

A Slice of Lemon Tort

The law of tort seeks to provide a legal remedy for the victims of certain types of harmful conduct. This Knowledge Byte uses a scenario to explain the principles behind this interesting area of law.

“Larry Samms mixes together a complicated mix of evaporated milk, boiling water, sugar, lemon jelly and a special ingredient. His guests are the very wealthy Cuthbert family, farming tycoons from the West Country. They were looking to invest heavily in a restaurant in the city. Earlier that day during a row with the restaurant owner, Bill Spike, told Larry if he didn’t make the evening special that he would be collecting his P45 at the door.

Larry was a good employee, he ensured that the evening was very special by including a very special ingredient. The Cuthbert Family spent the next week very close to their toilet, the deal wasn’t made and the long ‘bullied’ Larry resigned.

The Cuthbert’s decided to take action against Bill for personal injury, Bill decided to take action against Larry as his reputation was in shatters and Larry decided to take action against Bill for the emotional distress he had received.”

This case study is all about an area of law called tort. A tort is an injury or a wrong committed on a person or property of another. A tort is an infringement on the rights of an individual, but is not founded on a contract.

The law of tort seeks to provide a legal remedy for the victims of certain types of harmful conduct, such as Bill’s reputation and the Cuthbert’s ‘unfortunate’ illness.

Examples of types of harmful conduct are:

- Interference with a person’s ownership or possession of land or personal property
- Injury to business or personal reputation
- Interference with a person’s use or enjoyment of land
- Damage to land
- Personal injury and death
- Damage to commercial interests.

Negligence is a good example of a tort which targets a breach of duty by one person to another. The best known case is Donoghue vs Stevenson. Mrs. Donoghue consumed part of a drink containing a decomposed snail while in a public bar in Scotland. The snail wasn’t visible, as the bottle of ginger beer, was not transparent. Her friend, who bought it for her, and the shopkeeper who sold it were not aware of its presence. The manufacturer of the ginger beer, Mr. Stevenson, was sued by Mrs. Donoghue for her sickness following drinking the ginger beer. Members of the House of Lords held that Mrs. Donoghue had a valid claim, but disagreed as to why such a claim should exist. At the time, Lord MacMillan thought the case should be treated as a new product liability case. Lord Atkin argued thought that the law should recognise a unifying principle and now in the world of law, the doctrine that we should not harm our neighbours exists.

Each tort is governed by its own special rules as seen below:

Torts of strict liability – The claimant can recover compensation for loss or damage without having to prove fault or intention on the part of the defendant

Vicarious liability – Where one person may be held liable for the torts of another.

This is usually justified when:

- Liability is incurred by the person best able financially to meet any award of damages;
- The claimant is given an additional defendant to sue, who is more likely to be able to satisfy the judgement;
- Harm may be prevented by imposing liability on the person in control of the activity;
- The claimant is provided with a defendant in cases where it is impossible to establish precisely who was responsible within a particular organisation for the wrongful conduct.

Other examples of torts are:

Consumer protection such as the EU Product Liability Directive 85/374, where businesses making defective products that harm people must pay for any damage resulting

Occupiers’ Liability Act 1957 and 1984 in the UK whereby a person, such as a shop owner, who invites others onto their land, or even has trespassers, owes a minimum duty of care for those people’s safety

Defamation means ruining the reputation of somebody, slander and libel. Slander is spoken defamation and libel is defaming somebody through print or through broadcasting i.e. radio or TV.

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A collection of 'intentional' torts which are any intentional acts that are reasonably foreseeable to cause harm to an individual, and then go on to do so. This includes assault, false imprisonment, causing emotional distress and fraud.

Some torts protect people from interference to their businesses or trade opportunities. These include labour laws, antitrust regulations and competition law.

Remedies and proof

The law of tort is concerned with providing a remedy for damages suffered and proven by the claimant. The claimant must also prove that the suffering was caused by the defendant's infringement. The law remedies some rights even if the claimant has not suffered libel and trespass being good examples of this. A connection between the defendants' actions and the claimants suffering must be established.

So in the case of the 'Lemon Tort'

The Cuthbert's enjoyed a 'two week' Five Star convalescence in Goa, India, Larry opened up a small restaurant specialising in French Cuisine and Bill got his just desserts.

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