

Law of Torts: Overview



Tort v Tart





Nature of tort law

"Tort": Tort comes from the Latin word *tortum*, meaning "wrong."

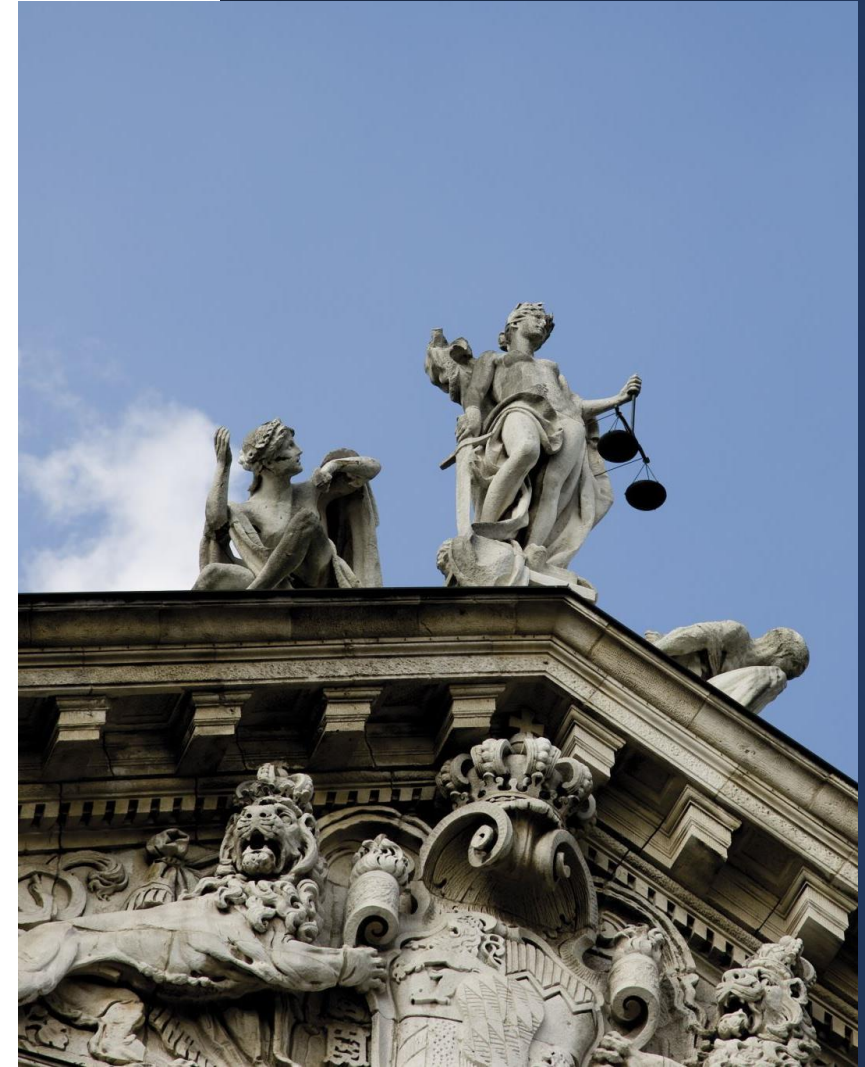
"A tort may be defined as a **civil wrong** independent of contract for which the appropriate remedy is an action for unliquidated damages."

In simple terms, **a tort occurs when someone either intentionally or negligently causes injury to another person or his/her property**

Section 2(m) in The Limitation Act, 1963: "(m) "tort" means a civil wrong which is not exclusively the breach of a contract or the breach of a trust"

Nature of tort law

- Civil law as opposed to criminal law: Deals with Civil wrong/Damages
- Part of common law system (UK) as opposed to civil law systems (Continental Europe): English common law – Forms of Action - Judicial Precedents - Evolution
- Part of private law as opposed to public law: Regulates relations and interactions between citizen and citizens (*Exceptions: constitutional torts/ state liability*)
- Goals: Compensation, Deterrence, Punishment(?)
- Law of tort or Law of Torts?: Category-based approach or principle-based approach



Forms of Action/Writs

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Torts and Crimes

Procedure: Enforcement by prosecuting authorities v. private parties (victims)

Sanctions: Imprisonment and fine v. Compensation and Injunction

Goals: Punishment/deterrence v. Compensation

Concurrent acts

Torts and Contracts (Obligations)

Purpose – Productive obligations: cause advantageous outcome v Protective: avoid disadvantageous outcome

In personam v In rem

Consideration v. No consideration required

Obligations owed to specified individuals v. Owed to general public/may arise between 'strangers'

Specific obligations v General/abstract obligations

Liquidated v. Unliquidated Damages

Concurrent acts

Essential Elements of Torts

(a) Wrongful act or Omission: An infringement of a legal right (reputation/bodily autonomy/property) **or** a violation of a legal duty

(b) Legal Damage: Harm or loss suffered due to the violation of a legal right

(c) Legal Remedy: Wrongful act must come under the category of wrongs for which the remedy is a civil action for damages/ "*where there is no legal remedy, there is no legal wrong.*"

(b) Legal damage (violation of a legal right)

- **Injuria sine damno:** Infringement of private right is actionable per se
 - *Ashby v White* (1703) 92 ER 126
 - *Bhim Singh v. Jammu Kashmir* AIR 1986 SC 494
- **Damnum sine injuria:** Loss without infringement of any legal right
 - *Gloucester grammar school case* (1410) YB 11 Hen IV, fo. pl. 201, 23, f.
 - *Acton v. Blundell* (1843) 152 E.R. 1223



Ashby v. White (1703)

Lord Holt: "Every injury imports a damage; though it does 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. As in an act ion for slanderous words, though a man does not lose a penny by reason of the speaking them, yet he shall have an action. So if a man gives another a cuff on the ear, though it costs him nothing, not so much as a little diachylon (plaster), yet he shall have his act ion, for it is personal injury. So a man shall have an action against another for riding over his ground, though it does him no damage; for it is an invasion of his property and the other has no right to come there"

Evolution and Prospects of Tort Law in India



Tort law in India

- **Scarcity of case law:** "...it has become almost customary to begin the annual survey of the tort law with some such observation bemoaning the scarcity of the reported tort decisions..."
- **Lack of scholarship:** "...Some authors do not cite a single Indian case and ignore the problematic field of Indian tort law completely.."
- **Inaccessible dispute resolution mechanism:** "The Indian law of torts made it apparently very difficult for victims to claim compensation in civil courts...The civil courts were clogged up with arrears while the Indian legal profession was abusing this situation by seeking interlocutory relief for their clients. Access to the courts was prohibitively expensive due to ad valorem court fees"

Reasons for the underutilization of Tort law in India

Non-codification

Lack of awareness

Lack of specialisation

Emphasis on criminal law and writ petitions

Procedural delays

Reconciliation culture

Prof. Marc Galanter

"The British...left tort law uncodedified although a codification was demanded by the Fourth Law Commission in 1879 and by various experts on the British Indian legal system during the last two decades of the 19th century...There was a conscious decision by the colonial power to forestall the development of tort law in India"



History of Indian Tort Law: Decline or Suppression?

"The other option, i.e. that there had been a decline of tort law or at least a kind of arrested development is hardly ever taken into consideration...The character and importance of tort law in India did decline during the 20th century – not only in comparison to the number of tort cases in England but also in respect of the total numbers of Indian cases per year...What happened to tort law in India?"

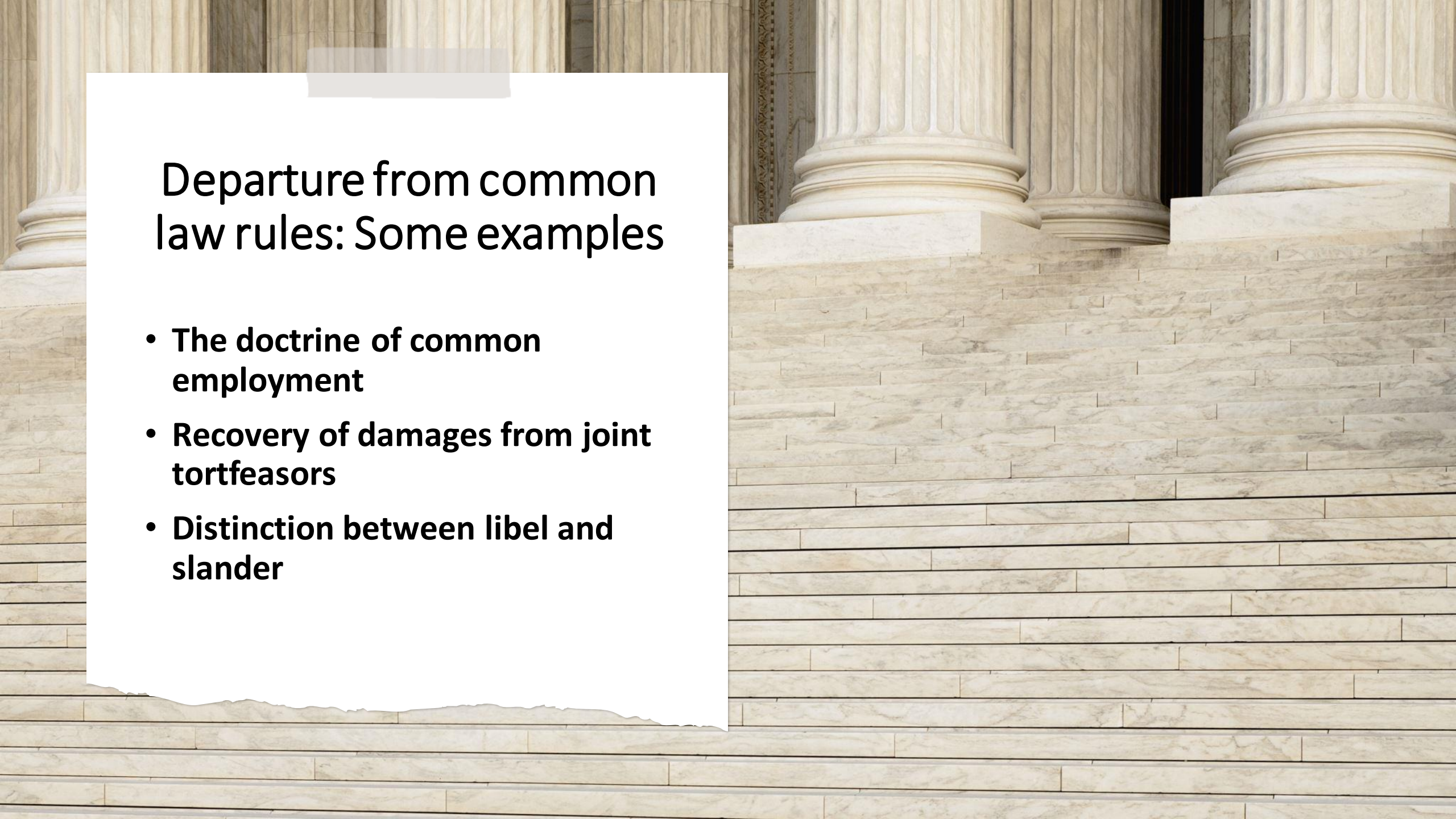




Tort Law in England v. India

"In the absence of a code the law of civil wrongs administered in India is almost wholly the common law of England. So much of the English law as seemed suitable to Indian conditions has been applied as rules of justice, equity and good conscience. The courts in India, however, have not hesitated to depart from the common law rules when they appeared unreasonable or unsuitable to Indian conditions"

- M C Setalvad

The background of the slide is a photograph of a classical building's exterior. It features large, fluted columns and a wide set of stone steps leading up to the entrance. The image is partially obscured by a white rectangular box on the left side, which contains the text.

Departure from common law rules: Some examples

- **The doctrine of common employment**
- **Recovery of damages from joint tortfeasors**
- **Distinction between libel and slander**

*L. Nawal Kishore vs Rameshwar
Nath* AIR 1955 All 594
(Allahabad HC)

"The Courts of this country act on the principle of equity, justice and good conscience in matters which are not covered by statute and rely upon the principles established under the English law to find out what the Rule of justice, equity and good conscience is. Any technical Rule or statutory law of England is not, as such, considered to be based on the principle of equity, justice or good conscience, unless it appears to be so to the judge deciding the case."



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"Introducing punitive damages and expanding torts law in India would benefit individual victims and society as a whole. It would encourage people to behave more responsibly and with greater care for the safety and well-being of others. It would also provide a stronger deterrent against harmful actions, potentially reducing the number of accidents and injuries that occur."



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"Such a pecuniary cost would also stand out as an example to such corporations/companies so that they would also exercise the bare minimum caution required while running a business/profit concern. Imposing such damages upon an individual can also serve as a reminder of the rights and duties of an individual in society and deter many individuals from misbehaving in public"



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EAC-PM Working Paper Series

"As India's global importance continues to rise, it is imperative that legal protections for individuals' lives in the country are improved. With the influx of many large corporations establishing factories and other facilities in India, there is a potential for foreign nationals to take up residence there. It is crucial to be vigilant that the foreign corporations do not exploit the lack of personal laws protecting Indian citizens and ensure that foreign citizens, whether permanent or temporary residents are guaranteed the same quality of life. The idea of protecting an individual is not singular, as harm can also be caused to groups of people, and protection should be extended to all. To achieve this, it is proposed that a codified law of torts, which would provide necessary protections, be implemented."



Animal-related tort claims

- **Protection to Animals**

- **Codified:**
 - The Prevention of Cruelty to Animals Act 1960
 - Indian Penal Code (IPC) 1860
- **Consumer protection Act, 2019**
 - Negligent medical treatment (Ex: Veterinary malpractice)
 - Product liability for animal-related products/services (Ex: A faulty pet food product)

- **Tort Liability for Animals**

- Trespass to the person/property
- Negligently-caused injuries by Animals
- Strict Liability

