

Plaintiff	वादी	Defendant	प्रतिवादी
Prosecution	अभियोग पक्ष	Accused	आरोपी
Petitioner	याचिकाकर्ता	respondent	उत्तरदाता
Act /omission			

Tort अपकार wrong tort गलत अपकृत्य

Damage injuries ---Damages liquidated / unliquidated ---- Liquidated - pre determine

Tort

The Latin maxim

“Ubi Jus Ibi Remedium”

Sir John William Salmond (1862–1924), जिन्हें सामान्यतः **J.W. Salmond** या **Salmond** कहा जाता है।

translates to “Where there is a right, there is a remedy.” This principle of law ensures that if a legal right is violated, the aggrieved party must have a legal remedy available.

Jurist salmond

Civil wrong for which the remedy is a common law action for unliquidated damage and which is not exclusively the breach of contract or the breach of trust or other merely equitable damage.

Sir Frederick Pollock (1845–1937)

“Every tort is an act or omission, not merely the breach of a duty arising out of a personal relation or undertaken by contract, which is related to harm suffered by a determinate person, whether there be actual damage or not.”

“प्रत्येक दायित्व-लंघन (Tort) ऐसा कृत्य या उपेक्षा (act or omission) है, जो मात्र किसी व्यक्तिगत संबंध से उत्पन्न कर्तव्य के उल्लंघन या अनुबंध द्वारा ग्रहण किए गए कर्तव्य के उल्लंघन तक सीमित न होकर, ऐसे हानि से संबंधित हो जिसे किसी निश्चित व्यक्ति ने भोगा हो, चाहे वास्तविक मापनीय हानि हुई हो या न हुई हो।”

Definition of Tort by Winfield

According to Sir Percy Henry Winfield, a prominent legal scholar, the definition of a tort is:

“Tortious liability arises from the breach of a duty primarily fixed by law; this duty is towards persons generally and its breach is redressible by an action for unliquidated damages.”

By Frasen:

“It is an infringement of a right in rem of a private individual giving a right of compensation at the suit of the injured party.”

Section 2 (m) limitation act 1963

Tort means a civil wrong which is not exclusively a breach of contract or breach of trust.

Right in rem right in persona/personam

We have 2 rights

Rem -----public rights

Persona ----- personal right or individual rights

Public right means -----against the public.

Tort public

Contract between 2 parties.

Right in persona -----for individual only.

Right in rem -----for public.

Tot is base upon England tot.

In section 2 (m) limitation act 1963

Since you've asked about **Section 2(m) of the Limitation Act, 1963** (India) in the context of tort law (based on your previous questions about the definition of a tort by Winfield and Fraser), I'll provide a detailed explanation of **Section 2(m)** and its relevance to tort law. Given your mention of "our constitution" and the IST timezone, I'll assume you're referring to the Indian legal context. I'll also connect this to tort law as defined by Winfield and Fraser, and clarify how it fits within the broader framework of the Indian Constitution and the Limitation Act, 1963.

Section 2(m) of the Limitation Act, 1963, defines a tort as follows:

"‘tort’ means a civil wrong which is not exclusively the breach of a contract or the breach of a trust."

Breakdown of the Definition

1. Civil Wrong:

- A tort is a **civil wrong**, meaning it is a legal wrong addressed in civil courts, distinct from criminal wrongs (which involve state prosecution) or contractual breaches (which arise from agreements).
- It involves harm to an individual's rights, such as personal injury, property damage, or reputational harm, leading to civil remedies like damages.

2. Not Exclusively a Breach of Contract:

- The definition excludes wrongs that arise solely from a contractual obligation. For example, failing to deliver goods under a contract is a breach of contract, not a tort, unless it also violates a general legal duty (e.g., negligence in delivery causing harm).

3. Not Exclusively a Breach of Trust:

- A breach of trust, such as a trustee misusing trust property, is governed by trust law (e.g., the Indian Trusts Act, 1882) and is distinct from torts. However, if a trustee's actions cause harm beyond the trust relationship (e.g., fraud affecting a third party), it could qualify as a tort.

Context within the Limitation Act, 1963

- **Purpose of the Act:** The Limitation Act, 1963, prescribes time limits for initiating legal proceedings in India to ensure timely justice and prevent stale claims. It applies to civil suits, appeals, and applications, including those involving torts.
- **Section 2:** This section provides definitions for key terms used in the Act. Section 2(m) specifically defines "tort" to clarify which civil wrongs are subject to the Act's limitation periods.
- **Limitation Periods for Torts:** The Act's Schedule specifies time limits for tort claims, such as:
 - **Three years** for most torts involving personal injury, property damage, or defamation (e.g., Articles 72–80).
 - **One year** for specific torts like malicious prosecution or false imprisonment (e.g., Articles 73–74).
 - These periods start from the date the cause of action arises (e.g., when the harm occurs or is discovered).

Comparison with Winfield's and Fraser's Definitions

Your previous questions asked for definitions of a tort by **Winfield** and **Fraser**, so I'll relate Section 2(m) to these:

1. Winfield's Definition:

- **Winfield:** "Tortious liability arises from the breach of a duty primarily fixed by law; this duty is towards persons generally and its breach is redressable by an action for unliquidated damages."
 - Winfield's approach allows for new torts (e.g., absolute liability in *M.C. Mehta v. Union of India*), which Section 2(m) implicitly supports by not limiting torts to specific categories.

2. Fraser's Definition (Corrected Sentence from Your Query):

- **Fraser (Corrected):** "A tort is an infringement of a right in rem of a private individual, giving rise to a right of compensation through an action brought by the injured party."

Relevance to the Indian Constitution

Since you mentioned "our constitution" (likely the Indian Constitution), I'll connect Section 2(m) to its constitutional context:

- **Article 300:** The Indian Constitution under Article 300 allows the Union or States to be sued for tortious acts committed by their servants, provided the act is not in exercise of sovereign functions (e.g., *State of Rajasthan v. Vidyawati for state liability in a motor accident*). Section 2(m)'s definition of a tort applies to such claims, with limitation periods governing when suits can be filed.
- **Constitutional Torts:** Violations of fundamental rights (e.g., Article 21's right to life) can be treated as torts, with courts awarding compensation for state wrongs like custodial death or illegal detention (e.g., *Rudul Sah v. State of Bihar*). Section 2(m)'s broad definition supports these claims by including civil wrongs beyond contract or trust. However, the Limitation Act generally doesn't apply to writ petitions under Articles 226 or 32, as they are not "suits" (e.g., *Rajmata V.R. Scindia v. State of Uttar Pradesh*).
- **Public Policy:** The Limitation Act, including Section 2(m), aligns with the constitutional principle of ensuring justice while preventing delayed litigation, as reflected in the maxim "*Vigilantibus non dormientibus jura subveniunt*" (the law aids the vigilant, not those who sleep on their rights).

Practical Implications of Section 2(m)

- **Scope of Torts:** By defining a tort as a civil wrong not exclusively tied to contract or trust, Section 2(m) covers a wide range of wrongs, such as:
- **Limitation Periods:** Section 2(m) ensures these wrongs are subject to the Act's time limits. For example, a suit for personal injury due to negligence must be filed within three years from the date of injury (Article 72).
- **Exceptions:** The Act allows extensions in cases like fraud, mistake (Section 17), or acknowledgment of liability (Section 18), which can reset the limitation period for tort claims.

Question : - **when a action become tot?**

Answer : - wrong full act + omission + violation of legal rights + breach of legal duty.

violation of legal rights ----- induria sine damrum

breach of legal duty ----- damnum sine injuria.

Law of tort / law of torts

- 1 Winfield theory important question 10 marks
- 2 pigeon hole theory by Salmond

Case **m c mehta 1987 absolute liability case** generate created a new tort in this at 1987.

Law of tort -----limited tort theory

Law of torts ----- new tort can be generated every time.

First theory Winfield or pollock

Law of tort -----law of torts

All injuries done by one person to another are tort. Unless there is some justification recognized by law.

Pigeon hole theory / supported by salmond.

No specific name mention means law of tort.

With specific name means law of torts.

Definition

“If I injure my neighbour, he can sue me in tort, whether the wrong happens to have a particular name, such as assault or battery, or not. I will be liable unless I can prove lawful justification.”

“यदि मैं अपने पड़ोसी को चोट पहुँचाता हूँ तो वह मेरे विरुद्ध टॉर्ट (नागरिक अपराध) का दावा कर सकता है, चाहे उस गलत कार्य का कोई विशेष नाम जैसे ‘असॉल्ट’ या ‘बैटरी’ हो या न हो। मैं तब तक उत्तरदायी रहूँगा जब तक कि मैं वैध (कानूनी) औचित्य सिद्ध न कर दूँ।”

The concept of absolute liability was established in India by the Supreme Court in the 1987 case of **M.C. Mehta v. Union of India**. This landmark judgment, arising from the Oleum gas leak incident in Delhi, significantly expanded the liability of hazardous industries beyond the existing rule of strict liability.

The M.C. Mehta v. Union of India case (1987) Oleum gas leak incident in Delhi

Absolute liability vs. strict liability

Criteria	Strict Liability (Rylands v. Fletcher)	Absolute Liability (M.C. Mehta)
Defenses/Exceptions	Allows for certain defenses, such as the plaintiff's consent, act of God, or act of a third party.	Has no exceptions. The enterprise is always liable, regardless of precautions taken.
Applicability	Applies when a dangerous substance kept on one's land escapes and causes harm.	Applies to enterprises engaged in hazardous or inherently dangerous activities.
Escape of substance	The escape of the substance from the defendant's premises is an essential requirement.	Escape of the substance is not a necessary condition. The rule applies even if the harm occurs within the premises.

Measure of compensation	Damages are typically based on the actual loss incurred by the plaintiff.	Compensation is exemplary and correlated to the enterprise's magnitude and capacity, ensuring a deterrent effect.
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Significance of the M.C. Mehta case

The judgment was a watershed moment in Indian environmental jurisprudence for several reasons:

- Proactive judicial role: It showed the judiciary's proactive role in protecting citizens' rights, particularly the right to a safe and healthy environment, under the expanded scope of Article 21 (Right to Life).
- Forerunner to environmental legislation: The ruling directly influenced the development of environmental law in India. The Public Liability Insurance Act of 1991 and the National Green Tribunal Act of 2010 were subsequently enacted to formalize and strengthen the principles established in this case.

“The law of torts consists of a clear set of pigeon-holes, each containing a labelled specific tort, such as assault, battery, etc. If the defendant’s wrong does not fit into any of these pigeon-holes, then he has committed no tort against the plaintiff.”

Conclusion 10 marks question.

“Both the theories are correct in their own perspective. The ‘Law of Tort’ theory takes a wider view, while the ‘Law of Torts’ theory adopts a narrower view.”

Element / essentials items become tort

- | | | |
|---|--------------------------|---|
| a | Wrongful act or omission | |
| b | violation of legal right | 1 Injuria sine damnum (Injury without damage) and 2 damnum sine injuria (damage without injury) |
| c | breach of legal duty | |
-

Element of tort

- | | | |
|---|--------------|---|
| A | legal damage | 1 Injuria sine damnum (Injury without damage) and 2 damnum sine injuria (damage without injury) |
|---|--------------|---|

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Ref A “Enrichment of legal rights without causing any harm or loss to the plaintiff.”

Case ref **Ashby v. White (1703)** is a landmark English tort law case that established the principle that a legal right must have a legal remedy, and that an infringement of a right is actionable even if no actual damage or loss is caused

Lord Chief Justice Holt's reasoning: In his famous dissent in the lower court, which was later upheld by the House of Lords, Lord Holt argued that the denial of a legal right, such as the right to vote, was in itself an injury that warranted a remedy, regardless of any financial or physical damage. He emphasized two key legal maxims:

Injuria sine damno (injury without damage): This maxim was central to the decision. It holds that a violation of a legal right is actionable even if it does not result in any actual harm or loss.

Ubi jus ibi remedium (where there is a right, there is a remedy): This maxim means that for every legal right, the law provides a means for its enforcement. Without a remedy, the right is meaningless.

2nd case ref

The case of ***Bhim Singh v. State of Jammu and Kashmir (1986 AIR 494)*** is a landmark Indian Supreme Court judgment that dealt with the arbitrary and illegal detention of a Member of the Legislative Assembly (MLA) and the violation of his fundamental rights. The court awarded exemplary damages to the petitioner, establishing a crucial precedent for compensating a person for the violation of their constitutional rights.

Facts of the case

- The Incident: On August 10, 1985, Bhim Singh was arrested by police in Jammu and Kashmir while he was on his way to attend a crucial legislative assembly session.
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B danmnum sine induria

Damage or loss without violation of legal right.

Example stelatoes open shop in the market and all other shop effective.

Case ref

The ***Gloucester Grammar School Case (1410)*** is a landmark English tort law case that established the legal principle of ***damnum sine injuria***, which means "**damage without legal injury**". The court held that a party cannot recover for financial losses caused by fair and lawful competition, even if they suffer significant harm

Judgment and legal principle

The court dismissed the plaintiff's claim, ruling that the defendant was not liable for the damages.

- Lawful Competition: The court held that the defendant's actions constituted legitimate business competition. Opening a competing school with lower fees was a lawful act and did not violate any of the plaintiff's legal rights. *Damnum sine Injuria*: The case demonstrated that suffering damage or financial loss (*damnum*) does not create a cause of action if there has been no corresponding legal injury or violation of a right (*injuria*).
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