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## Essentiality of Mental Elements in Torts

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*“Tort” is a French word, it has more of the influence of the Latin word “Tortum”, which means “twisted”, referring to twists or twists. It is a kind of civil damage or civil tort. When a person causes some damage related to the property, life, reputation, etc. of the plaintiff, the extra-contractual civil liability arises. In tort law, if the damage occurs deliberately or accidentally, you are responsible. Unlike criminal law related to criminal intent, tort law is based on the circumstances, circumstances, and facts of each case. It is not necessary to demonstrate malicious intent to pin liability on the offender. Therefore, depending on the intentional infringement, it can be divided into two categories: intentional tort and involuntary tort. The aim of this research is to explore the concepts of Malice, motive, intention, negligence, and recklessness and to understand how far the mental elements are essential in determining tortious liability.*

**Keywords:** *essential, circumstances, malicious.*

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### INTRODUCTION

The word Tort is derived from the French word ‘tortum’<sup>1</sup> which means wrong or a twisted act. The liability in torts is civil and it arises due to breach of duty which leads to infringement of the legal right of the other person. Law of torts provides for pecuniary compensation for

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<sup>1</sup> Ratanlal and Dhirajlal, *The Law of Torts* (28th edn, Lexis Nexis 2019) 4

injuries to a person and property recoverable by the process of law. Mental elements related to torts can be interpreted as the intention of a person to cause legal injury or some damage to the individual or his property. Mental elements are essential to prove that a tort has been committed. The terms associated with mental elements are:

1) **Malice:** Indirect or evil motive is indicated by the word malice<sup>2</sup>. Malice when interpreted in terms of law has two meanings, the first one is intentionally doing a wrongful act and the second being the improper motive<sup>3</sup>. Malice means an erroneous act that is committed intentionally without a just cause or purpose.

Malice is relevant in torts like; nuisance, conspiracy, deceit, and Malicious prosecution

2) **Motive:** Motive can be defined as the objective of doing an act. Motive relates to the satisfaction or benefits the wrongdoer desires. Motive is the ulterior objective or purpose of doing an act.<sup>4</sup> Motive is generally irrelevant in tort<sup>5</sup>.

In the case of *Allen vs Flood*<sup>6</sup>, it had been concluded that the Law of England does not take into account the motive to constitute an element of civil wrong. An invasion of other's civil rights is wrong in itself.

In the case of *Bradford vs Pickles*,<sup>7</sup> the court rules that no matter what the motive is Pickles had the right to take action on his own property. The motive was proved irrelevant in this case.

However, the motive is relevant in some exceptional cases such as defamation, nuisance, and conspiracy.

3) **Intention, Negligence, and recklessness:** Intention signifies something in the mind of the individual and for which no direct evidence is available. The intention depends upon the consequence of the act. The intention is relevant in torts such as assault and battery.

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<sup>2</sup> W E Ormsby, 'Malice in the Law of Torts' (1892) 8 L Q REV 140

<sup>3</sup> R F V Huston, *Salmond on Law Of Torts* (18th Revised edn, Sweet & Maxwell 1981)

<sup>4</sup> Ratanlal (n 1)

<sup>5</sup> *Ibid* 31

<sup>6</sup> *Allen v Flood* (1898) AC 92

<sup>7</sup> *The Mayor of Bradford v Pickles* (1895) AC 587

**Based on intention torts are classified into two categories:**

1) Intentional Tort - The tort wherein the underlying act is done on purpose by one person to another to cause harm.

Some of the Intentional Torts are: Assault and battery, False imprisonment, trespassing, and fraud

2) Unintentional tort - A type of accident that is not intended and may lead to property damage or financial loss. In this case, the person due to whom the accident is caused had done it inadvertently due to not being careful.

Some of the Unintentional torts are accidents, slip falls.

Negligence is when the consequences are not adverted to though a reasonable person would have foreseen them<sup>8</sup>

Recklessness is often called 'Gross Negligence'. The consequences are not desired and there is a willingness to run the risk. It consists of carelessness or incompetence.

**Research Questions**

- How far are the mental elements essential in torts?
- Whether they are essential or they are only relevant to ascertain the damages.
- How are these elements applicable in various case laws?

**SCOPE OF STUDY**

The purpose of this synopsis is to study the essentiality of mental elements in the Law of Torts. This study shall cover various torts which require mental elements in them. This paper shall also use various case laws from India and Foreign countries to prove the essentiality of mental elements in various torts such as conspiracy, battery, nuisance, assault, and defamation.

**1 - Malice**

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<sup>8</sup> Ratanlal (n 1) 30

### **Malice in Malicious Prosecution**

When a person institutes a case without true, honest, or reasonable explanation and there is a judicial proceeding over the same it is called malicious prosecution. Malicious prosecution walks on the stool of evil motive that is Malice. Therefore, the mental element of Malice is taken into consideration.

### **Malice in Deceit**

Deceit is when dishonest statements are passed knowingly or the representation or conduct leads to an incorrect and false impression which causes damage and harm to the other party. In such cases, the person who makes the statement knows that the statements are false therefore more importance is given to the mental element of malice while giving the judgement.

## **2 - Motive**

### **Motive in Defamation**

Defamation is a crime that causes damage to the letters, the fame, and reputation of people by incorrect prayers and malicious statements. In the case of defamation, the mental element of motivation plays the most important role in making a responsibility.

### **Motive in Nuisance**

Nuisance refers to illegal interference caused by the execution of land ownership and the person that was caused by individuals affected by the enjoyment of land ownership, legal events For illegal motivations that cause personal disorders that can be annoying. Therefore, you can see that the mentor element mentor plays an important role.

## **3 - Intention**

### **The intention in Assault and Battery**

In the case of assault and battery the intent to harm is essential but only having an intention is not sufficient. The intent must be evidenced by imminent danger.

#### **4-Recklessness and Negligence**

Both recklessness and negligence cannot be stated as a state of mind, they are more of conduct. Moreover, there is no essential element of fault required.

### **CASE ANALYSIS**

#### **Essentiality of Malice through case law analysis:**

1) In the case of *Balak Glass Emporium v. United India Insurance Co. Ltd*, there has been a multi-story construction wherein the defendant occupied the higher ground and the plaintiff occupied the decrease ground. The water which changed on top of things of the defendant escaped to the decrease ground which the plaintiff had occupied. It changed into proved that there has been unwell among the Plaintiff and the defendant and it changed into discovered that the faucet of the higher ground changed into left completely open and the hole of the tank changed into additionally closed. There changed into simplest one inference that the act changed into carried out through the defendant with wrongful intention. In this case, malice is applicable as there has been an evil purpose on behalf of the defendant and right here evil purpose being the simplest inference because of which the plaintiff changed into held entitled to damages makes malice critical.

However, Malice isn't a critical detail in maximum cases. It isn't continually critical to analyze whether or not a movement changed into influenced through malice are now no longer:

In the case of the *Town Area committee vs Prabhu Dayal*, the plaintiff had built sixteen stores at the vintage foundations of the construction. The defendant (Town Area Committee) illegally demolished the construction. According to the plaintiff, the attention given to him through the Municipal business enterprise changed into awful because it changed into given to him whilst he changed into now no longer in town. Moreover, the plaintiff changed into given simplest hours. The movement changed into stated to be mala fide.

In this case, it changed into stated that the plaintiff is entitled to reimbursement simplest if he has suffered because of any unlawful activity. A criminal movement, even though carried out with Malice, does now no longer make the plaintiff entitled to reimbursement. Therefore, mere malice does now no longer entitle the plaintiff to reimbursement.

### **ESSENTIALITY OF MOTIVE THROUGH CASE ANALYSIS**

In most cases, the motive has been proven to have nothing to do with the infringement.

1) In the Allen v Flood case, Flood and Walter were a carpenter employed on a ship, and other workers opposed his work because they were against competitors Employer. Allen is the union representative of the other employees on the ship. He finds his employer and tells them that if Vlad and Walter are not fired, the other employees will go on strike. They were subsequently fired and did not return to work.

The conclusion of this case is that the English law did not consider the reasons that constitute elements of civil damage. Violating the civil rights of others is a mistake in itself.

2) In Bradford vs Pickles, Pickles has a natural reservoir from which water flows into Bradford's land. Bradford uses this water to supply the local city. Pickles wanted to dig a well in his reservoir to reduce the amount of water flowing into the Bradford land.

In this case, it is alleged that there are reasons to deprive the land of water sources. In this case, it was concluded that Pickles has the right to take action on his property regardless of his motive. In this case, motivation does not matter.

### **ESSENTIALITY OF INTENTION THROUGH CASE LAWS**

In intentional torts such as assault having only the intention is not sufficient:

As said in the case of *A. C. Cama v H. F. Morgan*<sup>9</sup> it was held that the intention, as well as the act, makes it an assault.

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<sup>9</sup> *A C Cama v H F Morgan* (1864) 1 BHC

In some of the cases of trespass, the mental element of intention has played a major role.

In the case of *Wilson v Pringle*<sup>10</sup>, the plaintiff and the defendant were two schoolboys involved in an accident. The plaintiff claimed damages alleging that the defendant had committed trespass. But it was held by the court that if there was no intention to inflict injury then it would not amount to trespass. Moreover, it was held that more than the injury it was the act that had to be intentional. In this case, it is seen that Intention has played a major role in the holding of the case.

### **Recklessness and Negligence through case law analysis:**

In the case of *Donoghue v Stevenson*<sup>11</sup>, it was held that for negligence to exist there should be a duty of care and a breach of that duty of care. Negligence is more of conduct than a state of mind. Recklessness can be interpreted as a high degree of carelessness. In recklessness, there is a high amount of risk involved. The subject matter of the Balloon case in which a man fell from a gondola due to the recklessness of the pilot has deals less with the state of mind. The case is more related to recklessness and negligence which are a form of conduct.

### **CONCLUSION**

What we call "psychological factors" refers to a person's "intent" to harm others by infringing on the legal rights of others. Intention refers to a state of mind in which the wrongdoer is fully aware of his actions and their consequences. In addition, you have the desire to achieve these results. In criminal law, a basic element of a crime is a spiritual element. Here, the behaviour of the offender alone is not enough to hold him accountable for the crime. Another requirement is a sense of guilt. The basic principle is that a wrongdoer cannot be exempted from liability under the tort law just because he did not intend to cause harm. However, in some cases, the offender may not be liable (for example, limited privileges).

Based on the topics discussed and the case law analysis was done above, the researcher has come to the conclusion that mental elements are not essential in torts. The presence of mental

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<sup>10</sup> *Wilson v Pringle* [1986] 2 All ER 440

<sup>11</sup> *Donoghue v Stevenson* [1932] AC 562

elements aggravates damages. They are relevant but not essential. The element of malice as seen above is relevant in cases of malicious prosecution and deceit but it is not essential. It helps only in ascertaining the damages. A motive has been proven irrelevant in most of the cases as having the only motive cannot call for action. The same goes for Intention only having the intention does not call for damages.