



# Law of Torts

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*LL.B. — Complete Study Notes (All Units)*

LL.B. Study Notes

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**Read this page first, then go to your unit.** These notes teach Law of Torts from the ground up — in plain English, with every Latin maxim translated in [brackets], the leading cases with their holdings, and a visual map of each topic. They are written for a first-time learner: understand a topic once here, then revise it fast from the charts and tables.

## How to Use These Notes

**What this is.** A complete, self-contained set of study notes covering all units of Law of Torts. Each topic is taught from scratch, so you can learn it without a textbook.

**Who it is for.** The first-time learner who wants to understand before memorising; the revision student who wants fast, high-yield recall; and anyone who wants the whole subject in one clear, printable file.

**What is inside every topic** — the same blocks, in the same order:

| Block                               | What it does                                                                          |
|-------------------------------------|---------------------------------------------------------------------------------------|
| <b>The Hook</b>                     | A short true story or landmark case that makes the topic memorable                    |
| <b>The Concept</b>                  | Plain-English teaching of the rule — every element explained, not just listed         |
| <b>Key Definitions &amp; Quotes</b> | The exact statutory words or a jurist's definition, so your terminology stays precise |
| <b>The Visual</b>                   | A chart that maps the topic's structure at a glance                                   |
| <b>Case Laws</b>                    | The leading judgments, each with its holding and why it matters                       |

Each unit closes with a **Quick Revision & Case Law Table** — the fastest way to refresh the whole unit.

**How to study a topic.** (1) Read the Hook to anchor the idea. (2) Work through the Concept until you understand it, then memorise. (3) Trace the chart from memory. (4) Learn each case as a name plus a one-line holding.

**Disclaimer.** *A study aid, not a substitute for the bare Acts and prescribed texts. Always cross-check section and article numbers against the official text. © Medha-Academy.in · LL.B. · For personal academic use.*

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# UNIT 1 — Nature, Scope & Foundations of Tortious Liability

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## **In this unit.**

This unit looks big, but it is really only three questions. *What is a tort? How is it different from a crime and from a breach of contract? And when does a harm become a legal wrong the courts will do something about?* Everything else here — the Latin maxims, the arguments about intention and malice, the question of who may sue and who may be sued — hangs on those three. Get them right and you have the foundation for the whole subject, because Units 2 to 5 are simply this framework applied to particular wrongs. Unit 1 is also the most reliably examined unit in the paper: the definition question and the *damnum sine injuria* question have appeared in almost every sitting from 2011 to 2026.

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## **Also in this unit:**

- [Landmark Cases — in Brief](#)
  - [Quick Revision & Case Law Table](#)
-

# 1. How the Law of Torts Grew — England and India

## The Hook

In medieval England you could not simply walk into court and complain that someone had hurt you. You had to buy a **writ** — a printed royal form — and your complaint had to fit one of the forms already on sale. If no writ fitted your grievance, you had no case, however badly you had been wronged. The whole modern law of torts grew out of lawyers arguing that their client's misfortune *did* fit one of the forms.

## The Concept — a subject built by judges, not by a legislature

Here is the single most important fact about this subject, and the one students most often skip: **the law of torts in India is not codified**. There is no “Indian Torts Act” you can hold in your hand. Contract law has the Indian Contract Act, 1872; criminal law has its penal code. Tort has neither. It is **judge-made law** — worked out case by case, inherited from the English common law, and applied by Indian courts so far as it suits Indian conditions.

That one fact shapes how you must answer every question in this paper. You argue from **cases**, not from sections. The definitions you quote come from **jurists** — Salmond, Winfield, Fraser — not from a legislature.

### A. The English origin — the writ system.

The word “tort” comes from the Latin *tortum* [twisted or crooked], reaching English through Norman French. It simply meant conduct that was not straight.

Early English law gave a remedy only through a **writ**, a formal royal order that started a lawsuit. Two writs did most of the work:

1. **Trespass** — for a **direct and forcible** injury. You struck me; you walked onto my land; you seized my goods. Trespass was actionable *per se* [by itself], meaning I did not have to prove I lost anything.
2. **Trespass on the case** (often just “case”) — for an injury that was **indirect or consequential**. The classic contrast: if you throw a log at me, that is trespass; if you leave the log lying in the road and I trip over it later, that is case. Under “case” you had to prove actual damage.

From these two roots grew almost every tort you will study — negligence, nuisance, defamation, conversion. The writ system itself was abolished in England in the nineteenth century, but the distinction between wrongs actionable *per se* and wrongs needing proof of damage survives, and it is examined constantly.

## B. How tort law reached India.

There was no single moment of adoption. English tort law arrived in stages:

1. In the **Presidency towns** (Calcutta, Madras, Bombay), the Crown's courts applied English common law from the eighteenth century onwards.
2. Outside those towns, in the *mofussil*, courts had no code to apply, so they were directed to decide according to **justice, equity and good conscience** — a phrase which in practice meant English common law, so far as it was applicable to Indian society.
3. **Section 9 of the Code of Civil Procedure, 1908** keeps the door open to this day: civil courts have jurisdiction to try all suits of a civil nature unless barred. A tort claim is a suit of a civil nature. No specific statute is needed.

The crucial qualification is that English rules were never adopted wholesale. Indian courts apply them **subject to Indian conditions** — which is why some English doctrines were rejected outright here, and why in one celebrated instance an Indian court went further than England ever had.

## C. The Indian departures — where our law overtook England's.

Three developments are worth naming, because they let you end an evolution answer on a strong, modern note:

1. **Absolute liability.** In *M.C. Mehta v Union of India* (1987), after the Oleum gas leak in Delhi, the Supreme Court refused to follow the English rule in *Rylands v Fletcher* with its list of exceptions. It laid down a rule of **absolute liability** for hazardous enterprises, with no exceptions at all. This is taught fully in Unit 3.
2. **Constitutional tort.** From *Rudal Shah v State of Bihar* (1983) onwards, the Supreme Court began awarding **compensation directly under Articles 32 and 226** for violation of fundamental rights, without requiring the victim to file an ordinary civil suit.
3. **Rejection of English limits.** The doctrine of common employment, and the widest form of sovereign immunity, have both been cut back far more sharply in India than they were in England.

### ◆ WORKED EXAMPLE — why “uncodified” changes your answer

**Facts.** An examiner asks: “Is there a law of torts in India, and where is it found?”

**Rule.** Tort law in India is uncodified judge-made law, received from English common law and applied subject to justice, equity and good conscience; s.9 CPC gives the civil court jurisdiction.

**Apply.** A student who writes “the law of torts is contained in the Indian Torts Act” has invented a statute that does not exist. The correct answer names the common-law source, the reception through the Presidency towns and the *mofussil*, and s.9 CPC as the procedural gateway.

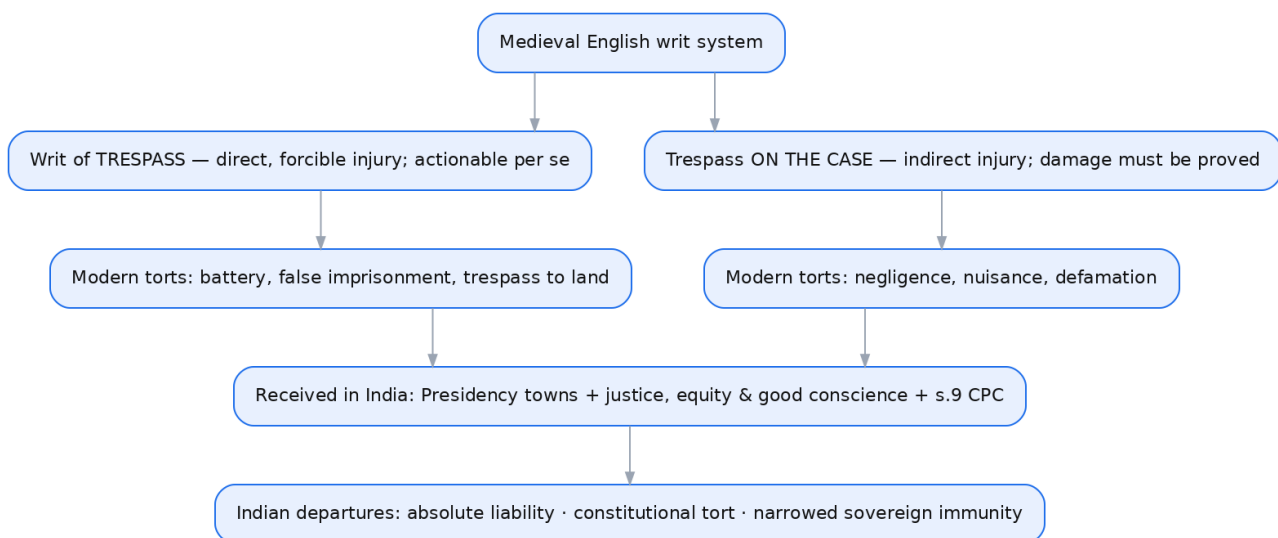
**Conclusion.** There is a law of torts in India, but it lives in judicial decisions, not in a code — which is exactly why case names carry so many marks in this paper.

## The Quote

**Winfield's definition (his own words):** "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."

**In Simple Terms:** the duties in this subject are imposed on you by the law itself, not chosen by you, and they are owed to everybody rather than to one named person. If you break one, the injured person can sue and the court decides how much you must pay.

## The Visual



## Case Laws

- **M.C. Mehta v Union of India (1987)** — created absolute liability for hazardous industry; the clearest example of Indian tort law departing from English precedent.
- **Rudal Shah v State of Bihar (1983)** — compensation awarded under Art. 32 for illegal detention; the birth of the constitutional tort in India.
- **Donoghue v Stevenson (1932)** — the neighbour principle; the case that turned scattered duty situations into a general law of negligence (taught in Unit 3).

## 2. What is a Tort? Definition and Essential Elements

### The Hook

In 1932 a woman in Paisley, Scotland, drank a bottle of ginger beer bought for her by a friend. At the bottom of the opaque bottle were the decomposing remains of a snail. She

had no contract with anybody — her friend had paid — yet the House of Lords let her sue the manufacturer. That snail is the reason tort exists as a separate subject: it protects you against people you have never dealt with and never agreed with.

## The Concept — a duty you never agreed to

Think of it this way. A contract is a duty you **chose**: you promised something, so you must do it. A tort is a duty the **law chose for you**: you did not agree to drive carefully, but every road-user is entitled to expect that you will.

A **tort** is a **civil wrong** — other than a breach of contract or a breach of trust — for which the remedy is an action for **unliquidated damages**.

Three phrases in that definition are doing real work, and each is worth marks:

1. **Civil wrong.** The wronged person sues for himself; the State is not the prosecutor. The object is compensation, not punishment.
2. **Other than a breach of contract or breach of trust.** This is a *negative* definition: tort is defined partly by what it excludes. Breach of contract is a civil wrong, and so is breach of trust, but neither is a tort.
3. **Unliquidated damages.** “Liquidated” means fixed in advance. In contract the parties may agree the sum payable on breach; in tort no one has agreed anything, so the **court assesses** the compensation. This phrase is the single most reliable way to distinguish tort from contract in one line.

### A. The four essential elements.

Every tort needs all four. State them as four, explain each, and give an illustration — that structure alone earns most of the marks.

1. **A wrongful act or omission by the defendant.** The conduct must be one the law disapproves of, not merely one you find unkind. An **omission** counts only where the law imposed a duty to act — a lifeguard who does nothing while a swimmer drowns is liable; a stranger walking past is generally not.
2. **Breach of a duty fixed by law.** The duty must be a **legal** duty, not a moral or social one. Refusing to help a beggar breaches a moral duty and no legal one, so no tort is committed.
3. **Legal damage — *injuria*.** The defendant’s act must violate a **legal right** of the plaintiff. This is the element the examiners test hardest, because “damage” in the ordinary sense and “legal damage” are different things. It is the subject of Topic 5 below.
4. **A legal remedy — an action for unliquidated damages.** The wrong must be one the courts will actually redress. Damages are the primary remedy; injunction and specific restitution are also available.

## B. Nature and scope — what the subject is really about.

The law of torts protects **rights in rem** [rights available against the whole world] — your bodily safety, your reputation, your liberty, your property, your peaceful enjoyment of land. Contract, by contrast, protects **rights in personam** [rights against one particular person].

The scope of the subject is deliberately open-ended. Because it is judge-made, new torts can and do emerge as society changes — nervous shock, absolute liability for hazardous industry, and the constitutional tort were each unknown a century ago.

## C. Winfield versus Salmond — the theoretical dispute.

When a question says “**critically evaluate** the various definitions”, it is asking for this argument. Do not simply list definitions.

1. **Winfield’s wider theory:** all harms are torts unless there is some justification. Tort law is one broad principle, and the list of torts can grow. His support: courts have in fact created new torts over time.
2. **Salmond’s narrower theory:** there is no general principle; there is only a **closed list** (“pigeon-holes”) of specific, named torts, and if your complaint fits none of them, you have no claim.
3. **The reconciliation** — and this is the sentence that earns the “critical” mark: both are right at different levels. Salmond describes what a lawyer does on any given day (find the pigeon-hole); Winfield describes what the law does over a century (make new pigeon-holes). The growth of negligence after *Donoghue v Stevenson*, and of absolute liability after *M.C. Mehta*, shows Winfield’s view operating in practice.

### ◆ WORKED EXAMPLE — moral duty is not legal duty

**Facts.** A strong swimmer stands on a riverbank and watches a stranger drown. He does nothing. The family sues him.

**Rule.** A tort requires breach of a duty **fixed by law**; an omission is actionable only where the law imposed a duty to act.

**Apply.** He owed the drowning man a plain moral duty, but the law imposes no general duty to rescue a stranger. No legal duty, therefore no breach, therefore no tort — however unattractive his conduct.

**Note the limit.** Change one fact and the answer changes. If he were the **lifeguard on duty** at that pool or beach, the law would impose the duty, and the same inaction would be actionable. This is exactly the Jan 2026 problem about the lifeguard on his mobile phone.

**Conclusion.** No liability for the bystander; liability for the lifeguard.

## The Quote

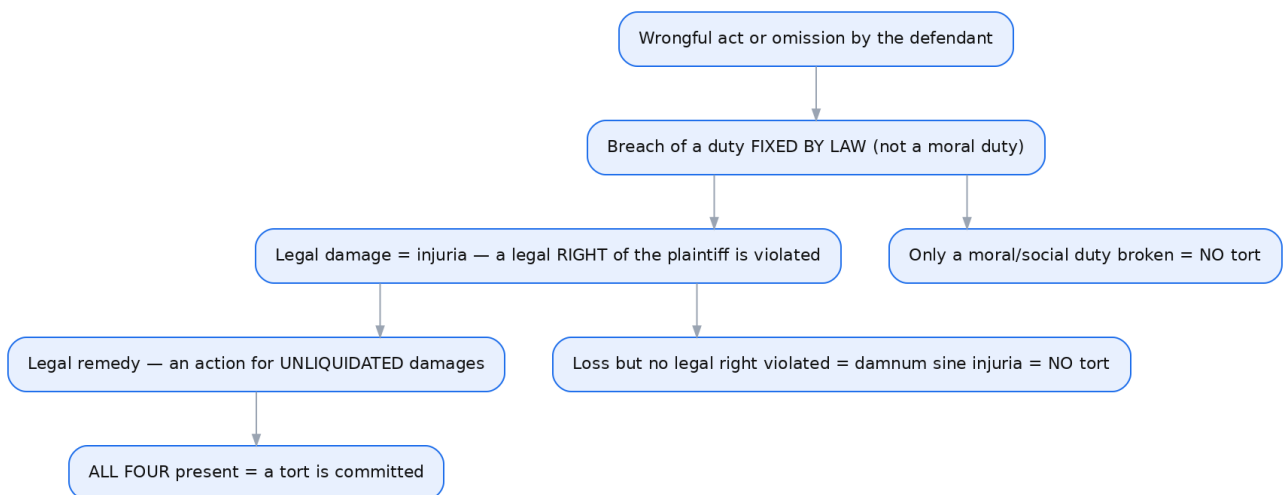
**Sir John Salmond:** “A tort is a civil wrong for which the remedy is a common-law action for unliquidated damages, and which is not exclusively the breach of a contract or the breach of a trust or other merely equitable obligation.”

**Prof. P.H. Winfield:** “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.”

**Fraser:** “A tort is an infringement of a right in rem of a private individual, giving a right of compensation at the suit of the injured party.”

**In Simple Terms:** all three say the same core thing in different words — the law itself (not any promise) tells you what you must not do to other people; if you break that rule, the victim can sue you, and the judge decides the amount.

## The Visual



## Case Laws

- **[C-1] Ashby v White (1703)** — a returning officer wrongly refused a qualified voter's vote; held actionable although the candidate won anyway, because a legal right was violated.
- **Donoghue v Stevenson (1932)** — a manufacturer owes a duty of care to the ultimate consumer; the foundation of modern negligence.
- **[C-2] Gloucester Grammar School Case (1410)** — a rival schoolmaster who took away all the pupils caused heavy loss but violated no legal right; no tort.

## 3. Tort, Crime and Breach of Contract Distinguished

### The Hook

A man punches you in a public street. The State prosecutes him and he is fined or jailed — that is the **crime**. You separately sue him and he pays you compensation for your injury — that is the **tort**. One act, two proceedings, two different purposes: the State punishes, and you are compensated. Neither excludes the other.

### The Concept — three wrongs, three different questions

The clean way to organise this answer is to ask four questions of each wrong: **who sets the duty, to whom is it owed, who sues, and what does the court order?**

#### A. Tort compared with crime.

1. **Nature of the wrong.** A tort is a **private** wrong against an individual. A crime is a **public** wrong against the community at large, even when only one victim is hurt.
2. **Who brings the proceeding.** In tort the injured party sues in his own name. In crime the **State prosecutes**, and the victim is a witness, not a party.
3. **Object.** Tort aims at **compensation**; criminal law aims at **punishment** and deterrence.
4. **Remedy.** Tort ends in unliquidated damages, an injunction, or restitution. Crime ends in imprisonment, fine, or forfeiture — and any fine goes to the State, not to the victim.
5. **Standard of proof.** A tort must be proved on the **balance of probabilities**; a crime **beyond reasonable doubt**.
6. **Compromise.** A tort claim may generally be settled and withdrawn by the parties. Most crimes cannot be compounded except as the law expressly permits.
7. **Overlap.** The same act can be **both**: assault, battery, defamation, trespass and negligence causing death are all simultaneously torts and offences.

#### B. Tort compared with breach of contract.

1. **Source of the duty.** This is the heart of it. In contract the duty is **fixed by the parties themselves**, by agreement. In tort the duty is **fixed by law**, whether you like it or not.
2. **To whom the duty is owed.** A contractual duty is owed to a **definite person** — the other party (a right *in personam*). A tortious duty is owed to **persons generally** (a right *in rem*).
3. **Consent.** A contract requires the consent of both parties. Tortious duties bind you without your consent.

4. **Privity.** Under contract, generally only a party to the agreement can sue. Tort has no such barrier — which is precisely why the plaintiff in *Donoghue v Stevenson* succeeded although she had bought nothing.
5. **Damages.** Contract damages may be **liquidated** (fixed in advance by the parties) or unliquidated; tort damages are **always unliquidated**.
6. **Measure of damages.** Contract damages aim to put the plaintiff in the position he would have occupied **had the contract been performed**. Tort damages aim to restore him to the position he was in **before the wrong** — *restitutio in integrum*.
7. **Motive and malice.** Generally irrelevant in contract. In a few torts — malicious prosecution, conspiracy, defamation on a privileged occasion — malice is decisive.

### C. Where a single set of facts gives both.

A surgeon operates negligently. He has broken his **contract** to treat the patient with skill, and he has also breached the **duty of care** the law imposes on every professional. The patient may sue in either, and will usually choose whichever gives the better measure of damages or the longer limitation period.

#### ⚠ **DON'T CONFUSE — “civil” does not mean “tort”**

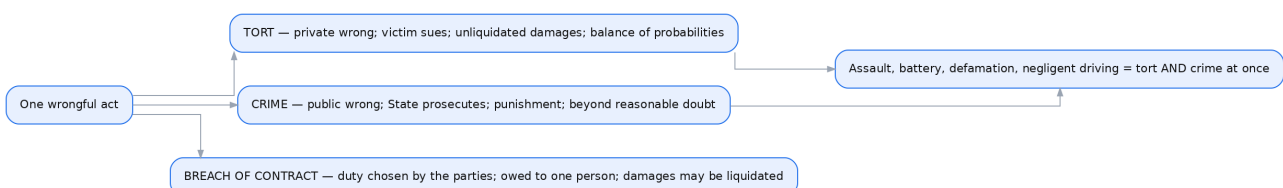
Every tort is a civil wrong, but **not every civil wrong is a tort**. Breach of contract and breach of trust are civil wrongs that are expressly excluded from the definition of tort. Writing “a tort is any civil wrong” is the most common way students lose the definition marks — see Topic 4.

### The Quote

**Salmond, on the distinguishing feature:** a tort is “a civil wrong for which the remedy is a common-law action for **unliquidated damages**, and which is not **exclusively** the breach of a contract or the breach of a trust...”

**In Simple Terms:** the word “exclusively” matters. If a set of facts amounts *only* to a broken promise, it is contract and nothing else. If the same facts also breach a duty the law imposes independently, it is a tort as well, and the plaintiff may choose.

### The Visual



## Case Laws

- **Donoghue v Stevenson (1932)** — no contract between consumer and manufacturer, yet a duty in tort arose; the clearest proof that tort ignores privity.
  - **Bhim Singh v State of J&K (1985)** — wrongful detention of an MLA was both a constitutional violation and the tort of false imprisonment.
- 

## 4. “All Torts are Civil Wrongs, but All Civil Wrongs are Not Torts”

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### The Hook

Think of civil wrongs as a large family, and tort as one child in it. Every member of the family shares the surname — all are private wrongs redressed by civil courts. But pointing at any family member and calling him “tort” would be wrong: two of his siblings are named breach of contract and breach of trust.

### The Concept — genus and species

This is a question about **classification**, and the vocabulary to use is *genus* and *species*.

The **genus** is the civil wrong: any wrong for which the remedy is a civil action brought by the injured person, as opposed to a criminal prosecution brought by the State.

Within that genus sit at least three **species**:

1. **Breach of contract** — a civil wrong, but the duty came from an agreement.
2. **Breach of trust** — a civil wrong, but the obligation is equitable and the damages are liquidated.
3. **Tort** — the residue: civil wrongs that are neither of the above, redressed by unliquidated damages.

So the first half of the statement is true by definition: every tort is a civil wrong, because tort is one species of that genus. The second half is true because the genus contains other species too.

### A. Why the exclusions exist.

Ask *why* the definition bothers to exclude these two, and the answer is that each differs from tort on the two crucial tests:

1. **Breach of contract** — the duty is fixed by the parties, not by law, and is owed only to the other contracting party.
2. **Breach of trust** — the beneficiary’s claim is for a **definite, ascertainable sum** (the trust property or its value), so the damages are **liquidated**, and the obligation is equitable in origin rather than common-law.

## B. Other civil wrongs that are not torts.

To show range, name a few more: breach of a quasi-contractual obligation (an obligation the law imposes to prevent unjust enrichment, such as money paid by mistake), and purely equitable obligations enforced only in equity.

### 📌 EXAM TIP — the structure that scores on this question

**The trap.** Students spend the whole answer defining tort and never actually *justify* the statement, which is what the question asked.

**What to write.** Open with genus and species in two lines. Then take each excluded wrong in turn — contract, trust, quasi-contract — and show *on the tests* (source of duty, to whom owed, liquidated or unliquidated damages) why it fails to be a tort. Close with one line on the practical consequence: the same facts may found more than one claim, and the plaintiff elects.

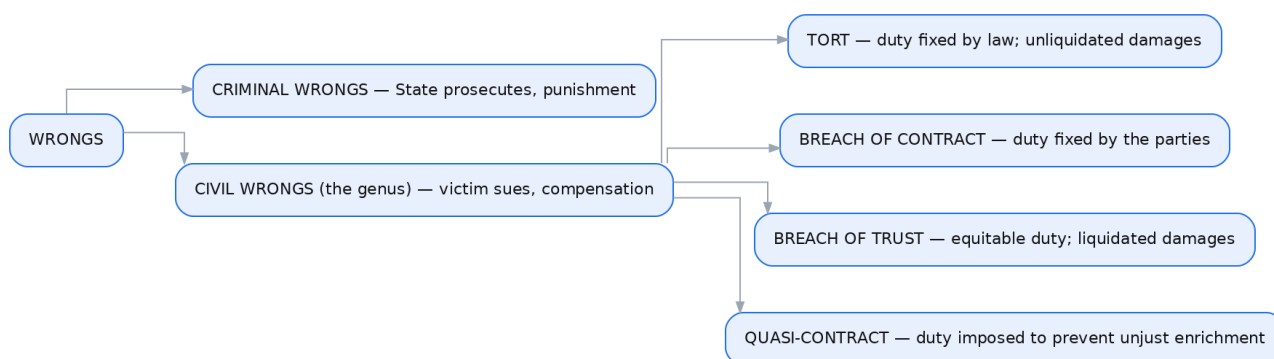
**Why it scores.** The examiner is looking for the reasoning that connects the two halves of the sentence, not for a definition he has already read in your answer to Q.1.

## The Quote

**Salmond:** *a tort is “a civil wrong for which the remedy is a common-law action for unliquidated damages, and which is **not exclusively the breach of a contract or the breach of a trust** or other merely equitable obligation.”*

**In Simple Terms:** Salmond defines tort partly by subtraction. Start with all civil wrongs; take away breach of contract; take away breach of trust and other purely equitable obligations; what remains is tort.

## The Visual



## Case Laws

- **Donoghue v Stevenson (1932)** — shows the tort species operating where no contract existed at all.

- **[C-1] *Ashby v White (1703)*** — a civil wrong redressed by unliquidated damages assessed by the court, the hallmark of tort.
- 

## 5. Damnum Sine Injuria and Injuria Sine Damno

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### The Hook

In 1703 a man named Ashby went to vote and the returning officer, White, turned him away without lawful cause. The candidate Ashby wanted won anyway. Ashby had lost nothing you could count in money — and he sued, and he won. Two hundred and eighty years later an MLA in Jammu and Kashmir was wrongfully detained by police on his way to an Assembly session; the Supreme Court awarded him compensation on the same principle. Losing nothing is no answer when a legal right has been taken from you.

### The Concept — the difference between “hurt” and “wronged”

Everything in this topic turns on one distinction. The law separates:

- **Damnum** [damage] — actual loss: money, health, comfort, reputation, trade.
- **Injuria** [legal injury] — the violation of a **legal right**.

Tort law protects *injuria*. It does not protect *damnum* by itself. So you can be badly hurt and have no claim, and you can lose nothing and still have one. Those two possibilities are the two maxims.

### A. *Damnum sine injuria* — loss without legal injury.

This means **actual damage suffered without any violation of a legal right**, and there is **no remedy**. The defendant did something he was lawfully entitled to do; the plaintiff's loss is real but is not a *legal* injury.

Typical situations:

1. **Lawful competition.** Opening a better shop next door and ruining your rival's trade is lawful, however great his loss.
2. **Lawful use of one's own land.** Digging on your own land and draining your neighbour's well.
3. **Lawful trade combinations.** Traders combining to lower prices and drive a rival out.
4. **Acts done under statutory authority**, and the lawful exercise of a legal right generally.

The leading authorities are ***Gloucester Grammar School*** (1410), ***Mogul Steamship Co. v McGregor, Gow & Co.*** (1892), ***Chasemore v Richards*** (1859) and, in India, ***Town Area Committee v Prabhu Dayal*** (1975).

## B. *Injuria sine damno* — legal injury without loss.

This means the **violation of a legal right without any actual damage**, and here there **is** a remedy. Such wrongs are said to be **actionable *per se*** [actionable in themselves], because the law presumes damage from the violation of the right.

Typical situations:

1. **Trespass to land** — walking across another's field, even doing no harm at all.
2. **Wrongful refusal of a vote** — *Ashby v White*.
3. **False imprisonment** — *Bhim Singh v State of J&K*.
4. **Wrongful dishonour of a cheque** by a banker where the customer had sufficient funds — *Marzetti v Williams* (1830).
5. **Libel**, and assault and battery.

## C. “Every injury imports damage, but every damage is not injury.”

When this sentence appears as the question, it is simply the two maxims restated, and you should say so explicitly:

1. “**Every injury imports damage**” = *injuria sine damno*. Once a legal right is violated, the law **presumes** damage, so the plaintiff need not prove loss.
2. “**Every damage is not injury**” = *damnum sine injuria*. Loss alone, without violation of a right, gives no claim.

## D. Why the law draws the line here.

It would be intolerable if every loss caused by another person were actionable.

Competition would be impossible; you could not open a shop, apply for a job, or build on your own land. So the law asks a narrower question — not “did he cause you loss?” but “did he invade a right the law had already given you?”

### ◆ WORKED EXAMPLE — the dried-up well

**Facts.** X digs a well on his own land to irrigate his farm. As a result, the water in his neighbour Y's well dries up. Y sues.

**Rule.** *Damnum sine injuria* — damage caused by the lawful use of one's own property violates no legal right (*Chasemore v Richards*; *Acton v Blundell*).

**Apply.** Y's loss is real and provable, and that is the decoy. But a landowner has no legal right to the continued flow of percolating underground water beneath his neighbour's soil. X exercised his own lawful right of user; no right of Y's was invaded.

**Variation.** If X had dug the well **out of pure spite**, with no benefit to himself, the answer would still be the same in English law — *Bradford Corporation v Pickles* holds that a bad motive does not make a lawful act unlawful.

**Conclusion.** Y fails. No *injuria*, therefore no tort.

### ⚠ DON'T CONFUSE — the two maxims read almost alike

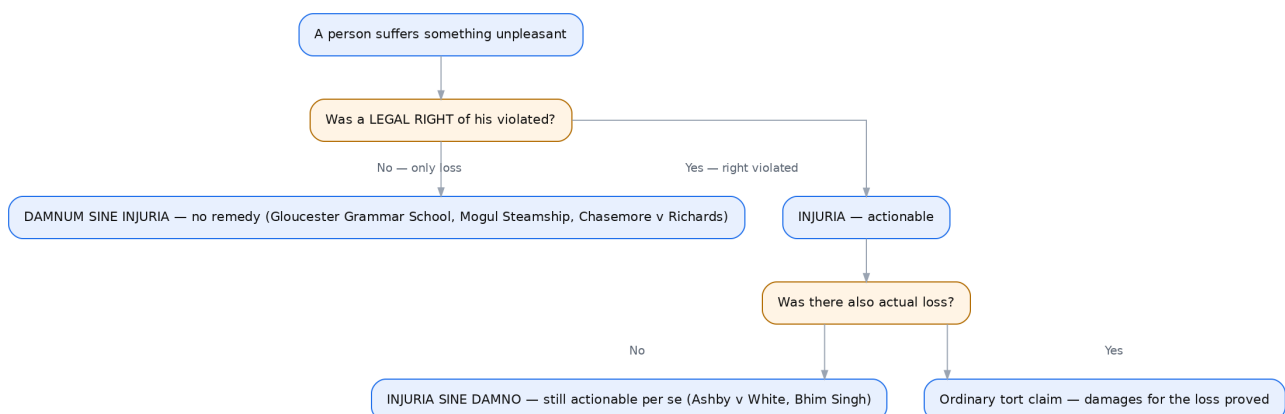
*Damnum sine injuria* = **damage** without **legal injury** → **no** remedy. *Injuria sine damno* = **legal injury** without **damage** → **remedy**. Fix it by the first word: whichever word comes **first** is the thing you **have**. Getting these the wrong way round reverses your entire answer and every problem based on it.

## The Quote

**Holt CJ in *Ashby v White* (1703):** “Every injury imports a damage, though it does not cost the party one farthing... For a damage is not merely pecuniary, but an injury imports a damage, when a man is thereby hindered of his right.”

**In Simple Terms:** the judge is saying that “damage” in law does not mean only money lost. Being blocked from exercising a right *is itself* the damage, and that is enough to sue on.

## The Visual



## Case Laws

- **[C-1] *Ashby v White* (1703)** — wrongful refusal of a vote; actionable though the plaintiff lost nothing.
- **[C-3] *Bhim Singh v State of J&K* (1985)** — MLA wrongfully detained and prevented from attending the Assembly; ₹50,000 exemplary compensation.
- **[C-2] *Gloucester Grammar School Case* (1410)** — rival school took all the pupils; heavy loss, no legal right violated, no remedy.
- **[C-5] *Mogul Steamship Co. v McGregor, Gow & Co.* (1892)** — lawful trade combination driving out a rival; *damnum sine injuria*.
- **[C-6] *Chasemore v Richards* (1859)** — landowner drained his neighbour’s supply by lawful excavation; no action.

- ***Town Area Committee v Prabhu Dayal (1975)*** — demolition of a building constructed without sanction; no legal right infringed even though motive was alleged to be bad.
  - ***Marzetti v Williams (1830)*** — banker wrongfully dishonoured a cheque despite sufficient funds; actionable without proof of loss.
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## 6. Ubi Jus Ibi Remedium

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### The Hook

This maxim is the reason Ashby won. Chief Justice Holt reasoned that if the law gives a man a right to vote, it must also give him a way to enforce it — otherwise the right is a decoration, not a right at all. A right nobody can enforce is merely a wish.

### The Concept — a right without a remedy is no right

***Ubi jus ibi remedium*** means “**where there is a right, there is a remedy.**” *Jus* here means a **legal right** — a right recognised and protected by law — and *remedium* means the means the law provides to restore or vindicate it.

The maxim expresses the whole basis of tort liability. Because tort is uncodified, there is no statutory list of claims. So when a plaintiff shows that a recognised legal right of his has been invaded, the court’s response is that a remedy must follow, even if no earlier case is exactly on all fours. This is how new torts have come into existence.

#### A. What the maxim requires.

Three conditions have to be satisfied before it operates:

1. **A legal right must exist** — not a moral, social or political claim. The law must already recognise the interest as a right.
2. **The right must have been violated**, or its exercise obstructed.
3. **The wrong must be one the law recognises as redressable** — a *wrongful act* in the legal sense.

#### B. The limits — and this is what separates a good answer.

The maxim is often overstated by students. It does **not** mean that every grievance has a remedy. Say plainly what it does not cover:

1. It applies only to **legal** rights, never to moral or purely equitable expectations. There is no remedy for ingratitude or for a broken promise unsupported by consideration.
2. It creates **no new rights** — it only ensures that an existing right is not left unenforceable.

3. It gives way to **express statutory bars** — where the law itself takes away the remedy (as with limitation, or a statutory immunity), the maxim cannot restore it.
4. It does not apply where the damage is *damnum sine injuria*, because there no right was invaded in the first place.

### C. Its development.

The maxim is very old, but its modern career begins with **Ashby v White**, where Holt CJ used it to justify a remedy for an interference with a right that had never been litigated in that form before. In India it has been carried furthest through the **constitutional tort** — *Rudal Shah v State of Bihar* (1983) and the cases after it, where the Supreme Court held that the right to life and liberty under Art. 21 would be hollow if no compensation could be awarded for its violation, and so awarded compensation directly under Art. 32.

#### 📌 EXAM TIP — a short note that reads like a full answer

**The trap.** Most students write three lines — the translation and *Ashby v White* — and stop. That is worth about half the marks even on a 6-mark note.

**What to write.** Translate the maxim; state the three conditions; give *Ashby v White*; then give the **limits** (legal rights only, creates no new right, yields to statute); close with the Indian extension through *Rudal Shah*.

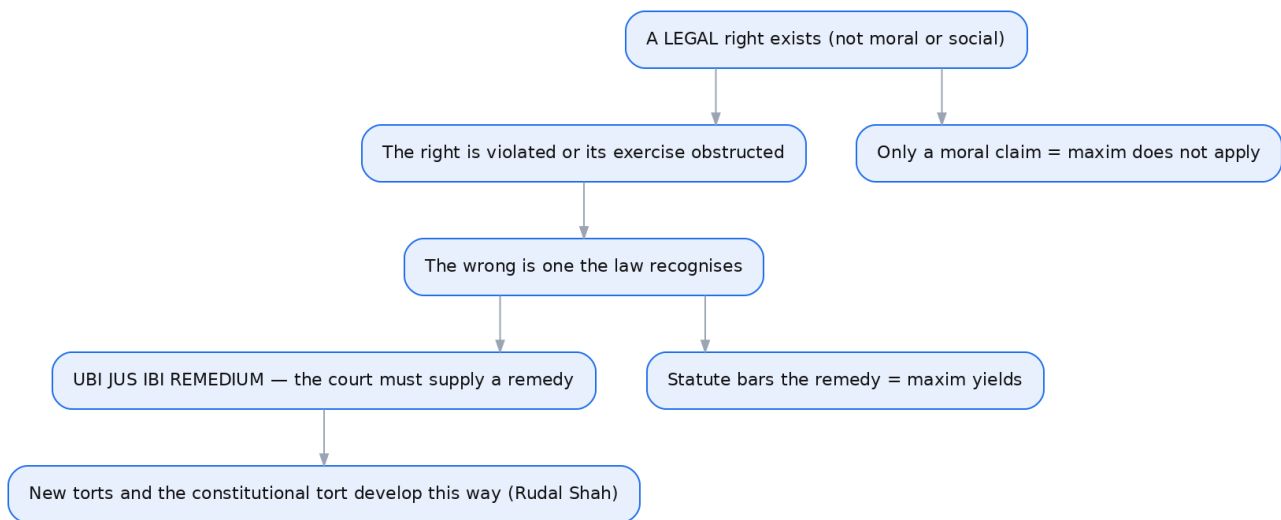
**Why it scores.** Stating the limits proves you understand the maxim rather than merely remembering it, and the Indian case shows currency. Both are cheap marks and take two extra sentences.

### The Quote

**Holt CJ in Ashby v White (1703):** “If the plaintiff has a right, he must of necessity have a means to vindicate and maintain it, and a remedy if he is injured in the exercise or enjoyment of it; and indeed it is a vain thing to imagine a right without a remedy, for want of right and want of remedy are reciprocal.”

**In Simple Terms:** having a right and having a way to enforce it are two sides of one coin. If the law will not help you when the right is broken, then in truth you never had the right.

## The Visual



## Case Laws

- **[C-1] *Ashby v White (1703)*** — the foundational application of the maxim.
- ***Rudal Shah v State of Bihar (1983)*** — compensation under Art. 32 for detention long after acquittal; the maxim applied constitutionally.
- **[C-3] *Bhim Singh v State of J&K (1985)*** — exemplary compensation for wrongful detention.

## 7. Mental Elements — Intention, Motive and Malice

### The Hook

In 1895 a Bradford landowner named Pickles deliberately sank a shaft on his land for one purpose only — to cut off the water flowing to the town’s reservoir and force the Corporation to buy him out. His spite was admitted and obvious. The House of Lords held he was entitled to do it. As Lord Halsbury put it, if the act was lawful, “however ill the motive might be, he had a right to do it.”

### The Concept — why a bad state of mind usually does not matter

Criminal law is preoccupied with the guilty mind. Tort law, for the most part, is not. Its central question is whether a legal right was invaded, not whether the defendant was wicked. But “for the most part” is doing a lot of work, and the exceptions are what the question is really about.

Four terms must be kept apart. Students lose marks by blurring them.

## A. Intention.

**What the defendant meant to do** — the desire to bring about a particular consequence. In some torts intention is essential: assault, battery, false imprisonment, deceit, malicious prosecution and conspiracy all require it. In others — negligence above all — intention is irrelevant, because the wrong lies in falling below a standard of care, not in wanting harm.

## B. Motive.

**Why the defendant did it** — the reason or purpose behind the act. The general rule is blunt: **motive is irrelevant in tort**. A lawful act does not become unlawful because it was done from a bad motive, and an unlawful act does not become lawful because the motive was good.

- A person who exercises his legal right out of spite commits no wrong (*Bradford Corporation v Pickles*).
- A person who commits a tort from a benevolent motive is still liable (a prison warden who force-feeds a hunger-striking prisoner to save his life still commits a battery unless necessity justifies it).

## C. Malice in law.

This is a **technical** expression and has nothing to do with spite. **Malice in law** means a wrongful act done **intentionally, without just cause or excuse**. It is sometimes called “implied malice”. Bayley J’s classic formulation is the one to quote.

## D. Malice in fact.

Also called “express malice” or “actual malice”. This is **malice in the ordinary sense** — ill-will, spite, personal hatred, an improper motive.

## E. When malice DOES matter — the exceptions to know.

This is where the marks are. The general rule is that malice is irrelevant; state the rule, then immediately give the five situations where it becomes decisive:

1. **Malicious prosecution** — the plaintiff must positively prove malice as one of the essentials of the tort.
2. **Defamation on a privileged occasion** — qualified privilege is a good defence, but proof of malice **destroys** it.
3. **Conspiracy** — a combination to injure is actionable where the **predominant purpose** is to harm rather than to advance the defendants’ own lawful interests.
4. **Nuisance** — an act otherwise lawful may become an actionable nuisance if done maliciously, as where a defendant deliberately makes noise to annoy his neighbour (*Christie v Davey*, 1893).
5. **Injurious falsehood / slander of title** — malice is an essential ingredient.

### ⚠ **DON'T CONFUSE — the two malices**

**Malice in LAW** is not a state of mind at all: it means a wrongful act done deliberately without lawful excuse. **Malice in FACT** is a state of mind: spite or ill-will. A defendant can be liable with malice in law and no ill-feeling whatsoever. Writing “malice means bad intention” collapses the distinction the question is asking you to draw.

### ◆ **WORKED EXAMPLE — spite on one's own land**

**Facts.** A landowner sinks a shaft on his own land purely to intercept underground water and pressure the town corporation into buying his land. Nobody disputes his motive.

**Rule.** Motive is irrelevant. A lawful act does not become unlawful because it is done maliciously (*Bradford Corporation v Pickles*).

**Apply.** He had a legal right to abstract percolating water beneath his own soil. Because the act was within his right, his spite could not convert it into a tort. The corporation's loss is *damnum sine injuria*.

**Note the limit.** Change the tort and the answer changes. Had the same spite been expressed by deliberately banging trays to disturb a neighbour's music lessons, it would be an actionable **nuisance** (*Christie v Davey*) — because malice is one of the exceptional torts where motive counts.

**Conclusion.** No liability on these facts; liability if the tort alleged is one of the five exceptions.

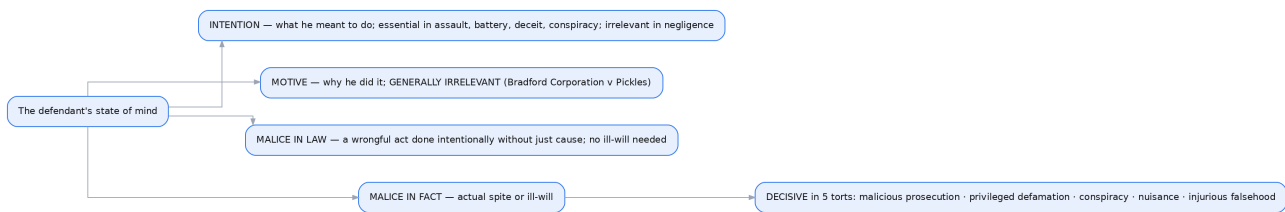
## The Quote

**Bayley J in *Bromage v Prosser* (1825), on malice in law:** “Malice in common acceptation means ill-will against a person, but in its legal sense it means a wrongful act, done intentionally, without just cause or excuse.”

**Lord Halsbury LC in *Bradford Corporation v Pickles* (1895):** “If it was a lawful act, however ill the motive might be, he had a right to do it.”

**In Simple Terms:** the first quotation tells you that lawyers use “malice” in a special, bloodless sense — doing something wrong on purpose without an excuse. The second tells you the general rule in a single line: lawful act plus bad motive still equals no tort.

## The Visual



## Case Laws

- **[C-4] *Bradford Corporation v Pickles (1895)*** — a lawful act does not become unlawful because of a bad motive.
- ***Bromage v Prosser (1825)*** — the classic definition of malice in law.
- ***Christie v Davey (1893)*** — deliberate noise made to annoy a neighbour was an actionable nuisance; malice tipped the balance.
- **[C-5] *Mogul Steamship Co. v McGregor, Gow & Co. (1892)*** — combination to advance one's own trade interests is lawful despite the harm intended to a rival.
- ***Wilkinson v Downton (1897)*** — a wilful false statement calculated to cause harm is actionable; intention supplied the wrong (taught in Unit 3 under nervous shock).

## 8. Capacity to Sue and Be Sued

### The Hook

The general rule is beautifully simple: any person may sue for a tort committed against him, and any person may be sued for a tort he commits. It is the exceptions that make an examinable question — and they exist because some defendants cannot form the necessary intention, and some are protected by their office.

### The Concept — the general rule and the persons outside it

Start by stating the rule, then take the exceptions in two groups: **persons who cannot sue**, and **persons who cannot be sued**.

#### A. Persons whose capacity to SUE is limited.

1. **A minor** may sue for a tort committed against him, but must do so through a **next friend**. There is no bar of substance, only of procedure.
2. **An unborn child** could not sue at common law. The modern position allows a claim for pre-natal injury once the child is born alive, and Indian courts have awarded compensation in such cases.
3. **An alien enemy** cannot sue in the courts of the country during hostilities without the Crown's or Government's permission.

4. **An insolvent** — rights of action relating to his **property** vest in the official assignee, but he retains claims that are **personal** to him, such as defamation or assault.
5. **A corporation** may sue for torts affecting its property or its business reputation, but not for wrongs that are purely personal to a human being.

## B. Persons who cannot be SUEd, or are protected.

1. **Foreign sovereigns, ambassadors and diplomatic agents** enjoy immunity under international law and the Diplomatic Relations (Vienna Convention) Act, 1972.
2. **Judicial officers** are protected by the Judicial Officers Protection Act, 1850 for acts done in the discharge of judicial duty.
3. **The State** — the position turns on the sovereign/non-sovereign distinction and is dealt with fully in Unit 2. In outline: *P&O Steam Navigation* (1861) drew the distinction; *State of Rajasthan v Vidyawati* (1962) allowed a claim; *Kasturi Lal* (1965) is the high-water mark of immunity; and *N. Nagendra Rao* (1994) and *Common Cause* (1999) cut that immunity back sharply.
4. **A minor** is generally liable for his own torts, since liability does not depend on contractual capacity. But where the tort requires a particular **mental element** which a child of that age could not form, he escapes; and a parent is liable only where he authorised the act or was himself negligent in allowing it.
5. **A person of unsound mind** is liable where the tort requires no specific intent, but not where the tort demands an intention he was incapable of forming.
6. **A married woman** may now sue and be sued in her own name; the old common-law disability requiring the husband to be joined has gone.

## C. Death and the survival of actions.

The old maxim ***actio personalis moritur cum persona*** [a personal action dies with the person] meant that a claim died with either party. It has been substantially cut back:

1. Under the **Legal Representatives' Suits Act, 1855** and the general law, most causes of action survive for and against the estate.
2. The **Fatal Accidents Act, 1855** gives the dependants a claim where death is caused by a wrongful act.
3. But **purely personal** actions — defamation being the standard example — still die with the person, which is why the recurring problem “A defames B and dies before B can sue” is answered against B.

🔑 **EXAM TIP — a new question, so answer it as a list**

**The trap.** This head first appeared in January 2025 and is not in most textbooks as a single chapter, so students improvise and produce a vague half-page.

**What to write.** State the general rule in one line. Then two clear groups — who cannot sue, who cannot be sued — with a named authority or statute against each. Finish with *actio personalis* and its statutory exceptions.

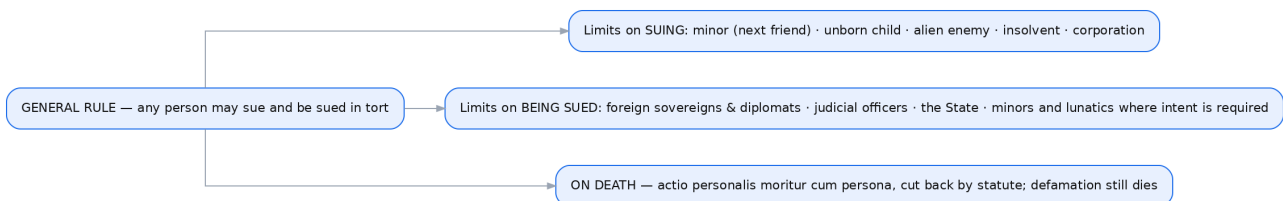
**Why it scores.** The question says “exceptions”, so the marks sit in the **breadth of the list**, not the depth of any one item. Nine short, correctly-labelled exceptions beat three beautifully-written ones.

## The Quote

**The maxim:** *Actio personalis moritur cum persona* — “a personal action dies with the person.”

**In Simple Terms:** at common law, if either the wrongdoer or the victim died, the claim died too. Statute has since rescued most claims, but the wholly personal ones — above all defamation — still perish.

## The Visual



## Case Laws

- **Kasturi Lal v State of U.P. (1965)** — sovereign function; State not liable (the position has since narrowed).
- **State of Rajasthan v Vidyawati (1962)** — State held liable for its driver’s negligence.
- **N. Nagendra Rao v State of A.P. (1994)** — sovereign immunity confined to a narrow class of functions.

## Landmark Cases — in Brief

### [C-1] *Ashby v White* (1703) — a right violated is actionable without loss

#### **Facts.**

Ashby, a qualified voter at Aylesbury, went to cast his vote. White, the returning officer, wrongfully refused to record it. The candidate Ashby supported was elected in any event, so Ashby suffered no financial or practical loss whatever.

#### **Issue.**

Can an action lie for the violation of a legal right where the plaintiff has suffered no actual damage?

#### **Held.**

Yes. Holt CJ held that the right to vote is a legal right, and that its obstruction is itself an injury. Damage need not be pecuniary; being hindered in the exercise of a right *is* the damage. The action succeeded.

#### **Why it matters.**

It is the foundation case for both *injuria sine damno* and *ubi jus ibi remedium*, and it supplies the reasoning for every modern case in which a court compensates a citizen whose right has been obstructed without measurable loss — including *Bhim Singh* in India.

### [C-2] *Gloucester Grammar School Case* (1410) — lawful competition causes no legal injury

#### **Facts.**

A schoolmaster set up a rival grammar school directly opposite an established one and charged lower fees. The pupils of the older school left for the new one, and the old school's fees collapsed from 40 pence to 12 pence a quarter.

#### **Issue.**

Is a person liable in tort for the financial ruin he causes a competitor by lawful competition?

#### **Held.**

No. The defendant had done nothing unlawful. He had a right to open a school and to charge what he wished. The plaintiff's loss, however severe, involved no violation of any legal right.

#### **Why it matters.**

It is the classic authority for *damnum sine injuria*, and it explains the policy behind the rule: if loss alone were actionable, ordinary competition would be impossible.

### [C-3] Bhim Singh v State of Jammu & Kashmir (1985) — the Indian *Ashby v White*

#### Facts.

Bhim Singh, a sitting MLA, was arrested by police while on his way to attend a session of the Legislative Assembly. He was detained in police custody and was not produced before a magistrate within the required period, so he missed the session and the vote.

#### Issue.

Where a citizen's liberty and his right to attend the legislature are violated by unlawful police action, what remedy does the law give?

#### Held.

The Supreme Court held the detention wholly unlawful, a violation of Articles 21 and 22, and awarded ₹50,000 as **exemplary compensation** under Article 32.

#### Why it matters.

It is the leading Indian illustration of *injuria sine damno*, of *ubi jus ibi remedium*, and of the constitutional tort. It is also the answer to the recurring MLA problem set in 2012, 2025 and after.

### [C-4] Bradford Corporation v Pickles (1895) — motive is irrelevant

#### Facts.

Pickles sank a shaft on his own land, intercepting underground water that would otherwise have flowed to the Bradford Corporation's reservoir. His purpose, openly admitted, was to force the Corporation to buy his land at his price.

#### Issue.

Does an act otherwise lawful become unlawful because it is done from a malicious motive?

#### Held.

No. The House of Lords held that Pickles was exercising a right he undoubtedly had. Lord Halsbury LC said that if the act was lawful, "however ill the motive might be, he had a right to do it."

#### Why it matters.

It is the leading authority for the rule that **motive is irrelevant in tort**, and the necessary starting point before you list the five torts in which malice does matter.

### [C-5] Mogul Steamship Co. v McGregor, Gow & Co. (1892) — lawful trade combination

#### Facts.

A group of shipowners combined to keep the China tea trade to themselves, offering rebates to shippers who dealt exclusively with them and undercutting the plaintiff company until it was driven from the trade.

**Issue.**

Is a combination of traders liable for the loss it deliberately inflicts on a rival, where the means used are lawful?

**Held.**

No. The defendants' object was to advance their own trade, not to injure the plaintiff for its own sake, and the means employed were lawful. The loss was *damnum sine injuria*.

**Why it matters.**

It fixes the boundary of the tort of conspiracy: what matters is the **predominant purpose**. Compare *Quinn v Leathem*, where the purpose was to injure and liability followed.

## **[C-6] Chasemore v Richards (1859) — lawful use of one's own land**

**Facts.**

The defendants sank a well on their own land to supply a town. The excavation intercepted underground percolating water and dried up a stream that had fed the plaintiff's mill for sixty years.

**Issue.**

Has a landowner a legal right to the continued flow of percolating underground water from beneath a neighbour's land?

**Held.**

No. There is no right of property in percolating water before it is appropriated. The defendants had used their own land lawfully, and the plaintiff's loss gave rise to no cause of action.

**Why it matters.**

It is the authority behind the recurring "dried-up well" problem, and it pairs with *Bradford Corporation v Pickles* to show that both an innocent and a malicious use of one's own land leave the neighbour without a remedy.

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# Quick Revision & Case Law Table

## One-line memory hooks

- **Evolution.** Uncodified, judge-made, English common law received through the Presidency towns and “justice, equity and good conscience”; s.9 CPC is the gateway; India then went further with absolute liability and the constitutional tort.
- **Definition.** Civil wrong + not contract or trust + unliquidated damages. Four essentials: wrongful act or omission, breach of a duty fixed by law, legal damage, legal remedy.
- **Tort v crime v contract.** Who sets the duty, to whom is it owed, who sues, what does the court order.
- **Civil wrongs.** Tort is one *species* of the *genus* civil wrong; contract and trust are its siblings.
- **The two maxims.** Whichever word comes first is the thing you *have*: *damnum* first = you have loss and no right (no remedy); *injuria* first = you have a right violated and no loss (remedy).
- **Ubi jus ibi remedium.** A right without a remedy is no right — but only legal rights, and it creates none.
- **Mental elements.** Motive is irrelevant (*Pickles*) — except in malicious prosecution, privileged defamation, conspiracy, nuisance and injurious falsehood.
- **Capacity.** Everyone may sue and be sued, subject to two lists of exceptions; and *actio personalis moritur cum persona*, now mostly reversed by statute except for defamation.

## Master Case List

| Case                                                      | Topic                                                          | One-line ratio                                                 |
|-----------------------------------------------------------|----------------------------------------------------------------|----------------------------------------------------------------|
| <b>[C-1]</b> <i>Ashby v White</i> (1703)                  | Legal damage;<br><i>injuria sine damno</i> ;<br><i>ubi jus</i> | Violation of a legal right is actionable without proof of loss |
| <b>[C-2]</b> <i>Gloucester Grammar School Case</i> (1410) | <i>Damnum sine injuria</i>                                     | Loss caused by lawful competition violates no legal right      |
| <b>[C-3]</b> <i>Bhim Singh v State of J&amp;K</i> (1985)  | <i>Injuria sine damno</i> ;<br>constitutional tort             | Exemplary compensation under Art. 32 for unlawful detention    |
| <b>[C-4]</b> <i>Bradford Corporation v Pickles</i> (1895) | Motive and malice                                              | A lawful act does not become unlawful through a bad motive     |

| Case                                                                     | Topic                                   | One-line ratio                                                         |
|--------------------------------------------------------------------------|-----------------------------------------|------------------------------------------------------------------------|
| <b>[C-5]</b> <i>Mogul Steamship Co. v McGregor, Gow &amp; Co.</i> (1892) | <i>Damnum sine injuria</i> ; conspiracy | Combination to advance one's own trade interests is lawful             |
| <b>[C-6]</b> <i>Chasemore v Richards</i> (1859)                          | <i>Damnum sine injuria</i>              | No property right in percolating underground water                     |
| <i>Donoghue v Stevenson</i> (1932)                                       | Definition; tort v contract             | Duty of care owed to the ultimate consumer despite absence of contract |
| <i>M.C. Mehta v Union of India</i> (1987)                                | Evolution; Indian departures            | Absolute liability for hazardous enterprise, without exceptions        |
| <i>Rudal Shah v State of Bihar</i> (1983)                                | <i>Ubi jus</i> ; constitutional tort    | Compensation under Art. 32 for violation of Art. 21                    |
| <i>Town Area Committee v Prabhu Dayal</i> (1975)                         | <i>Damnum sine injuria</i>              | Demolition of an unsanctioned building infringes no legal right        |
| <i>Marzetti v Williams</i> (1830)                                        | <i>Injuria sine damno</i>               | Wrongful dishonour of a cheque is actionable without proof of loss     |
| <i>Bromage v Prosser</i> (1825)                                          | Malice in law                           | A wrongful act done intentionally without just cause or excuse         |
| <i>Christie v Davey</i> (1893)                                           | Malice; nuisance                        | Malice can convert an otherwise lawful act into an actionable nuisance |
| <i>Kasturi Lal v State of U.P.</i> (1965)                                | Capacity; State liability               | No liability for acts done in the exercise of sovereign functions      |
| <i>State of Rajasthan v Vidyawati</i> (1962)                             | Capacity; State liability               | State liable for the negligence of its driver                          |
| <i>N. Nagendra Rao v State of A.P.</i> (1994)                            | Capacity; State liability               | Sovereign immunity confined to a narrow class of functions             |

*End of Unit 1.*