

# Torts

## I. LAW OF TORTS

### Definition of Tort

A tort is a violation of a right of a person/ breach of duty by one person towards another. Some of the important definitions, which indicate the nature of 'tort', are as under:

**Winfield:** Tortious liability arises from the breach of a duty primarily fixed by law. This duty is towards persons generally and its breach is repressible by an action for liquidated damages.

### Essentials of torts

The essential ingredients of torts are as follows:

1. There must be some act or omission;
2. It must be resulting in breach of duty;
3. There must be some wrong against someone; and
4. There must be suit for unliquidated damages.

Whether Tort is committed or not is determine by two maxims, which are as follows:

1. *Injuria sine damno*
2. *Danum sine injuria*

**Injuria sine Damno:** Violation (injury) of a legal right without damage. It implies that violation (injury) of a legal right without causing any harm or loss or damage to the plaintiff. *Injuria* means a tortuous act, it need not be wilful and malicious, for though it may be accidental if it be tortuous an action will lie any unauthorised interference, however, trivial with absolute right conferred by law on some person is an injury. There are two kinds of torts:

- a. Those which are *actionable per se* i.e. without the proof of actual damage; and
- b. Those which are *actionable* i.e. only on the proof actual damage resulting from them.

*Injuria sine damno* covers the first of the above stated cases. In such cases, there is no need to prove that as a consequence of an act, the plaintiff has suffered any harm. For a successful action, the only thing which has to be proved is that the plaintiff's legal right has been violated, i.e., there is *injuria*.

**Gloucester Grammar School case** (1410, Y.B. Hill 11 Hen), explains the point, where the defendant, a school master setup a rival school next door to the plaintiff's school and student's from the plaintiff's school flocked to the defendant's school. The court held that the plaintiff had no remedy for the loss thus suffered by them.

## II. GENERAL DEFENCES

When the plaintiff brings an action against the defendant for a particular tort providing the existence of all the essential elements of that tort the defendant would be liable for the same. The defendant may, however, even in such case avoid his

liability by taking the plea of some defence. There are some general defences which may be taken against action for number of wrongs. The general defences are as follows:

1. Volenti non fit injuri or the defence of consent;
2. Plaintiff the wrongdoer;
3. Inevitable accident;
4. Act of God;
5. Private defence;
6. Mistake;
7. Necessity; and
8. Statutory authority.

**Volenti non fit injuria:** Volenti non fit injuria to the defence of consent (express or implied) means when a person voluntarily agrees to suffer injury then he himself is liable and no one else. There is no remedy for that in law of tort because his free consent serves as a good defence against him. No person can enforce a right which he has voluntarily waived or abandoned. But for the defence of consent to be available, the act causing harm must not go beyond the limit of what the limit of what has been consented. For example, if a surgeon negligently performs an operation he cannot plead the defence of consent.

### Essential ingredients of volenti non fit injuria

For the application of the maxim following conditions must be fulfilled:

1. The consent must be free;
2. Mere knowledge does not imply assent;
3. It should not have been obtained under misconception.

### Exceptions to the maxim volenti non fit injuria

The scope of application of the doctrine limited in following cases:

1. No consent or it may be a case of knowledge;
2. When it is a case of negligence;
3. When there is a violation of statutory provisions;
4. In rescue cases; and
5. Unfair Contract Terms Act, 1977.

### Necessity (jus necessitates)

This defence is based on the maxim *salus populi suprema lex* which means welfare of the people is supreme. Concerned force of circumstances compelling one to do something may be termed as necessity. An act causing, if done under necessity to prevent a greater harm is not actionable even though harm was caused intentionally.

In **Mouse's case** (1609) 12 Rep. 63, in this case captain had ordered to over throwing goods from the ship and that held justified.

## Act of God

Act of God is also known as with different names i.e. *vis major* or *vis naturale* or *causa major* or *force majeure* or *damnum fatale*. Extraordinary natural occurrence will be termed as Act of God, that one which was not occurred so far. There is a maxim-*actus dei nemini facit injuriam*, it means irresistible and unsearchable providence nullifying human efforts.

## Essential elements of Act of God

The important essential elements are needed for Acts Of God are as:

1. Working on natural forces; and
2. Occurrence must be extraordinary.

## Inevitable accident

An inevitable accident or unavoidable accident is that which could not be possibly prevented by exercise of ordinary care, caution and skill. It means an accident physically unavoidable. In other words, it means an unexpected injury and if the same could not have been foreseen and avoided, in spite of reasonable care on the part of the defendant, it is inevitable accident.

## Plaintiff the wrongdoer

In law of Contract there is a principle that no court will aid a person who found his cause of action upon immoral or illegal act. The maxim is *ex turpi causa non oritur actio* which means from an immoral cause no action arises. It means that if the basis of the action of the plaintiff is an unlawful contract, he will not, in general, succeed to his action.

In *Bird v. Holbrook* (1828) 4 Bing. 628, the plaintiff, a trespasser over the defendant's land was entitled to claim compensation for injury caused by a spring gun set by the defendant, without notice, in his garden.

## Private defence

The law permits use of reasonable force to protect one's person or property. If the defendant uses the force which is necessary for self-defence, he will not be liable for the harm caused thereby. For taking this defence the following conditions have to be satisfied:

- i. The use of force is justified only for the purpose of defence; and
- ii. There should be imminent threat to the personal safety or property.

*Cockcroft v. Smith* (1706) 11 Mod. Rep. 48, Court held that A would not be justified in using force against B, merely because he thinks that B would not attack him some day, nor can the force be justified by way of retaliation after the attack is already over.

## Mistake

Mistake, whether of fact or of law, is generally no defence to an action of tort. For example: entering the land of another thinking that to be one's own trespass, driving of plaintiff's sheep amongst one's own herd is trespass to goods, injuring the reputation of another without an intention to defame is defamation.

In *Consolidated Co. v. Curtis* (1894) 1 Q.B. 495, an auctioneer was asked to auction certain goods by his customer. Honestly believing that the goods belonged to the customer, he auctioned

them and he paid the sale proceeds to the customer. In fact, the goods belonged to some person. In auction by the true owner, the auctioneer was held liable for tort of conversion.

## Statutory Authority

The damage resulting from an act, which the legislature authorizes or directs to be done, is not actionable even though it would otherwise be a tort. When an act is done, under the authority of an Act, it is complete defence and the injured party has no remedy except for claiming such compensation as may have been provided by the statute.

In *Vaughan v. Taff Valde Rail Co.* (1860) 5 H. and N. 679, sparks from an engine of the respondent's railway company, which has been authorised to run the railway, set fire to the appellant's woods on the adjoining land. It was held that since the respondents had taken proper care to prevent the emissions of sparks and they were doing nothing more than what the statute had authorised them to do, they were not liable.

## III. VICARIOUS LIABILITY

The word "*vicarious*" has been derived from the word "*vicar*" which means one who acts through another. Pollock explains and coins the term "*vicarious*". Generally, a person is liable for his own wrongful acts but in many cases he may be held liable for the torts committed by others. This is known as the '*vicarious liability*' i.e. the liability of one person for the act done by another person, may arise. The common examples of such liability are:

1. Liability of the principal for the tort of his agent;
2. Liability of the partners of each other's tort;
3. Liability of the master for the tort of his servant;
4. Father and son, guardian and ward;
5. Company and directors (alterego theory); and
6. Owner and independent contractor.

The principles on which vicarious liability is based are:

1. *Qui facit per alium facit per se* which means one who acts through another is supposed to have acted himself in the eyes of law?
2. *Respondent Superior* (let the principal be liable) which means superior should be held liable for the acts of the inferior.
3. *Public Policy* i.e. quick justice, Lord Pearce said that disability is not based on legal or logical principles but it is based on the principles of rough and quick justice.

## Principal and Agent

Where the principal expressly or impliedly authorizes another to do some act he is liable for such an act of the agent if the same has been done in the course of performance of his duties as an agent. It is based on the general principal *qui facit per alium facit per se*. Their liability is joint and several.

## Partners

The relationship as between partners is that of principal and agent. The rules of the law of agency apply in case of their liability also. For the tort committed by any partners are liable therefore to the same extent as the guilty partner.

## Master and servant

If a servant does a wrongful act in the course of his employment, the master is liable for it. The servant, of course, is also liable.

The doctrine of liability of the master for act of his servant is based on the maxim *respondent superior*. It also derives validity from the maxim *qui facit per alium facit per se*.

For the liability of the master to arise, the following two essentials are to be present:

1. The tort was committed by the servant; and
2. The servant committed the tort in the course of his employment.

### Who is servant?

The servant is a person:

- i. Who voluntarily agrees;
- ii. Whether for wages or not;
- iii. To subject himself at all time during the period of service;
- iv. To lawful orders and directions of the master; and
- v. For a certain work to be done.

### Who is master?

Master is a person:

1. Who enjoys power of selection;
2. Power to decide and settle remuneration;
3. Master control the method of doing the work; and
4. He has the power to grant leave and power to terminate or dismiss the employee.

### Doctrine of common employment

This doctrine was propounded by *Lord Abinger* in 1837, in the case of *Priestley v. Fowler*, Court observed that if there are two servants employed by the same master and the functioning is such that the safety of one servant is depend upon the working of another servant. In such a situation if one servant is injured by the negligence of other servant than master will not held liable and this decision was approved in 1850 in the case of *Hutchinson v. York, New Castle & Berwick Rail Co.*

### Position of this Doctrine in India

Some of the High Court's like Allahabad and Calcutta High Court favoured this doctrine but Sind and Nagpur High Court were of the view that this principle will be inequitable as far as India is concerned.

### Guardian and Ward

Generally, Guardian is not personally liable for tort committed by minor. But guardian will be liable under two conditions only:

1. When a minor is acting as a servant or agent of the guardian; or
2. If the guardian afford an opportunity to the minor to commit a tort.

A minor has a right to sue for tort like an adult with a condition that any guardian can sue on his behalf. Lesser protection is provided to minor under the law of Tort in comparison to other law.

### Company and its Directors

Companies are liable for the tort committed by their servants in the course of their employment. Directors are personally liable for any tort committed, although it may be for the benefit of the company.

### Vicarious liability of the State

King (State) is subject to law which means king is not above the law. In England after passing of the Crown Proceeding

Act, 1947, according to which the Crown is Liable for a tort committed by its servants just like a private master. In India we do not have any statutory provisions like England. But the extent of liability of the State (Govt.) in India may be known in two ways:

1. To go through the legislature; or
2. To go through the judicial decisions.

**Article 300 (1)** of the Constitution of India, 1950 says that the Government of India i.e. Central Government may sue or be sued by the name of Union of India and the provincial Government may sue and be sued by the name of State. Article 300 (2) says that any legal proceedings are pending to which dominion of India is a party and it will be transferred to the name of Union of India or State. Article 294 (b) says that government will be held liable for contract or otherwise, i.e., liability for tort also. From the legislature we did not find the extent of liability of the Government.

### Extent of liability of State through Judicial decisions

The Indian judiciary fixes the liability of the state through various landmark decisions. These are as follows:

In *P. & O. Steam Navigation Co. v. Secy. Of State* (1861), in that case, the plaintiff's servant was travelling in stage coach and was passing by the kidder pore dockyard in Calcutta due to negligence on the part of defendant's servant, a heavy piece of iron, which they were carrying for the repair of a steamer, fell and the horse rushed forward and was injured and also the person travelling. Plaintiff filed a suit against the Secy. of State for damages. Government take plea that maintenance of dockyard is a sovereign function therefore government is not liable. Peacock, C.J., said government functions are two types:

- a. Sovereign functions, and
- b. Non-sovereign functions.

Peacock C.J. said for sovereign functions there is no liability of government but for non-sovereign functions government is liable.

### What are sovereign functions?

Functions which have been done under the authority of law may be termed as sovereign functions.

### What are non-sovereign functions?

Functions which is performed by anybody.

In *Ram Gulam v. State of U.P.*, the police authorities had recovered some stolen property and deposited the same in the police malkhana were the property was again stolen by its Nazir. The owner of the property filed a suit against the State. It was held that the government is not liable.

## IV. NEGLIGENCE

According to *Winfield* (Winfield and Jolowicz, Tort, 12<sup>th</sup>, p. 45) "*negligence as a tort is the breach of a legal duty to take care which results in damages.*"

According to *Charlesworth and Percy* (On Negligence, 7<sup>th</sup> edn. P. 15) "*negligence is a tort which involves a person's breach of duty that is imposed upon him, to take care resulting in damage to the complainant.*"

### Essential ingredients of Negligence

In an action for negligence, the plaintiff has to prove the following essentials:

1. That the defendant owed a duty of care to the plaintiff;
2. The defendant made a breach of that duty; and
3. That there was consequential damage to the plaintiff.

In *Rural Transport Service v. Bezlum Bibi* (AIR 1980 Cal 165), the conductor of an overloaded bus invited passengers to travel on the roof of the bus. On the way the bus swerved on the right side to overtake a cart. One of the passengers on the roof of the bus was struck by an overhanging branch of a tree. He fell down and died because of injuries. Held that there was negligence on the part of both the driver and the conductor of the bus.

### Res Ipsa Loquitur (proof of negligence)

As a general rule, it is for the plaintiff to prove that the defendant was negligent. But there is a presumption of negligence accordingly to the maxim '*Res ipsa loquitur*' which means 'the thing speaks for itself'. When the accident explains only one thing and that the accident could not ordinarily occur unless the defendant had been negligent, the law raises a presumption of negligence on the part of the defendant. In such a cases, it is sufficient for the plaintiff to prove accident and nothing more. *Res ipsa loquitur* is not a principle of substantive law; it is a rule of evidence, relating to burden of proof and nothing else. There are three requirements which must be satisfied for the application of the rule of *res ipsa loquitur*:

- a. Absence of explanation;
- b. Improbability of the happening; and
- c. Management and control of object in causing accident in the defendant's hand.

### Contributory Negligence

It often happens that harm is suffered by the plaintiff not solely due to the negligence of the defendant but also due to the negligence of the plaintiff. Contributory negligence is an expression which implies that person, who has suffered damage, is also guilty of some negligence and has contributed towards the damage. In order to establish his defence, the defendant must prove that:

- a. The injury of which the plaintiff complains results from that particular risk to which the negligence of the plaintiff exposed him;
- b. The negligence of the plaintiff contributed to his injury; and
- c. There was fault or negligence on the part of the plaintiff.

### Last Opportunity Rule

With a view to mitigate the rigorous of the common law rule of contributory negligence, courts modified it with the rule of last opportunity. In *Davies v. Mann* (1842) 10 M & W 546, the plaintiff left his donkey negligently after tying his legs on the highway and the defendant subsequently came fast in his wagon and negligently ran over the donkey and killed it. The defendant was held liable because the defendant had last opportunity to avoid the harm.

**Salmond** summarized the last opportunity rule as "when an accident happens through the combined negligence of two persons, he alone is responsible to the other who had last opportunity of avoiding the accident by reasonable care..."

### Nervous Shock

This branch of law is comparatively of recent origin. It provides relief when a person may get physical injury not by an impact,

e.g. by stick, bullet or sword etc., but merely by a nervous shock through what he has seen or heard. In other words, that an action can be brought for damages for mental shock even though it is sustained through the medium of eye or the ear.

## V. THE DOCTRINE OF REMOTENESS OF DAMAGE

The damage is considered to be remote in the following circumstances:

- a. Where the damage caused to the plaintiff is not the direct consequence of the defendant;
- b. Where damage is caused due to the plaintiff's own negligent;
- c. Where there is intervention between the defendant's act and the damage by the other parties' independent act, (Novus actus inter remiens-which means the intervention of human activity between defendant's acts and its consequence);
- d. Where a natural event intervenes; and
- e. Where there is intervening act by the plaintiff himself.

### Test of Remoteness of Damages

There are two tests of remoteness of damages were laid down by the Court are as follows:

1. The test of directness; and
2. The test of foreseeability.

#### The test of directness

According to the test of directness, a person is liable for all the direct consequences of his wrongful act, whether he could have foreseen them or not because consequences which directly follow a wrongful act are not too remote.

#### The test of reasonable foreseeability

According to this test, if the consequences of wrongful act could have been foreseen by a reasonable man, they are not too remote. If, on the other hand, a reasonable man would not have foreseen the consequences, they are too remote.

#### Position of law in India

Indian courts have accepted the test of reasonable foreseeability as laid down in the *Wagon Mound's case*. Although there is no Supreme Court judgment on this point but the decisions of some High Courts makes it clear that they apply the test of reasonable foreseeability. In *Veeran v. Krishna Murthi* (AIR 1966 Kerala 172), some of the school boys were trying to cross the road. They were waiting for the bus. The defendant's lorry was following the bus. The lorry was about 100 yards behind the bus and came at the speed of 25 to 30 minutes per hour. Just after the bus passed, the boys started crossing the road and while doing so a boy was struck by the lorry and got seriously injured. It was held that the defendants were liable for the loss caused to the plaintiff because they could have foreseen the accident.

## VI. STRICT AND ABSOLUTE LIABILITY

There are situation when a person may be liable for some harm even though he is not negligent in causing the same, or there is no intention to cause the harm, or sometimes he may even have made some positive efforts to avert the same, it is known as *strict liability* or *no fault liability*.

Before 18<sup>th</sup> Century, law related to property was divided into four categories i.e.

1. Action for trespass were injury was direct;
2. Assizes of nuisance;
3. Liability for spread of fire; and
4. Liability for cattle trespass.

In 1868 one more liability added i.e. *strict liability*. In 1987 again one liability comes, i.e., *absolute liability*. In this connection, the rules laid down in two cases, firstly, in the decision of the House of Lords in *Ryland v. Fletcher* (1868) L.R. 3 H.I. 330, and, secondly, in the decision of the Supreme Court of India in *M.C. Mehta v. Union of India* (AIR 1987 SC 1086, may be noted.

### Genesis of the case

Ryland v. Fletcher case had been decided on the basis of a legal analysis:

- a. Whether it was a case of trespass? The answer was damage was not immediately, therefore, it was not a case of trespass.
- b. Whether it was a case of nuisance? The continuity is required in case of nuisance; therefore, it was not a case of nuisance.
- c. Whether the maxim-*sic utere tuo ut alien um non laedas* (which means everyone must so use his land as not to cause damage to another) is applied in this case? The answer is no.
- d. Whether it was a case of negligence? Ryland was not negligent but the independent contractor was negligent, therefore it was not the case of negligence.

### Essential elements of strict liability

For the application of the rule, therefore, the following essential ingredients should be there:

- a. There must be some dangerous thing;
- b. There must be escape of that dangerous thing; and
- c. There must be non-natural use of land.

### Exceptions to the rule of Ryland v. Fletcher

The following exceptions to the rule have been recognized are as follows:

- a. Plaintiff's own default;
- b. Act of God;
- c. Consent of the plaintiff;
- d. Interference of third party; and
- e. Statutory authority.

### Position of this rule in India

The rule of strict liability is applicable as much as in England but as far as water is concerned this principle does not applied because India is an agricultural country. In *Madras Rly. Co. v. Zamindar of Kiratnagar*, in this case there was escape of water as a consequence of bursting of two ancient tanks situated on the respondent's zamindari, which flooded the premises of railway Co. Privy Council held that the principle of strict liability cannot be applied to agricultural land. Zamindar was not negligent and not only the Zamindar but railway Co. also needs plenty of water. No damages were awarded

### Rule of Absolute Liability

Absolute liability is liability without fault liability for which there is no excuse. In other words, absolute liability is imposed upon certain conduct, regardless of whether or not such conduct is negligent. Absolute liability is commonly used to describe damages in which it is not open to a defendant to avoid liability on the ground that he acted under a reasonable care and caution. The rule of absolute liability was evolved in the case of *M.C. Mehta v Union of India (Shriram Food & Fertilizers Ltd. Case)*.

## VII. NUISANCE

### Nature and Definition of Nuisance

The term "*nuisance*" is derived from the French term "*nuire*" and Latin word "*nocere*" or "*nocumentum*" which means which in legal sense means "*annoyance*" or "*harm*". Nuisance is an unlawful interference with a person's use or enjoyment of land, or of some right over, or in connection with it. Nuisance is an injury to the right of a person in possession of a property to undisturbed enjoyment of it and result from an improper use by another person in his property.

### Essential Ingredients of Nuisance

To constitute the tort of nuisance, the following essential elements are required to be proved:

- a. Unreasonable interference;
- b. Interference with the use of enjoyment of land; and
- c. There must be damage to plaintiff.

### Kinds of Nuisance

There are two kinds of Nuisance:

- a. Public nuisance or common nuisance; and
- b. Private nuisance.

### Public Nuisance

If any act of a person annoys a large number of persons or class of persons, it is known as "*Public Nuisance*". Public nuisance is a crime whereas private nuisance is a tort or civil wrong. Public nuisance is interference with the right of public in general and is punishable as an offence. Section 268 of the Indian Penal Code, 1860 defines it as: "*an act or illegal omission which causes any common injury, danger or annoyance, to the people in general who dwell, or occupy property, in the vicinity, or which must necessarily cause injury, obstruction, danger or annoyance to persons who may have occasion to use any public right.*"

### Private Nuisance

In *Hunter v Canary Wharf*, it was established that private nuisance is of three types:

- a. encroachment on a neighbour's land;
- b. direct physical injury to the land; or
- c. Interference with the enjoyment of land.

Liability in private nuisance, among other factors, depends on the nature of the defendant's conduct and balance of conflicting interests. Also, more or less, a person would be held liable for nuisance only if the land is damaged and not merely chattels on the land. It is only when the interference becomes unreasonable and substantial that the law interferes.

### **Sensitive plaintiff**

In nuisance, a defendant is not liable to unusually sensitive plaintiff because an act which is otherwise reasonable does not become unreasonable and actionable when the damage occurs, even though substantial, is caused solely due to sensitiveness to the plaintiff or the use to which he puts his property. For example, if some noises which do not disturb or annoy an ordinary person but disturb only the plaintiff in his work or sleep due to his oversensitiveness, it is no nuisance against this plaintiff.

In *Robinson v. Kivert* (1889) 41 Ch.D. 88, the plaintiff warehoused brown paper in a building. The heat created by the defendant in the lower portion of the same building for his own business dried and diminished the value of the plaintiff's brown paper. The loss was due to an exceptionally delicate trade of the plaintiff and paper generally would not have been damaged by the defendant's operations. It was held that the defendant was not liable for the nuisance.

## **VIII. DEFAMATION**

### **Essential Elements of Defamation**

The essential elements of defamations are as follows:

- a. the statement must be false and defamatory;
- b. the said statement must refer to the plaintiff;
- c. malice may be present in such cases;
- d. injuries the reputation of that person; and
- e. the statement must be published.

### **Kinds of Defamation**

Defamation is a generic term and the species are libel and slander. The tort of defamation includes:

1. Libel (it is a representation made in some permanent form, e.g., writing, printing, picture, effigy or statue, etc.), and
2. Slander (it is the publication of a defamatory statement in a transient form, e.g., spoken words or gesture, etc.)

In the case of *Yousouppoff v. M.G.M. Pictures Ltd.*, under the said production house a film "Rasputin-The Mad Monk" was being made. A character in the film name 'Natasha' was played by a British actress Irina. The character of Natasha had a close resemblance with the life of Princes "Russie", Yousouppoff. Thus, the Princes claim for damages for the damage on the ground of defamation. The court awarded the damages.

### **Defences of Defamation**

The defences to an action for defamation are:

- a. Justification or truth;
- b. Fair comment;
- c. Privilege, which may be either absolute or qualified;
- d. Innocent Dissemination;
- e. Consent; and
- f. Retraction of the allegedly defamatory statement.

## **IX. TRESPASS TO THE PERSON**

### **Battery**

Battery is a tort of intentionally and voluntarily bringing about an unconsented harmful or offensive contact with a person or to something closely associated with them (e.g. a hat, a purse).

Its essential requirements are:

- a. there should be use of force; and
- b. the same should be without any lawful justification or excuse.

### **Assault**

The historic case of *I de S et Ux v. W de S* (1348), allowed the husband (the wife had no legal standing) to recover from the defendant who wielded an axe at the plaintiff's wife. The court concluded that even though the wife was not physically touched, the attack had caused her harm, the fear of imminent physical injury.

### **Essentials**

- a. Intent to cause apprehension;
- b. imminent threat; and
- c. reasonable apprehension.

### **False Imprisonment**

An unlawful restraint of an individual's personal liberty or freedom of movement. Imprisonment is "any unlawful exercise or show of force by which a person is compelled to remain where he does not wish to remain or to go where he does not wish to go. There must be actual or legal intent to restrain. The confinement must be against the plaintiff's will and if a person voluntarily consents to the confinement, there can be no false imprisonment. In other words, In false imprisonment, the defendant unlawfully acts to intentionally cause confinement or restraint of the victim within a bounded area.

### **Essentials**

To constitute tort of false imprisonment the following requirement is essentials:

- a. there should be total restraint on the liberty of a person;
- b. it should be without any lawful justification.

## **X. MALICIOUS PROSECUTION**

### **Nature and definition**

A malicious prosecution is defined as a 'judicial proceeding instituted by one person against another, from wrongful or improper motive and without probable cause to sustain it.

### **Essential elements**

The plaintiff has to required to prove the following essentials in a suit for damages for malicious prosecution:

1. that he was prosecuted by the defendant;
2. the prosecution was instituted without any reasonable and probable cause;
3. the defendant acted maliciously and not with a mere intention of carrying a law into effect;
4. the proceedings complained of terminated in favour of the present plaintiff; and
5. the plaintiff suffered damage as a result of the prosecution.

In *Nagendra Nath Ray v. Basanta Das Bairagya* (I.L.R. (1929) 47 Cal. 25, after a theft had been committed in the defendant's house, he informed the police that he suspected the plaintiff for the same. Thereupon, the plaintiff was arrested by the police but was subsequently discharge by the magistrate as the final police report showed that there was no evidence connecting the plaintiff with the theft. In a suit for malicious prosecution, it was held that it was not maintainable because there was no prosecution at all as mere police proceedings are not the same thing as prosecution.

# EXERCISE

**DIRECTIONS (Qs. 1-11):** *The given below are legal principle and facts. Apply the given legal principle to the facts and select the most appropriate answer given below.*

- 1. Legal Principle:** Principal is vicariously held liable for the wrongful acts of his agent done in the course of the former's employment.

**Facts:** A has a saving account in the Prime Bank of India (PBI). His friend B is an employee in the said Bank. A in order to deposit 25,000/ rupees in his account visited the bank and gave B the said amount during working hours. Owing to workload, B assured A that the receipt will be send to his house by a staff of the bank. But B misappropriated the money.

Which one of the followings is the correct alternative?

  - (a) PBI is vicariously liable for the wrongful act of B.
  - (b) PBI cannot be held vicariously liable for the wrongful act of B because the said act was not done during the course of employment of the bank.
  - (c) PBI is vicariously liable for all the wrongful acts of B, whether done within or outside the employment, because B is an employee of the bank.
  - (d) None
- 2. Legal Principle:** The relationship between the partners is that of principal and agent.

**Facts:** One of the two partners of the defendant's firm, acting within the general scope of his authority as a partner, bribed the plaintiff's clerk and induced him to make a breach of contract with his employer (plaintiff) by divulging secrets relating to his employer's business. That is, the clerk was induced to make a breach of contract.

Which one of the followings is the correct alternative if the plaintiff brings an action?

  - (a) Both the partners can be held liable
  - (b) Plaintiff must be held liable for his failure to exercise effective control over his clerk
  - (c) Both the partners cannot be held liable
  - (d) None
- 3. Legal Principle:** A master is liable for the negligent act of his servant done in the course of employment.

**Facts:** A servant, the driver of a petrol lorry, while transferring petrol from the lorry to an underground tank stuck a match to light a cigarette and threw it on the floor.

Which one of the followings is the correct alternative?

  - (a) Master is vicariously liable for the negligent act of his servant.
  - (b) Master cannot be held vicariously liable because his servant conduct was not illegal.
  - (c) Master cannot be held vicariously liable because to light a cigarette for smoking is injurious to health but not illegal.
  - (d) None
- 4. Principle:** The defence of volent non fit injuria that is consent of the plaintiff is not applicable in Tort of Nuisance.

**Facts:** Dr M Prasad purchased a piece of land for constructing a nursing home. His neighbor has been running a brick grinding machine for the last five years. After opening the hospital, his profession and patient's treatment began to be severely impacted owing to smoke, noise and dust being discharged from the machine. He brings an action under Private Nuisance.

The defendant (brick grinder) takes the plea that the plaintiff establish the nursing home after knowing about such activity in his neighbourhood. As such, he (plaintiff) consented to such nuisance by purchasing his neighbourhood's land.

Is defendant's plea tenable?

  - (a) Yes, the plaintiff purchased the land after knowing about brick grinding activity.
  - (b) No, because the principle of Plaintiff's consent is inapplicable in such cases.
  - (c) No, because the defendant has taken reasonable care to avoid the causes of inconvenience to the plaintiff
  - (d) None
- 5. Principle:** Negligence is a breach of duty or a failure of one party to exercise the standard of care required by law, resulting in damage to the party to whom the duty was owed. A plaintiff can take civil action against the respondent, if the respondent's negligence causes the plaintiff injury or loss of property.

**Facts:** "D" went to a cafe and ordered and paid for a tin/can of soft drink. The tin was opaque, and, therefore, the contents could not be seen from outside. She ("D") consumed some of the contents and then lifted the tin to pour the remainder of the content into a tumbler. The remains of a snail in decomposed state dropped out of the tin into the tumbler. "D" later complained of a stomach pain and her doctor diagnosed her as having gastroenteritis and being in a state of severe shock. She sued the manufacturer of the drink for negligence.

Applying the afore-stated principle, which of the following derivations is Correct as regards liability of the manufacturer in the given situation?

  - (a) The manufacturer is liable for negligence, as it owed a duty (to consumers) to take reasonable care to ensure that its products are safe for consumption.
  - (b) The manufacturer is not liable for negligence as there is no direct contract between "D" and the manufacturer. No duty is owed by the manufacturer towards a particular consumer ("D")
  - (c) The manufacturer is not liable for negligence because it would otherwise become very difficult for the manufacturers to do business
  - (d) The manufacturer could be made liable under criminal law, but not for tort of negligence

6. **LEGAL PRINCIPLE :** When a person unlawfully intervenes in the chattel of another person by which the latter is deprived of its use, the former commits the tort of conversion. And nobody shall enrich himself at others cost.

**FACTUAL SITUATION :** X, a patient suffering from fibroids in her uterus approached KLM Medical Institute. X was suggested to undergo surgery to remove the fibroids from her uterus. The operation was successfully performed and X was discharged after few days, one of the researchers of the KLM institute discovered some rare and unique cells in the fibroids of x and using these cells, the laboratory of KLM developed some life saving drugs and earned rupees twenty crore from a leading International Pharma Company. When X came to know about it, she claimed five crore from the Institute.

**DECISION :**

- (a) KLM Institute need not share its income with X because X far from being deprived of the use of her fibroids was actually benefitted by its removal.
- (b) KLM Institute need not share its income with X because the medical institute instead of destroying the waste fibroids of X conducted research on its own and invented new life-saving drugs.
- (c) KLM Institute must share its income with X because KLM could not have achieved its success without the fibroids of X.
- (d) KLM Institute must share its income with X on moral grounds.

7. **Principle:** The owner of immovable property is entitled to the column of airspace above the surface. However, the owner's right to air and space above his land is restricted to such height as is necessary for the ordinary use and enjoyment of his land and the structures on it.

**Factual Situation:** Galaxy Cable TV Network Company is providing cable connections to their customers. One of the cable passes over the house of Mr. Vasanth Bhat., He is not a customer of the Network Company. The cable is neither attached to his house nor to any projection thereof.

It is at a distance of 20 ft above the terrace of Mr. Bhat's two storied house. Because of the cable, Mr. Bhat's son Sachin is unable to fly a kite from the terrace. Mr. Bhat requested the Network Company to change the position of the cable.

But the company did not bother to change it. One evening, Mr. Bhat out the cable and cleared the airspace above his house. The Network Company suffered a loss of about ₹ 1000.

They bring a legal action against Mr. Bhat for recovery of loss suffered.

**DECISION :**

- (a) The Network Company will succeed because the cable was not interfering with the ordinary use and enjoyment of Mr. Bhat's property.
- (b) The Network Company will not succeed because Mr. Bhat has every right to endure proper enjoyment of his property by removing objects causing trespass in the air above his property to a reasonable extent

(c) The Network Company will succeed because laying cables is widely practised in all cities like electricity and telephone wires

(d) None of the above

8. **Principle:** Everybody is under a legal obligation to take reasonable care to avoid act or omission which he can foresee would injure his neighbour. The neighbour for this purpose is any person whom he should have in his mind as likely to be affected by his act.

**Factual Situation:** Ram, while rushing to board a moving train, pushed Shyam, who was walking along with a heavy package, containing fire crackers. As a result, the package slipped from his hand and crackers exploded injuring a boy standing close by. A suit was filed against Ram, by the boy, claiming damages.

**DECISION :**

- (a) Ram is not liable, because he did not know anything about the contents of the package.
- (b) Ram is not liable, because Shyam should not have earned such a package in a crowded place like railway station
- (c) Ram is liable, because Ram is under an obligation not to push Shyam
- (d) None of the above

9. **Principle:** There is no liability in tort in cases of inevitable accidents.

**Factual Situation:** A stranger takes lift in truck. The truck later meets with an accident due to break failure. The stranger suffered grievous physical injuries and nervous shock. He filed a suit to claim compensation from the truck's owner.

**DECISION :**

- (a) Truck owner is liable
- (b) Truck owner is not liable because it is an inevitable accident and defect in truck was not apparent
- (c) Truck driver is liable not the owner
- (d) Neither the truck driver nor the owner is liable

10. **Principle:** An employer is responsible for any accident loss caused to his employees, during the course of employment.

**Factual Situation:** Ravi Menon runs the "African Circus". The circus has an ' night show. Two motor cyclists Rohit and Mohit rotate their motorcycles inside a big iron globe in complete darkness. And the audience, especially the children give a big clap. One day, it so happens that during one night show, an accident occurs inside the globe. Rohit and Mohit collide with each other and Rohit loses both his legs. His parents claim compensation from Ravi Menon, the proprietor of the circus.

**DECISION :**

- (a) Ravi is not liable to pay any compensation because he cannot be held responsible for the accident
- (b) Ravi is liable to pay compensation because he is the employer and the accident occurred during the course of employment
- (c) Ravi is not liable to pay any compensation, but he can pay some amount to Rohit, if he has sympathy for him
- (d) None of the above

11. Define vicarious liability.
- (a) Liability of the principle for the tort of his agent
  - (b) Liability of partners for each other
  - (c) Liability of the master for the tort of his servant
  - (d) All of the above

**DIRECTIONS (Qs. 12-13):** Choose the correct alternative from the following.

12. **Assertion (A):** In the event of violation of any legal right (tort), the aggrieved party is entitled to recover unliquidated damages.

**Reason (R):** The object of awarding damages to the aggrieved party is to put him in the same position in which he would have been if the wrong would not have been committed. Damages, are therefore, assessed on that basis.

- (a) Both A and R are true and R is the correct explanation of A.
- (b) Both A and R are true and R is not the correct explanation of A.
- (c) A is true but R is false
- (d) A is false but R is true

13. **Assertion (A):** All minorities, whether based on religion or language, shall have the right to establish or administer educational institutions of their choice.

**Reason (R):** Institutions established by the minorities are not entitled to governmental aid and government is not under an obligation to give aid.

- (a) Both A and R are true and R is the correct explanation of A.
  - (b) Both A and R are true and R is not the correct explanation of A.
  - (c) A is true but R is false
  - (d) A is false but R is true
14. X went to Y's house and forgot his bag which contained 1 kg sweets. Y's children consumed the sweets. Decide the liability of Y.
- (a) Y is bound to pay the price of sweets to X
  - (b) Y is not bound to pay anything
  - (c) Y is bound to pay half the price of sweets
  - (d) Y would not have to pay anything because X loves Y's children

15. Mr. Samay was severely hurt while working in his factory and fell unconscious. He was rushed to a hospital by his fellow workers. In the hospital (at emergency/casualty ward), the doctor opined that he should be operated immediately. While conducting preliminary examinations, he was found to be HIV positive. The doctors are in a dilemma regarding what should they do first.

- (a) Doctors should operate first
- (b) Doctors should inform his family members
- (c) Doctors should inform his employers
- (d) Doctors should not involve anyone because it would violate patient's right of privacy

**DIRECTIONS (Qs. 16-24):** Given below is a statement of legal principle followed by a factual situation. Apply the principle to the facts given below and select the most appropriate answer.

16. **LEGAL PRINCIPLE :** A statement is defamatory in nature if it is injurious to a person's reputation and if the statement has been published.

**FACTUAL SITUATION :** Rudra had been dating a girl named Kiara for three weeks. But he had introduced himself to her as Ricky Thakur (who is one of Rudra's friends) and he continued to be Ricky for the rest of their relationship. But ultimately the relationship ended badly and Kiara being upset and angry at Rudra started a website named 'ricky-thakur-is-a-jerk.com'. She created this website so as to warn other girls about 'Ricky Thakur'. The real Ricky Thakur files a suit for defamation. Decide.

**DECISION :**

- (a) Kiara shall be held liable for defamation as she published a statement which was injurious to Ricky's reputation.
- (b) Rudra shall be held liable as he had led Kiara into thinking that he was Ricky Thakur and moreover, it was his fault in the first place that made Kiara create this website.
- (c) Kiara cannot be held liable as she had actually been referring to Rudra and not the real Ricky Thakur.
- (d) Kiara cannot be held liable as her act was done in good faith as she intended to warn other girls.

17. **LEGAL PRINCIPLE :** Whoever stores a substance which could cause damage on escape shall be absolutely liable (i.e. liable even when he has exercised necessary care) for any damage caused by the escape of the substance.

**FACTUAL SITUATION :** Union Carbide India Limited (UCIL) manufactured methyl isocyanate, an extremely toxic gas. Due to a storm, the gas that was being stored in sealed containers got released. Before much could happen, the local municipal authorities managed to contain the disaster. The authorities filed a suit against UCIL for the costs that were incurred in decontamination. However, later it was realized that the clean-up by the authorities could have been done without spending as much resources and the damage was not that significant. UCIL argued that it would pay only part of the amount demanded by the authorities, which could have dealt with the contamination.

**DECISION :**

- (a) UCIL is liable only to the extent of contamination caused. It does not need to pay the authorities the entire amount demanded by them.
- (b) The authorities are entitled to the whole sum, as UCIL shall be held liable for all the repercussions of their act even if they had exercised due care.
- (c) UCIL can plead that the escape of the gas had been caused by a storm and not due to its own negligence. It was an inevitable accident.
- (d) The municipal authorities should have analyzed the damage first before jumping into action. It was due to their own negligence because of which they had to shell out more than required.

18. **LEGAL PRINCIPLE :** A partner is liable for the debts incurred by the other partners in the course of partnership.

**FACTUAL SITUATION :** Satwik and Prateek enter into a partnership to produce a film, wherein Satwik also directs the movie. The movie bombed at the box office. Consequently, they run into financial difficulties and the partnership ends. Prateek goes to Abbas to borrow some money, which Abbas understands is for repaying the debts from the partnership. Prateek takes the money and absconds to Malibu. Abbas sues Satwik for the amount. Decide.

**DECISION :**

- (a) Satwik is liable to return the money as it was his partner, Prateek, who directed the movie.
- (b) Abbas has been negligent in not properly enquiring the purpose for which Prateek borrowed the money. Satwik is not liable to pay him back according to the principle of contributory negligence.
- (c) Satwik is not liable as Prateek absconded with the money instead of using it to pay off the debts in the partnership.
- (d) Satwik is not liable as by the time Prateek borrowed money from Abbas, the partnership was no more in existence.

19. **LEGAL PRINCIPLE :** Everybody is under a legal obligation to take reasonable care to avoid act or omission which he can foresee would injure his neighbour, the neighbour for this purpose is any person whom he should have in his mind as likely to be affected by his act.

**FACTUAL SITUATION :** Krish, while driving a car at a high speed in a crowded road, knocked down a cyclist. The cyclist died on the spot with a lot of blood spilling around, Lekha, a pregnant woman passing by, suffered from a nervous shock, leading to abortion. Lekha filed a suit against Krishnan claiming damages.

**DECISION:**

- (a) Krish will be liable, because he owed a duty of reasonable care to everybody on the road including Lekha.
- (b) Krish will not be liable, because he could not have foreseen Lekha suffering from nervous shock as a result of his act.
- (c) Krish will be liable to Lekha because he failed to drive carefully.
- (d) None of the above.

20. **LEGAL PRINCIPLE :** The occupier of a premise owes a duty of care to all his invitees and visitors.

**FACTUAL SITUATION :** Lalit was running a dairy from his house. People used a dirt of his farm as shortcut to get to a nearby railway station. Lalit who did not approve of this, put up a notice that "Trespassers will be prosecuted". However since a number of these people were also his customers he tolerated them. One day a person who was using this short cut was attacked by a bull belonging to the farm. The injured person filed a suit against him.

**DECISION:**

- (a) Lalit is not liable in view of the clear notice against trespassers.

- (b) Lalit is liable for having kept a bull on his farm.
- (c) Lalit, is not liable to the people other than his customers.
- (d) Lalit is liable because in fact he allowed the people to use his premises

21. **LEGAL PRINCIPLE :** A master shall be liable for the acts of his servants done in the course of employment.

**FACTUAL SITUATION :** PUL, a public sector undertaking, is operating a number of bus services for its employees in Pune. These buses are quite distinct in their appearance and carry the board "for PUL employees only". M, a villager from neighbouring state, was waiting for a regular bus in one of the bus stops in Pune. A bus belonging to PUL happened to stop nearby and number of people got into the bus. M, without realizing that it was PUL bus, got into the bus and soon thereafter, the bus met with an accident due to driver's negligence. M, along with several others, was injured in the accident. M seeks to file a suit against PUL claiming damages.

**DECISION:**

- (a) M will succeed, because he got into the bus without realizing that it was PUL bus.
- (b) M will not succeed, because it was for him to find out whether it was a public transport.
- (c) M will succeed, because the driver was anyhow duty-bound to drive carefully.
- (d) PUL is not liable as the bus met with an accident due to driver's negligence.

22. **LEGAL PRINCIPLE :** Any direct physical interference with goods in somebody's possession without lawful justification is called trespass of goods.

**FACTUAL SITUATION :** Z purchased a car from a person who had no title to it and sent it to a garage for repair. X believing wrongly that the car was his, removed it from the garage. Has X committed any offence ?

**DECISION :**

- (a) X cannot be held responsible for trespass of goods as he was under a wrong belief.
- (b) X can be held responsible for trespass of goods.
- (c) Z has no right over the car as he purchased it from a person who had no title over it.
- (d) None of the above.

23. **LEGAL PRINCIPLE :** The master/principal is liable for all acts done by his duly appointed servant/agent for all acts done by him lawfully in the course of his employment.

**FACTUAL SITUATION :** A, B, C and D carried on a business in partnership. While making a deal with another company, B bribed the clerk there. Is the partnership firm vicariously liable ?

**DECISION :**

- (a) No, as bribing is not in course of employment of the partners.
- (b) Yes, as partners are agent of the firm.
- (c) Yes, as B can be said to have implied authority for the same.
- (d) No, as this act was not authorised by the others.

24. **LEGAL PRINCIPLE :** Necessity knows no law, and any person facing danger may do all that is necessary to avert the same till he can take recourse to public authorities

**FACTUAL SITUATION :** Akshay, a law abiding citizen decided to remove the weed of corruption from Indian society. One day, confronted with a bribing official, Akshay decided to teach him a lesson and punched him on his face. Akshay

**DECISION:**

- Can plead defence of necessity as he was being bribed which is a crime.
- Cannot plead defence of necessity as there was no necessity to act in the manner he acted.
- Can plead defence of necessity as aware and vigilant citizenry forms the basis of a good democracy.
- Can plead defence of necessity as there was no time to take recourse to public authorities.

**DIRECTIONS (Qs. 25-33):** Given below is a Statement of legal principle followed by a factual situation. Apply the principle to the facts given below and select the most appropriate answer.

25. **Principle:** Letters or words not describing quality of things can be registered as a trade mark.

**Facts:** Ram made an application for registration of alphabet 'B' written in a fancy style as trade mark to be applied on packets and cartons of shoes manufactured by him.

- The alphabet 'B' cannot be registered as trade mark because it is an English letter.
- The alphabet 'B' can be registered as trade mark because it describes the quality of things.
- The alphabet 'B' can be registered as trade mark.
- The alphabet 'B' cannot be registered as trade mark because it belongs to humanity.

26. **Principle:** Existence of all the alleged facts is relevant, whether they occurred at the same time and place or at different times and places.

**Facts:** 'A', a citizen of England, is accused of committing murder of 'B' in India by taking part in a conspiracy hatched in England.

- Only the fact that 'A' is accused of conspiracy hatched in England is relevant.
- Only the fact that 'A' citizen of England is accused of committing murder of 'B' in India is relevant.
- The facts that 'A' citizen of England is accused of commission of murder in India and of conspiracy hatched in England are relevant facts.
- 'A' citizen of England cannot be tried in India.

27. **Principle:** Nothing is an offence, which is done by accident or misfortune, and without any criminal intention or knowledge in the doing of a lawful act in a lawful manner by lawful means and with proper care and caution.

**Facts:** 'A' takes up a gun, not knowing whether it is loaded or not, points it playfully at 'B' and pulls the trigger. Consequently, 'B' falls dead.

- B's death is accidental, as 'A' did not have the knowledge that the gun is loaded.

- B's death is accidental, as 'A' had no intention to kill 'B'.
- B's death is accidental, as 'A' was just pointing the gun playfully at 'B'.
- B's death is not accidental, as there was want of proper care and caution on the part of 'A'.

28. **Principle:** Intentional application of force to another person is actionable in law.

**Facts:** 'P' and 'D' are unknown to each other. When 'P' is about to sit on a chair, 'D' intentionally pulls it away as a result of which 'P' falls on to the floor and is injured.

- 'D' is not liable as such jokes are common in the society.
- 'D' is not liable as 'P' is not seriously injured.
- 'D' is liable as he intentionally caused injury to P.
- 'D' is not liable as the injury is not directly caused.

29. **Principles:**

- A servant is one who is employed to do some work for his employer (master). He is engaged under a contract of service. He works directly under the control and directions of his master.
- In general, the master is vicariously liable for those torts (wrongful acts) of his servant which are done by the servant in the course of his employment.

**Facts:** 'M' appointed 'D' exclusively for the purpose of driving his tourist vehicle. 'M' also appointed 'C' exclusively for the purpose of performing the work of a conductor for the tourist vehicle. During one trip, at the end of the journey, 'C', while 'D' was not on the driver's seat, and apparently for the purpose of turning the vehicle in the right direction for the next journey, drove it through the street at high speed, and negligently injured 'P'.

- 'M' could not be made liable for the act of 'C', as his (C's) act of driving the vehicle was not in the course of his employment.
- 'M' could be made liable for the act of 'C', as his (C's) act of driving the vehicle was within his scope of employment.
- 'M' could be made liable for the act of 'C', as 'C' was employed under a contract of service.
- 'M' is not liable as he was not present at the time of accident.

30. **Principle:** In cases where there is an infringement of legal right even without any actual loss or damage, the person whose right is infringed has a cause of action.

**Facts:** 'P' was wrongfully prevented by the Returning Officer from exercising his vote in an assembly election. However, the candidate for whom he wanted to cast his vote won the election. Still, he ('P') brought an action claiming damages. Which of the following derivations is correct?

- 'P' would succeed in his action, as it is mandatory to cast vote.
- 'P' would not succeed in his action, as the candidate for whom he wanted to give his vote won the election.
- 'P' would not succeed in his action, as he did not suffer any loss in that election.
- 'P' would succeed in his action, as he was wrongfully prevented from exercising his legal right of voting in that election.

**31. Principle:** False imprisonment is a tort (wrong) which means the total restraint of a person's liberty without lawful justification.

**Facts:** A part of a public road had been closed for spectators of a boat race. 'P' wanted to enter but he was prevented by 'D' and other policemen because he had not paid the admission fee. 'P' was able to enter the enclosure by other means but was unable to go where he wanted to go. The policemen refused access to where he wanted to go but allowed him to remain where he was or to go back. 'P' remained within the enclosure and refused to leave. Subsequently, 'P' sued 'D' for false imprisonment.

- (a) It was a case of false imprisonment, but 'D' could not be made liable for it.
- (b) 'D' could not be made liable for false imprisonment, as he did not totally restrict P's movements.
- (c) 'D' could be made liable for false imprisonment, as he did restrict P's movements.
- (d) 'D' could not be made liable for false imprisonment as he has not touched him.

**32. Principle:** Causing of an effect partly by an act and partly by an omission is an offence.

**Facts:** 'A' confined her daughter 'D' in a room. 'A' also did not provide any food to her daughter 'D'. Consequently, 'D' died of starvation.

- (a) 'A' committed the offence of causing death of 'D'.
- (b) 'A' committed the offence of confining 'D'.
- (c) 'A' committed the offence of not providing food to 'D'.
- (d) 'A' committed no offence.

**33. Principle:** Law does not penalise for wrongs which are of trivial nature.

**Facts:** In the course of a discussion, 'A' threw a file of papers at the table which touched the hands of 'B'.

- (a) 'A' is liable for insulting 'B'.
- (b) 'A' is not liable for his act, as it was of trivial nature.
- (c) 'A' is liable for his act, as the file touched 'B's hand.
- (d) 'A' is liable for his act, as it assaulted 'B'.

**DIRECTIONS (Qs. 34-45):** Given below is a Statement of legal principle followed by a facts. Apply the principle to the facts given below and select the most appropriate answer.

**34. Legal Principle:** When a person consented to an act to be done by another, he cannot claim any damages resulting from doing that act, provided the act done is the same for which consent is given.

**Facts:** 'P' submitted a written consent to a surgeon 'S' for undergoing a surgical operation for removal of appendicitis. The surgeon while doing surgery also removed the gall bladder of 'A':

- (a) 'P' can claim damages from 'S'
- (b) 'P' is not bound to pay expenses of the surgery
- (c) 'P' is required to pay expenses for surgery for Appendicitis but not for Gall Bladder
- (d) 'P' cannot claim damages from 'S'

**35. Legal Principle:** Assault is causing bodily injury to another person by use of physical force.

**Facts:** Rustum while entering into compartment of a train raised his fist in anger towards a person Sheetal, just in front of him in the row, to get way to enter into the train first, but did not hit him. Rustum has:

- (a) Rightly showed his anger
- (b) committed an assault on Sheetal
- (c) insulted Sheetal
- (d) not committed an assault on Sheetal

**36. Legal Principle:** When a person interferes with peaceful possession of another person without the permission of the person in possession of those premises, commits trespass to land.

**Facts:** 'T' just walked over the land of 'P' to reach his house as it was a short cut. 'P' had displayed a notice that it is not a thoroughfare. 'P' did not cause any damage to the land.

- (a) 'T' has committed trespass to land
- (b) 'T' has created nuisance for 'P'
- (c) 'T' has not committed any trespass on the land of 'P'.
- (d) 'T' has violated privacy of 'P'

**37. Legal Principle:** Negligence is actionable in law. In simple terms, negligence is the failure to take proper care over something.

**Facts:** A, a doctor, conducted a hysterectomy sincerely on B and left a small cotton swab inside the abdomen. As a consequence of which B developed some medical problems and had to undergo another surgery. Is A liable?

- (a) A is not liable as he did not foresee any consequences at the time of surgery.
- (b) Liability for negligence does not arise here as A performed the operation sincerely
- (c) A is liable for the negligence as he failed to take proper care during the surgery.
- (d) As only a small swab was left in the abdomen, there was no negligence.

**38. Legal Principle:** An employer is liable for the act of his servant performed during the course of employment.

**Facts:** While working as a driver for Verma, Alok sometimes used to earn some side income by carrying parcels for others in Verma's car without his knowledge or permission. While going to pick Verma from the airport one day, Alok stopped to deliver a parcel he was carrying with him. While he was delivering the parcel, which unknown to him was one of contraband goods, the police arrested Alok.

Which of the following statements is the most appropriate in relation to the legal principle stated above?

- (a) Verma is liable for the act of Alok since he is Verma's driver.
- (b) Verma is liable for the act of Alok since he had gone to pick Verma from the airport.
- (c) Verma is not liable for the act of Alok since Alok himself did not know that he was carrying contraband goods.
- (d) Verma is not liable for the act of Alok since carrying the parcel was not in the course of his employment.

39. **Legal Principle:** Negligence is the absence of care by one party which results in some damage to another. Damage is an essential ingredient to constitute a tort of negligence.

**Facts:** Mistry left his ladder on the public road while unloading it from a truck when he went to open the shutters of his shop. Saini who was riding his motorcycle had to swerve hard to avoid hitting the ladder as he came with speed on the road. Saini fell down but was miraculously not injured.

Which of the following statements is the most appropriate in relation to the legal principle stated above?

- (a) Mistry is not liable for the tort of negligence since Saini was not injured though he fell down.
- (b) Mistry is liable for the tort of negligence since Saini fell down due to the presence of the ladder.
- (c) Mistry is not liable for the tort of negligence since Saini was speeding on the road.
- (d) Mistry is liable for the tort of negligence since he was careless in leaving the ladder on the road.

40. **Legal Principle:** Parents are not liable for wrongs committed by their children unless they provide the opportunity for such wrongful acts to be committed by their children.

**Facts:** Sunil, a minor, takes the keys to his father's car from the table top where his father keeps it, drives the car on the public road and hits a pedestrian who gets injured.

Which of the following statements is the most appropriate in relation to the legal principle stated above?

- (a) Since Sunil took the car without his father's permission, his father is not liable for Sunil's act resulting in the accident.
- (b) Sunil's father is liable for the conduct of Sunil resulting in the accident since he left the car keys where his son could easily take it without permission.
- (c) Accidents happen despite utmost care and hence neither Sunil nor his father is liable in the instant case.
- (d) Sunil's father is not liable since he had kept his car locked and securely deposited its keys without negligence on his table top.

41. **Legal Principle:** No remedy lies in law where an injury is caused to a person without any infringement of his legal right.

**Facts:** Ashutosh started a tuition Centre right next to the one being run for the past twenty years by Gulshan. After Ashutosh started his Centre, a large number of students shifted from Gulshan's tuition Centre to Ashutosh's Centre forcing Gulshan to close down his establishment suffering huge losses. Can Gulshan initiate legal action against Ashutosh?

Which of the following statements is the most appropriate in relation to the legal principle stated above?

- (a) Ashutosh must compensate Gulshan for his loss consequent to the start of the new tuition centre.
- (b) Gulshan cannot blame Ashutosh if he cannot retain his students.
- (c) Ashutosh has not violated any legal right of Gulshan, though students shifted to Ashutosh's Centre and

though Gulshan suffered loss, after he shut down his tuition Centre.

- (d) Gulshan should have improved his quality with lower fees to retain his students in the light of competition brought in by Ashutosh.

42. **Legal Principle:** When there is an infringement of the legal right of a person, he gets a right to sue the wrongdoer for remedy irrespective of any actual loss caused.

**Facts:** Saroj is prevented from voting at an election. The candidate she intended to vote for, wins the election.

Which of the following statements is the most appropriate in relation to the legal principle stated above?

- (a) Saroj's legal right has been violated and she can sue the persons who prevented her from voting
- (b) Since Saroj's candidate has won the election, her rights are not violated and she cannot sue.
- (c) Since Saroj is not the candidate, her rights are not violated if she is prevented from voting.
- (d) This principle is not at all applicable in this case.

43. **Legal Principle:** Nuisance is the unlawful interference with a person's enjoyment of his land or some rights over or in connection with it.

**Facts:** Ashok, in his nineties, is hard of hearing and plays the radio very loudly throughout the day and on a daily basis. Raju, his neighbour, complains that he cannot listen to his favourite TV show in his home due to the radio of Ashok.

Which of the following statements is the most appropriate in relation to the legal principle stated above?

- (a) Listening to the radio is Ashok's freedom.
- (b) Ashok is creating nuisance to his neighbour by playing the radio loud perpetually and disturbing Raju in being able to listen to the TV in his home.
- (c) Raju is creating nuisance by complaining about Ashok's enjoyment of hearing his radio.
- (d) Raju should appreciate that Ashok is aged and hard of hearing.

44. **Legal Principle:** A person is liable to compensate others for harm caused by the escape of any inherently dangerous material that he keeps on his land.

**Facts:** Ankit lights a bonfire in his courtyard to warm himself up during a cold winter evening. A strong wind suddenly blows some sparks from the fire, on to his neighbour's house which catches fire and gets completely destroyed.

Which of the following statements is the most appropriate in relation to the legal principle stated above?

- (a) Ankit's neighbour is liable to Ankit for distress caused by keeping a house that catches fire so quickly.
- (b) Ankit is not liable because nobody could foresee that the sudden wind will blow the sparks to cause a fire.
- (c) Ankit's neighbour cannot make Ankit liable for the loss of his house since it was an accidental fire that destroyed it.
- (d) Ankit is liable to compensate because the fire escaped from his premises to burn down his neighbour's house.

**45. Legal Principle:** A person who keeps hazardous substances in his premises, is responsible for the fault if that substance escapes in any manner and causes damage.

**Facts:** A, an industrialist stored 1000 litres of liquid ammonia in a tank in his premises for his industrial use. There was a leakage from the tank due to which there was ammonia vapour in the surroundings.

Many workers in other industries as well as his own industry and some members from the public suffered serious health hazards. Examine the liability of A, if any.

- (a) A may be liable for the injury sustained by his workers only and not others.
- (b) A is liable as he is responsible for the injury caused by the leakage of ammonia from his premises.
- (c) A is not liable because there was no fault on his part for the escape of the dangerous substance.
- (d) A is not liable because he did not expect a leakage from the tank.

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**DIRECTION (Q. 46):** Apply the legal principle to the facts given below and select the most appropriate answer.

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**46. Legal Principle:**

1. A person is liable for his negligence when he owed a duty of care to others and commits a breach of that duty causing injury thereby.
2. *Volenti non fit injuria* is defence to negligence.

**Facts:** Anil and his wife, Reena, were in a shop as customers, where a skylight in the roof of the shop was broken, owing to the negligence of the contractors engaged in repairing the roof, and a portion of the glass fell and struck Anil causing him a severe shock. Reena, who was standing close to him, was not touched by the falling glass, but, reasonably believing her husband to be in danger, she instinctively clutched his arm, and tried to pull him from the spot. In doing this, she strained her leg in such a way as to bring about a recurrence of thrombosis. Anil and Reena are claiming compensation for their injuries which were caused due to the negligence of the shop owners. The shop owners are denying liability on the grounds of *volenti non fit injuria*. The defence of *volenti non fit injuria*

- (a) is available in respect of husband
- (b) is available in respect of wife
- (c) is available in respect of both husband and wife
- (d) is not available in respect of both husband and wife

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**DIRECTIONS (Qs. 47-48):** Apply the legal principles to the facts given below and select the most appropriate answer.

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**Legal Principles:**

1. Private nuisance is a continuous, unlawful and indirect interference with the use or enjoyment of land, or of some right over or in connection with it.
2. The person who for his own purposes brings on his lands and collects and keeps there anything likely to do mischief if it escapes, must keep it at his peril, and, if he does not do so, is *prima facie* answerable for all the damage which is the natural consequence of its escape.
3. A person is liable if he can reasonably foresee that his acts would likely to injure his neighbour.

4. The foreseeability of the type of damage is a prerequisite of liability in actions of nuisance.

**47. Facts:** During 2011, a European Directive was issued requiring nations of the European Community to establish standards on the presence of Perchloroethene (PCE) in water, which the Kingsland did in 2013.

Alfa Water Co. purchased a borehole in 2007 to extract water to supply to the public in Kingsland. In 2014, it tested the water to ensure that it met minimum standards for human consumption and discovered that it was contaminated with an organochlorine solvent (PCE). On investigation, it emerged that the solvent seeped into the soil through the building floor of the Light & Soft Leather Tannery, about 3 miles from the borehole that eventually contaminated the Alfa's borehole.

Since the tannery opened in 1910, until 2007, the solvent it used had been delivered in 40-gallon drums which were transported by fork lift truck and then tipped into a sump. Since 2007, solvents had been delivered in bulk and stored in tanks. It was then piped to the tanning machinery. There was no evidence of any spills from the tanks or pipes, and it was concluded that the water had been contaminated by frequent spills under the earlier system. Alfa Water brought a claim against the Tannery on the grounds of nuisance. Whether the Tannery owners are liable?

- (a) Yes, the escape of the solvent which contaminated the water is sufficient for making them liable.
- (b) No, the damage is too remote as it was not possible for the Tannery owners to reasonably foresee a spillage which would eventually lead to contamination of a water borehole so far away.
- (c) No, because Alfa Water Co. should have been careful in using good purifying mechanisms to ensure that the water is fit for human consumption. They cannot shift the blame on the Tannery owners.
- (d) Yes, the damage is not remote as it was possible for the Tannery owners to reasonably foresee a spillage which would eventually lead to contamination of a water borehole just 3 miles away.

**48. Facts:** MG Ltd. was constructing Crystal Heights, a posh state-of-the-art tower for commercial and residential purposes, in Gurugram. During construction, hundreds of claimants alleged that, in addition to dust and noise caused by the erection of the building, their television signals had been interrupted by the tower. The claimants, some of whom were absolute owners, and many others who were renting, sued in both negligence and in nuisance for the harm done to their amenity by the loss of their television signals. Whether the respondent's action in causing the appellant's television signals to be interrupted with the construction of their tower could constitute a private nuisance ?

- (a) The interference with the television signal caused by the construction of the tower could not amount to a private nuisance at law. Effective town planning can sort this matter, instead.
- (b) Yes, the large tower had interrupted their television reception, and caused private nuisance – for loss

of enjoyment - and remuneration for their wasted television license fee, from the time their signal had been impaired.

- (c) No, it cannot constitute private nuisance but the claimants can claim damages for loss of television signals.
- (d) Yes, the respondent's conduct was unreasonable because the act of building the tower caused impairment of enjoyment of the land.

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**DIRECTIONS (Qs. 49-51):** *Apply the legal principles to the factual situations given below and select the most appropriate answer.*

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**Legal Principles:**

1. The Tort of Negligence is a legal wrong that is suffered by someone at the hands of another who fails to take proper care to avoid what a reasonable person would regard as a foreseeable risk.
2. The test of liability requires that the harm must be a reasonably foreseeable result of the defendant's conduct, a relationship of proximity must exist and it must be fair, just and reasonable to impose liability.
3. The claimant must prove that harm would not have occurred 'but for the negligence of the defendant. The claimant must prove, on the balance of probabilities, that the defendant's breach of duty caused the harm.

**49. Factual Situation:** Amar worked for an iron works, Luxmi Mills & Co. Ltd. operating a remotely controlled crane, Amar galvanized items by dipping them into a large tank of molten metal. In order to protect its crane operators, whose controls were located just a few feet from the tank, Luxmi Mills erected a low wall around the tank and also provided a sheet of corrugated iron that crane operators placed between themselves and the wall. The operators were not facing the tank while operating the crane. Thus, they could not see the operation of the crane and therefore relied upon signals from another worker located farther from the tank. Many other galvanizers at the time situated their operators in enclosed, windowed spaces from which they could safely see and perform their work. Luxmi Mills eventually adopted that practice as well. One day, Amar was working on the crane. At one point, he either turned toward the tank or leaned out to see the worker giving him instructions, thereby placing his head outside the iron sheet. A spray of molten metal burned Amar's lip. When it failed to heal and began to ulcerate, he consulted a doctor who diagnosed the wound as cancerous. Amar ultimately died from the spread of cancer after three years. His widow sued Luxmi Mills for negligence. Whether the employers would be liable for the full extent of the burn and cancer that had developed as a result?

- (a) The employers are liable for all of the consequences of their negligence; thus, liable for the employee's death. His predisposition to cancer did not matter, nor did the results of the injury. The question of liability was, whether the defendant could reasonably foresee the injury.
- (b) The employers are not liable because the duty of care towards Amar was not breached by them as they were

using the same practices which were used by other companies at that time.

- (c) The employers are not liable because Amar suffered injury due to his own negligence in stepping out of the protective shield.
- (d) The employers are liable for burns and not for the death which happened due to Amar's cancerous condition which could not have been known to the employers.

**50. Factual Situation:** A 13-year-old boy fell from a tree. He went to a hospital where his hip was examined, but an incorrect diagnosis was made. After 5 days it was found that he was suffering from avascular necrosis. This was more advanced and serious than if it had been spotted straight away. Despite receiving treatment, it was determined that he had suffered from a muscular condition (avascular necrosis) which left the boy with a permanent disability and further left a strong probability that he would develop severe osteoarthritis later in life. The expert medical testimony indicated that had his fractured hip been identified on his initial hospital visit, there was a 25% chance of his condition having been successfully treated. He is claiming compensation for the negligence of hospital. Whether the hospital's negligence on his initial visit had caused his injury?

- (a) No, because there are very less chances that correct diagnosis and treatment would have prevented the disability from occurring.
- (b) Where there are a number of possible causes, the claimant must still prove the defendant's breach of duty caused the harm or was a material contribution.
- (c) Yes, because there are some chances that correct diagnosis and treatment would have prevented the disability from occurring.
- (d) Both (a) and (b)

**51. Legal Principle:** Vicarious liability is when employers are held liable for the torts committed by their employees during the course of employment.

**Factual Situation:** New Vision School opened a boarding house (Shivaji House) for boys in the year 2000 for the students having behavioural and emotional difficulties. The claimants in the instant case had resided there between 2000 to 2003, being aged 12 to 15 during that time, under the care of a warden, who was in charge of maintaining discipline and the running of the house. The warden lived in the House, with his disabled wife, and together they were the only two members of staff in the House. His duties were ensuring order, in making sure the children went to bed, went to school, engaged in evening activities, and supervising other staff. It had been alleged by some of the boys that the warden had sexually abused them, including inappropriate advances and taking trips alone with them. A criminal investigation took place some ten years later, resulting in the warden being sentenced to seven years imprisonment. Following this, the victims brought an action for personal injury against the employers, alleging that they were vicariously liable. Whether the employers of the warden may be held vicariously liable for their

employee's intentional sexual abuse of school boys placed under his care?

- (a) No, vicarious liability could only arise when the employee is acting during the course of his employment and for his employer's benefit.
- (b) No, the employers cannot be made liable for acts which are not authorised by them.
- (c) Yes, there was a sufficient connection between the work that the warden was employed to do and the abuse that he committed to render it within the scope of employment. The abuse was committed at the time, premises and during the course of the warden's care of the boys.
- (d) Yes, because the employers should be made liable in cases of sexual abuse of differently abled children.

**52. Principle:** An employer is liable for an injury caused to an employee in the course of the employment.

**Facts:** 'A' and 'B' were working in a factory as unskilled labourers. A was carrying a basket of stones on his head. B was sitting on the ground. When A crossed B, all of a sudden a stone fell down from the basket and hit B on his head. B died instantaneously.

- (a) The employer will be liable
- (b) The employer will not be liable
- (c) A will be liable
- (d) Both employer and A will be liable

**53. Principle:** Damages is the money recompense, as far as money can do, for the loss suffered by a person.

**Facts:** A, an Indian citizen, having a right to vote, was not allowed to cast his vote on the polling booth, by the returning officer. Name of A was mentioned in the voter's list. A has also reported at the polling booth in time. However, the candidate in whose favor A would have cast his vote won the election. A filed a suit claiming damages.

- (a) A will be entitled to damages
- (b) A will not be entitled to damages
- (c) A will be entitled to only nominal damages
- (d) A will be entitled to exemplary damages

**54. Principle:** Doing of an act which causes common injury, danger or annoyance to public or which is likely to cause such injury or annoyance is Public nuisance. A common nuisance is not excused because it causes some nuisance or advantage.

**Facts:** 'A' a farmer having large farmlands burns crop residue (stubble) on his fields after harvesting the crop to make the field ready for next crop as this is the easy, fast and convenient method of making the field ready for next crop. His farmlands are adjoining a densely inhabited residential area and people pass through the smoke while travelling on the road adjoining his farmlands. The smoke caused by fire also enters the houses in the colony.

- (a) A has not committed any offence since he does not cause any specific injury to any specific person
- (b) A has not committed any offence because he does not gain any advantage from persons living in the vicinity
- (c) A has committed public nuisance
- (d) A has not committed any offence because the alleged

acts are done on the fields owned and used by him and acts are done without any intention to cause harm.

**55. Principle:** Death caused by rash or negligent act of a person is an offence.

**Facts:** X was driving his SUV car in a lonely road leading to a forest at 160 km per hour. Suddenly, someone appears from the forest on the road and in the resultant accident, the car hits the commuter causing his death.

- (a) X is not guilty of an offence as the accident has occurred on a lonely road
- (b) X is not guilty because there was no intention to kill the deceased
- (c) X is guilty of an offence of death by rash or negligent act
- (d) X is not guilty because he was also injured in the accident

**56. Principle:** Whoever causes death by rash or negligent act commits an offence.

**Facts:** X is having a house on the roadside which is also having a street on the back of the house. He has a lawn on the back of his house where he has built a toilet. To prevent the intruders from entering his house, he got the fence charged with a high voltage live electric wire. Z was passing through the street at the backyard of the house of X and sat down to take rest near the fence. While getting up, his hands came in contact with the fence which was connected to high voltage electric wire causing his death.

- (a) X has not committed any offence because he has right to prevent trespass
- (b) X has committed an offence of causing death by rash and negligent act
- (c) X has committed no offence because he does not have any enmity with X
- (d) X has committed an offence of Murder

**57. Principle:** Employer is liable for the injury caused to the employee in the course of his employment.

**Facts:** X organized a party and hired a caterer. During the party, generator set went out of order and he requested one employee of the caterer, i.e., Y to bring the mechanic on his vehicle and promised to pay 1000 for the same to Y. Y met with an accident while going to fetch the mechanic and he seeks compensation.

- (a) X is liable as Y was working in the course of employment offered by X
- (b) X is not liable as Y is not his employee
- (c) X is liable because party was organized by him
- (d) Caterer is liable as Y is his employee

**58. Principle:** Master is liable for the acts of his servant done in the course of his duties.

**Facts:** X hired an employee Y in his construction business. Y was the property in-charge who received construction material and gave receipts for the material received by him. Z claimed payment for cement supplied to X which was duly received by Y. X denied the payment on the ground that he has only received half of the material and the balance was misutilized by the employee Y.

- (a) X is liable for the entire amount
- (b) X is liable for the part amount only i.e. for payment of the cost of half of the material
- (c) X is not liable for the misconduct/embezzlement of his employee
- (d) Z can claim the balance payment only from Y

**DIRECTIONS (Qs. 59-61):** Apply the legal principles to the facts given below and select the most appropriate answer.

**Legal Principles :**

1. The Tort of Negligence is a legal wrong that is suffered by someone at the hands of another who fails to take proper care to avoid what a reasonable person would regard as a foreseeable risk.
2. The test of liability requires that the harm must be a reasonably foreseeable result of the defendant's conduct, a relationship of proximity must exist and it must be fair, just and reasonable to impose liability.
3. Volenti non-fit injuria is defence to action in negligence.

**59. Facts :** In a sad incident, 95 fans of a Football club died in a stampede in the Nehru Stadium. The court has decided that the accident was caused due to the negligence of the Police in permitting too many supporters to crowd in one part of the stadium. Now, a suit is filed by Harman and several other people against the Commissioner of State Police. Harman and the other claimants had relatives who were caught up in the Nehru Stadium disaster. The disaster was broadcast on live television, where several claimants alleged, they had witnessed friends and relatives die. Others were present in the stadium or had heard about the events in other ways. All claimed damages for the psychiatric harm they suffered as a result. Determine whether, for the purposes of establishing liability in negligence, those who suffer purely psychiatric harm from witnessing an event at which they are not physically present are sufficiently proximate for a duty to be owed, and thus can be said to be reasonably within the contemplation of the tortfeasor?

- (a) Police is liable for all of the consequences of their negligence because they could reasonably foresee the injury. The liability towards victims who are not physically present is also there in all circumstances.
- (b) Police is not liable because the duty of care towards Harman and others will be breached if they were present at the event and the harm caused was foreseeable. The liability towards victims who are not physically present is only in certain exceptional circumstances.
- (c) Police is not liable because the incident was an accident and supporters were there by their own free will.
- (d) Police is liable only for the death of 95 fans but not for the psychiatric harm to relatives of deceased fans which happened due to their own delicate mental condition.

**60. Facts:** X purchased a disused cinema with the intention of turning it into a Multiplex. Six weeks after, X entered the

building for the first time, it was set on fire by intruders and destroyed. As a result, the adjacent buildings were also affected and damaged. The cinema building was a target to vandals and children who often played there, but X had had no knowledge of previous attempts to start fire at the cinema buildings. The owners of the adjacent buildings brought an action for negligence against X on grounds that X failed to take reasonable care for the safety of the buildings by not keeping the cinema locked, making regular inspections and employing a caretaker. Decide whether the occupier of a property owes a duty of care to the adjoining occupiers in respect of acts of trespass on his property resulting in damage to the adjoining properties?

- (a) An occupier of a property owes a duty of care to the adjoining occupiers in respect of acts of trespass on his property resulting in damage to the adjoining properties under all circumstances.
- (b) X was not aware of previous attempts of vandals to start fire and as such, the building did not present an obvious fire risk, so X was not under any duty to anticipate the possibility of fire and take measures to prevent the entry of vandals. So, no duty of care existed towards the adjoining properties in this case.
- (c) Though X was not aware of previous attempts of vandals to start fire as such and the building did not present an obvious fire risk he failed to take reasonable care. So X is liable.
- (d) X is not liable as the adjoining occupiers are also negligent by not being careful in safeguarding their properties against fire.

**61. Facts:** A team of scientists imported a virus for the purpose of research. They carried out research on their premises into foot and mouth disease in cattle, and they were apparently responsible for the escape of some virus. As a result, there was an outbreak of foot and mouth disease in the area, and the Minister of Agriculture ordered two markets to be closed. This caused some of the traders, who were two firms of auctioneers, to suffer a loss of profits on a total of six market days, from which they sought to recover. Decide whether the scientists owed a duty of care towards the traders?

- (a) An ability to foresee indirect or economic loss to another person as the result of a defendant's conduct automatically imposes on the defendant a duty to take care to avoid that loss.
- (b) The loss to the traders was pecuniary. They suffered no physical harm to themselves or to any of their property. An ability to foresee indirect or economic loss to another person as the result of a defendant's conduct did not automatically impose on the defendant a duty to take care to avoid that loss.
- (c) It is not proved that there was negligence on the part of the scientists which resulted in an escape of the virus so they are not liable.
- (d) Though the scientists are negligent in handling the virus, they are not liable as the leakage of virus was by accident.

**62. Legal Principles:**

1. Private nuisance is a continuous, unlawful and indirect interference with the use or enjoyment of land, or of some right over or in connection with it.
2. A person is liable if he can reasonably foresee that his acts would be likely to injure his neighbour.
3. The foreseeability of the type of damage is a pre-requisite of liability in actions of nuisance.

**Facts :** Bharat Sugar Ltd. operated a sugar refinery on the bank of the river Ravi. They had a jetty from which raw sugar would be offloaded from barges and refined sugar would be taken. The sugar would be taken by larger vessels and then transferred to smaller barges to enable them to get through the shallow waters. As part of development Bharat Sugar Ltd. wished to construct a new jetty and dredge the water to accommodate the larger vessels. At the same time, the State was constructing new ferry terminals. The design of the ferry terminals was such that it caused siltation of the channels. After using the channels for a short while, Bharat Sugars' larger vessels were no longer able to use them. Further dredging at the cost of ₹ 7,50,000 was required to make the channel and jetties usable by the vessels. Bharat Sugar Ltd. brought an action in nuisance to recover the cost of the extra dredging. Is the State liable?

- (a) The loss caused by the construction of new ferry terminals could not amount to a private nuisance at law since they did not possess any private rights which enabled them to insist on any particular depth of water.
- (b) The loss caused by the construction of new ferry terminals amounts to a private nuisance at law since they did possess right to use the water at a particular depth.
- (c) No, it cannot constitute private nuisance but the claimants can claim damages for loss suffered by them.
- (d) Yes, the State's conduct was unreasonable in building the new terminals without thinking of all the consequences it would have on the rights of other parties.

**63. Legal principle :** The tort of negligent misstatement is defined as an inaccurate statement made honestly but carelessly usually in the form of advice given by a party with special skill/knowledge to a party that doesn't possess this skill or knowledge.

**Facts:** X and Y Co. were advertising agents placing contracts on behalf of a client on credit terms, X and Y Co. would be personally liable should the client default. To protect themselves, the X and Y asked their bankers to obtain a credit reference from K and L, the client's bankers. The reference (given both orally and then in writing) was given gratis and was favourable, but also contained an exclusion clause to the effect that the information was given 'without responsibility on the part of this Bank or its officials'. X and Y relied upon this reference and subsequently suffered financial loss when the client went into liquidation. X and Y sued K and L Co. for negligence, claiming that the information was given negligently and

was misleading. K and L argued there was no duty of care owed regarding the statements. Decide.

- (a) The K and L's disclaimer was not valid to protect them from liability and X and Y's claim will not fail.
- (b) The X and Y Co. has a duty to obtain the necessary information themselves without relying upon the other party.
- (c) It was reasonable for K and L to have known that the information they had given would likely have been relied upon for entering into a contract of some sort. That would give rise to a special relationship of trust, in which K and L would have to take sufficient care in giving advice to avoid negligence liability. However, on the facts, the disclaimer is sufficient to discharge any duty created by K and L's actions.
- (d) It was reasonable for K and L to have known that the information that they had given would likely have been relied upon for entering into a contract of some sort. That would give rise to a special relationship of trust, in which K and L would have to take sufficient care in giving advice to avoid liability. Hence, liable for negligent misstatement.

**64. Legal Principles:**

1. Vicarious liability is when employers are held liable for the torts of their employees that are committed during the course of employment.
2. A servant is a person subject to the command of his master as to the manner in which he shall do his work. The question of whether a person is an employee depends upon the degree of control which the 'employer' exercises over the worker.

**Facts:** Raja is a travel agent and possessed certain houses, which had an internal communication throughout, and which were used for the purposes of his business. Ramesh looked after the houses, and lived in them for this purpose, but he was also a clerk in the Raja's pay at a set annual salary. He lived in the houses with his wife, a child, and a servant. The case concerned the payment of inhabited house duty. There was a statutory exemption for premises which were occupied by a "servant" or person occupying the premises "for the protection thereof. Raja was claiming the exemption from tax liability by claiming that Ramesh was the servant. Decide whether Ramesh was a servant or an independent contractor?

- (a) Ramesh is not a servant as the premises was held purely for trade purposes, and as Ramesh's position was simply that of a caretaker.
- (b) Ramesh earned a salary per annum in his separate role as a clerk and merely enjoyed residence of the building with his family members. Thus, he is an employee of the building owner for tax purposes.
- (c) Ramesh is a servant as servant is a person subject to the command of his master as to the manner in which he shall do his work.
- (d) Ramesh is a servant as Raja can control his work of caretaker of the building as well as his job of clerk.

### 65. Legal Principles:

1. Private nuisance is a continuous, unlawful and indirect interference with the use or enjoyment of land, or of some right over or in connection with it.
2. The person who for his own purposes brings on his lands and collects and keeps there anything likely to do mischief if it escapes, must keep it in at his peril, and, if he does not do so, is prima facie answerable for all the damage which is the natural consequence of its escape.
3. Generally, nuisances cannot be Justified on the ground of necessity, pecuniary interest, convenience, or economic advantage to a defendant.

**Facts:** Dr. Hemant had for 18 years operated a clinic and hospital for the treatment of ENT. Dr. Karan operated a renal clinic in which patients receive haemo-dialysis on

the floor above Dr. Hemant's clinic. Karan was found liable for obnoxious fumes emitting from the clinic which escaped downwards into Dr. Hemant's clinic. Hemant, his staff and patients were found to have suffered substantial damage ranging from skin diseases, red and swollen eyes, headaches, lethargy and breathing difficulties. Decide whether Karan is liable?

- (a) Karan is not liable as the work is of public welfare and if required, a nuisance may be permitted for special purposes.
- (b) Hemant cannot claim damages as he is voluntarily operating his clinic since a decade.
- (c) Karan is not liable as he is running the clinic for 18 years and Hemant has not raised any issue earlier.
- (d) Karan is liable for the damages caused to Hemant and his staff and patients.

## Hints & Solutions

1. (a)
2. (a) In this case, both the partners would be held responsible for the breach of contract.
3. (a)
4. (b) In this matter of tort, the plaintiff's consent is not applicable because the defendant's grinding machine was running before the establishment of nursing home.
5. (a)
6. (b) KLM institute need not share its income with X because the medical institute instead of destroying the waste fibroids of X conducted research on its own and invented new life- saving drugs.  
The institute did not unlawfully intervene with the personal possession (fibroids). They were removed with the patient's consent and the when the fibroids were to be disposed off, KLM used them to develop life saving drugs and made money.
7. (a) The network company will succeed because the owner's right into the airspace above his property does not extend endlessly , further kite flying cannot categorically be assumed as "NECESSARY" ordinary use and enjoyment of land .The company's act of passing cable above Mr. Vasanth Bhat's house will not be considered TRESSPASSING. one can further add that even if the network company had wrongly trespassed Mr. Vasanth 's right he is not entitled to cut wire himself , his action of cutting wire himself will automatically attract legal action against him.**Option (b)** is incorrect because of above stated reason.  
**Option (c)** is incorrect as wrong practice followed by many people does not make it right in the eyes of law.  
**Option (d)** is not applicable as option (a) is correct.
8. (a) In the given case although Ram is under a legal obligation to take care to avoid act or omission which he can FORSEE would injure his neighbor but

presently he did not push Shyam on purpose , further he could not FORSEE that Shyam is carrying crackers which might explode . Thus Ram is not liable.

**Option (b)** is incorrect as there is no prohibition on carrying such package in crowded place . So, this argument can't be taken in favor of Ram.

**Option (c)** is incorrect as Ram UNINTENTIONALLY pushed Shyam , further he was IGNORANT about the fact that Shyam is carrying crackers which might explode.

**Option (d)** is not applicable.

9. (b) The truck owner is not liable in tort as facts of the case state that accident happened due to inevitable circumstances and there was no malicious intention or planning ; further an defect in the vehicle was unknown to the truck owner. So the above stated principle holds true in this case.

**Option (a)** and option (c) both are incorrect . Refer above explanations.

**Option(d)can be** also assumed as true because neither driver nor owner can be sued in tort .However we are not concerned with the driver as the case is against the owner and not the driver. Thus option (c)is also incorrect.

10. (b) The ruling principle states that employer is liable to pay compensation to any employee who gets injured while on work . Here Rohit and Mohit were doing an act within their professional duty and thus got hurt during the course of their employment , hence Ravi Menon is liable to pay compensation being the employer ,to Rohit being the injured employee on duty.

**Option (a)** is incorrect . Ravi will be held responsible for all the acts done by his employees within the course of their employment done with the authorization of the employer.

**Option (c)** is incorrect . Refer above.

**Option (d)** Inapplicable.

11. (d) The doctrine of vicarious liability holds that there can be a person responsible for the actions of another because of a special relationship the parties maintain, like employee/employer, principal/agent and parent/child.
12. (a) Tort is a wrongful act other than a breach of contract for which relief may be obtained in the form of damages or an injunction. The law of torts serves four objectives. First, it seeks to compensate victims for injuries suffered by the culpable action or inaction of others. Second, it seeks to shift the cost of such injuries to the person or persons who are legally responsible for inflicting them. Third, it seeks to discourage injurious, careless, and risky behavior in the future. Fourth, it seeks to vindicate legal rights and interests that have been compromised, diminished, or emasculated. Thus it can easily be concluded that the given assertion and reason stand individually true also reason is correct explanation of the assertion. Hence option (a) is correct.  
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14. (a) The three ingredients to support the cause of action under Section 70 of the Indian Contract Act are these: First, the goods to be delivered lawfully or anything has to be done for another person lawfully. Second, the thing done or the goods delivered is so done or delivered "not intending to do so gratuitously." Third, the person to whom the goods are delivered "enjoys the benefit thereof." It is only when the three ingredients are pleaded in the plaint that a cause of action is constituted under Section 70 of the Indian Contract Act. If any plaintiff pleads the three ingredients and proves the three features the defendant is then bound to make compensation in respect of or to restore the things so done or delivered so, legally Y is liable to pay the price of sweets to X. Hence option (a) is correct. However socially X should not claim price of sweets consumed by the kids.
15. (b) As per the guiding law, a doctor who treats without valid consent will be liable under the tort and criminal laws. The law presumes the doctor to be in a dominating position, hence the consent should be obtained after providing all the necessary information.
16. (a) Essentials of defamation  
i). The statement must be defamatory  
ii). Must refer to the plaintiff  
iii). The statement must be published  
In the present problem Kiara published a statement which was injurious to Ricky's reputation.
17. (b) Principle clearly states that whoever stores any substance which can cause damage is liable for the damage even if he has taken reasonable care.
18. (d) Partner is liable for debts incurred by other partner till the partnership exists. In the present case partnership was over when Prateek took the debt.
19. (a) Krish's carelessness led to accident and further led to Lekha's abortion. It was duty of Krish to take reasonable care of people around him.
20. (d) Lalit is liable because in spite of clear notice against the trespassers, he allowed them to use the farm's short cut.
21. (a) Option 'c' is correct. M will succeed as the driver was driving in the course of his employment further it was duty of the driver to drive carefully.
22. (b) X has committed offence.
23. (a) Partnership firm is vicariously liable for act of B under implied authority. But bribing cannot be considered as course of his employment.
24. (b) Necessity doesn't lead to harm anybody for a reason which can be treated tactfully.
25. (a) The reasonable conclusion is drawn that the alphabet "B" cannot be registered as a trade mark it is English letter. So, option (a) is correct.
26. (c) Accordingly to section 3, Indian Evidence Act. One fact is said to be relevant to another when the one is connected with no other in any of the ways referred relating to the relevancy of facts. The reasonable conclusion is drawn that A citizen of England is accused of commission of murder in India and of Conspiracy hatched in England are relevant facts. So, option (c) is correct.
27. (d) B's death is not accidental, as there was want of proper care and caution on the part of A. In *Bhupender Singh A Chudasama vs State of Gujrat AIR 1997 SC3790*, The Hon'ble Supreme Court observed on the facts of a case before it. The primordial requirement of the exception that we get is that it should have been done "with proper Care and Caution". The reasonable conclusion drawn is that the B's death is not accidental, as there was lack of proper care and caution on the part of A. So, option (d) is correct.
28. (d) Criminal and Civil Law, 'battery' is He intentional touching of, or application of force to, the body of another person in a harmful or offensive manner (without consent). Three main elements are:  
(1) intent (2) contact (3) Harm. In the given case "contact" is missing. The reasonable conclusion is

drawn that D is not liable as the injury is not directly caused. Hence option (d) is correct.

29. (a) The reasonable conclusion drawn is that M's liability arises only when the wrongdoer is his servant and the servant while doing the wrongful act is in the course of the employment. In the Present reasonable conclusion is M could not be made liable for the act of C, as C's act of driving the vehicle was not in the course of the employment.
30. (d) The reasonable conclusion drawn that it is violation of a legal right without causing any harm, loss or damage to the plaintiff. Thus it is actionable in a tort. Hence P would succeed in his action, as he was wrongfully prevented from his legal right of voting. Option (d) is correct.
31. (b) The tort of false imprisonment is constituted when there is a total restraint. It is no imprisonment if a person prevented from going to a particular direction but he his free to go any other direction. If a man is prevented from going to a particular direction but is allowed to go back there is no false imprisonment. The reasonable conclusion in the above noted question is that there was no total restraint on the P's liberty. The reasonable conclusion drawn that D could not be held liable for false imprisonment and he did not restrict P's movement. Hence option (b) is correct.
32. (a) The reasonable conclusion drawn A has committed the offence of causing death of D. Hence option (a) is correct.
33. (b) According to the Section 95 of the Indian Penal Code nothing is an offence by reason that it causes, or that it is intended to cause, or that it is known to be likely to cause, any harm, if that harm is so slight that no person of ordinary sense and temper would complain of such harm. The reasonable conclusion drawn A is not liable for his act, as it was of trivial nature.
34. (a) A written consent for surgery was given by 'P' to surgeon 'S'. The consent was given only for the act of removal of appendicitis. However, 'S' also removed the gall bladder of 'A' for which no consent was given. This act was therefore carried out without the permission and approval of 'P'. In this case, 'S' acted sans valid consent. There is disobedience to the right of the patient's autonomy. (Ram Bihari Lal v Dr. J. N. Srivastava. AIR 1985 MP 150).
35. (d) Rustum did not cause any bodily injury to Sheetal and thus there is no assault.
36. (a) 'T' has not taken permission of 'P' to walk over the land. The and has a notice informing that it is not a tho-roughfare . Even though there is no damage caused to the land, 'T' has caused trespass.
37. (c) A is liable for the negligence as he failed to take proper care during the surgery. It was the duty of the doctor A to ensure the utmost safety of his patient B during the surgery. Forgetting a cotton swab inside the abdomen caused medical problems. Doctor is liable under negligence.
38. (d) Three elements needed to be fulfilled to transfer vicarious liability. They are : relationship between employer v employee, tortuous act of negligence committed and within the course of employment . Employers to be responsible for the lack of care on the part of employees (to whom the employers owe a duty of care). To apply the respondent superior, the employee's negligence must occur within the scope of their employment. Additionally, it is important to know whether B is an employee of A and also to determine whether B was within the scope of employment when the negligent act was committed. Hence option (d) is the correct , although there was employer employee relationship between Verma and Alok, but Alok was not acting in the scope of his employment when he was delivering the package with contraband goods and was arrested for the same . thus Mr. Verma is not liable for his acts .
39. (b) Negligent torts are not deliberate actions, but instead present when an individual or entity fails to act as a reasonable person to someone whom he or she owes a duty to. The negligent action found in this particular tort leads to a personal injury or monetary damages. Thus the two major essentials of tort are (a) negligence and (b) damage or injury.
- Facts of the case presented before us mentions that Saini who was riding a motorcycle fell down due to Mistry's negligence even though he did not get injured, DAMAGE was caused to his motorcycle ,clothes ,time etc .Thus we can easily conclude that option (b) is the most appropriate statement.
40. (b) There is no general duty on the parents to keep a child under constant supervision. The duty of parents is to exercise a reasonable degree of supervision and control over the child, in view of any foreseeable danger in the activities the child was involved in at the relevant time, taking into account the age of the child and the child's propensity to meddle. parents have a bigger duty to control the young one, and a correspondingly higher liability if they fail to do so. In the case presented before us two things can be observed, firstly Sunil's father left the keys unattended within the approach of his son Sunil and secondly his son Sunil took the keys and injured a pedestrian . the mere negligence on the part of father makes him liable for the conduct of his son Sunil.Hence option (b) seems most appropriate.
41. (c) Damnum sine injuria is a Latin maxim which means damage without legal injury. When there is an actual damage caused to the plaintiff without an infringement of his legal right, no action lies against the defendant. In order to make someone liable in tort, plaintiff must prove that he has sustained legal injury. Damage without injury is not actionable in the law of torts. The case presented before us is a perfect example where the phrase "Damnum sine injuria" applies. In spite of the fact that Gulshan incurred huge losses due the competition given by Ashutosh ,he cannot hold Ashutosh liable for the same and claim damages as none of his legal rights were infringed and Damage

without injury is not actionable in the law of torts. Hence option (c) seems most appropriate.

42. (a) Infringement. The encroachment, breach, or violation of a right, law, regulation, or contract. The term is most frequently used in reference to the invasion of rights secured by Copyright, patent, or trademark. Right endowed upon by a law is called legal right. We all have rights and at the same time we need to ensure that we do not take away or violate someone else's rights. This is our legal duty. When we fail to perform or incorrectly perform our legal duties, we end up violating someone else's rights and in turn commit a tort. Thus in the case presented before us Saroj's right to vote was infringed and whether or not any damage was caused still she has the right to sue the wrong doer. Hence option (a) is correct.
43. (b) Private Nuisance. Private nuisance may be defined as unlawful interference with a person's use, comfort, enjoyment and any interest that a person may have over his land. ... An interference becomes unlawful and constitutes a nuisance when it unreasonably interferes with the plaintiff's enjoyment of his land. Option (b) is correct and Ashok will be considered as creating nuisance for his neighbor as he is listening to music at unreasonably high volumes which is interfering with the right of his neighbor Raju.
44. (d) The liability cast on such person who is holding or keeping dangerous article in his home is known, in law, as strict liability, for all the damage which is the natural consequence of its escape in a hazardous or inherently dangerous activity and harm is caused on anyone on account of escape of such dangerous thing, the holder or keeper is strictly and absolutely liable to compensate those who are injured or incurred losses. In the light of above option (d) is the most appropriate statement. Thus Ankit is liable to compensate because the fire escaped from his premises to burn down his neighbor's house.
45. (b) The liability cast on such person who is holding or keeping dangerous article in his home is known, in law, as strict liability, for all the damage which is the natural consequence of its escape in a hazardous or inherently dangerous activity and harm is caused on anyone on account of escape of such dangerous thing, the holder or keeper is strictly and absolutely liable to compensate those who are injured or incurred losses. Thus in the case presented before us option (b) holds good and A is liable as he is responsible for the injury caused by leakage of ammonia from his premises.
46. (d) *Volenti non fit iniuria* (or *injury*) (Latin: "to a willing person, injury is not done") is a common law doctrine which states that if someone willingly places himself in a position where harm might result, knowing that some degree of harm might result, he/she will not be able to bring a claim against the other party in tort or delict. *Volenti* applies only to the risk which a reasonable person would consider them as having assumed by their actions;  
The defense has two main elements:

The claimant was fully aware of all the risks involved, including both the nature and the extent of the risk; and

The claimant expressly (by statement) or implicitly (by actions) consented to waive all claims for damages. Knowledge of the risk is not sufficient: *sciens non est volens* ("knowing is not volunteering"). Consent must be free and voluntary, i.e. not brought about by duress. In the case presented before us neither there is knowledge of risk involved nor there was an express or implicit waiver of claims for damages hence the defense of *Volenti non fit iniuria* is not available in respect of husband and wife. Hence answer is (d) is correct.

47. (b) In the case presented before us, Tannery owners would have been liable only and only if they could reasonably foresee that solvent is being spilt and also it has been contaminating the water source that is 3 miles away. Foreseeability of the type of damage is a pre-requisite of liability in actions of nuisance as is enumerated in the guiding principle (4). Hence (b) is correct.
48. (a) Points to be looked into to decide on the given case are
1. M.G. LTD was in no way unlawfully interfering with the use and enjoyment of land by others,
  2. The fact that the tower built by him was causing disturbance in television signals was not his fault, and
  3. The company could not reasonably foresee that the tower built by it will cause disruption in television signals.
- In the light of above points option (a) is correct.
49. (a) According to the facts presented before us we come across following points:
- (1) Laxmi mills could reasonably foresee the risk undertaken by crane drivers,
  - (2) The steps taken by the company cannot fall under term "proper care", and
  - (3) If the Amar's lip hadn't burnt because of molten metal, it wouldn't have become cancerous, due to which he ultimately died.
- Thus as per above explanation the employers are liable for all the consequences of their negligence; thus death of the employee.  
Hence option (a) is correct.
50. (d) Elements of negligence claims
1. duty: the defendant has a duty to others, including the plaintiff, to exercise reasonable care,
  2. breach: the defendant breaches that duty through an act or culpable omission,
  3. damages: as a result of that act or omission, the plaintiff suffers an injury, and
  4. causation: the injury to the plaintiff is a reasonably foreseeable consequence of the defendant's act or omission.
- In the light of above statements it can be reasonably concluded that in no way the boy can prove that correct diagnose of the problem could have prevented

the disability totally from occurring and hence option (c) can be eliminated without any doubt thus both (a) and (b) are true, thus option (d) is correct

51. (c) Three elements are needed to be fulfilled to transfer vicarious liability. They are relationships between employer v employee, tortious act of negligence committed and within the course of employment. Employers to be responsible for the lack of care on the part of employees (to whom the employers owe a duty of care). To apply the "respondeat superior", the employee's negligence must occur within the scope of her employment. Additionally, it is important to know whether B is an employee of A and also to determine whether B was within the scope of employment when the negligent act was committed. Hence option (c) is the correct option as there was employee-employer relationship between warden and the employer, the abuse was committed during the course of his job.
52. (a) In this case the employer is liable for the injury caused. It does not matter whether or not he is at fault or whether he is the direct cause of injury. Even if the injury is caused to an employee due to the negligence of another employee, the employer is liable because the principle clearly states so. The principle says, "An employer is liable for an injury caused to an employee in the course of the employment."
53. (b) A will not be entitled to damages because he has not suffered any loss. The principle states that a person who suffers a loss is to be recompensated with money as far as money can do. A did not suffer any loss by being prevented from voting. Also, the candidate in whose favour A wanted to vote won.
54. (c) A has committed public nuisance as defined in the principle. According to the principle: "Doing of an act which causes common injury, danger or annoyance to public or which is likely to cause such injury or annoyance is Public nuisance." X's action of burning crop stubbles is a public nuisance because smoke caused by his action is disturbing to public. The principle also states that "A common nuisance is not excused because it causes some nuisance or advantage." This may be interpreted to mean that X's action cannot be excused even if it is advantageous to his farm.
55. (c) X is guilty of an offence of death by rash or negligent act. The principle states that the death caused by rash or negligent act of a person is an offence. Driving at a high speed is a rash and negligent act because even if the road is lonely there is a possibility of someone suddenly crossing the road.
56. (b) X has committed an offence of causing death by rash and negligent act. The act of fencing a private house with high voltage electric wires is a rash and negligent act because there is a danger of someone accidentally touching it.
57. (a) X is liable as Y was working in the course of employment offered by X. In this case, the liability falls on X because for that time period Y was his employee as he had promised Y Rs.1000/- for the job of calling a mechanic using his own (X's) vehicle.
58. (a) X is liable for the entire amount because the principle clearly states "Master is liable for the acts of his servant done in the course of his duties." Therefore, it is clear that X will have to bear the consequences of Y's misdeed done while in the employment of X.
59. (b) Police is not liable because the test of liability requires that harm must be a reasonably foreseeable result of the defendant's conduct; a relationship of proximity must exist; and it must be fair, just and reasonable to impose liability. The police is not liable to victims who are not present at the actual accident site. The police could not have foreseen harm to Harman and others who were not present and there is no relation of proximity.
60. (b) No duty of care exists in this case towards the adjoining properties. As it is, the building didn't present an obvious risk of fire in ordinary course. X was also not aware of the previous attempts by vandals to burn the building. Therefore, the harm was not reasonably foreseeable. It is therefore clear that X was not under any duty to anticipate the possibility of fire and take measures to prevent the same.
61. (b) The scientists while conducting the experiment owed a duty of care, no doubt but this case is of a unique nature. The traders did not suffer physical harm to themselves or to their property in which case the issue of duty of care was relevant but here the traders suffered financial losses and that too in a very indirect manner. An ability to foresee indirect or economic loss to another person as a result of a defendant's conduct did not automatically impose on the defendant a duty to take care to avoid the loss.
62. (a) This would not come under the scope of private nuisance because Bharat Sugar Ltd has no private right over the land/water over which the State constructed new ferry terminals. The State is not liable because it has not created nuisance in the first place according to the principle which states private nuisance is a continuous, unlawful and indirect interference with the use or enjoyment of land or of some right over or in connection with it.
63. (c) K and L argued there was no duty of care owed because they had given a disclaimer which was that the information was given without responsibility on the part of this bank or its officials. Based on this disclaimer it can be said that even if it was reasonable for K and L to have known that the information that they had given would likely have been relied upon for entering into a contract of some sort, their disclaimer protects them from the clause on duty of care.
64. (a) Ramesh is not a servant and the houses he lived in were used for the purpose of Raja's business. Therefore, the houses cannot be exempted from statutory duties.
65. (d) Karan is liable for the damages caused to Hemant and his staff and patients. Karan was found liable for obnoxious fumes emitting from the clinic which escaped downwards into Hemant's clinic and caused damage to Hemant, his staff and the patients.