ORIGIN AND DEVELOPMENT OF LAW OF TORTS IN ENGLAND AND IN INDIA

Tort law is a body of law that addresses and provides remedies for civil wrongdoings not arising out of contractual obligations. A person who suffers legal damage may be able to use tort law to receive compensation from someone who is legally responsible, or liable, for those injuries. Generally speaking, tort law defines what constitutes a legal injury and establishes the circumstances under which one person may be held liable for another's injury. Tort law spans intentional and negligent acts. Tort law has three purposes. The first is to compensate the victim, the second is to punish the wrongdoer, and the third is to deter harmful activities.

The two basic categories of torts are:

- Intentional Torts: An intentional tort is a category of torts that describes a civil wrong resulting from an intentional act on the part of the tort feasor.
- Negligent Torts: Negligence is a failure to exercise the care that a reasonably prudent person would exercise in like circumstances. The area of tort law known as *negligence* involves harm caused by *carelessness*, not intentional harm.

Wrongs are of two types

- Public wrong – These are acts that are tried in Criminal Courts and are punishable under the Penal Law and are called crimes
- Private wrong – These are acts against an individual person or a person within a community and are tried in Civil Courts and are called torts.

Development of Tort in England

It is essentially a civil liability at the present day and is a means by which a person wronged recovers compensation from the wrongdoer. The remedy for tort is a "debt of justice," the royal courts are being bound to redress wrongs done by one subject to another. The initiative is always taken by the person aggrieved, who may also decide to abandon his claim if he wishes. No royal pardon could excuse tort liability, though it could excuse criminal responsibility so far as this

prerogative is not cut down by Act of Parliament. The courts have a wide power to decide whether a wrong is to be treated as a tort or to be left unredressed. Many torts are also crimes but the two aspects are quite distinct, e.g., causing death by careless driving. Under the English system, torts and crimes are tried centrally by different courts, but both are tried at assizes.

Many legal systems clearly distinguish between crimes and civil wrongs (our "torts") though both are tried by the same courts. In some systems all crimes are automatically also torts when private damage results. Apart from early confusion between the subject matter of tort and crime the subject of tort has been confounded by its unsystematic growth. The various wrongs which have received a remedy have developed haphazardly through diverse forms of action. It is only in recent years that certain underlying characteristics appear to be established and it is too early yet really to describe them as principles applicable to torts generally. In particular, torts are now classified by reference to the degree of intention or negligence necessary to support an action. This is modern and displays a converse movement from that in crime, where the element of *mens rea* in modern crimes tends to reach a vanishing point.

The law was administered in the communal courts it remained formless, and no doubt the wrongs were of a comparatively simple type. The manorial courts also had what might be called a law of torts, and here the range was fairly wide. Many cases were admitted there which could not for a long time be heard in the common law courts; for example, defamation was not an uncommon plea. But it is not easy to say what notion, if any, was behind these wrongs other than that of keeping peace and good order on the manor. This apparent failure to recognize a mental element in the law wrongdoing should not cause surprise. Civilization was very of the modern position of general principles 'primitive, and much of the law depended upon custom belonging to pre-Christian times. Greek drama shows us how civilized pagans regarded liability without fault as tragic but inevitable. In order that a mental element may be an ingredient in law there must also be an adequate means for ascertaining its presence; this the archaic procedure of the middle Ages with its appeal to the supernatural hardly did, or was required to do. After all, the Divine intervention, implicit in their modes of proof, was of itself sufficient evidence of wrongdoing or of mitigating circumstances or innocence, depending on its result. In the second place the more primitive the people the more completely will their philosophical scheme be occupied solely with the recognition of external facts.

Law cannot represent the most advanced thinking of its age at any time, because it must be capable of some acceptance among those for whom it is promulgated, but customary law from its very nature will be even more conservative. Even with our highly developed judicial machinery and relatively advanced thought, external facts play far the greatest part in our legal system. For example, the adultery of the divorce division is the adultery of the Old and not the New Testament. Infidelity of heart or mind is no ground for divorce; there must be the outward visible sign of physical misconduct. It is true that negligence is recognized as a ground of liability, but it does not depend upon the carelessness of the particular individual. It is dependent upon a finding by a jury that the facts show the want of care of a reasonable and prudent man; whether or not the defendant exercised all the care he could is not the issue. Even for proof of intention a litigant must rely upon external facts; today the mind of man may be triable; but the evidence is circumstantial.

These circumstances might cause a variation in liability for acts corresponding with their moral gravity, and in some cases might even exonerate the doer from legal blame. Ancient private law differed from modern systems because an act gave rise prima facie to liability, but an omission was disregarded. Yet even for his act a defendant might show that he was not liable by reason of the circumstance. Hence we should use Professor Winfield's terminology, "strict liability, rather than "absolute liability."

Tort is constituted of:

- Negligence
- Specific torts
- Vicarious liability