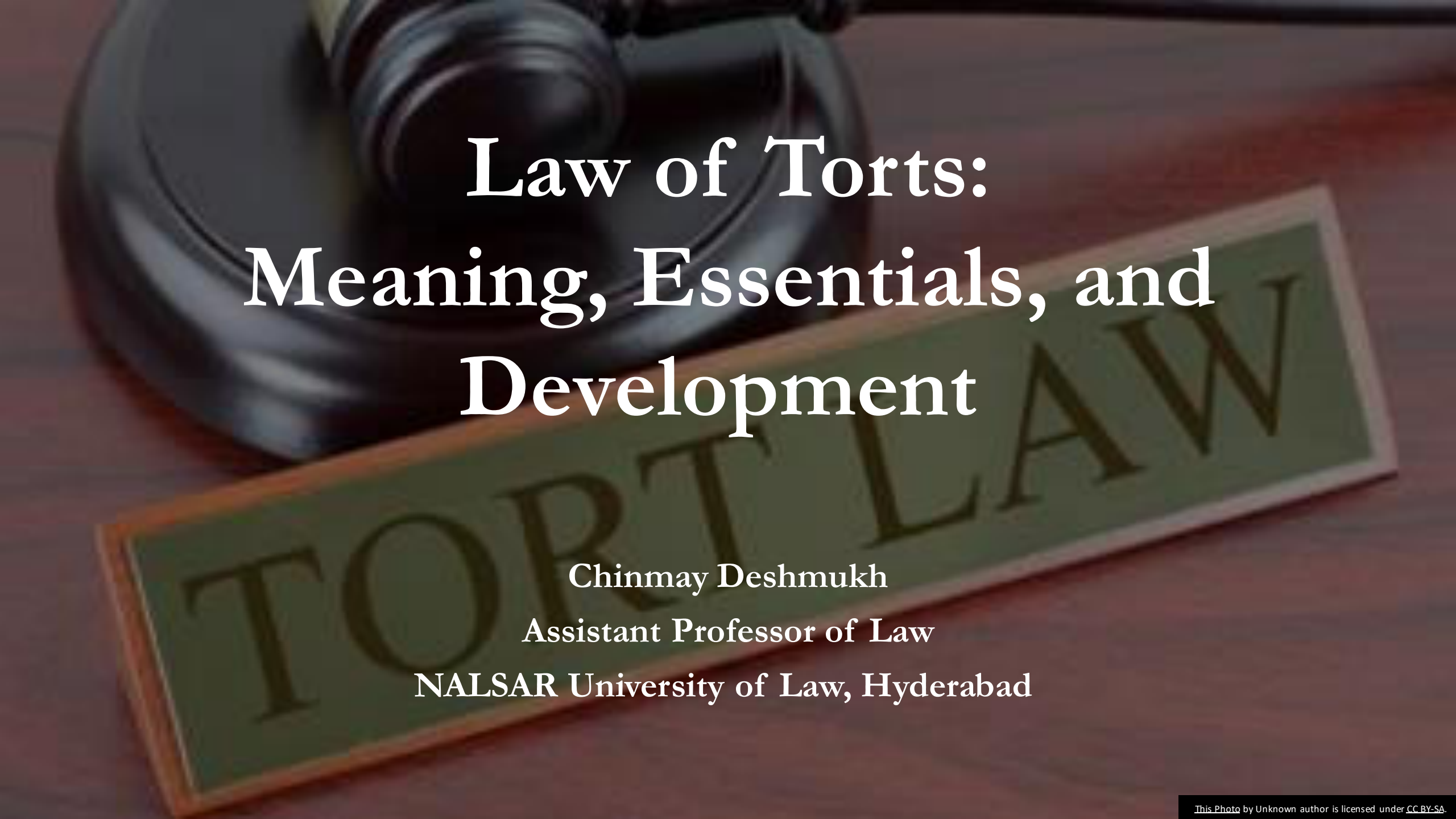




Law of Torts: Meaning, Essentials, and Development

Chinmay Deshmukh

Assistant Professor of Law

NALSAR University of Law, Hyderabad

Outline

Nature, meaning and characteristics of Tort law

Difference between tort law and criminal law; tort and contract law

Jurisprudential development: Jurisprudential development: Law of 'tort' or Law of 'torts'?

Aims, Theories, and Context of tort law (*Underutilization v. Compensation culture*)

Essentials of a tort: Act/Omission; Damages

Case law

ALBUQUERQUE JOURNAL

HOME-OWNED AND HOME-OPERATED

Thursday Morning, August 18, 1994 • Copyright © 1994, Journal Publishing Co.

Local Woman Wins \$2.9 Million Over Burning-Hot Coffee

By Susanne Burks
JOURNAL STAFF WRITER

Sending a message to the restaurant industry, a jury Wednesday awarded \$2.9 million in damages to an Albuquerque woman severely burned by McDonald's coffee in 1992.

Of the award to Stella Liebeck, now 81, \$2.7 million was in punitive damages McDonald's





Nature of tort law

- "Tort": Tort comes from the **Latin word *tortum***, meaning "twisted" or "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.
- The one who sues is known as **'plaintiff'** and the one who is sued is known as **'defendant'**



Nature of tort law

- **Civil law:** Civil wrong/Damages (compensation)
- **Common law:** Evolution (UK and India; Rules of justice, equity and good conscience; Section 9 CPC)
- **Part of private law:** Regulates relations and interactions between citizen and citizens (*Exceptions: constitutional torts/ state liability*)
- **Goal:** Compensation, Punishment/Deterrence
- **Law of 'Tort' or Law of 'Torts'?:** Category-based approach or principle-based approach

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

Consideration v. No consideration required

Obligations owed to specified individuals v. Owed to general public/may arise between ‘strangers’
(*In personam v In rem*)

Specific obligations v General/abstract obligations

Liquidated v. Unliquidated Damages

Concurrent acts

THE LAW OF TORTS

A TREATISE
ON THE ENGLISH LAW OF
LIABILITY FOR CIVIL INJURIES

BY

JOHN W. SALMOND

M.A., LL.B.; FELLOW OF UNIVERSITY COLLEGE, LONDON; A BARRISTER
OF THE SUPREME COURT OF NEW ZEALAND

LONDON:
STEVENS AND HAYNES
BELL YARD, TEMPLE BAR

1907

3139

A TEXT-BOOK

OF THE

LAW OF TORT

BY

SIR P. B. WATFIELD

ESQ., LL.D., BARRISTER-AT-LAW, LL.B. (LOND.), FELLOW OF THE INSTITUTE

OF JURISTS, LONDON; LL.B. (NEW ZEALAND), FELLOW OF THE INSTITUTE
OF JURISTS, NEW ZEALAND

FIFTH EDITION

PRINTED BY
HENRY R. MAXWELL, LIMITED

2, 4 & 6, MARK LANE, E.C. 4

THE UNIVERSITY OF LONDON
THE UNIVERSITY OF LONDON
THE UNIVERSITY OF LONDON
THE UNIVERSITY OF LONDON

LONDON: 1907





[This Photo](#) by Unknown author is licensed under [CC BY-SA](#).



Prof. Glanville Williams

"The first school has shown that the rules of liability are very wide. The second school has shown that some rules of absence of liability are also very wide.

Neither school has shown that there is any general rule whether of liability or of non-liability to cover novel cases that have not yet received the attention of the courts. In a case of first impression—that is a case that falls under no established rule or that falls equally under two conflicting rules — there is no ultimate principle directing the court to find for one party or the other."

Prof. Glanville Williams

"Why should we not settle the argument by saying simply that there are some general rules creating liability and some equally general rules exempting from liability. Between the two is a stretch of disputed territory with the courts as an unbiased boundary commission. If in an unprovided case the decision passes for the plaintiff it will be not because of a general theory of liability but because the court feels that here is a case in which existing principles of liability may properly be extended"

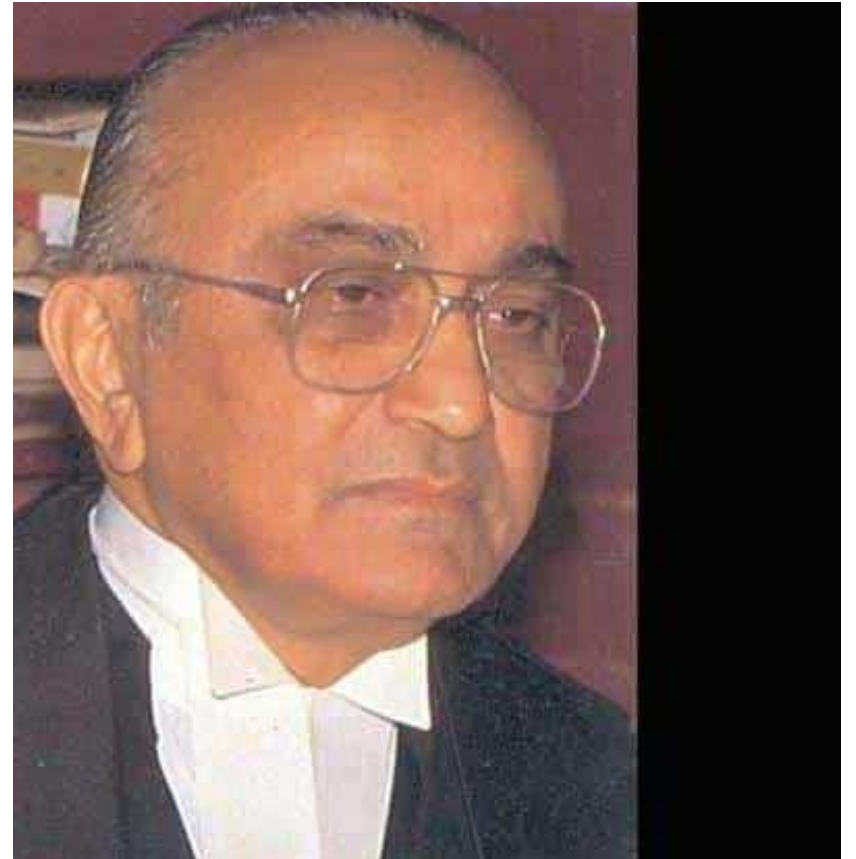
Prof. Sir Percy Winfield

"From a narrow and practical point of view, the second theory will suffice, but from a broader outlook, the first is valid. If we concentrate attention on the law of tort at the moment (which is what most practitioners do), entirely excluding the development of the law, past and future, then it corresponds to the second theory. If we take the wider view that the law of tort has grown for centuries and is still growing, then the first theory seems to be at the back of it. It is the difference between treating a tree as inanimate for the practical purposes of the moment, e.g., for the purpose of avoiding collision with it, it is as lifeless as a block of marble and realizing that it is animate because we know that it has grown and is still growing."

M.C. Mehta v. Union of India, AIR 1987 SC 1086

Justice Bhagawati:

"We have to evolve new principles and lay down new norms which will adequately deal with new problems which arise in a highly industrialised economy. We cannot allow our judicial thinking to be constricted by reference to the law as it prevails in England or for the matter of that in any foreign country. We are certainly prepared to receive light from whatever source it comes but we have to build our own jurisprudence."



Jay Laxmi Salt Works (P) Ltd. v. State of Gujarat, (1994) 4 SCC 1

Justice Sahai:

"Truly speaking entire law of torts is founded and structured on morality that no one has a right to injure or harm other intentionally or even innocently. Therefore, it would be primitive to class strictly or close finally the ever-expanding and growing horizon of tortuous liability. Even for social development, orderly growth of the society and cultural refinement the liberal approach to tortuous liability by courts is more conducive."

Lord Falconer, House of Lords

"'Compensation culture' is a catch-all expression. . . It's the idea that for every accident someone is at fault. For every injury, someone to blame. And, perhaps most damaging, for every accident, there is someone to pay."



Lord John Dyson

"As a consequence, the perception is that as a society we have witnessed a cultural shift. No longer is British society characterised by a somewhat philosophical and accepting approach to life. The growth of compensation culture has seen a shift in this approach, with more and more individuals suing at the drop of a hat for any injury; as the media reports are taken to demonstrate."



Conduct-based classification of torts

Negligent torts

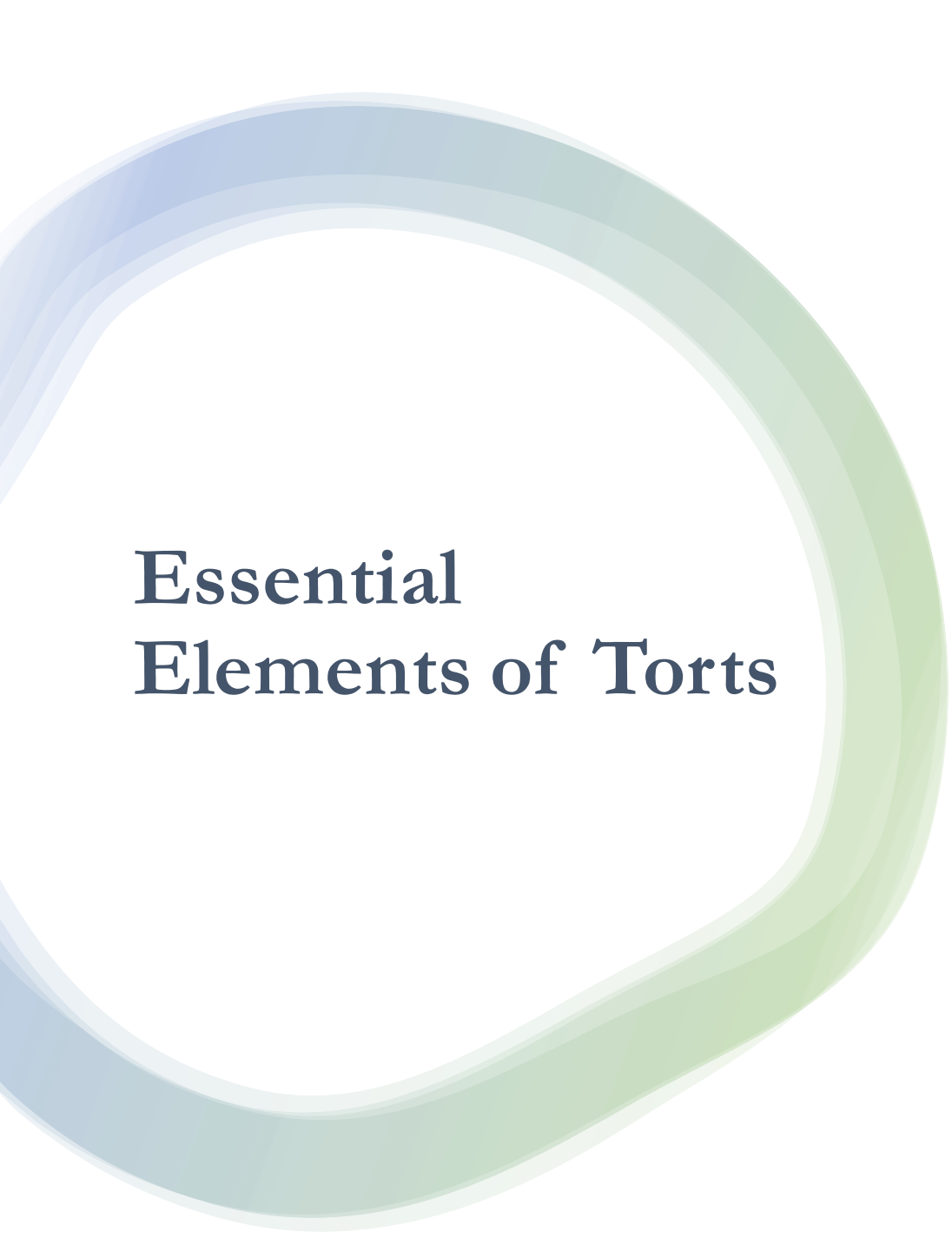
- Negligent torts occur when the defendant's actions were unreasonably unsafe.
- e.g., causing an accident by failing to obey traffic rules

Intentional torts

- Intentional torts are wrongs that the defendant knew or should have known would result through his or her actions or omissions.
- e.g., intentionally hitting a person

Strict liability torts

- Unlike intentional and negligent torts, strict liability torts do not depend on the degree of care that the defendant used. Rather, in strict liability cases, courts focus on whether a particular result or harm manifested.
- e.g., liability for inherently dangerous activities



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."*

Legal damage (*violation of a legal right*)

Injuria sine damno: Infringement of private right is actionable per se

- Conduct can be actionable even though no damage is *suffered*
- *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

- Not all damage is compensated by the law of *torts*
- *Gloucester grammar school case (1410) YB 11 Hen IV, fo. pl. 201, 23, f.*



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"