
Subject Name: Law of Torts

Topic Name: Ingredients

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Act or Omission by the Defendant

The person must have either performed an act they should not have or omitted to do something they were supposed to do. This can be either a positive wrongful act or a legally significant omission.

For instance, actions like trespass, defamation, or wrongful detention make one liable for the respective torts.

Similarly, omissions like failing to fence off a poisonous tree in a public park, leading to a child's death, or not maintaining a clock tower resulting in casualties, can hold a corporation liable for its negligence. It is crucial that the wrongful act or omission is recognized by law; moral or social wrongs do not create legal liability unless a legal duty is involved.

Legal Damage (Injuria)

The plaintiff must demonstrate legal damage, meaning there was a violation of a legal right vested in them. The breach of a legal duty or the infringement of a legal right must be proven. The presence of a violation of a legal right is actionable irrespective of whether it resulted in loss or harm to the plaintiff.

This principle is encapsulated in the maxim "Injuria sine damno," where injuria signifies any unauthorised interference with the plaintiff's right, and damnum refers to substantial harm or damage.

Conversely, if no legal right is violated, no action can lie in tort law, even if the defendant's actions caused some loss or damage. This is described by the maxim 'Damnum sine injuria'.

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Mental Element in Tortious Liability

Relevance of Fault

Unlike most crimes, where a guilty mind (mens rea) is required, tort liability varies in its need for a mental element. For torts like assault, battery, false imprisonment, deceit, malicious prosecution, and conspiracy, the mental state of the person is crucial.

The standard of care expected from a reasonable person is often used to judge liability. If the defendant acted carelessly, they might be liable for negligence. Conversely, if due care was taken, they are not liable for any resulting damage.

Defences like inevitable accident or necessity might apply when the defendant's actions were innocent or compelled by circumstances.

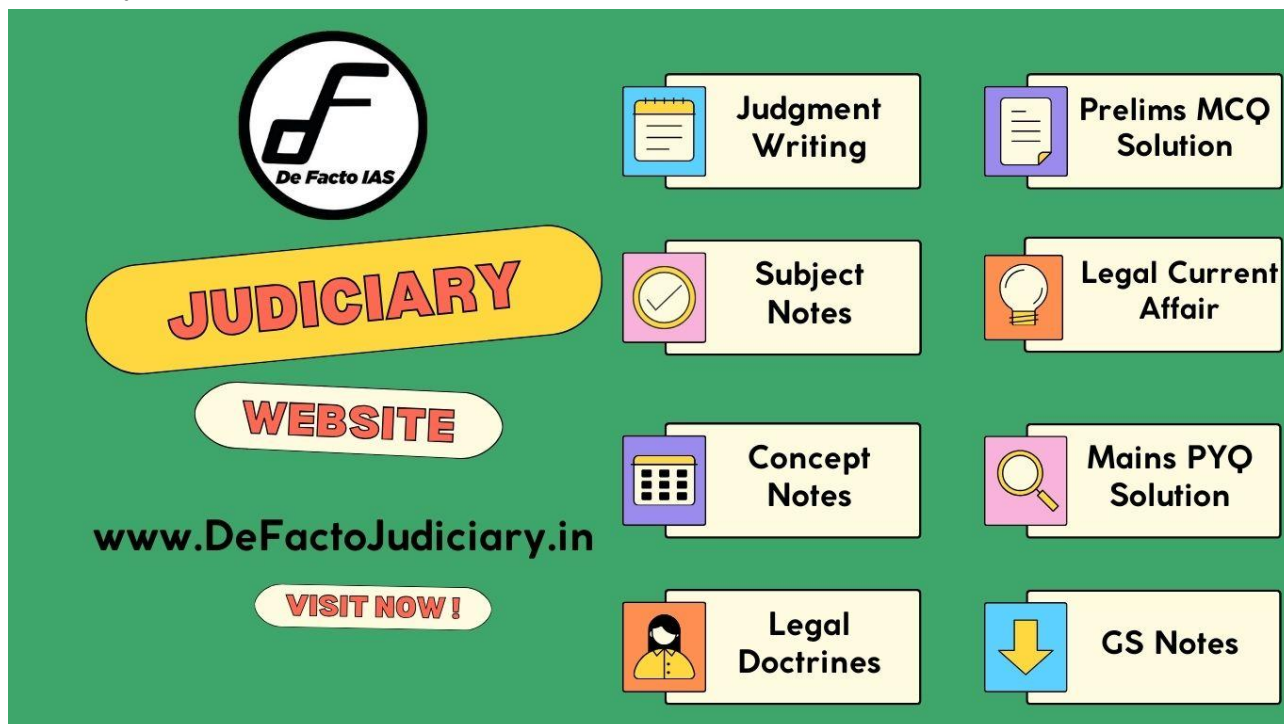
For example, damage to unseen electric wires during excavation or injuries caused by horses on a highway due to unforeseeable events may be excused as inevitable accidents.

Similarly, actions like trespass to prevent a larger harm, forcibly saving a drowning person, or performing emergency medical procedures without consent are not actionable under the necessity defence.

Liability Without Fault

In certain tort cases, the mental element is irrelevant, and liability arises even without any wrongful intent or negligence.

For example, in the tort of conversion, an auctioneer selling goods without the rightful ownership is liable regardless of their belief in the customer's ownership. Similarly, unintentional defamation can still result in liability. Vicarious liability holds a person accountable even if they were not at fault personally.



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The rule of strict liability, as in *Rylands v. Fletcher*, makes a person liable for non-natural use of their land if it causes damage upon escape, irrespective of negligence. This also applies to keeping dangerous animals or operating hazardous industries, where the principle of absolute liability is recognized.