Must not be impaired (e.g., by drugs/alcohol).

2

Illustrations:

- Padmavati v. Dugganaika (AIR 1971 Mys 140): Plaintiff knowingly traveled in an overloaded vehicle.
- Hall v. Brooklands Auto Racing Club (1933): Spectator injured at a car race assumed inherent risks.

Limitations:

- Emergency situations.
- Employer-employee relationships.
- Unlawful or negligent acts beyond the scope of consent.

JUSTIFICATION IN TORT: NECESSITY, PLAINTIFF'S DEFAULT

1

Necessity (Preventing Greater Harm)

- Principle: Harm is excusable to avoid a greater danger.

Elements:

- Imminent Danger: Immediate threat to life/property.
- No Alternatives: No safer option available.
- Proportionality: Harm caused must be proportional to harm avoided.
- Good Faith: No ulterior motives.

Illustrations:

- Chiranjilal Srilal Goenka v. Jasjit Singh (1993): Police entered property to apprehend a criminal.
- M.C. Mehta v. Union of India (1987): Industries near the Taj Mahal were shut down to protect the environment.

Limitations:

- Self-inflicted danger.
- Recklessness or negligence.
- Acts by public authorities acting outside lawful bounds.

2

Plaintiff's Default (Contributory Negligence)

- Meaning: Plaintiff's negligence contributed to the injury, reducing/restricting recovery.

Elements:

- Negligence: Plaintiff acted carelessly or wrongfully.
- Causation: Conduct contributed to the harm.
- Foreseeability: Harm was a predictable result.

Illustrations:

- Butterfield v. Forrester (1809): Plaintiff failed to avoid a visible obstruction.
- Nidamarti Maheshwaramma v. Nidamarti Jayaram Reddy (1986): Plaintiff disregarded traffic rules, reducing damages.

Limitations:

- Last opportunity rule (defendant could have avoided harm).
- Vulnerable parties (e.g., children)

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ACT OF GOD

Definition: Defense in tort law for harm caused by uncontrollable natural events (e.g., floods, earthquakes).

Application: Ramalinga Nadar v. Narayana Reddiar – Flash flood caused harm; defense upheld.

1

Elements

- Natural Event: Harm due to extraordinary natural occurrences.
- Unforeseeability: Event could not be predicted.
- Irresistible Force: Event was unstoppable by human effort.
- No Human Fault: No negligence by the defendant.

2

Limitations

- Foreseeable events.
- Harm due to negligence.
- Failure to warn or protect.

3

Key Cases

- Nichols v. Marsland – Dam failure due to rainfall; no liability.
- Krell v. Henry – Coronation delay; Act of God frustrated contract.
- Ramalinga Nadar v. Narayana Reddiar – Flash flood, no liability.
- Lebeaupin v. Crispin – Negligence invalidated defense.

Rylands v. Fletcher (1868) LR 3 HL 330:

- Established strict liability for non-natural use of land causing harm from escaping hazardous materials.
- Act of God defense applies if harm caused by unforeseeable natural events.

INEVITABLE ACCIDENT

Definition: Defense for harm caused by unavoidable accidents despite reasonable care.

Limitations

02

- Negligence involved.
- Lack of reasonable precautions.

Elements

- No negligence by the defendant.
- Accident unavoidable despite precautions.
- Accident unforeseeable.

Key Cases

- Smith v. London Railway – Rare crane malfunction; defense upheld.
- Stanley v. Powell – Unforeseeable ricochet; defense upheld.
- Lakshmi Rajan v. Malarvizhi Ammal – Brake failure; defense upheld.
- Padmavati v. Dugganaika – Wheel detachment; defense upheld.

- Lakshmi Rajan v. Malarvizhi Ammal – Brake failure; no liability.

01

03

04

Application

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UNIT 2

NEGLIGENCE

APPLICATION IN INDIAN LAW

Indian courts apply negligence principles rooted in English common law, with *Donoghue v. Stevenson* (1932) as a foundational influence.

1

Elements of Negligence

1. Duty of Care
 - A legal obligation to act reasonably to prevent harm.
2. Breach of Duty
 - Failure to meet the reasonable standard of care.
3. Causation
 - Harm caused by the defendant's actions, both factually and foreseeably.
4. Damages
 - Actual harm suffered, whether physical, emotional, or economic.

2

Defenses to Negligence

1. Contributory Negligence
 - Plaintiff partly responsible for harm.
2. Comparative Negligence
 - Shared fault, proportional damages.
3. Volenti Non Fit Injuria
 - Plaintiff willingly accepted risk.
4. Act of God
 - Harm caused by unforeseeable natural events.

3

Remedies for Negligence

1. Damages
 - Compensation for direct, consequential, or egregious harm.
2. Injunction
 - Restraining defendant from harmful actions.
3. Specific Performance
 - Court-mandated corrective action (rare).

LANDMARK JUDICIAL PRECEDENTS ON NEGLIGENCE

DONOGHUE V.
STEVENSON (1932)

- Established duty of care in tort law.
- A decomposed snail in a ginger beer bottle led to the doctrine of foreseeable harm.

01

INDIAN MEDICAL ASSOCIATION V.
V.P. SHANTHA

- Expanded strict liability to absolute liability for hazardous activities.
- Recognized the non-delegable duty of enterprises to prevent harm.

M.C. MEHTA V.
UNION OF INDIA
(1987)

- Medical services brought under the Consumer Protection Act, 1986, empowering patients to seek remedies.

03

- Highlighted the state's duty to provide adequate medical facilities under Article 21 of the Constitution.

PASCHIM BANGA
KHET MAZDOOR
SAMITY V. STATE OF
WEST BENGAL (1996)

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LANDMARK INDIAN CASES ON NEGLIGENCE

POONAM VERMA V. ASHWIN PATEL (1996) 4 SCC 332

- Facts: A defendant posed as a qualified allopathic practitioner but caused severe harm by practicing outside his expertise.
- Ruling: The Supreme Court held the defendant liable, stressing that professionals must adhere to their scope of practice.

JACOB MATHEW V. STATE OF PUNJAB (2005) 6 SCC 1

- Facts: Medical negligence led to a patient's death.
- Ruling: Defined the standard of care for medical professionals, holding that they must act with the skill and diligence of their peers.

NIZAM'S INSTITUTE OF MEDICAL SCIENCES V. PRASANTH S. DHANANKA (2009) 6 SCC 1

- Facts: A patient suffered permanent disability due to negligence during spinal surgery.
- Ruling: Doctors and the hospital were found liable, with substantial compensation awarded.

ACHUTRAO HARIBHAU KHODWA V. STATE OF MAHARASHTRA (1996) 2 SCC 634

- Facts: Negligence during sterilization surgery led to a patient's death.
- Ruling: Liability was assigned to the hospital and its staff, reinforcing standards of reasonable care.

NUISANCE

Types of Nuisance

1. Public Nuisance
 - a. Affects community rights or a large group.
 - b. Governed by Section 268, IPC; criminal offense.
 - c. Civil suits allowed for special harm.
2. Private Nuisance
 - a. Interferes with an individual's property use or comfort.
 - b. A civil wrong, e.g., noise, pollution, encroachments.

Principles

1. Balance individual rights and broader interests.
2. Public authorities must address health hazards (Ratlam Municipality).
3. Apply reasonableness to differentiate nuisances from minor annoyances.

Elements of Nuisance

1. Interference
 - a. Defendant's act disrupts plaintiff's property use or comfort.
2. Unreasonableness
 - a. Interference must be excessive or unjustified.
3. Damage
 - a. Actual harm, e.g., property damage, discomfort, or loss of use.

Landmark Cases

1. Ram Raj Singh v. Babulal (1978)
 - Smoke from a kiln damaged farmland; held as private nuisance.
2. Ratlam Municipality v. Vardichand (1980)
 - Untreated sewage caused health issues; court ordered abatement.

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1

False Imprisonment

- Definition: Unlawful restriction of a person's freedom of movement, causing them to believe they cannot leave.
- Key Elements:
 - Intentional Act: Defendant must intentionally confine the plaintiff.
 - Unlawful Restraint: Confinement without legal authority or consent; even brief restraint qualifies.
 - Consciousness of Confinement: Plaintiff must be aware of the restraint.
 - Damages: Harm suffered (e.g., physical injury, emotional distress, economic loss).
- Landmark Case:
 - Raghunath Anant Govilkar v. Damodar Tukaram Mangal (1960): Plaintiff detained on false complaint; court awarded damages for unlawful detention.

2

Malicious Prosecution

- Definition: Wrongful initiation of legal proceedings without reasonable cause and with malice.
- Key Elements:
 - Prosecution by Defendant: Defendant initiated or pursued legal action.
 - No Reasonable Cause: Proceedings lacked valid grounds or evidence.
 - Malice: Defendant acted with improper motives (e.g., spite, revenge).
 - Termination in Plaintiff's Favor: Case ended in acquittal, dismissal, or withdrawal.
 - Damages: Harm suffered (e.g., reputation damage, legal costs, emotional distress).
- Landmark Case:
 - Gobind Ram v. State of Maharashtra (1972): Plaintiff wrongfully prosecuted on false charges; court granted damages for harm caused.

1

Judicial Acts

- Definition: Actions by judges, magistrates, or judicial officers within their authority to administer justice.
- Immunity of Judges:
 - Judges are immune from civil liability for acts performed in their judicial capacity, even if done in error or excess of jurisdiction, provided they act within authority.
 - Landmark case: R. v. Sirros De Mello [(1974) 2 SCC 706].
- Elements of Torts in Judicial Acts:
 - a. Judicial act performed within authority.
 - b. Breach of duty deviating from reasonable standards.
 - c. Causation linking act to harm.
 - d. Proven harm (physical, emotional, or financial).
 - e. Absence of immunity due to malice or lack of jurisdiction.

2

Quasi-Judicial Acts

- Definition: Actions by administrative or executive officers (e.g., tribunals, commissions) affecting individual rights, requiring evidence-based decisions and fair hearings.
- Exceptions to Immunity:
 - Acts without jurisdiction (State of U.P. v. Mohammad Naim).
 - Malice (e.g., personal bias or ulterior motives).
 - Gross negligence (reckless disregard for rights).
 - Violation of fundamental rights (e.g., liberty or equality).
 - Procedural irregularities (e.g., unfair hearings, natural justice violations).
 - Non-quasi-judicial acts (e.g., defamatory statements in personal capacity).

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1

Parental Liability

- Rationale
 - Parents are liable for harm caused by their child's torts due to their duty to supervise and control.
- Conditions for Liability
 - Child's Act: The child committed a tort.
 - Parental Duty: Parent had a duty to supervise.
 - Negligence: Parent's failure contributed to harm.
- Limitations
 - Liability depends on the parent's knowledge and control over the child.

2

Quasi-Parental Liability

- Rationale
 - Individuals or entities (like schools) assume liability for children under their care in the absence of parents.
- Conditions for Liability
 - Child's Act: The child caused harm.
 - Duty to Supervise: The entity had supervision responsibility.
 - Negligence: Entity's failure contributed to harm.
- Limitations
 - Liability is limited by the entity's control and knowledge of the child's behavior.

Aspect	Parental Authority	Quasi-Parental Authority
Source	Legal/biological relationship.	Assumed responsibility.
Responsibility	Broad and ongoing	Limited and context-specific.
Nature of Supervision	Long-term guidance	Temporary and specific.

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UNIT 3

VICARIOUS LIABILITY

Principles of Vicarious Liability

- Doctrine of Respondeat Superior: Employers are liable for employees' actions during work if done within the course of employment.
- Course of Employment: Vicarious liability applies if the act occurs during the employee's job duties or in furtherance of the employer's business.

Instances of Vicarious Liability

- Employer-Employee: Employers are liable for employees' actions during work (e.g., a delivery driver causing an accident).
- Principal-Agent: A principal can be liable for an agent's actions within the scope of their authority.
- Partner Liability: Partners may be liable for a partner's torts if related to partnership business.

Vicarious Liability of the State

- Sovereign and Non-Sovereign Functions: The State is immune for sovereign acts but liable for non-sovereign acts.

Conditions for Establishing the State's Vicarious Liability

- Employment or Agency Relationship: Liability exists if the employee or agent works for the State.
- Scope of Employment: The act must be within the employee's job duties.
- Non-Sovereign Functions: Liability applies when the act is related to non-sovereign functions of the State.

STRICT LIABILITY

Key Elements of Strict Liability

- Dangerous Activity: Harm arises from inherently risky substances or activities.
- Escape: Risk escapes defendant's control and causes damage.
- Non-Natural Use: Land use must be unusual or extraordinary.
- Foreseeable Harm: Harm must be reasonably predictable.
- Actual Damage: Plaintiff must suffer real injury or loss.



Position in India

- Adopted Principle: Courts use strict liability widely in tort cases.
- Evolving Doctrine: Recognized absolute liability for hazardous activities.
- Public Protection: Balances industrial growth with victim rights.
- Judicial Precedents: Cases like M.C. Mehta and Bhopal Gas Tragedy.

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DOCTRINE OF SOVEREIGN IMMUNITY

SOVEREIGN FUNCTIONS

- Activities performed as a sovereign authority (e.g., defense, law and order).
- Generally immune from liability.

01

02

- Acts as a service provider or commercial entity (e.g., railways, utilities).
- No immunity for tortious acts.

NON-SOVEREIGN FUNCTIONS

EVOLUTION IN INDIA

- Pre-Constitution Era
 - Absolute immunity under English common law.
- Post-Constitution Era
 - Exceptions recognized, especially for non-sovereign functions.

03

04

- Sovereign Immunity and Social Justice
 - Courts emphasize government accountability for non-sovereign acts.
- Kasturi Lal's Relevance
 - Refined to adapt to modern accountability standards.

PRESENT-DAY POSITION

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ABSOLUTE LIABILITY

1

KEY CONCEPT

- Liability imposed on defendants for harm from hazardous activities, regardless of intent, fault, or negligence.
- No defenses permitted, unlike strict liability.

2

HISTORICAL DEVELOPMENT

- Rylands v. Fletcher (1868): Introduced strict liability with defenses like the act of God.
- M.C. Mehta v. Union of India (1987): Established absolute liability in India for hazardous industries, admitting no defenses.

3

DOCTRINE HIGHLIGHTS

- Applicability: For inherently hazardous activities.
- No Defenses: No exceptions allowed, unlike strict liability.

4

LEGISLATIVE SUPPORT

- Environment Protection Act, 1986: Empowers preventive and remedial actions.
- Public Liability Insurance Act, 1991: Mandates insurance for victim compensation.

5

KEY CASES

- M.C. Mehta v. Union of India (1987): Introduced absolute liability post-Oleum gas leak, ensuring industries adopt safety measures and compensate victims.

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DEFAMATION

Defamation protects against false statements harming reputation, offering civil and criminal remedies. Defendants can claim defenses like truth, privilege, and apology.

1

Elements

- Defamatory Statement
- Reference to the Plaintiff
- Publication
- Injury to Reputation

2

Defenses to Defamation

- Truth: If the statement is true, it is a complete defense.
- Fair Comment: A fair, opinion-based comment on a public interest matter made in good faith.
- Absolute Privilege: Certain communications, like in judicial or parliamentary proceedings, cannot be defamation.

3

Key Cases

- R. Rajagopal v. State of Tamil Nadu (1994): Public figures have limited privacy rights; defamation about their private life must be weighed against public interest.
- Subramanian Swamy v. Union of India (2016): Criminal defamation is constitutional and can limit freedom of speech to protect reputations.

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UNIT 4

1

Consumer Disputes and Protection Mechanisms

- Consumer disputes arise when a consumer files a complaint about defective goods, deficient services, or unfair trade practices. The Consumer Protection Act, 2019, defines "consumer dispute" as a situation where the accused party denies the complaint. Key issues include defective products, substandard services, misleading advertisements, restrictive trade practices, and e-commerce disputes. The Act establishes a redressal system through the District, State, and National Consumer Disputes Redressal Commissions. It aims to protect consumers and ensure they have access to a fair and efficient dispute resolution process.

2

Unfair and Restrictive Trade Practices

- The Consumer Protection Act, 2019, addresses deceptive or unethical business practices, including false advertising, deceptive pricing, and restrictive trade practices. Unfair trade practices, such as false representation, false warranties, misleading advertising, and unjustified tie-in sales, are prohibited. The Act empowers the Central Consumer Protection Authority (CCPA) to investigate and act against such practices, ensuring transparent business conduct. It also holds manufacturers, sellers, and service providers accountable for defective products or services that cause harm, thereby safeguarding consumer rights and promoting ethical market practices.

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TOP THE SEMESTER

by

ADV. MOHIT TANWR

ADV. SHIVANG VERMA

CONSUMER PROTECTION ACT

01

Purpose

The Consumer Protection Act, 2019, aims to protect consumer rights in India by addressing unfair trade practices, defective goods, deficiency in services, and e-commerce disputes, with regulatory bodies like the CCPA.

02

Background

Replacing the 1986 Act, the 2019 version responds to evolving market dynamics, digital transactions, and consumer awareness, offering a stronger framework for consumer protection.

03

Key Definitions

Key terms include "consumer," "goods," "services," "unfair trade practices," "deficiency," and "product liability," which define the scope and responsibilities under the Act.

04

Scope

The Act covers all goods and services, excluding those for resale or personal services, and applies to various sectors, including e-commerce, ensuring transparency and consumer grievance redressal.

05

Constitutional Basis

The Act derives from the Directive Principles of State Policy (DPSP), emphasizing social, economic, and political justice, and aligns with constitutional provisions like Articles 38, 39, and 47.

06

Covered Parties

The Act protects consumers, manufacturers, sellers, service providers, advertisers, and e-commerce platforms, ensuring fair practices and consumer rights across sectors.

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Key Points on Consumer Protection

01

Consumer Definition

A consumer is anyone who buys goods or hires services for personal use, not resale, and includes beneficiaries with the approval of the buyer.

02

Exclusions

The term excludes those purchasing goods for commercial purposes or availing services for commercial use.

03

E-Commerce Inclusion

The definition extends to online transactions, including those through electronic means, teleshopping, and multi-level marketing.

04

Landmark Judgments

Key cases like Laxmi Engineering Works and Spring Meadows Hospital expanded the consumer definition to include small-scale use, patients, and investors.

05

E-Commerce Entities

E-commerce entities are responsible for ensuring transparency, handling grievances, and ensuring product accuracy on online platforms.

06

Liabilities

E-commerce entities can be held liable for defective products or misleading ads, but can avoid liability with proof of due diligence.

07

Consumer Protection Rules

The Consumer Protection (E-Commerce) Rules, 2020, regulate unfair trade practices, ensure accurate product descriptions, and establish complaint resolution mechanisms.

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Rights of the Consumer

01

Right to Safety

- Consumers must be protected from unsafe goods and services, with businesses adhering to safety standards.

02

Right to Information

- Consumers have the right to accurate details about products and services to make informed decisions.

03

Right to Choose

- Consumers should have access to a variety of products at competitive prices without restrictive practices.

04

Right to be Heard

- Consumers can voice grievances in designated consumer forums for resolution.

05

Right to Redressal

- Consumers can seek compensation for defective products or services through the Act's redressal mechanisms.

06

Right to Consumer Education

- Consumers are entitled to education that helps them make informed choices.

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PRODUCT LIABILITY

Legal responsibility of a manufacturer, seller, or distributor for harm caused by defective/unsafe products.

Introduced under the Consumer Protection Act, 2019 (Section 2(34)).

1

Product Manufacturer (Section 84)

Liable for harm caused due to

- Manufacturing defect.
- Design defect.
- Deviation from manufacturing specifications.
- Inadequate instructions or warnings.

2

Product Service Provider (Section 85)

Liable for harm due to:

- Fault/negligence in services.
- Inadequate instructions or warnings.

3

Product Seller (Section 86)

Liable if:

- Exercised substantial control over design, testing, manufacture, or labeling.
- Altered or modified the product, causing the defect.
- Was aware of the defect but continued to sell the product.

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CONSUMER RIGHTS AND REMEDIES

Consumer Rights and Compensation

- Consumers can claim compensation (Section 82) for harm caused by defective products or services, including medical expenses, suffering, and property damage (Section 2(6)). Complaints must detail the product, defect, harm, and sought compensation (Sections 34–38).

Enforcement and Mediation

- Non-compliance with court orders leads to penalties, property attachment, and imprisonment (Sections 72–73). Mediation provides an alternative dispute resolution with mutual consent (Sections 74–81).

Civil Remedies

- Courts can order compensation, refunds, product replacements, or defect removal for damages caused by defective products/services (Sections 49, 58, 67).

Criminal Remedies

- Employment or Agency Relationship: Liability exists if the employee or agent works for the State.
- Scope of Employment: The act must be within the employee's job duties.
- Non-Sovereign Functions: Liability applies when the act is related to non-sovereign functions of the State.

Jurisdiction and Time Limits

- Consumer courts handle claims based on value: District (<INR 1 crore), State (INR 1–10 crores), and National (>INR 10 crores). Complaints must be filed within two years of the cause of action (Section 69).

CONSUMER PROTECTION COUNCILS (CPCS)

Objectives (Section 7)

- Safeguard consumer rights.
- Encourage education, awareness, and dispute resolution.
- Advise governments on consumer matters.
- Monitor consumer protection policies.

Constitution

- Central CPC (Section 3):
 - Chairperson: Minister of Consumer Affairs, Government of India.
 - Members: Appointed by the Central Government from diverse sectors.
- State CPC (Section 6):
 - Chairperson: Minister of Consumer Affairs, State Government.
 - Members: Appointed by the State Government.
- District CPC (Section 9):
 - Chairperson: District Magistrate or equivalent.
 - Members: Appointed by the State Government.

Central Consumer Protection Authority (CCPA)

- Objectives (Section 10):
 - Protect consumer rights.
 - Address unfair trade practices and false advertisements.
 - Investigate grievances and enforce consumer laws.
- Constitution (Section 11):
 - Chief Commissioner: Head of the authority.
 - Commissioners: Appointed by the Central Government, with relevant expertise.
- Powers and Functions (Section 18):
 - Investigate consumer rights violations.
 - Recall unsafe goods/services.
 - Stop unfair trade practices and misleading advertisements.
 - Penalize violators and restrict misleading endorsers.
 - Issue fair trade guidelines.

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