



Extra-Contractual Liability

Law of Tort

Introduction

- There are rights and interests, which are rendered protection by the FDRE Constitution. Some of these interests and rights include:-
 - The right to life (article 15)
 - The right to the security of person (article 16)
 - The right to liberty (article 17)
 - The right to honor & reputation (article 24)
 - The right to privacy (article 26)
 - The right to property (article 40)
- Where these rights or interests are infringed there are remedies made available by different laws, one of which is criminal law and Non- Contractual Liability Law

- Therefore, Non-Contractual Liability Law is a law that gives remedy by:-
 - Awarding compensation to the victim
 - Ordering Injunction: it is a court order given to the defendant to refrain from doing something.
 - Restitution is the third form of remedy
- The victim seeks a remedy by bringing her case to a court or by settling it amicably with defendant directly or through a third party

Definition of 'Tort Law'

- The term tort is the French equivalent of the English word wrong
- It is possible for one party to injure another outside of a contract and such an injury is said to be a tort
- The area of law that covers the majority of all civil lawsuits
- Essentially, every claim that arises in civil court with the exception of contractual disputes falls under tort law.
- The concept of tort law is to redress a wrong done to a person, usually by awarding them monetary damages as compensation
- The law of torts developed almost entirely in the common-law courts

Non-contractual liability law Vs Contractual law

- The sources of obligations
 - In case of contracts, the obligations emanate from the agreement made between the parties,
 - While the obligation of Non – Contractual Liability Law emanates from the law.
- Consent of the parties is necessary in case of Law of Contracts while this is not in Non-Contractual Liability Law.
- In case of Contract Law there are certain people who are exempted from performing their part of obligations, for instance, a minor. No exception is, however, made in Non – Contractual Liability Law.

- The amount of compensation, which is the other difference.
 - In case of contract where it is established that the breach is intentional or due to “grave” fault, the compensation shall be increased to cover the damage, which is greater than the normal damage.
 - However, in the absence of intentional fault non – contractual compensation for wrongful harm may sometimes be decreased.
- Period of limitation and court jurisdiction
 - Limitation of action in contract is 10 years while in case of Non – Contractual Liability it is 2 years.
 - Finally, a court that has jurisdiction in a case of contract is a court at the place where the contract is made or to be performed while in the case of Non – Contractual Liability the court at a place where the wrong was done has jurisdiction

Tort Law Vs Criminal Law

- Liability from both wrongs emanates from the law, unlike that of contractual wrongs, which emanates from agreement
- Moreover, criminal wrong may give rise to Non – Contractual Liability
- On the contrary in deciding whether a [civil] offence has been committed, the court shall not be bound by an acquittals or discharge by a criminal court.
- The criminal wrong doer may end up in jail or be punished with fine or both
- In the criminal case, the parties are the offender and the state, the latter, representing the public through the public prosecutor
- Criminal law prohibits and punishes wrongful conduct

Why Tort Law Is Important?

- The main aim of tort law is to provide a system that holds people accountable for the damages they cause while discouraging others from doing the same
- The prospect of paying damages provides the financial incentive for companies to ensure safety and refrain from harmful conduct, thereby preventing injuries in the first place
- The tort system also helps limit the government's role in the process, allowing it to take the lead in criminal cases

Principles

- To make a person liable under this law, four requirements which are called principles of Non-contractual Liability Law are essential
 - The first one is act or omission.
 - The second concerns damage.
 - The third is the existence of casual relationship between the act or omission and the damage suffered by the victim
 - Finally, this damage should be a kind of harm recognized as attracting legal liability.

Ethiopian Non - Contractual Liability Law

- The sources of Non – Contractual Liability Law are three:
 - a) Fault (offence)  fault liability
 - b) Activities one engages in or things possessed by a person  strict liability
 - c) Where a third party for whom a person is responsible incurs liability  vicarious liability.

Liability for Fault

- This type of liability is an ordinary one and the principle
- When an act or forbearance of an individual is in a manner or in a condition. which offends morality or the usual standard of good conduct, we say that person is at fault
- There are two main types:
 - Negligence/ Unintentional tort
 - Intentional tort



Negligence

- Negligence is the most common type of tort.
- It is caused when an individual acts carelessly resulting in the injury of another.
- Unintentional tort i.e negligence covers the full scope of human activity
- For example: a janitor has a duty to put up a wet floor sign after mopping. If he or she fails to put up the sign and someone falls and injures themselves, a negligence tort case may be filed.



- Examples of negligence torts include car accidents, pedestrian accidents, slip and falls, medical malpractice, and more.
- In practicing their profession, engineers may cause injury to another party as a result of a mistake

Duty Of Care Owed By Professionals

- In a negligence lawsuit, the plaintiff must demonstrate the defendant owed him or her a duty of care—a specific legal obligation to not harm others or their property.
- An engineer has a duty of care to not only his or her clients, but also those who may be affected by the actions of the engineer.
- It is trite law that an engineer is liable for incompetence, carelessness or negligence which results in damages to his employer and he is in the same position as any other professional or skilled person who undertakes his professional work for reward and is therefore responsible if he does or omits to do his professional undertaking with an ordinary and reasonable degree of care and skill.
- A builder of defective premises may be liable in negligence to persons who thereby suffer injury.

Intentional Torts

- This type of tort case takes place when an individual intentionally engages in actions that effectively cause injury or damage to another person.
- For example :throwing a punch in a fight is intentionally engaging in destructive behavior. A plaintiff can file an Intentional tort suit in this situation.
- The most common examples of intentional torts are assault, battery, defamation and trespassing.
- These are different from negligence because the harm was caused by purposeful conduct. In these cases, the act may also be considered a crime depending on the state's criminal code. In this case, the act can be prosecuted in both civil and criminal courts.



Strict Liability

- It is regulated from Article 2066 – 2089
- Also termed as Liability Irrespective of Fault, or “absolute” liability, is a tort case where responsibility can be placed on an individual without proof of negligence or fault.
- For example, if a company releases a defective product for consumer purchase, and a consumer is injured because of the defect, strict liability is imposed. The company is always held liable.
- Examples of strict liability torts also include animal attacks and abnormally dangerous activities

Vicarious Liability

- This type of liability occurs when a person is held responsible for another person's actions or it is where one person is made liable for the tort of another person.
- Thus, under the Ethiopian tort law parents and others listed under article (Art. 2124 – 2125) are liable for the wrongs done by a minor child.
- It is very common in the workplace as employers are usually held responsible for their employees' actions.
- The state is liable for its civil servants and employees acts(Art. 2126 – 2128),
- Similarly, bodies corporate are liable for their representatives, agents or paid workers act (Art. 2129 – 2132).
- Finally, the managing editor of the newspaper, the printer of the pamphlet or publisher of a book is liable for defamation committed by the author of the printed text.

Why someone is held liable for the wrong committed by another?

The possible rationales are:

- The control test: this theory attributes to those who are made liable the ability to control the behavior and precise manner of the wrong doers
- Analogy with causation: the state, the employers or the bodies corporate are those who set the whole thing in motion and that, therefore, they should bear the consequences of a third party who suffers through their employees wrongful conduct
- Deep pockets: as per this theory, the father, the state, bodies corporate and the employers are richer. Hence they should pay
- Economic and moral consideration: this theory is based on the fact that "...the person who drives a benefit from the activity of another should also bear the risk of the damage inflicted by those acts."

Case: Dutton v Bognor Regis Urban District Council [1972] 1 QB 373

- A house was built on a rubbish deposit. This will result in settling, but this can be dealt with through larger foundations. By-laws required that the foundation be approved by a building inspector but the inspector failed to make an proper inspection. Part of the building collapsed.

Held: The inspector was responsible while the local building authority, however, was liable for the damages.

Assignment Three

- 1) What are the distinctions between Torts and Crimes?
- 2) Briefly Discuss the role of Tort Law in the Construction Industry.

Note:

- Carry out the assignment in a group of three.
- Every student within a group should participate in writing the document.
- The document should include cover page.
- Page range = 1-2, hand written (legibly) on A4 paper and stapled.
- Date, time and place of submission of the assignment

December 26, 2019 at 8:00 am, Class room

Thank You