

# SCHOOL OF LAW, NARSEE MONJEE INSTITUTE OF MANAGEMENT STUDIES, BENGALURU



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## CRITICAL ANALYSIS OF MENTAL ELEMENTS IN LAW OF TORTS BATCH2022-2027

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## ABSTRACT

*Any action that violates another person's legal rights or creates a nuisance is referred to as a wrongful act. And this "wrongful act or omission" results in the formation of a tort. Anyone's "wrongful act or omission" can constitute a tort. Injuries to a person's life, property, or reputation, as well as breaches of duties owed to other people in general and remediable through monetary damages, can give rise to tortious liability.*

*This sort of responsibility falls under the realm of civil law. In tort law, the existence of mens rea is fact-specific and therefore subject to interpretation.*

*In order to determine how much the mental element is crucial in determining tortious liability, this project intends to investigate the ideas of intention, motive, malice, negligence, recklessness, and fault.*

**Keywords:** Nuisance, tortious liability, intention, motive, negligence, recklessness, etc.

## CHAPTER-01

### INTRODUCTION

#### 1.1. Meaning of Tort:

No clear, scientific definition of a tort has yet been developed. The Latin word "tortum," which meaning to twist, is the source of the English word "tort." Thus, it suggests behaviour that is twisted, crooked, or illegal rather than behaviour that is legal. It is similar to the word "jimha" in Sanskrit, the roman term "delict," and the English term "wrong".<sup>1</sup>

A tort occurs when there is a violation of obligation, which is a civil wrong. A wrongdoer or tortfeasor acts inappropriately when their duty to another is breached. Their illegal behaviour is considered tortious and they can be sued either jointly or separately. The purpose of tort law is to ensure victims are financially supported in the event of a legal wrong.

Some tort definitions are as follows:

<sup>1</sup> Ratanlal & Dhirajlal 'The law of Torts' Lexis Nexis, 20<sup>th</sup> edition, 2019  
ISBN: 978-93-8854-841-0

“Tort means a civil wrong which is not exclusively a breach of contract or breach of trust.” Section 2(m) of Limitation Act, 1963<sup>2</sup>

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

## 1.2. Essential of Tort

1. A wrongful act or omission, and
2. Duty imposed by the law
3. The act must give rise to legal or actual damage, and
4. It needs to be actionable, or at least do enough damage, to warrant legal recourse.

## 1.3. TORT AND CRIME- DISTINGUISHED

1. A tort is an act that causes harm to an individual privately; it is the violation of a person's right in personam. A crime is a public wrong because it violates a public right, which is a right in rem and therefore applies to the whole world and the state.
2. In criminal law, purpose is central to the crime itself, whereas in tort law it is less crucial but nonetheless vital.

“It is the act and not the motive for the act that must be regarded. If the act, apart from the motive, gives rise merely to damage with legal injury, the motive, however, reprehensible it may be, will not supplement that element”- Salmond<sup>3</sup>

To comprehend the role of mental element in tort law, we must first examine the concepts of Intention, Negligence, Motive and Malice. In tort law, these are the terms associated with the Mental Element.

In tort law, “motive” refers to the mental condition that actually prompts a person to perform an action. In tort law, motive is typically irrelevant, much like purpose. Intention is formed as a result of motive. The Honourable Indian courts also stated that if an act is legal, its motivation is of little consequence.

Tort can now occur intentionally or unintentionally. Tort law recognises the possibility of liability for wrongdoing regardless of whether the harm was intentional or accidental. The term

“malice” is a broad synonym for “bad motive,” “spite,” or “ill will.” It means purposefully causing harm or damage in legal sense. When the act is otherwise illegal and malicious intention may be inferred from the facts and circumstances provided in the case, malice becomes significant in deciding responsibility. The difference between intention and purpose, as defined in terms of, In its purest form, recklessness is frequently understood as a risk that a particular course of action will have specific effects, and that risk. It’s critical to determine the limits of tortious recklessness, and in particular, to define the boundary between recklessness and negligence, because occasionally recklessness attracts liability for “deliberate torts. "In tort law, negligence simply means failing to act in accordance with the law. There is no thought process involved. The plaintiff in a tort action for negligence, on the other hand, does not have the burden of proving that the defendant was negligent or reckless.

### 1.3. RESEARCH PROBLEM:

How much does the presence of mental factors help in determining tortious liability

### 1.4. RESEARCH OBJECTIVES

- To study the concept of the mental element in Tort Law
- To identify the role of Intention and Motive in determining tortious liability
- To examine the exception of said rules

supra<sup>3</sup> Ratanlal & Dhirajlal ‘The law of Torts’ Lexis Nexis, 20<sup>th</sup> edition, 2019  
ISBN: 978-93-8854-841-0

### 1.5. RATIONALE OF STUDY:

<sup>2</sup> Limitation Act, 1963

This paper seeks to analyse the concept of the mental element of tort law. And how does the presence of mental factor help in determining tortious liability. It also seeks to distinguish between motive and intention. How does motive and intention irrelevant in determining tortious liability. And also to examine the exception of said rules. In some cases, like battery, assault, false imprisonment and trespass, motive and intention are relevant in determining tortious liability.

### 1.7 LITERATURE REVIEW:

#### JOURNAL ARTICLES

- 'Mens Rea in Tort Law' - By Peter Cane (winter, 2000)<sup>4</sup>

'Motive as an aspect of Tort' by the same authors have been extremely influential in shaping the bulk of Chapters 1 and 2, respectively. The paper "Mental Elements—Essentially in Torts" was extremely helpful in forming the working hypothesis for this study. It also assisted in accomplishing the paper's primary purpose.

- "Mental Deficiency in Relation to Tort"- By W. G. H. Cook (April,1921)<sup>5</sup>

If a person's mental illness was not so severe that it rendered him incapable of understanding the nature and consequence of the act he was committing, then that person could be held liable in a court of law for committing a crime or a culpable act, depending on the circumstances.

The New York Court of Appeals ruled in *Williams v. Hays* that a person suffering from insanity might be held liable for the same torts as a sane person. However, the Court acknowledged that "in which malice, and hence intention, actual or assumed, is a required factor, like libel, slander, or wrongful prosecution," it is not responsible.

- "Mental and Emotional Disturbance in the Law of Torts"- Calvert Magruder (May,1936)<sup>6</sup>

<sup>4</sup> Peter Cane. "Mens Rea in tort law" Oxford Journal of Legal Studies

[Vol. 20, No. 4 \(Winter, 2000\)](https://www.jstor.org/stable/20468340), pp. 533-556 (24 pages) <https://www.jstor.org/stable/20468340>

<sup>5</sup> W. G. H. Cook. "Mental Deficiency in Relation to Tort" Apr, 1921, Vol. 21, No. 4 (Apr., 1921), pp. 333-350 : <https://www.jstor.org/stable/1112693>

<sup>6</sup> Calvert Magruder. "Mental and Emotional Disturbance in the Law of Torts" May, 1936, Vol. 49, No. 7 (May, 1936), pp. 1033-1067 Stable URL: <https://www.jstor.org/stable/1333061>

Once upon a time, it was mistakenly believed that the interest in mental and emotional peace should be accorded independent of legal protection because the defendant's admitted negligent conduct endangered the plaintiff's bodily safety, and actually caused a b as a result of a direct physical impact, but attending nervous shock and acute emotional distress.

#### BOOKS

Intention in tort law (Keith N Hylton)

- This book has greatly increased the much-needed insight to make Chapter 3. Intent requirements in tort law are discussed, with an emphasis on the incentive consequences of tort liability laws.

The Law of Torts (Ratanlal & Dhirajlal)<sup>7</sup>

- The author talks about a bad intention is not enough to make an act that does not constitute a legal damage actionable.
- Even if the motivation behind the action is abhorrent, it will not be sufficient to establish legal injury if the conduct itself results in only damage and no actual wrongdoing.

Torts (Windfield & Jolowicz),<sup>3</sup>

- The author explains that in order to establish liability for some torts, one must show that the defendant acted with fault, which can be defined as a lack of the level of care that a "reasonably sensible person" would have used in the same situation (negligence).

<sup>3</sup> Peel, W.E & Goudkamp, J. 'Torts' Thomson Reuters (professional) 19<sup>th</sup> edition, 2014

ISBN 978-93-84746-40-7

## 1.8 RESEARCH METHODOLOGY

The methodology that would be applied for carrying out this research in Doctrinal, Analysis and Comparative research. In this research the primary source of data are limitation Act, 1963, Indian penal code, Torts law, Government orders, Reports of various committees. The secondary sources of data comprises of published books, journals, scholarly articles, news releases, print media, research paper and others were used.

<sup>7</sup>supra Ratanlal & Dhirajlal 'The law of Torts' *Lexis Nexis, 20<sup>th</sup> edition, 2019*  
ISBN: 978-93-8854-841-0

### CHAPTER-02 MOTIVE:

In tort law, Motive is the mental condition that drives a person to perform an action. usually refers to the reason why the act was committed. In tort law, motive is typically irrelevant, much like purpose. The ultimate cause is motive, which results in the formulation of an intention. Additionally, the Honourable Indian courts have ruled that if an act is legal, the intention behind it is mostly irrelevant.

In law, particularly criminal law, a motive, is the reason why somebody choose to take a particular action. Normally, the legal system permits motive to be demonstrated in order to give the accused believable explanations for committing a crime. However, a tort action need not be motive in order to succeed. Not at all just because a wrongdoing has a decent motivation doesn't make it okay to do it. Similarly, a lawful conduct does not become unlawful because of an improper, malicious intent or malice.

In a number of cases, the Indian courts have also discussed how purpose and malice are irrelevant. In **Vishnu Basudeo v. T.L.H. Smith Pearse, Mudholkar. J.** observed

The rulings by Lords Halsbury and Watson in the case of Bradford Corporation v. Pickles<sup>4</sup> and Allen v Food can be regarded as some of the earliest decisions that held that motive is irrelevant in tort.

#### **Bradford Corporation v. Pickles [1895] AC 587**

Facts:

- Pickles held more land than Bradford Corporation did.
- Water from a natural reservoir beamed to the land owned by the Bradford Corporation.
- This was employed by the Corporation to provide water to nearby towns.
- Pickles started drilling a well into this naturally occurring reservoir (on his land).
- As a result, less water is flowing onto land owned by Bradford Corporation

Claim:

- Bradford Corporation sued the defendant in a nuisance case and requested an injunction.
- According to Bradford Corporation, this was an intentional attempt to rob their land of water.

- They claimed that the defendant was taking these actions to compel them to buy their property.

Court held that:

- Although the defendant's actions did deprive them of water, the court found that
- Before the water entered their land, the claimant had no claim to it.
- The potential existence of a malicious intent on the part of the defendant had no bearing on the case.
- The court's only concern is thus whether the defendant had the legal authority to act in the manner in question.
- Since the well was dug on his property, the defendant, in this case, did have the right to do so.

ALLEN V FOOD (1898) AC1<sup>5</sup>

<sup>4</sup> Bradford Corporation v . Pickles 1895, AC 587

<http://allanbeever.freehosting.co.nz>

<sup>5</sup> Allen v Food,1898AC1 <https://doi.org/10.2307/1321554>

## FACTS:

Flood and Walter worked as a shipwright and was subject to dismissal at any time. Employees were opposed to hiring them since they had previously worked for a competitor. Allen, acting as a trade union representative for the other workers on the ship, confronted the crew and warned them that a strike would be called unless they removed flood and Walter from service. As a result, Flood and Walter were fired, and their former employers have stated they will not rehire them. Both Flood and Walter sued for breach of contract, claiming that it was intentionally caused by the defendants.

## ISSUE:

The question at hand is whether the court made a mistake in concluding that Allen had illegally induced the procurement of contract.

## HELD:

Allen was found not to have violated flood's and Walter's legal rights, and the decision was overturned as a result. Neither Allen nor the company had any obligation to keep the worker on staff, and Allen did not break the law or resort to dishonest means to fire the worker. Evidence suggested that Allen made false promises to the company if Flood and Walter were to continue working there. The company he worked for put their faith in his predictions, and he was rewarded for them. It was determined that no rights were being violated or obstructed in any way, and that no illegal activity was facilitated by this. No matter how vicious or poorly intentioned Allen was, his actions were not actionable. There was no interference that warranted a remedy; hence the workers were not awarded damages.

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**Vishnu Basudeo v. T.H.S Pearse<sup>6</sup>**

In this case, court held that the legality of the act must be taken into account. The reason why the conduct was committed has no bearing if it was legal.

Every tort is presumed to be malicious under the law because it is legal wrongdoing, hence the concept of "malice in law" is unnecessary.

Depending on the context, "malice" can mean either, committing wrongdoing without a valid excuse.

A course of activity driven by an unlawful motivation.

## Exceptions to Rule

There are certain types of torts where the motive might be an essential component and hence important for determining liability like deception, malicious prosecution, injurious falsehood and defamation, where the defense of fair comment or privilege is applicable. Only if it was published in good faith will the defence of qualified privilege be available.

An act that is technically legal but has an illegal intent can be considered a nuisance if it causes the target significant distress (held in the case of *Palmer v. Loder* 1962)

The plaintiff in *Balak Glass Emporium v. United India Insurance Co. Ltd* was forced to move into a lower level of the building because of water damage caused by leaks from higher floors. There was evidence of hostility between the plaintiff and the defendant. Both the tank's outlet and the tap were left completely open. Because the defendant committed the above act with bad intent, the plaintiff was held accountable.

## CHAPTER-3

## INTENTION:

Intention torts are wrongdoings that are done knowingly. " Intention denotes the defendant's full awareness of the conduct in question and its consequences, as well as a desire for those consequences. However, it is important to note that the interpretation of this definition by the law is frequently technical in nature. In law, a party is presumed to intend that which is a necessary or natural consequence of what he does.

The law recognizes torts when one party causes another person physical or mental injury or damage to their property or good name. Tort law recognizes the potential of responsibility regardless of whether the harm was intentional or accidental.

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<sup>6</sup> **Vishnu Basudeo v. T.H.S Pearse[AIR 1949 NAG 364]**

Depending on the intention, a tort can be classified into two parts namely:

1. Intentional Tort
2. Unintentional Tort

#### A) Intentional Tort

Some action must be committed with the intent to do so, i.e., there must be an intention to commit the act. That there be a mental component is crucial.

In the 1955 case of **Garratt v. Dailey**<sup>7</sup>, a little boy named Brian dragged a chair out from beneath Ruth Garratt as she attempted to sit down. Ruth was unaware of what Brian had done, and as a result, she fell and shattered her hip. Ruth sued the family of Brian, claiming that they were negligent and responsible for her bodily injury. Ruth was awarded \$11,000 in damages even though Brian did not want to hurt Ruth; the court's ruling stated that since the act caused the hip to be broken, Ruth was entitled to compensation. The appeal filed by Brian's family argued that children under the age of 5 could not be held accountable for an intentional tort.

As the court explained, "the purpose element is in force if the person knew with certainty that the act entails a danger of injury." This means that youngsters can be held responsible for their actions.

#### Intentional tort includes:

##### Battery:

Battery is the use of physical force against another person without a legal justification.

#### Essential of battery:

All three of these conditions must be met:

- 1) There must have been some sort of physical contact (direct or indirect);
- 2) There must have been some sort of intent; and
- 3) The physical contact must have been completely unjustified.

Example: Holding the collar of a person

#### Assault:

To commit the tort of assault, one must cause another person to reasonably fear or apprehensive that they will be the victim of an immediate battery by means of an act amounting to an attempt or threat to commit a battery.

Probably merely using words does not amount to an assault; However, insulting or threatening; The threat of violence must be demonstrated via action as much as speech.

The fear has to be real. Assault does not occur if there is no reasonable fear of harm. **For example:** In **R. v. S. George**<sup>8</sup>, pointing a loaded gun at someone is considered an assault. Even if the gun isn't loaded, pointing it so far away that it could hurt someone is still an assault. If someone comes up to you and threatens to use force, that is an assault. In the **Stephens v. Myers**<sup>9</sup> case, this issue was resolved.

THERE IS NO FEAR, THERE IS NO ASSAULT

#### False Imprisonment

False imprisonment occurs when an individual is arbitrarily and completely deprived of their liberty, even for a short time, without any valid legal justification.

#### Essential of False Imprisonment

- 1.** A condition in which a person's freedom is severely limited.

<sup>7</sup> Garratt v. Dailey, 146 Wash. Dec. 186 (1955) <https://scholarship.law.stjohns.edu>

<sup>8</sup> r v st george 1840 173

<sup>9</sup> *Stephens v. Myers*, 1830 172 E.R. 735

## 2. The detention must be against the law.

### Trespass:

To trespass is to intrude upon the land or property of another without permission. Intentionally entering someone else's property without their consent is considered trespassing. It indicates an unlawful act or a breach of a legal right. There are two types of trespass:

1. Trespass of land and property (means entering another person's property)
2. Trespass of goods (means the taking of someone else's goods)

### B) Unintentional Torts

In the event of unintentional tort, the defendant injures the plaintiff without having any malicious intent. It might qualify as an unforeseen accident. Because the person who injured you wasn't being careful, they unintentionally did this. Such a person could be considered careless or negligent. In the case of unintentional tort, it should be noted that the harm was brought about by the disregard for the "duty of care" that a sensible and reasonable man would have taken into account.

In **Wilkinson v. Downton**<sup>10</sup>, the defendant made light of the fact that her husband had been injured in an accident and had been taken to the hospital. She was horrified by this information and quickly became ill. She then filed a tort claim for damages against the defendant. The defendant insisted that he only intended to make jokes and never intended to hurt the plaintiff. The judge found him responsible and rejected his claim. In this case, the court noted that mere intention was not a necessary element of tort. The respondent knew that his actions would have natural and likely consequences and would have hurt the plaintiff. Therefore, whether or not it was his intention, he was responsible.

A defendant who can persuade the court that, at the time of the offence, if he or she can prove that they were too young or too inexperienced to understand the gravity of their actions, they may be free from prosecution, thereby failing to account for intent, in both criminal and tort prosecution.

### Difference Between Motive and Intention

Motive must be distinguished from intention. Intention is the volition or active desire to perform an act, whereas motive is the reason or basis for an action. In other words, intention is the operation of the will that directs an overt act, whereas motive is the emotion that prompts the operation of the will, or the ulterior goal of the person willing.

<sup>1</sup>For example- A beggar who had not eaten for 10 days steals some bread from a shop. Here, he is accountable for both theft and trespassing, but his motive was not to cause loss to shopkeepers.

## CHAPTER-04

### Malice

In common sense, malice refers to resentment or ill will. However, malice has two distinct meanings in law: (1) the deliberate commission of an unlawful act, and (2) an improper motive. Malice and intention are synonymous in the first sense. In the second sense, malice refers to the motivation, and in this context, it covers not only resentment or ill will but also any motivation that is against the letter of the law. The following are the words used by **BAYLEY J.** to describe malice in its most basic form. Malice is often used to refer to animosity toward someone, but in the legal sense, it refers to an unlawful act that is committed knowingly and without justification or justification. If I strike a complete stranger with a blow that will likely result in death, I am acting maliciously because I am doing it wilfully and without justification.

### Town Area Committee v. Prabhu Dayal, 1975<sup>11</sup>

#### Facts:

In this case, plaintiff had made 16 shops on the old foundation of the building within the territory of Town Area Committee. The town area committee demolished his shop due to illegal construction.

#### Plaintiff contention:

He claimed that he suffered a loss of Rs.1000 due to demolition of his construction.

<sup>10</sup> Wilkinson v. Downton, 1897 2 Q.B. 57

[Vol. 74, No. 3 \(November 2015\)](#), pp. 392-395 (4 pages)

<sup>11</sup> **Town Area Committee And Ors. vs Prabhu Dayal And Anr. on 12 July, 1974**

<https://indiankanoon.org/doc/287252/>



He further added-

1. He was not given reasonable time to demolish the construction.
2. He was given a short time notice, so the action was malafide 3. At the time of demolition of construction, he was out of station.

Defendant contention (Town Area Committee)

Defendant said that notice was given several times and construction was illegal and directed by DM to take necessary action against him. Court observation and Decision

Court held that since construction was illegal so it had to be demolished. No one can enjoy the fruits of an act which is an offence under court of law.

Plaintiff's damage so called Damnum sine Injuria. Such damage does not give the sufferer any right to get compensation. And the action of demolition was done according to the law made by government. Since, the plaintiff did not suffer any legal injury. So, he has no right to get compensation. Balak Glass Emporium v. United India Insurance Co. Ltd, 1993<sup>12</sup>

In this case, the defendant, the building's owner, was held liable because water from a higher floor, which was under the defendant's control, made its way to the plaintiff, the floor below.

The plaintiff and the defendant clearly held animosity toward one another. It proved that the plaintiff and the defendant had animosity toward one another. It was discovered that the tank outlet was closed, and the tap on the upper floor was left open.

There was only one

reasonable inference to make, and that was that the defendant acted wrongfully when they did what was being alleged, and the plaintiff was therefore entitled to damages.

Exception to malice:

The following circumstances make malice significant when determining tort liability

1. when the act is unlawful in other ways and it is obvious from the circumstances that it was done with malice.
2. The defendant's malice must be established in torts involving deceit and malicious prosecution.
3. If there is evidence of malice, the defendant cannot escape responsibility for defamation or mala fide in such a situation by raising a qualified privilege defence.
4. Personal discomfort brought on by public nuisance.
5. Recklessness that makes damages worse.

A legal definition of malice is "intentional wrongdoing without a just cause or excuse" or "lack of a reasonable or probable cause." Malice in fact is the popular term for "improper or evil motive." As was previously mentioned, it is not important to determine

**Debeswar Bhuyan v. State Of Assam (2005)**

According to the dictum "actus non facit reum nisi mens sat rea," the prosecution in the Debeswar Bhuyan case must demonstrate that the attack and his criminal thought, or mens rea, coexist (2005). It is not more difficult for the accused to support its claim of insanity under Section 84 IPC than it is for a party to a civil. Additionally, the Penal Code requires that the accused's claimed criminal act be accompanied by his guilty mind, or mens rea, in order to be considered murder. However, even if the accused is unable to prove beyond a reasonable doubt that he was mentally unfit at the time of the alleged crime, the prosecution may still be found to have failed to prove the murder charge against him if the evidence presented at trial raises reasonable doubts about his mental culpability. Furthermore, the Court found that the evidence indicated the defendant was not in a normal state of mind at the time of the attack, ruling out the possibility that he possessed the requisite mens rea to commit the crime for which he was being prosecuted.

CONCLUSION:

Crime and punishment go hand-in-hand. Criminal law requires mens rea. Unless differently stated with justification, mens rea is required in all circumstances. By presumption, everyone intends their actions' inevitable consequences. Mens rea is an essential

<sup>12</sup> **Balak Glass Emporium vs United India Insurance Co. Ltd. ... on 27 July, 1993 AIR Ker 243**

<https://indiankanoon.org>

feature of statutory offences, according to relevant cases and legislation. The Supreme Court has indicated multiple times that it is not required to adopt an English court's ruling, but is free to construct an Indian-appropriate legislation.

**Prabhat Kumar Singh vs. State of Bihar, 2021**<sup>13</sup>

In an instance of medical negligence, the Supreme Court has noted that mens rea as intent is not necessary.

The bench of Justices AM Khanwilkar and Sanjiv Khanna noted that the complainant must bring medical evidence or interrogate a competent Doctor in support of his case laid forth in the complaint before the court will issue an arrest warrant for the accused in a criminal medical negligence allegation.

Medical malpractice charges were filed under Indian law (Sections 304, 316, and 34). The accused was served with a summons by the Magistrate. The accused took the summons order to court, where it was overturned because no proof of mens rea (malicious intent) had been presented.

CHAPTER-05

**Negligence and Recklessness:**

The word "negligence" in common usage refers to simple carelessness. In a legal sense, it denotes a failure to uphold the standard of care that the perpetrator, acting as a sensible man would have upheld under the circumstances. In general, there is a legal obligation to exercise caution when it was conceivably foreseeable that doing otherwise would likely result in harm. By failing to take adequate precautions, many different types of harm may be brought about through negligence. When another party fails to take measures that a reasonable person would take to prevent an unreasonable risk, they have committed the Tort of Negligence. There will frequently be an express or implied contract between the parties, such as between a doctor and a patient, an employer and an employee, or a bank and a customer. Until recently, the existence of such a contract was required for a claim of negligence to be successful.

Negligence law, on the other hand, has developed to cover situations involving two or more parties where no contract, express or implied, has been established.

In contrast to negligence, which primarily consists of carelessness or incompetence, recklessness involves the intentional selection of a specific action. Furthermore, the degree of risk taken by the actor is higher in recklessness than in negligence. For an action to be considered reckless, the actor must have the desire to commit it but not the desire to cause harm to others. Instead, he may hope against hope that the harm doesn't occur, but know full well that it very well could. Intention is the defining factor between negligence and recklessness from a legal perspective. A person can be held legally responsible for injuries they cause to others if they knowingly put the health and safety of others in jeopardy, usually while also breaking the law.

If an injured party successfully files a claim for damages resulting from reckless behavior, the court may also award punitive damages. Negligence, on the other hand, is the failure to act in a safe manner or to ensure the safety of others without malice on the part of the actor.

**FARDON V HARCOURT (1932) 146 L.T.391**<sup>14</sup>

The defendant abandoned his dog in a parked car at the side of the road. The dog leaped through the opening and shattered a pane of glass. As he passed the vehicle, the plaintiff was hurt by a shard of glass. It was decided that the defendant was not responsible because the accident was highly improbable. The obligation is to take precautions against the more likely outcomes, rather than against completely improbable outcomes. The event was so unique and unlikely that by no reasonable standard could it be stated that the most diligent owner of a motor vehicle with a dog in it on a highway ought to have expected it.

David Topp v London County Bus (South West) Limited [1993]<sup>15</sup>

<sup>13</sup> *Prabhat Kumar Singh vs. State of Bihar ; SLP(Crl) 2395-2396 of 2021*

<sup>14</sup> FARDON V HARCOURT (1932) 146 L.T.391,

<https://www.studocu.com>

<sup>15</sup> David Topp v London County Bus (South West) Limited [1993] EWCA Civ 15 <http://www.e-lawresources.co.uk/Topp-v-London-Country-Bus.php>

No minibus was going to be driven because its driver didn't show there. The criminals then rode off in the stolen minibus after knocking a woman off her bike and assaulting her (she subsequently died from her injuries). Although the woman's husband contended that the bus company owed him a duty of care, it was determined that the corporation had no such duty toward a third party.

## CHAPTER-06

### CRITICAL ANALYSIS OF THE JUDGEMENT

#### ✚ RELEVANT OF INTENTION IN TORT LAW:

In intentional torts like assault, it's not enough to just have the intention.

It was decided in the case of *A. C. Cama v. H. F. Morgan* that assault requires both an act and an intent to do harm.

The mental component of purpose has been crucial in several instances of trespass.

**Wilson v. Pringle** featured an accident between two teenage males, the plaintiff and the defendant. Plaintiff filed suit against the defendant for trespassing, seeking monetary damages. However, the court ruled that there was no trespass because no one intended to cause harm. As a matter of law, it was determined that the intentionality of the conduct itself was more important than the severity of the harm done. That Intention was crucial to the court's decision here is clear.

#### ✚ Analysing Case Law for Recklessness and Negligence

It was determined in the case of **Donoghue v. Stevenson** that a duty of care must be in place for negligence to exist. In most cases, negligent behavior can be traced back to specific actions rather than a certain mindset. Being extremely careless is one definition of recklessness. There is a great deal of danger in being careless. The Balloon case, in which a man fell from a gondola due to the irresponsibility of the pilot, is more concerned with the circumstances surrounding the incident than with the mental health of those involved. The lawsuit is mainly about conduct, specifically carelessness and negligence.

#### ✚ RELEVANT OF MOTIVE IN TORT LAW:

It has been established that intent rarely plays a role in cases of intellectual property violation.

- 1) In the case of *Allen v. Flood*, a carpenter named Walter Flood was employed aboard a ship, and his coworkers protested his work since it was for a competitor of their employer. Allen represents his fellow workers on the ship as their union representative. When he reports to work, he warns his boss that if he doesn't fire Vlad and Walter, the rest of the staff will go on strike. They were let go after that and never came back to work.

This case proves that the factors of civil injury were not taken into account by English law. In and of itself, violating the civil rights of others is wrong.

- 2) In the case of *Bradford vs. Pickles*, Bradford's farm receives water from Pickles' natural reservoir. That water is used to supply Bradford, the city where I live. Pickles proposed drilling a well in his reservoir to lessen water seepage into the Bradford property. There is a claim here that water should be withheld from the area. In this instance, the court ruled that Pickles has the legal right to use his property for whatever purpose he sees fit. Inspiration is of little consequence here.

## CHAPTER-07

### CONCLUSION:

This paper seeks to answer the question, "To what extent are "mental elements" necessary in tort law?" Whether or not "mental elements" are important in determining tort liability is also a question. Regardless of how evil the motivation, if the act was legal, the person had the right to do it. If there is no use of the property, which would be legal if motivated by a legitimate motive, it can become unlawful because it is driven by an improper or even malicious motive. Even if there was a "malicious motive," a contract could not be made unlawful because the effect that was the subject of the complaint (no reemployment) was in and of itself entirely legal.

A legal action cannot turn into an illegal one just because of the motivation behind it. A bad motive is a requirement for civil wrong liability, with the exception of cases involving malicious prosecution, defamation, and conspiracy. A good motive does not make an otherwise unlawful act justifiable, and a bad motive does not make an unlawful act justifiable.

When qualified privilege or fair comment are pleaded, motive becomes important in the defamation tort. According to Lord Watson's ruling in the case *Allen v. Flood*, "Motive is irrelevant in the Law of Torts.

Since it is obviously impossible to know what was going through the defendant's mind, intent alone is a poor defence in tort law. In contrast to motive, which provides an explanation for why the accused committed the crime, intention determines whether the accused committed the crime on purpose or by accident. Simply put, motive drives intention, which causes the latter to result from the former. The defendant's intention is the key factor in every criminal case because it is the only way to establish guilt or innocence.

On the other hand, determining guilt or innocence is not greatly influenced by motive. Intention or the mental component is "irrelevant" in tort law, to sum up the findings. The definition of "irrelevant" states that the presence or absence of a mental component does not affect the wrongdoer's liability.

In summary, the research indicates that in tort law, purpose or the mental aspect do not matter.

Sr. No	CONTENT	MENTAL ELEMENT
1.	Law of Tort	Irrelevant
2.	Intentional Tort	Relevant
3.	Unintentional Tort	Irrelevant
4.	Motive	Irrelevant, with exceptions
5.	Malice	Irrelevant, with exception
6.	Negligence or Recklessness	Irrelevant

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