



SAFALTA CLASSTM

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Legal Reaso

TORTS IN RELATION TO PERSONS

1. Assault:

It is an act of one party, which puts another person in a reasonable fear of an immediate attack.

It is an attempt or a threat to cause hurt to another, coupled with an apparent present ability and intention to do the act.

Examples:

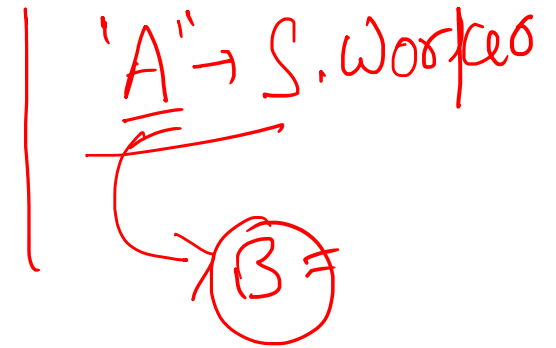
1. A advances toward B with clenched fists, but it was stopped by C. An assault has been committed by A.

2. Pointing a pistol, whether loaded or unloaded, toward the plaintiff is an assault.

2. Battery: ~~RR~~

Battery may be defined as the intentional application of physical force to the person of another, without his consent or lawful justification.

It includes the actual striking of another person, or touching him in a rude, angry, or revengeful manner.



Examples:

1. A hits B by throwing a stone at him.]

2. X spits on Y's face.

3. Defamation:

Defamation is the act of lowering down the reputation of a person in the eyes of public (reasonably prudent and/or right thinking members of the society) by way of words, gestures, pictures, paintings, and caricatures.

The term 'defamation' is a generic expression and includes (i) libel and (ii) slander.

A libel is a defamatory statement made in some permanent and visible form.

Example: writing, picture, printing, statute, etc.

A slander is a defamatory statement made by spoken words tending to injure the reputation of another.



Thus, 'libel is defamation addressed to the eyes and slander is defamation addressed to ears'.



Essentials of Defamation:

1.

The statement must be defamatory.

A defamatory statement is one, which tends to lower a person in the estimation of right-thinking members of society.

2.

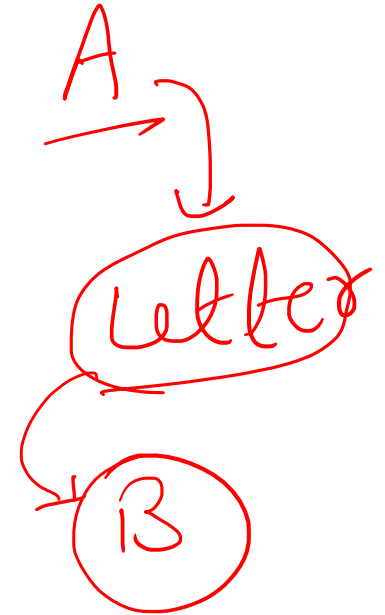
It must refer to the plaintiff.

3.

The statement must be published.

Publication does not mean that the defamatory matter must be published in a newspapers or a magazine.

Publication means the defamatory matter is made known to some person other than the person defamed.



Following are examples of **publication**.

• A tells **B** in the presence of **C** that **B** is a rogue.

• A writes a defamatory letter about **B**, who is blind and posts it to him in a sealed cover, knowing well that his wife has to read it for him.

Defenses of Defamation:

1. Truth:

If the alleged defamatory statement is substantially true, even though some details may be untrue, the defendant has complete defence in civil cases.

2. Fair and bonafide comment:

A fair and bonafide comment on matter of public interest does not attract any liability unless it is written (maliciously.)

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3. Privilege:

→ Legislature

When a person stands in such a relation to the facts of the case that he is justified in saying/writing that would be slanderous or libelous in the case of anyone else, he is said to have a privilege.

There are two types of privileges:

A. Absolute privilege:

In matters of absolute privilege, no action lies for a defamatory statement even if it is false and is made maliciously and out of improper motives.

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Example:

Article 105(2) of the Indian Constitution states that no action lies for statements made by members of either House of Parliament in their places in the Houses, however injurious they may be to the interest of third persons.



B. Qualified privilege:

When a person makes a statement in order to protect his own interest, which may be defamatory when any other person makes the same statement.

Example: //

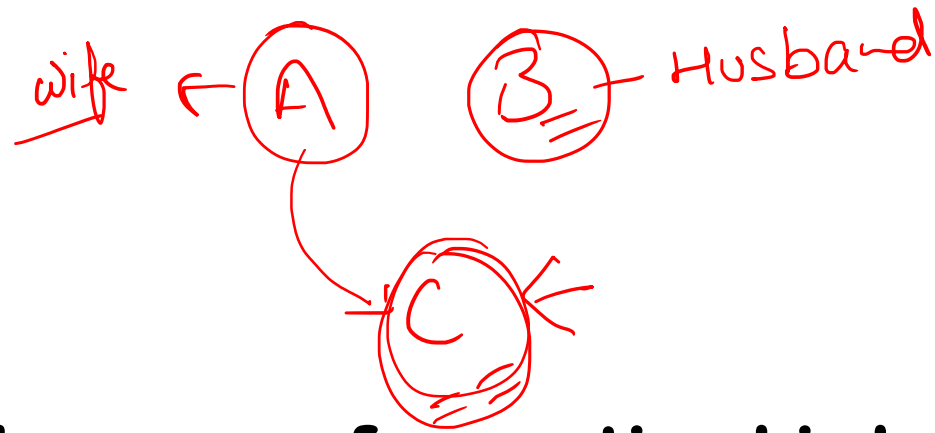
An employer tells his employee not to supply goods to a particular client, because he believes that the client has no intention to pay for the goods.

The employer is protected by qualified privilege, as he made the statement to protect his own interest.

4. Nervous Shock: (New)

Earlier, no action could be taken for any mental suffering/emotional disturbance caused by the negligence of the defendant.

However, it is now recognized that if by reason of an acute shock to the nervous system, the activities of the body are impaired and incapacitated from functioning normally, there is a clear bodily injury.




Example:

The defendant by way of practical joke informed the plaintiff that her husband had his leg broken in an accident.

The plaintiff got a nervous shock and became seriously ill. Held, the defendant was liable.

5. Negligence:

The word 'negligence' refers to the breach of a legal duty to take care which results in damage to the plaintiff. (Negligence is the absence of reasonable care to be taken.) 

Elements of Negligence:

In an action for negligence, the plaintiff must prove the following three points:

1. That there was **existence of a legal duty** to take care owed by the defendant to the plaintiff.

2. That there had been a **breach of that duty** by failure of the defendant to take such care as a reasonable man would have taken.

3. That as a result of the breach of duty referred to above, the plaintiff has **suffered damage**.

Unliquidated

Examples of the connotation of the word 'duty' in this context.

1. Duty of care to pedestrians and other road users while driving a vehicle.

2. Doctor's duty to his patients

Case Law:

Donoghue vs Stevenson

A man bought a bottle of ginger beer for his girlfriend's manufactured by the defendant.

The lady drank the contents of the bottle directly. Later, she poured the remaining contents into a glass.

To her utter shock, she noticed that a dead snail popping out of the bottle.

She fainted and fell ill, as she had already consumed a portion of the drink. It was held that the manufacturer was liable to the lady for 'negligence'.

Concept of Res ipsa loquitur: (Legal Maxim)

This maxim literally means, ('The thing speaks for itself'.)

The general rule is that, the burden of proof of negligence lies on the plaintiff.

There are however certain cases where the plaintiff is not required to prove negligence, because the accident speaks for itself (i.e., the facts are strongly in favor of negligence on the part of defendant), the plaintiff has simply to show that the accident occurred.

Case Law: Mata Prasad vs Union of India

There was a manned railway level crossing, whose gates were kept open.

The plaintiff, who believed that there was no train in the vicinity, tried crossing the gates. His vehicle collided with a railway engine.

It was held that the railway board was liable on the basis of maxim res ipsa loquitor.

The fact that the railway gate was open amply shows the gross negligence of the railway authorities.

Defences:

The following defences are available to defendant in an action against negligence: =

1. Denial by the defendant that he owed any duty to the plaintiff.]

2. Denial by the defendant of failure to take reasonable care.

3. Volenti non fit injuria.)

Question No: 1

Legal Principle: ✍

Violation of a legal right, with or without damage, gives rise to a tort.

Factual Situation:

A establishes a coaching class and charges ` 5,000 per year as fees. A's neighbor B establishes another coaching class thereby creating a competition; this forces A to reduce his fees to ` 3,000 per year.

Question: Can A claim damages from B for the loss caused to him?

- (a) Yes, he can as B has violated his legal right.**
- (b) No, A has reduced the fees on his own.**
- (c) No, because though there was damage there was no legal injury.**
- (d) None of the above.**