



CHALLENGES FACED BY TORT LAW IN PRESENT TIME

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ABSTRACT

Tort law is a discipline that is continually changing in response to new problems and difficulties brought on by societal shifts, technology development, and legal concerns. This article examines some of the current problems with tort law and suggests some remedies. In this article major challenges facing by tort law will be discuss and their solutions as well as. The legal system may adjust to social developments and continue to offer remedies for civil wrongs and suffering suffered by persons by addressing these difficulties through regulatory frameworks, judicial guidance, legislative reforms, international collaboration, and ethical considerations. Furthermore, the article highlights some major tort cases that have had a significant impact on the development of tort law.

Key Word: Tort, Law, Challenges, Remedies, Judicial, Legal, Reforms, Cases, Impact

INTRODUCTION

Tort law is a subset of civil law that addresses civil wrongs and offers relief to those who have been injured or harmed as a result of someone else's conduct or inaction. Tort law is a living thing that changes all the time to address new social trends, technical developments, and legal issues. As society evolves, new challenges and complexities arise in the field of tort law. The ramifications of various current tort law challenges for the legal system are examined in this article.

WHAT IS TORT LAW?

Tort law, which deals with civil wrongs and offers remedies to people who have been harmed or injured as a result of another person's acts, is a basic component of civil law. The word "tort" comes from the Latin word "tortus," which meaning "twisted" or "wrong," and it refers to a variety of wrongdoings.

A breach of a duty owed by one person or party to another that causes harm, loss, or injury is referred to as a tort in tort law. Tort law's two main goals are to make up for the harm an injured party has endured and to stop others from doing similar wrongdoing. There are many

different kinds of torts, such as strict responsibility, carelessness, and deliberate torts. When someone fails to use reasonable care and hurts another person, that person has engaged in negligence. For instance, a driver may be held accountable for carelessness if they cause an accident while disobeying traffic laws.

Intentional torts are crimes committed with the intent to hurt or injure another person. Assault, violence, slander, and false imprisonment are a few examples of deliberate torts. In many situations, the intention to damage or injure is a crucial component of the defence. Different from negligence, strict responsibility involves holding the offender accountable regardless of their intention or degree of care. This usually holds true in situations involving dangerous activity or subpar goods. For instance, even if the maker was not negligent, a person hurt by a defective product may still be able to sue them under strict liability laws.

A plaintiff must demonstrate a number of elements in order to establish a successful tort claim, including the existence of a duty of care owed by the defendant, a breach of that duty, causation (i.e., a connection between the

defendant's actions and the plaintiff's harm), and actual damages suffered by the plaintiff. By encouraging responsibility and ensuring that people are held accountable for their conduct, tort law plays a key role in society. It gives people a way to seek restitution for their losses and motivates others to act responsibly and rationally.

In general, tort law covers a wide spectrum of civil wrongs and is a complicated and comprehensive field of the law. In addition to acting as a mechanism for settling conflicts and paying victims, it also helps to motivate people to act properly and with consideration for the security and welfare of others.

SOME CHALLENGES IN TORT JURISPRUDENCE IN PRESENT TIME

I. Liability in the Digital Age

There are new legal concerns in tort law as a result of the rapid advancement of technology and the digital era. The responsibility of internet platforms for user-generated material is one such problem. Platforms including social networking websites, online stores, and websites for sharing material frequently deal with accusations of defamation, violation of intellectual property, and carelessness for hosting or supporting harmful information. In this situation, it is necessary to strike a compromise between the right to free speech and the obligation of platform providers.

Courts have struggled in recent years to decide whether platforms are responsible for third-party material. The Communications Decency Act's Section 230¹ protection has been interpreted broadly in some countries, protecting platforms from legal responsibility for user-generated material. The extent and boundaries of this protection are still up for question, particularly in situations involving online harassment, hate speech, and disinformation.

II. New Theories of Torts

Traditionally, tort law has relied on well-established notions like strict liability, negligence, and intentional torts. However, new ideas have been developed in modern tort law to deal with complicated problems. One such idea is "enterprise liability," which holds businesses accountable for damage brought on by their goods or operations, regardless of guilt. This idea seeks to advance responsibility in situations involving large torts and environmental devastation and acknowledges that companies frequently have more resources and expertise than individual claimants.

The concept of "economic negligence," which aims to hold parties accountable when they fail to exercise reasonable caution in economic activity and cause financial loss, is another one that is now gaining traction. This argument broadens the definition of tort responsibility to include economic damage, challenging the notion that tort liability is limited to just causing bodily harm.

III. Climate Change and Tort Liability

Questions concerning tort responsibility for environmental harm have been raised in light of the growing understanding of climate change and its extensive effects. Lawsuits relating to climate change, such as those made against fossil fuel firms, governments, and other organisations, claim that their deeds or omissions have harmed people and communities and contributed to global warming.

In instances involving climate change, it might be difficult to prove causation and assign particular harm to defendants. It is challenging to show direct causality due to the complexity of climate systems, the involvement of several players in greenhouse gas emissions, and the lengthy time horizons. To properly handle tort claims relating to climate change, courts and legal experts are debating how to allocate blame and formulate legal standards.

IV. System Autonomy and Artificial Intelligence

¹ Communications Decency Act, 1996, § 230

The development of autonomous systems and artificial intelligence (AI) poses new problems for tort law. Questions about responsibility for harm or injury caused by autonomous systems when it occurs are raised as AI permeates more industries. For instance, mishaps involving self-driving cars bring up questions of product liability, carelessness, and who is accountable—the manufacturer, the software developer, and the user.

Traditional tort law must be re-examined in order to determine culpability in situations involving AI and autonomous systems. There are concerns regarding the level of care that should be anticipated from AI systems, how much responsibility should be shared between people and computers, and if the current legal frameworks are adequate to deal with these problems. Legal systems must change in order to provide protection and accountability for anyone harmed by AI.

V. Privacy and Data Protection

Concerns concerning privacy and data protection have been raised as a result of the growing acquisition and use of personal data by businesses and governments. Tort law can be used to resolve data breaches, privacy violations, and other harms brought on by the improper use of personal information. Individuals have the option to sue entities in tort.

SOLUTION TO COUNTER THESE CHALLENGES

In present time challenges in tort jurisprudence present complex challenges that require careful analysis and consideration. Here are some important things to think about:

I. Liability in the Digital Age

A. Regulatory Frameworks: Laws governing the liability of online platforms may be passed into law or amended by the government. This may involve outlining the obligations and responsibilities of platform owners with relation to user-generated material while balancing their rights to free speech and the need to prevent damage.

B. Transparency and content moderation: Platforms should put strong content moderation rules and procedures in place to quickly detect and delete dangerous information. Platforms may also improve transparency by giving users better instructions on what constitutes acceptable material and what actions will be taken in the event that those standards are broken.

C. User Empowerment: Giving users the tools to report and flag bad information can make the internet a safer place. Platforms may offer easily accessible reporting methods and guarantee that customer complaints are properly addressed.

II. New Theories of Torts

A. Judicial Guidance: Courts can offer clarification and direction on how to apply new tort theories. The development of tort law can be influenced by precedent-setting judgements, which can offer a framework for tackling complicated problems.

B. Legislative Reforms: Legislative bodies may take into account passing legislation that reflects and incorporates new tort theories into the existing legal framework. This can provide new legal problems a legislative foundation and guarantee uniform application across countries.

III. Climate Change and Tort Liability

A. Enhanced Causation Standards: Courts might create evidentiary guidelines that address the difficulties in proving the link between a given event and climate change. Consideration of cumulative effects, scientific data, and expert testimony could be required here.

B. Regulatory Frameworks and Policies: Governments may put in place regulatory frameworks and policies that support sustainable practises and hold businesses accountable for their role in climate change. This may involve setting emission reduction goals, establishing carbon price plans, and tightening environmental restrictions.

C. Collaboration on a worldwide scale is necessary to combat climate change. International accords and treaties can help

governments work together, promote collective action, and set forth standard guidelines for handling tort responsibility connected to climate change.

IV. System Autonomy and Artificial Intelligence

A. Updated Legal Frameworks: To address liability problems relating to AI and autonomous systems, legislators can examine and amend current laws. To do this, it could be necessary to develop precise standards of care, product liability frameworks, and laws that are tailored to AI technology.

B. Industry Standards and Guidelines: Industry-wide standards and guidelines for the development, implementation, and usage of AI systems can be developed by stakeholders, including manufacturers, software developers, and industry groups. These guidelines can be used to specify recommended practises and assign duties to various stakeholders involved in AI technology.

C. Ethical Considerations: By including ethical concerns into AI research and use, the potential of harm can be reduced. Artificial intelligence (AI) system design and operation should take into account ethical principles including responsibility, transparency, and justice.

V. Privacy and Data Protection

A. Strengthened Data Protection Laws: Governments have the power to implement thorough data protection regulations that clearly define the rights and responsibilities of organisations that collect and process personal data. These laws have to have effective enforcement procedures and harsh punishments for infractions.

B. Privacy by Design: Businesses should follow privacy-by-design guidelines to make sure that personal information protection and privacy considerations are taken into account throughout the creation of new goods, services, and systems.

C. User Awareness and Control: People should be given the tools and knowledge they need to manage their personal data. This might

involve offering user-friendly privacy controls, explicit permission methods, and open disclosure of data collection and usage practises.

It is crucial to remember that these solutions need to be adjusted to the particular legal frameworks, societal norms, and cultural settings of many countries. Collaboration amongst stakeholders, including legislators, attorneys, technologists, and members of civil society, is essential for efficiently tackling these modern concerns.

MAJOR TORT CASES

I. Donoghue v Stevenson²

The Donoghue v. Stevenson case has significantly changed the way negligence is governed in the UK and other common law countries. A benchmark for the degree of care that a manufacturer must exercise to guarantee the safety of his products was established by the case, which also defined the duty of care that manufacturers owe to customers. The case also established the rule that a manufacturer may be held accountable for damage brought on by a flaw in his product, even if he was unaware of the flaw at the time of creation.

II. Rylands v. Fletcher³

The case of Ryland v. Fletcher was crucial in determining an owner's responsibility when a harmful device is brought into the property. A law that might raise the owner's responsibility was required. In order for him to bring any hazardous objects into his premises with greater caution. There was a need for a legislation that could address these issues because of the speed at which the world is developing and the rise in duty of care conflicts during this period of industrialization, privatisation, and globalisation. In this situation, it was carried out. This Rule of Strict Liability in India prepared the way for "The Rule of Absolute Liability" in India.

III. Hall v. Brooklands Auto Racing Club⁴

² Donoghue v Stevenson [1932] AC 562

³ Rylands v. Fletcher (1866) LR 1 Exch 265, (1868) LR 3 HL 330

In *Hall v. Brooklands Auto Racing Club*, the plaintiff attended an automobile race that was taking place at Brooklands on a track that belonged to the defendant business as a spectator. An accident between two automobiles occurred during the race, and one of the cars was launched into the crowd, injuring the plaintiff. It was decided that the defendant was not responsible since the plaintiff implicitly assumed the risk of such harm, a risk that was inherent in the activity and that any spectator might have seen coming.

IV. *Ashby v. White*⁵

Ashby v. White is a well-known case that explains the adage *injury sine damno*. Even though the defendant's activity in this instance did not result in any damage, the plaintiff was successful in his claim. The defendant, a returning officer in a Parliamentary election, unlawfully declined to accept the plaintiff's ballot despite the fact that she was an eligible voter. Such a rejection caused no harm because the candidate he intended to vote for still won the election. It was decided that the defendant was responsible.

CONCLUSION

In conclusion, tort law is a developing area that deals with civil wrongs and offers relief to those who have been hurt by the deeds or inactions of others. However, the current state of tort law raises various difficulties that call for critical evaluation. Responsibility in the digital era, novel tort theories, tort responsibility and climate change, system autonomy and AI, and privacy and data protection are some of the difficulties. These difficulties are brought forth by technology development, shifting societal standards, and new legal concerns. Various solutions can be used to address these problems. These include updated legal frameworks for AI, industry standards and guidelines, strengthened data protection laws, privacy by design, user awareness and control, and judicial guidance. They also include

regulatory frameworks, transparency and content moderation on online platforms, user empowerment, judicial guidance, legislative reforms, improved causation standards, cooperative international efforts, and updated legal frameworks for AI. It is crucial to modify these solutions to fit certain legal structures, societal norms, and cultural contexts. To properly solve these contemporary issues, stakeholders must work together, including politicians, lawyers, technologists, and representatives of civil society.

The development of tort law has also been greatly affected by a number of noteworthy tort cases. Examples include *Hall v. Brooklands Auto Racing Club*, which discussed the assumption of risk in spectator sports, and *Donoghue v. Stevenson*, which established the duty of care owed by manufacturers to consumers. Other cases include *Rylands v. Fletcher*, which introduced the concept of strict liability for bringing harmful objects onto one's property, *Hall v. Brooklands Auto Racing Club*, which discussed the principle of *injury sine damno*, and *Ashby v. White*.

Finally, as society changes, new problems in tort law arise that need for critical analysis and creative answers. To ensure a successful and equitable tort system, it is imperative to embrace new tort theories, address concerns relating to climate change and artificial intelligence, and safeguard privacy and data.

REFERENCES

- I. Ratanlal And Dhirajlal, *The Law of Torts* [LexisNexis, 2019]
- II. R.K. Bangia, *The Law of Torts* [Allahabad Law agency Law Publishers, 2012]
- III. <https://blog.ipleaders.in/top-10-tort-law-cases/>
- IV. <https://www.cambridge.org/core/journals/canadian-journal-of-law-and-jurisprudence/article/abs/contemporary-tort-theory-and-tort-laws-evolution/46D4AA256D58C9F3CC3D809CA510231A>

⁴ *Hall v. Brooklands Auto Racing Club* (1932) 1 KB 205

⁵ *Ashby v White* (1703) 92 ER 126