

Law of Torts, Motor Accident Claims & Consumer Protection

Answers to Important Question

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Subject: Law of Torts, Motor Accident Claims & Consumer Protection

By Jigar Ashar

❖ Module - 1: General Principles of Tort

1. **Explain Tort / Definition of Tort:** (2m)
 - The word tort has been derived from the Latin word “tortum” which means twisted or crooked. According to Salmond, “Tort is a civil wrong for which the remedy is a common law action for unliquidated damages, and which is not exclusively the breach of contract, or, the breach of trust, or, other merely equitable obligation.”.
 - In general terms, a tort is a wrongful act, not including a breach of contract or trust, that results in injury to another's person, property, reputation, or the like, and for which the injured party is entitled to compensation.
2. **Constituents / Ingredients / Elements of Tort: [DOWRI]** (2m/6m/13m)
 - There are four essential ingredients of torts. They are:
 - i. **Duty imposed by law**
 - ii. **Omission or Wrongful Act**
 - iii. **it should give rise to a Legal Remedy**
 - iv. **The act must give rise to legal or actual damage / Injury**
(For 2m write till here / For 13m write along with definition of Torts)
 - i. **Wrongful Act:** (May come separately for 2m)
 - A wrongful act can be either morally wrong or legally wrong and can also be both at the same time.
 - A legal wrongful act is one which affects one's legal right,
 - the wrongful act must be one recognized by law,
 - the act must be in violation of the law to be a legal wrongful act
 - E.g., if someone whose religion does not allow him/her to eat non-vegetarian food, still eats it then he/she will be morally wrong but not legally wrong. And if a person whose religion doesn't allow him or her to eat non-vegetarian and he or she strictly follows that religion, is forcefully fed by someone then it is a legal wrong on the part of the person forcing the other one to eat that food which he or she does not want to eat
 - ii. **Legal Damage to the Plaintiff:** (May come separately for 6m)
 - The second important ingredient in constituting a tort is legal damage. In order to prove an action for tort in the court, the plaintiff has to prove that there was a wrongful act or an act or omission which resulted in the breach of a legal duty or the violation of a legal right.
 - So, there must be a violation of a legal right of a person and if there is no violation of a legal right then there can be no action under the law of torts.
 - If there has been a violation of a legal right, the same is actionable whether the plaintiff has suffered any loss or not.
 - This is expressed by the maxim, “Injuria sine damno/damnum” where ‘Injuria’ refers to “infringement of the legal right of a person” and the term ‘damnum’ means “substantial harm, loss or damage to that individual”. The term ‘sine’ means “without”.
 - a) **Injuria Sine Damno/Damnum:**
 - “Injuria sine damnum” means “injury without damage”. Such damage is actionable under the law of torts. It occurs when a person suffers a legal

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damage instead of actual loss, i.e., his legal right is infringed by some other individual.

- In other words, this is an infringement of an absolute private right of a person without having suffered any actual loss.

- Eg. An example of this can be the landmark case of, *Ashby v. White* (1703), where Mr Ashby, the plaintiff, was prevented from voting by the constable Mr White. This rule is basically based on the old maxim “*Ubi jus ibi remedium*” which translates to “where there is a right, there will be a remedy.”

b) *Damno/Damnum Sine Injuria*

- “**Damnum sine injuria**” translates to “**damage without injury**”, here the party affected suffers damage which may also be physical but suffers no infringement of their legal rights.

- In other words, it means the occurrence of an actual and substantial loss to a party without any infringement of a legal right. Here no action lies in the hands of the plaintiff as there is no violation of a legal right.

- E.g. The Gloucester Grammar school case is one such case that falls under the umbrella of this maxim. The rival teacher had performed a morally wrongful act in order to get back at the plaintiff's school but he did not infringe any legal rights nor did he cause any legal damage in this act.

iii. **Legal Remedy:** (May come separately for 2m)

- The third essential element is that the wrongful act that resulted in injury should give rise to a legal remedy.
- A tort is a civil injury arising from a wrongful act. All civil injuries are not torts. It is therefore necessary that the wrongful act must come under the category of wrongs for which the remedy is a civil action.
- The principal remedy for tort is damages. Usually the court awards monetary compensation. Since the damages are unknown at the time of the event of tortious act of commission or omission, the damages are referred as unliquidated damages which are decided by the court based on facts and merits of a particular case.
- Besides monetary compensation there are other remedies such as self-help, injunction and specific restitution are also available.

3. ***Injuria Sine Damno/Damnum:*** (For 6m include answer/notes from Q2.ii) (2m/6m)

- “***Injuria sine damnum***” means “**injury without damage**”. Such damage is actionable under the law of torts. It occurs when a person suffers a legal damage instead of actual loss, i.e., his legal right is infringed by some other individual.
- In other words, this is an infringement of an absolute private right of a person without having suffered any actual loss.
- E.g. An example of this can be the landmark case of, *Ashby v. White* (1703), where Mr Ashby, the plaintiff, was prevented from voting by the constable Mr White. This rule is basically based on the old maxim “*Ubi jus ibi remedium*” which translates to “where there is a right, there will be a remedy.”

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4. **Damnum Sine Injuria:** (For 6m include answer/notes from Q2.ii) (2m/6m)

- “**Damnum sine injuria**” translates to “**damage without injury**”, here the party affected suffers damage which may also be physical but suffers no infringement of their legal rights.
- In other words, it means the occurrence of an actual and substantial loss to a party without any infringement of a legal right. Here no action lies in the hands of the plaintiff as there is no violation of a legal right.
- E.g. The Gloucester Grammar school case is one such case that falls under the umbrella of this maxim. The rival teacher had performed a morally wrongful act in order to get back at the plaintiff' school but he did not infringe any legal rights nor did he cause any legal damage in this act.

5. **Difference between “Injuria sine damnum” and “Damnum sine injuria”** (2m)

“Injuria sine damnum”	“Damnum sine injuria”
there is no physical damage or an actual loss	there is actual damage and loss on the part of the plaintiff
he party suffers with the infringement of their legal rights	there is no legal right infringement.
actionable in the court	not actionable in court.
deals with the legal wrongs	deal with the moral wrongs.

6. **Volenti non-fit injuria:** (2m/6m)

- In case, a plaintiff voluntarily suffers some harm, he has no remedy for that under the law of tort and he is not allowed to complain about the same. The reason behind this defence is that no one can enforce a right that he has voluntarily abandoned or waived. Consent to suffer harm can be expressed or implied.
- Case Law: In Padmavati v. Dugganaika[2], the driver of the jeep took the jeep to fill petrol in it. Two strangers took a lift in the jeep. The jeep got toppled due to some problem in the right wheel. The two strangers who took the lift were thrown out of the jeep and they suffered some injuries leading to the death of one person.
- The conclusions which came out of this case are:
 - i. The master of the driver could not be made liable as it was a case of a sheer accident and the strangers had voluntarily gotten into the vehicle.
 - ii. The principle of Volenti non-fit injuria was not applicable here.

(For 2m write till here)

- Elements of Volenti non-fit injuria:
 - i. For the application of the defence of volenti non fit injuria there are some essential elements or conditions which should be present in a case and only when they are fulfilled, this defence can be taken to prevent liability.
 - ii. There are 2 essential elements in this defence:
 - a. The plaintiff has the knowledge of the risk
 - b. The plaintiff with the knowledge of risk has voluntarily agreed to suffer the harm.
 - iii. Thus, whenever the plaintiff is aware of the possibility of harm which is likely to be caused by an act and when he still accepts to do that act and therefore agrees to suffer the injury, a defendant is relieved of his liability.

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7. Ubi jus ibi remedium

(2m/6m)

- Ubi jus ibi remedium is a Latin maxim which means that "wherever there is a right, there is remedy". It consists of two main ingredients of the doctrine jus and remedium. Where jus means legal authority to do or demand something from and "remedium" means rights of action. It simply gives us a meaning that if there is any violation of the legal right, then the law provides a remedy to the affected person.
- "Everyone in the vicinity has the right to have a good legal remedy by the competent national tribunals for the acts which violate your fundamental rights and human rights which are granted to him by the constitution or by any law in the vicinity."

(For 2m write till here)

- Case Laws:

- i. Ashby V. White: This is basically a case of English tort law which is related to the violation of right and remedy provided by law. Plaintiff Mr. Ashby is a registered voter but he was interrupted from voting in the elections. So, there is a violation of fundamental right which is "Right to vote", by the officer Mr. white. The candidate, whom he wanted to vote, won the election. Now, he wants the compensation of the violation of his legal right. The court held that however, the plaintiff has suffered any damage because he wished to vote in the election, his right has been infringed and he was interrupted from exercising his legal right. Therefore, the plaintiff was awarded compensation in the form of damages.
- ii. Bhim Singh V. State of Jammu and Kashmir: In this case, there is an applicant who is the MLA of the Jammu and Kashmir parliamentary gathering. While he was on his way to the parliamentary meeting, he was inappropriately captured by a cop and he was not able to be introduced before the judge on time and he had a lawful right to go to the gathering. His fundamental right under article 21 under the Indian constitution has been violated. The Supreme Court considered that the respondent was liable for violating the applicant's rights and it granted him a damage of ₹50,000 to the candidate for encroachment of his fundamental right.

- Essentials Of Ubi Jus Ibi Remedium: (May come separately for 2m)

- i. This legal maxim is applicable only when any legal injury has occurred to any person, if no legal injury is caused then the legal maxim damnum sine injuria is used which implies that any harm without any legal injury
- ii. Any unlawful or wrongful act must have been done which violates the legal rights of a person.
- iii. This maxim can be used only when sufficient relief has not been provided by the court to the person who sustained the injury.
- iv. This maxim can only be applied wherever this right exists and can be recognized by the court of law.

- Limitations Of Ubi Jus Ibi Remedium: (May come separately for 2m)

- i. We cannot apply this maxim if any proper remedy is given in case of any breach of rights under law.
- ii. This maxim cannot be applied to moral and political wrong which are not actionable.
- iii. If plaintiff is negligent or there is negligence by the side of the plaintiff then this maxim will not be applicable.
- iv. In case of public nuisance unless a plaintiff shows that he suffered more injured than other members of the society, this maxim will not be applicable.

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8. Extinction of Liability (6m)
- Even if a person commits a tort, under certain circumstances, there are possibilities that the law may extinct it. Discharge of torts is different from the justification of torts. Justifications are exceptions and under some situations, the law justifies the wrong.
 - In the extinction of a tort, the circumstances are such that the liability exists but its remedy does not. The meaning of discharge of tort or liability is reaching an end of the tort. It is a process by which tort stops to exist and the wrongdoer is no longer liable.
 - **Basis for Extinction of Liability:**
 - i. **Death of the Parties:**
 - In case of death of a wrongdoer, the legal heir can ask damages from the defendant for tort against the property. It includes trespass, nuisance, negligence, waste, fraud, etc. But in case of personal tort, legal heirs cannot sue the defendant.
 - Personal torts are those torts, which affects the mind, and body of a person. It includes assault, battery, false imprisonment, defamation, etc. In case of personal tort legal heir of the wrong doer is not liable. But in some case of proprietary torts, legal heirs are liable.
 - ii. **Accord and satisfaction:**
 - Accord means an agreement in which a person agrees to accept some valuable consideration. It is generally in exchange for the right of action that he has against the other. Satisfaction states the actual payment of an amount of consideration.
 - The consideration can be in the form of money or compensation which is accepted by a wrong person or his legal heirs. It leads to the settlement of the case and they do not proceed to the court.
 - iii. **Release:**
 - A release is the leaving or giving up the right of action which a person against another party. The aggrieved person gives up the entire claim or right which he has against the wrongdoer. Such release must be voluntary and should not be obtained by coercion, compulsion or force.
 - The release should be in writing but it is valid even without consideration and in writing. A release which is executed under mistake or ignorance is nil or invalid. A covenant not to sue one of the 2 tortfeasors does not function as a release so as to give up the other.
9. ****What are the General Defences used in Tort?** (2m/6m/13m)
- The word tort has been derived from the Latin word "tortum" which means twisted or crooked. According to Salmond, "Tort is a civil wrong for which the remedy is a common law action for unliquidated damages, and which is not exclusively the breach of contract, or, the breach of trust, or, other merely equitable obligation."
 - In general terms, a tort is a wrongful act, not including a breach of contract or trust, that results in injury to another's person, property, reputation, or the like, and for which the injured party is entitled to compensation.
 - When a plaintiff brings an action against the defendant for a tort committed by him, he will be held liable for it, if there exist all the essential ingredients which are required for that wrong.

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- But there are some defences available to him using which he can absolve himself from the liability arising out of the wrong committed.

[For 2m, write any 2 / For 6m, write any 4 / For 13m, write all]

- These are known as 'General defences' in the law of tort:
 - a. Volenti non-fit injuria or the defense of 'Consent': In volenti non fit injuria, if a plaintiff has consented to a wrongful act with free content, either express or implied, under no pressure of fraud or coercion, with voluntary acceptance of risk, then he has no right to sue the defendant. Also, there should be a duty on behalf of others.
 - b. The wrongdoer is the plaintiff: It is based on the maxim ex turpi causa that if the plaintiff himself is engaged in the wrongful act or conduct, then he cannot recover damages.
But if a defendant asserts that claimant himself is the wrongdoer and not entitled to the damages, then it does not mean that the court will declare him free from the liability.
 - c. Inevitable accident: Inevitable Accident is a mishap. Its occurrence cannot be prevented despite taking any degree of care and attention by an ordinary and sagacious individual.
 - d. Act of God: A very unusual act or an event which is the result of the natural forces such as earthquakes, volcanic eruptions, floods, droughts, etc. is coined as Act of God or 'Vis major'. It is beyond human imagination and could not be prevented by human intervention.
 - e. Private defence: Among the general defences in tort, private defence is the most common. When a defendant tries to protect his body or property or any other person's property, harms another person by using reasonable force, under an imminent-danger and where there is no time to report instantly to the authority, it is Private Defence. The harm done should be proportional according to the nature of the circumstances.
 - f. Mistake: When a defendant acts under a mistaken belief in some or the other situation, he may plead the defence of mistake.
A mistake is of two types:
 - i. The mistake of law: No defence in each civil and criminal case.
 - ii. The mistake of fact: Not valid in torts
 - g. Necessity: 'Necessity knows no law'. In order to avoid or prevent a great loss or harm, a defendant can cause lesser harm that is justified. The act of the defendant may be not legal but if it is to avoid major damage then he can plead this defence.
 - h. Statutory authority: Another general defence is statutory Authority. If an act is sanctioned by a statutory enactment or a law passed by the legislature, then the defendant cannot be held liable for the damages resulting in the course of such an act.

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❖ Module - 2: Torts against person, property, Freedom & Reputation

1. Explain Trespass to Person:

(2m/6m/13m)

- Definition/Explanation: Interference, however slight with a person's elementary civil right to security of person, and self-determination in relation to his own body, constitutes trespass to person. Trespass may be done intentionally, deliberately or negligently. The fundamental principle plain and incontestable law is that every person's body is inviolate.
- Trespass to person may be categorised as:
 - i. Assault: any act of such a nature as to excite an apprehension of battery
 - ii. Battery: The use of force on the person of another without lawful justification.
 - iii. False imprisonment: unlawful obstruction or deprivation of freedom from restraint of movement.
 - iv. Mayhem: Mayhem is a tort that causes severe injury to the victim in such a way he's unable to defend himself from the tortfeasor.

(For 2m, write till here / For 6m, write 2 points from each below / For 13m, write everything along with definition of Torts)

- **Assault:** (May come separately for 2m)
 - It is the causing of unreasonable apprehension of bodily injury and damage in the mind of another person and is usually a prelude to a battery.
 - It can be given effect in a way that would make certain actions and indications suggestive of assault by another.
 - It can be both direct and indirect.
 - It can be carried out by the person himself or through a third person.
 - Essentials of assault:
 - i. Intent
 - ii. Apparent ability to carry out the purpose
 - iii. Apprehension
 - iv. Knowledge of threat
- **Battery** (May come separately for 2m)
 - The use of force on the person of another without lawful justification.
 - Battery consists of touching another person hostilely or against his will directly or indirectly, however, slightly.
 - Direct force can be like slapping a person whereas indirect force is like setting a dog behind a person or spitting on a person.
 - Essentials of Battery:
 - i. Direct or indirect physical contact without lawful justification
 - ii. Use of force
 - iii. It must be voluntary
- **False imprisonment:** (May come separately for 2m)
 - When someone's way is restricted unlawfully from all possible directions so as to prevent him/her from moving in a direction for some period, however short, it is called false imprisonment.
 - A mere partial interference with freedom of locomotion doesn't amount to imprisonment.
 - Essentials of False Imprisonment:

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- i. The total restraint of the liberty of a person.
 - ii. The detention must be unlawful
- ii. Mayhem: **(May come separately for 2m)**
 - Mayhem is a tort that causes severe injury to the victim that he is unable to defend oneself from the tortfeasor.
 - It's closely intertwined with assault and battery. While assault refers to the threat of battery, and the battery is the physical usage of force against an individual, Mayhem deals with the disfigurement or loss of any part to physical injury caused by the tortfeasor.
 - The disabling of an arm, hand, finger, leg, foot, or eye are examples of mayhem.
 - To be guilty of the criminal offence, one shall dismember the victim or must assault him so recklessly on creating the danger of dismemberment albeit not meaning to cripple.

2. Explain Trespass to Property: (2m)

- Torts against property or torts affecting property is called trespass to property.
- It may be trespass to Movable Property or Immovable Property.
- Trespass to **"immovable property"** is called as **"trespass to land"**
- Trespass to **"movable property"** is called as **"trespass to goods"**
- Thus, Wrongful intervention of one over the property or goods belonging to another without any lawful justification is called as trespass to land or trespass to goods respectively.
- Eg. Asif enters Tabrez's land and broke his window so this is trespass to property committed by Asif.

3. Trespass to Land / Immovable Property: (2m)

- Trespass to land is an **unlawful entry** upon the land of the Plaintiff or **unlawfully remaining** on the land of the Plaintiff or **disturbing the possession** of land of the Plaintiff
- Immovable property means and includes land, house, flat, minerals, metal ores, etc. The act of unlawful and unjust possession or even an unjustified entry on the land means trespassers to immovable property.
- Trespass to Land is direct interference with the possession of enjoyment of the land of another, interference could be by a person himself or by some other material object.

4. Trespass to Goods / Movable Property: (2m)

- Trespass to Goods is an unlawful disturbance of possession of the goods which is caused by seizure or removal or by a direct act causing damages to Goods.
- A trespass to goods is actionable 'per se' (by itself) ie without any proof of actual damage
- In an action for trespass of Goods, the Plaintiff must prove:
 - i. That, the goods were in his actual or constructive possession
 - ii. That, the defendant intentionally or negligently disturbed his possession by seizing or removing or damaging his goods.

5. Explain Trespass to Property: (6m/13m)

[For 6m, write combined answers of Q2/3/4, for 13m, write along with definition of Torts]

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6. Trespass ab initio

(2m/6m)

- Trespass-ab-initio is trespass from the beginning. In the case of Six Carpenters, the principle was laid down that if the defendant enters the plaintiff's land under the authority of the law or license is given to him and he subsequently abuses his right of entry, he will be treated as trespasser ab initio.
- When a person has the authority of the law to enter upon the land of the another but later is guilty of an act such as misfeasance or misconduct making his original entry tortuous. Here he is liable for damages for both entering the land and further misconduct.
- The following conditions must be fulfilled in order to apply the doctrine of trespass ab initio:
 - i. The authority must be given by law.
 - ii. The subsequent act must be misfeasance.
- The Six Carpenters' Case 1610
 - i. In this case, the six carpenters entered an inn by the authority of law and consumed food and had fine but refused to pay. They were held not liable under this doctrine and the court laid down three major principles—
 - If a man abuses an authority given to him by law, he becomes a trespasser ab initio.
 - In an action of trespass, if an authority is pleaded, the subsequent abuse of that authority may be removed.
 - A mere non-feasance does not account to such abuse as renders a man a trespasser ab initio.

7. Explain Defamation / Tort Related to Reputation:

(2m/6m/13m)

- Defamation is an injury to the reputation of a person. If a person injures the reputation of another he does so at his own risk, as in the case of an interference with the property. A man's reputation is his property, and if possible, more valuable, than other property.
- Any intentional false communication, either written or spoken, that harms a person's reputation decreases the respect, regard or confidence in which a person is held; or induces disparaging, hostile or disagreeable opinions or feelings against a person is known as defamation.

Types of Defamation / Defamation is of two types:

- i. Civil Defamation: Civil defamation involves no criminal offence, but on account of this kind of defamation, you could sue the person to get a legal compensation
- ii. Criminal Defamation: defaming a person by committing a crime or offence

[For 2m, write till here]

Essentials of Defamation: [Maybe asked separately for 6m]

- Any intentional false communication, either written or spoken, that harms a person's reputation decreases the respect, regard or confidence in which a person is held; or induces disparaging, hostile or disagreeable opinions or feelings against a person is known as defamation.
- The following are the essentials of Defamation: (Please self-explain in your own words or refer books if asked individually for 2m or for 13m)
 - i. The statement must be Defamatory
 - ii. The statement must refer to the plaintiff
 - iii. Defamation must be published
 - iv. The Statement must be false

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8. Torts affecting Persons & Property: (6m/13m)
- A tort is a conduct that harms other people or hampers their property. It is a private wrong against a man for which the aggrieved party can recover damages, i.e., money or monetary compensation. The injured party can sue the wrongdoer (tortfeasor) to seek damages to compensate for the harm or loss to him. The conduct which is a tort can also be a crime.
 - Types of Torts
 - i. Trespass to Person
 - This consists of any contact with some person for which consent is not provided. This is known as a battery. An assault will be a situation when a plaintiff reasonably believes a battery upon his person was about to be committed.
 - An example of an assault can be where one man swings his fist at another person. If the person makes a contact, then this would be an assault as well as battery. A defence to assault and battery will be a case of self-defence.
 - ii. Trespass to Land
 - Trespass to land involves going on or above the property of another person without his/her permission. A trespass can also involve the use of the airspace of another's property as well as actually going on the actual property without permission.
 - However, this rule has been changed to allow the flights of aircraft above the land as long as it does not interfere with the proper use of the land of another person.
 - iii. Trespass To Personal Property
 - A trespass to personal property means the use of someone's property without his/her permission. A conversion happens when someone takes away the personal property and keeps it away from the real owner without his/her permission.
 - The concept is based on the wrongdoer converting something to his/her own use. It also requires an intention to deprive the real owner of their ownership – so if you put the device in your pocket thinking it is yours it will not be converted.
 - Tort or Trespass affecting Person:
 - i. Trespass to the person means a direct and deliberate interference with a person's liberty or freedom. A trespass which is also a breach of the King's peace, however, fell within the judiciary of the King's courts. Moreover, in course of time, the allegation which the trespass commits came to be used as a general form in order to preserve the jurisdictional propriety of an action brought in these courts, whether or not there is any truth in it.
 - ii. There are mainly three forms of trespass to a person, namely, assault, battery, and false imprisonment and their common element are that there must be a direct means of commitment.
9. What are Specific Torts? (Negligence, Nuisance, Fraud) (13m)
- Tort is when one person or entity inflicts an injury upon another, in which the injured party can sue for damages. There are numerous specific torts including negligence, nuisance, fraud, etc

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- **Negligence:** [Maybe asked separately for 6m]
 - i. In everyday usage, the word “negligence” means carelessness. Secondly, in legal usage, it signifies failure to exercise the standard of care which the doer should have exercised in the circumstances. If there is no legal duty to take care, lack of care has no legal consequences. Negligence is thus a mode in which many kinds of harms may be caused, if adequate precautions are not taken. It is different from intentional or deliberate harm.
 - ii. Essentials of Negligence:
 - In an action for negligence, the plaintiff has to prove the following essentials:
 - a) That the defendant owed duty of care to the plaintiff: It means a legal duty rather than a mere moral, religious or social duty. The plaintiff has to establish that the defendant owed to him a specific legal duty to take care of which he has made a breach. There is no general rule of law defining such duty. It depends on each case, whether a duty exists or not.
 - b) The defendant made breach of that duty: Breach of duty means non-observance of due care which is required in a particular situation. The standard of care required is that of a reasonable man or of an ordinary prudent man. If the defendant has acted like a reasonably prudent man, there is no negligence. The law requires taking three points into consideration to determine the standard of care required.
 - c) The plaintiff suffered damage as a consequence thereof: It is also necessary that the defendant's breach of duty must cause damage to the plaintiff. The plaintiff has also to show that the damage caused is not too remote, and is a consequence of defendant's negligence.
- **Nuisance:** [Maybe asked separately for 6m]
 - i. Nuisance as a tort means an unlawful interference with person's use or enjoyment of land or some right over or in connection with it. Acts interfering with comfort, health or safety are the examples of it. The interference can be noise, vibration, heat, smoke, smell, fumes, water, gas, electricity or disease producing germs.
 - ii. Kinds of Nuisance:
 - a) Public Nuisance (Common Nuisance): Public nuisance is an interference with the right of public in general and is punishable as an offence. Obstructing a public way by digging a trench is an example of public nuisance. Although, such obstruction may cause inconvenience to many people, but none can be allowed to bring civil action for that, otherwise there may be hundreds of actions for a single act of public nuisance.
 - b) Private Nuisance (Tort of Nuisance): A private nuisance is an interference with a person's enjoyment and use of his land. The law recognizes that landowners or those in rightful possession of land have the right to the unimpaired condition of the property and to reasonable comfort and convenience in its occupation.
 - iii. Essentials of Nuisance:
 - To constitute the tort of nuisance, the following essentials are required to be proved:
 - a) There must be an unlawful interference: This must be in respect of the use or enjoyment of land or of some right over or in connection with it causing physical discomfort to the plaintiff or some damage to his property. E.g., Noise, smell,

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pollution of air or water. But in society some amount of interference by sound, smell etc., is inevitable. The courts apply the standards of a reasonable man and determine the degree of injury to the comfort or enjoyment of the property. Up to a certain degree, interference is not actionable.

Taking all the circumstances into consideration the court fixes the Standard of liability.

- b) There is no liability for abnormal sensitiveness of a person or of the property. The leading cases are:

- Robinson v. Kilvert
- Heath v. Brighton.
- Wagon Mound Case

- **Fraud or Deceit:** [Maybe asked separately for 6m]

- i. Fraud: a false or untrue representation of the fact, that is made with the knowledge of its falsity or without the belief in its truth or a reckless statement which may or may not be true, with intention to induce a person or individual to act independent of it with the result that the person acts on it and suffers damage and harm. In other words, it is a wrong act or criminal deception with an intention to result in financial or personal gain.
- ii. Deceit— a tort arising from an untrue or false statement of facts which are made by a person, recklessly or knowingly, with an intention that it shall be acted upon by the other person, who would suffer damages as a result. In other words, it is the practice or action of deceiving someone by misrepresenting the truth.
- iii. Fraudulent Misrepresentation: Fraudulent misrepresentation means a lie that is used to trick someone into an agreement which would cause some harm to them. Misrepresentations can be spoken, written, gestured, or even made through silence. A claim for fraudulent misrepresentation is found in the tort of deceit. Example- If a jeweller sells a diamond ring which is later discovered to be a crystal, then it is a fraudulent misrepresentation.
- iv. Elements of Fraudulent Misrepresentation:
 - The elements for fraudulent misrepresentation are:
 - a) False representation to the claimant must be made by the defendant,
 - b) the defendant should know that the depiction is false, or reckless as to whether it is true or false,
 - c) the defendant should intend that the claimant must act in dependence on it,
 - d) the claimant must act in reliance and trust on the representation and suffer loss as a consequence.

10. Joint – Tortfeasor

(6m)

- When two or more persons unite to cause damage to another person, then they will be liable as joint tortfeasors. All those who actively participate in the civil wrong commission are joint tortfeasors. Based on the percentage of damage caused by his negligent act, each joint tortfeasor is responsible for paying a portion of the compensation granted to the complainant. According to the principle of contribution, the defendant who pays more than his share of the damages, or who pay more than he is at fault, may bring an action to recover from the other defendant.
- Liability of Joint Tortfeasors:

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- i. When two or more persons join together for common action, then all the persons are jointly and severally liable for any tort committed in the course of such action. There were three principles in English Common Law with regard to the liability of joint tortfeasors.
 - The first principle is that the liability of wrongdoers is joint and several i.e., each is liable for the whole damage. The injured may sue them jointly or separately.
 - The second principle was laid down in the case of *Brinsmead v Harrison*, where it was held that a judgment obtained against one joint wrongdoer released all the others even though it was not satisfied.
 - The third rule was laid in the case of *Merryweather v Nixon*, where it was held that in common law, no action for contribution could be sustained by one wrongdoer against another, although one who sought a contribution might have been compelled to pay the full damages. The reason alleged for this rule was that any such claim to the contribution must be based on an implied contract between the tort-feasors and that such a contract was illegally concluded with a view to committing an illegal act.
 - ii. But the above rules were virtually abolished by the Law reforms Act, 1935 and the Civil Liability Act, 1978. The first rule in *Brinsmead* case being unjust, was abolished by the Act 1935 and therefore by the Act of 1978 which now provides that judgment recovered against any person liable in respect of any debt or damage should not be bar to an action, or to the continuance of an action, against another person who is jointly liable with him with respect to the debt and damage.
 - Liability of joint tortfeasors arises in three circumstances and they are:
 - i. Agency: When one person is authorized by another person to do work on his behalf then any tort committed by that person, the agent then principal who is authorizing the work will jointly and independently be held liable. When a tort is committed by an agency then both principal and agent are considered as joint tortfeasors. When any partner commits tort during the course of the business, then all other partners are also considered as joint tortfeasors.
 - ii. Vicarious Liability: When a person is liable for the tort committed by another person under special circumstances, the liability is joint and both are joint-tortfeasors. Thus, when a servant commits a tort in the course of employment, the master can be made liable along with the servant as a joint-tortfeasors.
 - iii. Joint Action: Where two or more persons join together for common action then all the persons are jointly and severally liable for the tort committed in the course of action.
11. Nervous Shock or Psychiatric Injury (6m)
- Psychiatric Injury - It is also known as Nervous Shock, used to describe a claim where the claimant might claim compensation even though she has not clearly received any physical harm.
 - Psychiatric Damages- According to medical conditions which defines as, circulatory failure marked by a sudden fall of blood pressure and resulting in pallor, sweating, fast (but weak) pulse, and sometimes collapse.
 - For this condition to occur major causes are disease, injury, and psychological trauma. In shock, the blood pressure falls below that necessary to supply the tissues of the body, especially to the brain. Treatment depends on the cause.

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- Two conditions need to be fulfilled in order to claim compensation under psychiatric damages:
 - i. A recognizable psychiatric illness.
 - According to Lord Bridge- To claim compensation under this it should be established that person is not suffering from only grief but it is positive psychiatric illness which is recognizable which would include morbid depression, hysterical personal disorder, post-traumatic stress disorder, pathological stress disorder and chronic fatigue syndrome and there should also be one medical witness or expert proving the above facts. There will be no compensation for mere anxiety, emotional outbreak etc.
 - ii. Test of Reasonable Foreseeability.
 - The law commission considered that the psychiatric damages should be tested beyond the simple foreseeability test and reasonable foreseeability should be used. First time it was used in the case of *Delieu v White & Sons*.

12. Malicious Prosecution / Abuse

(6m)

- Malicious Prosecution in torts is defined as an abuse of legal procedure by wrongfully using the law for a criminal charge.
- Malicious prosecution denotes the wrongful initiation of criminal proceedings. It is prosecution against a person without any likely cause that causes damages. It is a kind of tort, and the victim has the right that he even can sue the police authorities for any such wrong done by them.
- Liability arising out of malicious prosecution relies on the freedom to take any action, and the other is the necessity to look into the false accusations against the person. Criminal prosecuting attorneys and judges are exempted from malicious prosecution by the doctrine of prosecutorial immunity and judicial immunity.
- Essential elements of malicious prosecution
 - i. Prosecution by the defendant: It must be noted that any departmental enquiries against the plaintiff conducted by disciplinary authorities will not be considered prosecution. Prosecution refers to judicial proceedings through appeals.
 - ii. Absence of reasonable and probable cause: The plaintiff's responsibility is to prove to the court that he was prosecuted without reasonable cause by the defendants with malicious intent. Even if the reasonable, likely and probable motive exists, it is of no value if the prosecutor prosecutes the case in ignorance. It must be noted that the accused getting acquitted or the case getting dismissed should not be proof of the absence of reasonable and probable cause.
 - iii. The malicious act of the defendant: Malice isn't always only a feeling of ill will or a spirit of vengeance in the direction of the plaintiff; however, it may be to behave with any mistaken cause which motivates the prosecutor to benefit from the man or woman. It isn't always crucial that the defendant appear maliciously proper from the prosecution launched. If the prosecutor is initially harmless but becomes malicious, a motion for malicious prosecution can lie. If the pendency of crook prosecution, the defendant receives fantastic know-how of the accused's innocence, the continuance of the trial is malicious from that moment onwards.
 - iv. Proceedings are terminated in favour of the plaintiff: Termination here refers to the non-existence of judicial determination of the defendant's guilt. Malice is no longer defined just as a feeling of enmity, spite, or a spirit of vengeance against the

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plaintiff. Malice may also be any wrongful motivation that may help the prosecutor gain personal collateral.

- v. Damage caused to the plaintiff as a result of prosecution: The plaintiff can claim damages on the following three counts:
 - Damage to the plaintiff's reputation,
 - Damage to the plaintiff's person,
 - Damage to the plaintiff's property.

❖ Module - 3: Principles of Liability in Torts and Legal Remedies

1. Vicarious Liability (2m/6m/13m)
 - Generally, a person is liable for his own wrongful acts and one does not incur any liability for the acts done by others. In certain cases, however, vicarious liability, that is the liability of one person for the act of another person, may arise. In order that the liability of A for the act done by B can arise, it is necessary that there should be certain kind of relationship between A and B, and the wrongful act should be, in certain way, connected with that relationship.
 - A vicarious liability case is mostly reported when the personal benefit of a person is involved in cash or kind. However, it can also occur if a person intends to hit/damage another person, be it physical or reputational, due to a dispute between both parties.
 - Some of the wrongdoings that fall under vicarious liability are mentioned below:
 - i. Employers' liability for wrongful acts of employees
 - ii. Principals' liability for wrongful acts of agents
 - iii. Partners' liability for wrongful acts of each other
 - iv. Masters' liability for a wrongful act of servants
 - These wrongful doings could be a copyright violation, sexual abuse, confidentiality breach, physical and mental harassment, etc.
 - So Vicarious Liability deals with cases where one person is liable for the acts of others. In the field of Torts, it is considered to be an exception to the general rule that a person is liable for his own acts only. It is based on the principle of *qui facit per se per alium facit per se*, which means, "He who does an act through another is deemed in law to do it himself".
 - Constituents Of Vicarious Liability:
 - i. There must be a relationship of a certain kind.
 - ii. The wrongful act must be related to the relationship in a certain way.
 - iii. The wrong has been done within the course of employment.
 - **Types of Vicarious Liability:** [Maybe asked separately for 2m/6m]
 - i. Parental Liability: Though these incidents have different traits, they are categorized based on their nature of occurrences. For example, when a kid misbehaves, the parents are held responsible for their children's actions. This is termed parental liability.
 - ii. Employers Liability: In an organization, vicarious accountability holds employers responsible for an employee's misconduct as the former needs to constantly monitor the happenings and ensure they do not encourage any negativity in the workplace. Therefore, such incidents fall under the employers' liability label.
 - iii. Principal Liability: There are instances where owners allow another individual or entity to use their asset. While using the same, if the latter damages the property, the owner will be held responsible for the action. This is because it's the owners'

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responsibility to make sure the property is lent to someone trustworthy. Such liabilities are termed principal liability.

2. Vicarious Liability vs Strict Liability (2m)

- Vicarious liability and strict liability are two forms of liabilities that lead to major confusion among people. However, the two concepts differ widely.
- Vicarious liability is the legal responsibility the supervising or authoritative party has to take for the mistakes or crimes committed by their subordinates. On the other hand, strict liability, as the name implies, is an unescapable legal liability, which the authorities impose in situations where the mistakes or crimes are hazardous, and the law punishes the one responsible, irrespective of their intentions or mental status.
- For example, even if A unintentionally sells a product to a minor, believing him to be over 18, the law holds the seller strictly liable for the crime committed.

3. Explain Strict Liability with Essentials/Exemptions (2m/6m/13m)

- It is a kind of liability under which a person is legally responsible for the consequences flowing from an activity even in the absence of fault or criminal intent on the part of the defendant. It is basically a legal doctrine that holds a party (defendant) responsible for its actions, without the plaintiff having to prove the negligence or fault on the part of defendant.
- When any person involves in ultra hazardous activities such as keeping wild animals, using explosives or making defective products, then he/she may be held liable if any other person is injured because of that activity, even if the defendant took necessary precautions and followed safety requirement.
[For 2m, write till here]
- In Rylands v. Fletcher case, the defendant got a reservoir constructed through independent contractor. There were old unused shafts under the site of the reservoir, which the contractors failed to observe and so did not block them. When the water was filled in the reservoir, it burst through the shafts and flooded the plaintiff's coal mines on adjoining land.
- The defendant did not know about the shaft and had not been negligent, but he was held liable. This is also called the 'No fault' liability. In the given case, the liability recognised was 'strict liability' i.e., even if the defendant was not negligent or did not cause any intentional harm, he could still be liable under the rule.
- Essentials of Strict Liability: [Maybe asked separately for 2m/6m]
 - i. Dangerous Things: According to this rule, the liability for the escape of thing from one's land arises only when the thing collected was a dangerous thing. In Rylands v. Fletcher, the thing was large water body (reservoir). The rule is also applied to gas, electricity, vibration, sewage, explosive, etc.
 - ii. Escape: For the rule in Rylands v. Fletcher to apply, it is also essential that the thing causing the damage must escape to the area outside the occupation and control of the defendant. The case of Read v. Lyons and Co, is an example of no escape and hence no liability. In this case, the plaintiff was an employee in the defendant's ammunition factory, while she was performing her duties inside the defendant's remises, a shell, which was being manufactured there, exploded and she was injured. There was no evidence of negligence on the part of defendant. It was held that the defendant was not liable because there was no escape of thing outside the defendant's premises. So, the rule of Rylands v. Fletcher did not apply to this case.

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- iii. Non-natural Use of Land: There should be non-natural usage of land to make the defendant liable. Like in Rylands v. Fletcher case, collecting large body of water is considered to be non-natural use of land.
- Exceptions to the Rule of Strict Liability: **[Maybe asked separately for 2m/6m]**
 - i. Act of God: Act of God (vis major) was also considered to be a defence against the action of strict liability. If the escape has been unforeseen and takes place because of super natural forces without any human intervention, the defence of act of God can be pleaded.
 - ii. Consent of the Plaintiff: When the plaintiff has consented to the accumulation of the dangerous thing on the defendant's land, the liability under the rule does not arise. Such consent is implied where the source of danger is for the 'common benefit' of both the plaintiff and the defendant.
 - iii. Act of Third Party: If the harm has been caused due to act of a stranger, who is neither the defendant's servant nor the defendant has any control over him, the defendant will not be liable under this rule. Thus, in Box v. Jubb, the overflow from the defendant's reservoir was caused by the blocking of a drain by strangers, the defendant was not held liable for that.
 - iv. Statutory Authority: An act done under the authority of State is a defence to an action for tort. The defence is also available when the action is under the rule in Rylands v. Fletcher. Statutory authority however cannot be pleaded as a defence when there is negligence.
 - v. Plaintiff's Own Default: Damage caused by escape due to the plaintiff's own default was considered to be a good defence in Rylands v. Fletcher itself. If the plaintiff suffers damage by his own intrusion into the defendant's property, he cannot complain for the damage so caused.

4. Explain Rylands V/S Fletcher Case

(6m)

- Facts: The plaintiff and defendant were neighbouring property owners. The defendant, a mill owner hired independent contractors for the construction of a water reservoir on his land. While working, the contractors came across passages under the reservoir which was filled loosely only with Earth and Marl, but they chose to ignore the problem. Once the reservoir was full, water broke through these shafts, flooding the mine property owned by the plaintiff causing considerable damage. Thereafter, the plaintiff filed a suit against the defendant to recover his lost gains.
- Issue: The issue in Rylands V/S Fletcher the case is if the defendant would be held liable for an act executed by another.
- Judgement: Regardless of the defendant's plea, the House of Lords considers the respondent answerable for all harms endured in the mine. As per the law forced on this case, if an individual submits any activity with a conceivably unsafe medication on their reason, the person in question will be expected to take responsibility for any mischief caused by the spillage of the said material, if it got away because of their ineptitude.

5. Absolute Liability

[2m/6m]

- Absolute liability can be derived as, when an industry or enterprise is involved in an inherently dangerous activity or using hazardous substances and deriving commercial benefit out of them, and such an activity is capable of causing any damage, then the company officials will be absolutely liable to pay compensation to the aggrieved parties

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without any defence. They cannot plead that there was no negligence on their part and reasonable care was taken to prevent such an accident

- In case of Absolute liability, they neither plead defences like 'Act of God' nor 'Act of Stranger' which can be done in case of strict liability. This defence component primarily differentiates absolute liability from strict liability.
- This rule clearly holds that if an enterprise engages in a hazardous activity and this activity results in harm to anyone, the corporation would be held wholly responsible. Thereby, provoking the non-delegable and absolute nature of this principle.
- Essential Conditions in Absolute Liability: **[Maybe asked separately for 2m/6m]**
 - i. Hazardous Substance: According to the rules which are established, the liability of a substance escaping from someone's land will come into light only if the substance is hazardous or dangerous. The substance should be dangerous in that it is harmful and injurious and can cause damage. In simple words, there should be the use of any Hazardous substance cause such an accident. It can be poisonous gases, fumes, pollutants, water reservoir, explosives etc.
 - ii. Escape: To held liable the defendant, there should be an escape of a substance or a thing that caused harm or damage from the land of the defendant or the land which was under the control of the defendant. In other words, the hazardous substance should escape so that it causes some damage to a victim which give rise to absolute liability. But Escape within the premise can also be considered for absolute liability.
 - iii. Non- natural use of land: It can be clear from the facts of the case. Storing water for domestic purpose can be natural whereas storing water in reservoirs in large quantity can be non-natural. Similarly growing plants or trees on land can be natural whereas growing plants which is poisonous in nature can be unnatural.
 - iv. Mischief: In order to hold a defendant liable, the plaintiff needs to show that some hazardous substance had escaped and caused some damages.

6. Explain Legal Aspects of Bhopal Gas Tragedy (6m)

- The Bhopal gas tragedy is, till date, the world's worst industrial disaster. It occurred in December of 1984 at Bhopal in Madhya Pradesh. The tragedy was a result of the leak of the methyl isocyanate (MIC) gas from the Union Carbide India Ltd (UCIL) plant which manufactured pesticides.
- Background: On the night of December 2-3, 1984, there was a leak of the MIC gas which is considered to be the most toxic chemical in industrial use. All around the city of Bhopal, people were exposed to this gas and the immediate effects of inhaling the gas were coughing, vomiting, severe eye irritation and a feeling of suffocation. Thousands of people died immediately and lakhs of people sustained permanent injuries.
- The Legal Battle: In the February of 1985, the Indian Government filed a case in the U.S Court for a claim of \$3.3 billions against the Union Carbide Corporation. But by 1986 all of these litigations in the U.S District were transferred to India on the grounds of forum non conveniens. It means that the case should be transferred to a more convenient forum so that the trial proceeds smoothly. Meanwhile in March 1985, the Bhopal Gas Leak Disaster (Processing of Claims) Act was passed which empowered the Central Government to become the sole representative of all the victims in all kinds of litigations so that interests of the victims of the disaster are fully protected and the claims for compensation are pursued speedily. In the year 1987, cases were filed in the Bhopal District Court which ordered the Union Carbide Corporation to pay 350 crores as interim compensation. But the interim order could not be decreed and therefore the UCC refused to pay the amount. Later on, at the

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High Court, this interim compensation amount was reduced to 250 crores. Both the Union of India and the UCC preferred appeals by special leave against this High Court's order.

- The Settlement Order: - But a major twist to these legal proceedings came through the settlement order which was stroked out between the Indian Government and the Union Carbide in an out of Court settlement in February 1989. Through this deal the liability of the Union Carbide was fixed at \$470 million in full and final settlement of all claims, rights, and liabilities arising out of the disaster. The terms of the settlement were such that it limited liability under all future claims as well, whether they were civil or criminal. This would mean that henceforth, all kinds of liability arising out of the disaster could be fixed only upon the Government of India and the Union Carbide would be held liable only to the extent of \$470 million.

7. Legal Remedies in Tort

(2m/6m)

- When the aggrieved person is taken back to the position that they were enjoying before their rights were infringed, they are said to have been provided with a legal remedy. There are various types of legal remedies.
- For instance, if something that belongs to you has been taken away from you by a party, the court can either ask them to pay you back in money, or ask them to return your belongings as they were, and may also punish the party in some cases.
- Remedies in Tort Law are of 2 types:
 - i. Judicial Remedies: These are the remedies that the courts of law provide to an aggrieved party.
 - ii. Extra-Judicial Remedies: If the injured party takes the law in their own hand (albeit lawfully), the remedies are called extra-judicial remedies.

[For 2m, write till here]

- i. Judicial remedies:
 - They are of 3 main types:
 - a) Damages: Damages or legal damages is the amount of money paid to the aggrieved party to bring them back to the position in which they were before the tort had occurred. They are paid to a plaintiff to help them recover the loss they have suffered. Damages are the primary remedy in a cause of action for torts. The word “damages” should not be confused with the plural of the word “damage” which means ‘harm’ or ‘injury’.
 - b) Injunction: Injunction is an equitable remedy available in torts, granted at the discretion of the court. An equitable remedy is one in which the court, instead of compensating the aggrieved party, asks the other party to perform his part of the promises. So, when a court asks a person to not continue to do something, or to do something positive so as to recover the damage of the aggrieved party, the court is granting an injunction.
 - c) Specific Restitution of Property: the third judicial remedy available in the Law of Torts is that of Specific Restitution of Property. Restitution means the restoration of goods back to the owner of the goods. When a person is wrongfully dispossessed of his property or goods, he is entitled to the restoration of his property.
- ii. Extra-judicial Remedies in Tort
 - These are of five main types:
 - a) Expulsion of trespasser: A person can use a reasonable amount of force to expel a trespasser from his property.

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- b) Re-entry on land: In this case, the owner of a property can remove the trespasser and re-enter his property by using a reasonable amount of force.
- c) Re-capture of goods: In this case, the owner of goods is entitled to recapture his/her goods from any person whose unlawful possession they are in.
- d) Abatement: In case of a nuisance, be it private or public, a person (the injured party) can remove the object causing nuisance.
- e) Distress Damage Feasant: Lastly, distress damage feasant. In this case, a person's cattle/other beasts move to another's property and his crops are spoiled. The owner of the property is entitled to take possession of the beasts until he is compensated for the loss suffered by him.

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❖ Module - 4: Concept of Consumer & CPA, 2019

1. Define Consumer (2m)
 - A consumer is an individual or group of individuals who purchase goods and services for their own personal use and not for the purpose of manufacturing or resale.
 - Section 2(7) of the Consumer Protection Act, 2019 defines a consumer as any person who buys goods or services in exchange for consideration and utilises such goods and services for personal use and for the purpose of resale or commercial use.
 - In the explanation of the definition of consumer, it has been distinctly stated that the term 'buys any goods' and 'hires or avails any services' also includes all online transactions conducted through electronic means or direct selling or teleshopping or multi-level marketing.
2. Defect in Goods (6m)
 - To help customers settle their complaints more quickly and easily, the Consumer Protection Act of 1986 was established. The Act explicitly provided the word "customer" extra rights and special safeguards for the first time. It is important to note that the Act's intent is to protect all consumers, not just those in the traditional sense. The Act is comprehensive because its main objective is to preserve consumers' interests by protecting them from subpar products, subpar services, unfair business practises, and restricted business activities. To guarantee that vendors behave in the public interest and safeguard consumer rights against dishonest practises, the government has passed a number of legislations.
 - Goods: Term goods is defined under Section 2(21) of the Consumer Protection Act, 2019. According to this section, goods mean any property which is movable. Goods also include food as defined under section 3(1)(j) of the Food Safety and Standards Act, 2006. Illustration: A brought a book from B for a consideration of Rs. 500. Here, the book is a tangible good and Rs. 500 is the amount paid for it as a consideration.
 - Defect:
 - Every consumer desire that the goods he bought are in a situation as desired by him means there shouldn't be any defect in it but, how can we define this defect?
 - Section 2(10) defines a defect as any
 - Shortcoming
 - Imperfection
 - Fault

in some parameters of goods such as: purity, quality, quantity, potency, or standard which the producer is required to maintain or provided under any law or any contract or implied by the trader in any manner.
 - Defective Goods / Defect in Good: From the above definitions, it is easy to identify a defective good. Goods that include any of the shortcomings given under section 2(10) of the Consumer Protection Act, 2019 is a defective good.
 - Illustrations:
 - i. Adulterated milk is a defective good.
 - ii. Beauty products which may badly affect users' skin is a defective good.
3. Objective of the Consumer Protection Act, 2019 (6m)
 - The main objective of the Act is to protect the interests of the consumers and to establish a stable and strong mechanism for the settlement of consumer disputes. The Act aims to:
 - i. Protect against the marketing of products that are hazardous to life and property.

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- ii. Inform about the quality, potency, quantity, standard, purity, and price of goods to safeguard the consumers against unfair trade practices.
- iii. Establish Consumer Protection Councils for protecting the rights and interests of the consumers.
- iv. Assure, wherever possible, access to an authority of goods at competitive prices.
- v. Seek redressal against unfair trade practices or unscrupulous exploitation of consumers.
- vi. Protect the consumers by appointing authorities for timely and sufficient administration and settlement of consumers' disputes.
- vii. Lay down the penalties for offences committed under the Act.
- viii. Hear and ensure that consumers' welfare will receive due consideration at appropriate forums in case any problem or dispute arises.
- ix. Provide consumer education, so that the consumers are able to be aware of their rights.
- x. Provide speedy and effective disposal of consumer complaints through alternate dispute resolution mechanisms.

4. What are consumer rights under Consumer Protection Act, 2019 (6m)

- There exist six rights of a consumer under the Consumer Protection Act, 2019. The rights of the consumers are mentioned under Section 2(9) of the Act, which are as follows:
 - i. The right of a consumer to be protected from the marketing of goods and services that are hazardous and detrimental to life and property.
 - ii. The right of a consumer to be protected against unfair trade practices by being aware of the quality, quantity, potency, purity, standard and price of goods, products or services.
 - iii. The right of a consumer to have access to a variety of goods, services and products at competitive prices.
 - iv. The right to seek redressal at respective forums against unfair and restrictive trade practices.
 - v. The right to receive adequate compensation or consideration from respective consumer forums in case they have been wronged by the seller.
 - vi. The right to receive consumer education.

5. Services / Types of Services: (2m)

- Services as per sec 2(1)(o) of Consumer Protection Act, means and includes – banking, financing, insurance, transport, processing, supply of electric energy, board or lodging or both, entertainment, amusement or purveying of news or other information. Exclusion- those rendered free of charge or personal services.
- Characteristics of Services:
 - i. Two party process: there has to be a service provider and service recipient.
 - ii. It has to be intangible and invisible, i.e., it cannot be seen or touched.

6. Consumer Service (2m)

- Consumer service is an intangible product offered to households, not to businesses. Service delivery involves service providers, e.g., company staff; equipment such as vehicle equipment, cash registers, electronic devices; physical facilities such as buildings; customer contacts; and individual service users.

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- Various examples of consumer service are around you. They include services provided by hotel companies, personal insurance, rail travel, education, health care, recreation, catering, tourism, finance, entertainment, and home maintenance.

7. Deficiency of Services

(6m)

- According to the definition under Section. 2(11) of Consumer Protection Act 2019 ("the Act"), any sort of imperfection, or defect in the feature, quality, amount, worth, authenticity, its capacity or potential, and standard which is obligatory to be maintained and regulated as per the laws and statutes in function or any agreement/contract claimed by the seller, with respect to the products and goods, is known as deficiency.
- Wilful and deliberate concealment of important information, omission or negligence of acts by seller which may lead to injury or loss to the consumer(s), also comes under the ambit of deficiency of service.
- Any act(s), which a prudent seller is supposed to do or is supposed to omit, but deliberately does the contrast, such actions amount to 'deficiency of service'.
- When a service is found deficient by a consumer, they can lodge a complaint under the Consumer Protection Act, 2019. Thus, the prime requirement is that the matter must fall within the "definition of service", and it must entail a deficiency as per the requirements provided under the Consumer Protection Act, 2019.
- Deficiency of service can be witnessed in any service sector where there is buyer-seller relationship, such as, railways, banks, legal aid, electricity, construction, education, transportation, aviation, hospitality, restaurants, entertainment etc. Deficiency of service can have minor to grave consequences, ranging from inconvenience or harassment to mental or physical injury to death, thereby leading to legal consequences.
- The Consumer Protection Act (both old and new) is a legislation enacted in India with the sole purpose of protecting and safeguarding the interests of consumers. The Consumer Protection Act, 2019, which came into effect on July, 20 2020, not only covers within its ambit physical platforms for buyer-seller relationship but also recognizes services provided by E-commerce platforms.

8. Denial of Services

(6m)

- The Consumer Protection Act, 1986 was enacted to provide simple and quick access to the redressal of consumer grievances. The concept of consumer was introduced through this act and was conferred with express additional rights. It is mentionable that the Act doesn't seek to protect every consumer within the literal meaning of the term. The protection is meant for the person who fits in the definition of consumer given by the Act.
- Denial of Services under Consumer Protection Act, 2019 refers to the act of a service provider or seller refusing to render services or sell products to a consumer without any reasonable justification. This includes the refusal to accept a consumer's request for the supply or provision of goods and services. The Consumer Protection Act, 2019 ensures that consumers have the right to obtain goods and services without any discrimination or arbitrary behaviour from the service provider or seller. Any person who violates the consumer's right to obtain goods and services without any discrimination can be held liable under the act.
- Denial of Services under the Consumer Protection Act, 2019 is one of the unfair trade practices that is prohibited under the act. It is defined under Section 2(47) of the act, and it includes the following:
 - i. Refusal to sell goods or provide services to a consumer.

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- ii. Placing unreasonable conditions on the sale or provision of goods and services.
 - iii. Delaying the sale or provision of goods and services without any reasonable justification.
 - iv. Denying permission to purchase goods or services without any reasonable justification.
 - The act makes it clear that no service provider or seller can refuse to sell goods or provide services to a consumer on the basis of the consumer's religion, caste, gender, place of birth, or any other ground that is discriminatory and arbitrary.
 - If a consumer faces denial of services, they can file a complaint under the Consumer Protection Act, 2019. The consumer can approach the consumer court or the district forum, depending on the value of the goods or services involved in the case. The consumer court can order the service provider or seller to provide the requested services or goods to the consumer and can also award compensation to the consumer as deemed fit.
9. What is a 'Complaint' [For 2m, write any 2] (2m/6m)
- "Complaint" means any allegation in writing, made by a complainant for obtaining any relief provided by or under this Act, that—
 - i. an unfair contract or unfair trade practice or a restrictive trade practice has been adopted by any trader or service provider.
 - ii. the goods bought by him or agreed to be bought by him suffer from one or more defects.
 - iii. the services hired or availed of or agreed to be hired or availed of by him suffer from any deficiency.
 - iv. a trader or a service provider, as the case may be, has charged for the goods or for the services mentioned in the complaint, a price in excess of the price— (a) fixed by or under any law for the time being in force; or (b) displayed on the goods or any package containing such goods; or (c) displayed on the price list exhibited by him by or under any law for the time being in force; or (d) agreed between the parties.
 - v. the goods, which are hazardous to life and safety when used, are being offered for sale to the public – (a) in contravention of standards relating to safety of such goods as required to be complied with, by or under any law for the time being in force (b) where the trader knows that the goods so offered are unsafe to the public.
 - vi. the services which are hazardous or likely to be hazardous to life and safety of the public when used, are being offered by a person who provides any service and who knows it to be injurious to life and safety.
 - vii. a claim for product liability action lies against the product manufacturer, product seller or product service provider, as the case may be – Section 2(6) of Consumer Protection Act, 2019.
10. Complainant (2m)
- Complaint can be filed by 'complainant'.
 - "Complainant" means –
 - i. a consumer; or
 - ii. any voluntary consumer association registered under any law for the time being in force; or
 - iii. the Central Government or any State Government; or
 - iv. the Central Authority; or (v) one or more consumers, where there are numerous consumers having the same interest; or

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- v. in case of death of a consumer, his legal heir or legal representative; or
- vi. in case of a consumer being a minor, his parent or legal guardian – Section 2(5) of Consumer Protection Act, 2019.

11. Consumer Dispute (2m)

- "Consumer dispute" means a dispute where the person against whom a complaint has been made, denies or disputes the allegations contained in the complaint.
- A consumer dispute under the Consumer Protection Act, 2019 refers to a disagreement or conflict that arises between a consumer and a service provider or seller regarding the sale or provision of goods and services. The Consumer Protection Act, 2019 provides a legal framework for the protection of consumer rights and grievances, and it aims to ensure that consumers receive fair treatment and protection from unfair trade practices.
- Under the act, a consumer dispute can be filed by a consumer or a group of consumers against a service provider or seller, seeking relief for any unfair trade practices or deficiency in goods and services. The consumer dispute can be filed before the appropriate consumer court or forum, depending on the value of the goods and services involved in the dispute.

12. Consumer Protection Council: (6m/13m)

- The Consumer Protection Council is an organisation that provides legal assistance to Indian consumers. They do this by developing and promoting effective consumer protection measures, as well as educating people about their rights under the law. It has a wide range of services that it offers, including product liability, consumer disputes, and credit information. Additionally, the council conducts awareness campaigns to educate people about their rights as consumers.
- The council offers free information and support to individuals who have been wronged by companies or government agencies. So, whether you're the victim of a scam or just feel like you've been wronged in the past, the Consumer Protection Council can help.
- **Composition of the Consumer Protection Council:**
 - i. The Consumer Protection Council acts as the mediator between businesses and consumers, providing education and legal interpretations of consumer rights. In addition, the council tries to make it easier for consumers to take action if they feel that their rights have been violated.
 - ii. The Consumer Protection Council is a government body that looks after the interests of consumers in India. It has a total of 20 members and all are appointed by the President of India on the advice of the Prime Minister. The term of all members is 5 years and they can be re-appointed once their term ends. The primary mandate of the council is to provide effective and affordable consumer protection through the formulation, implementation, and review of consumer-related laws/regulations. It also provides guidance to other government departments/organisations on issues pertaining to consumer affairs. Overall, the council plays an important role in ensuring that consumer interests are always well-protected.
- **Objectives of the Consumer Protection Council:**
 - i. The Consumer Protection Council provides impartial advice and support to consumers with regard to their rights under the law. Its members are experts in consumer protection and come from different parts of the business community. They work together to provide objective, impartial guidance, and support to consumer concerns. In addition, the council also works towards increasing consumer

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awareness of their rights and protecting businesses from unfair practices by customers.

- ii. It performs functions like:
 - To formulate policy guidelines for the protection and promotion of consumer interests.
 - To provide guidance on matters relating to consumer protection.
 - To advise Government on all issues related to consumer protection.
 - To monitor compliance with rules/regulations issued by the Government or any other authority or organisation as per directions given by it.
 - To receive complaints from consumers regarding violations or non-compliance with any provision.

13. Redressal Agencies under the Consumer Protection Act, 2019 (2m/6m/13m)

- According to the Consumer Protection Act 2019, a Consumer is a person who buys any goods or avails any services for a consideration, which has been paid or promised to pay or partly paid or partly promised or under any scheme of deferred payment. A consumer also includes a person who is using the goods or beneficiary of service with the approval of the buyer and applies to both online and offline transactions through electronic means of teleshopping or direct selling or multilevel marketing.
- The three redressal agencies under the Consumer Protection Act, 2019 are:
 - i. District Commission,
 - ii. State Commission, and
 - iii. National Commission.

[For 2m, write till here]

i. **District Commission:**

- A district commission includes a president (who can be a working or retired judge of the District Court) and two other members. They are appointed by the state government. One can file a complaint for goods and services of ₹1 crore or less in this agency. For the complaints filed, if the district commission feels a requirement, it sends the goods to the laboratory for testing and gives its decision based on the laboratory report and facts.
- If the aggrieved party is not happy with the jurisdiction of the district commission, then they can appeal against the judgment of this agency in the State Commission within 45 days.

ii. **State Commission:**

- A state commission includes a president (who must be a working or retired judge of the High Court) and at least two other members. They are appointed by the state government. One can file a complaint of goods and services worth less than ₹10 crores and more than ₹1 crore in this agency. After receiving a complaint from the aggrieved party, the state commission contacts the party against whom the complaint has been filed. Also, for the complaints filed, if the state commission feels a requirement, it sends the goods to the laboratory for testing.
- If the aggrieved party is not happy with the jurisdiction of the state commission, then they can appeal against the judgment of this agency in the National Commission within 30 days by depositing 50% of the fine money.

iii. **National Commission:**

- A national commission includes a president and four other members one of whom shall be a woman, and Central Government appoints them. One can file a complaint

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of goods and services worth more than ₹10 crores in this agency. After receiving a complaint from the aggrieved party, the national commission informs the party against whom the complaint has been filed. Also, for the complaints filed, if the state commission feels a requirement, it sends the goods to the laboratory for testing, and then gives judgement based on the reports.

- If the aggrieved party is not happy with the jurisdiction of the national commission, then they can appeal against the judgment of this agency in the Supreme Court within 30 days by depositing 50% of the fine money.

14. District Commission v/s State Commission v/s National Commission (6m)

Basis	District Commission	State Commission	National Commission
Composition	A district commission includes a president and two other members, and one of the members has to be a woman.	A state commission includes a president and at least two other members, and one of the members has to be a woman.	A national commission includes a president and four other members one of whom shall be a woman.
Who can be a President	A working or retired judge of the District Court can be a president of the District Commission.	A working or retired judge of the High Court can be a president of the State Commission.	A working or retired judge of the Supreme Court can be a president of the National Commission.
Appointment of President	By taking the recommendation of the selection committee, the state government appoints the president of the District Commission.	After consulting with the Chief Justice of the High Court, the state government appoints the president of the State Commission.	After consulting with the Chief Justice of India, the central government appoints the president of the National Commission.
Jurisdiction	One can file a complaint for goods and services of ₹1 crore or less.	One can file a complaint of goods and services worth less than ₹10 crores and more than ₹1 crore.	One can file a complaint of goods and services worth more than ₹10 crores.
Appeal against orders	If the aggrieved party is not happy with the jurisdiction of the district commission, then they can appeal against its judgment in the State Commission within 45 days.	If the aggrieved party is not happy with the jurisdiction of the state commission, then they can appeal against its judgment in the National Commission within 30 days by depositing 50% of the fine money.	If the aggrieved party is not happy with the jurisdiction of the national commission, then they can appeal against its judgment in the Supreme Court within 30 days by depositing 50% of the fine money. However, one can file the complaint only when the value of goods and services exceeds ₹10 crores.

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15. Write a Short Note on Motor Vehicle Act, 1988

(2m/6m/13m)

- The Motor Vehicle Act is a law relating to torts that is founded on the concept that every injury has a remedy. At this point, the idea of compensating and giving damages comes into action. The Motor Vehicle Act of 1988 has been regarded as a welfare law aiming at offering relief to those who have been harmed. There existed the Motor Vehicle Act of 1939, which combined all motor vehicle legislations, but it had to be regularly amended in order to be updated. With advancements in road transport technology and road network growth, as well as changes in passenger transport patterns, it was necessary that the Act was revised to cover all new methods relevant to motor vehicles.
- This Motor Vehicle Act is mainly concerned with granting relief to innocent people on the road who are frequent victims of accidents and then find themselves without a claim to the compensation that they should normally receive. All vehicle drivers must have a driving licence under this Act. This also requires the registration of a vehicle under the Act, which has a 15-year validity duration and can be renewed for another 5-year period. The Motor Vehicle Act of 1988 includes not just licencing and registration, but also other aspects of road transport vehicles.
- Motor insurance is required to have at least third-party insurance in order to register and drive a car on Indian roads. However, the New Motor Vehicle Act Of 2019 proposes a Rs.2000/- fine, 3 months in jail, and community service for driving without insurance, as well as Rs.4,000/- punishment for repeated offences.

[For 2m, write till here]

- **Objectives of the Motor Vehicle Act, 1988:** **[Maybe asked separately for 2m/6m]**

The Indian Motor Vehicle Act of 1988 was established to solve the following issues:

- i. Sticking to strict procedures for granting licences and calculating the validity period of such licenses.
 - ii. To maintain road safety requirements, dangerous and explosive material transportation rules, and pollution control measures.
 - iii. To maintain the country's rapidly growing quantity of personal and commercial cars.
 - iv. To raise the amount of compensation available to hit-and-run cases.
 - v. To eliminate the time limit for traffic accident victims to file a compensation claim.
 - vi. Offences covered under the Motor Vehicle Act
- **The following are the offences covered under the original Motor Vehicle Act that includes:**
 - i. Driving without a license,
 - ii. Allowing someone without a licence to operate a vehicle owned by the vehicle owner,
 - iii. Failing to possess all of the relevant documentation required to operate a motor vehicle on Indian roads,
 - iv. Driving without a permit if required,
 - v. Driving without a vehicle fitness report, driving without a registration certificate or R.C,
 - vi. Operation of a vehicle by a minor,
 - vii. Allowing an unauthorised individual to operate a vehicle,
 - viii. Riding certain motor vehicles without a helmet,
 - ix. Driving without fastening the driver's seat belt,
 - x. Exceeding the speed limit and rash driving,
 - xi. Risky driving,
 - xii. Driving against the flow of traffic in a one-way lane, and other violations are considered offences under the Act

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16. What is Claims Tribunal?

(13m)

- Established by Motor Vehicle Act 1988, Claims Tribunal is defined under Chapter XII in Section 165 which authorizes the State Government to constitute Claims Tribunals to adjudicate on the claims for compensation which emerge from motor vehicle accidents, ensuing death or bodily injury to persons or damage to any property of third parties. Its objective is to provide remedy to the victims of accident by motor vehicles in appropriate time without any procrastination. Motor Accident Claims Tribunals [MACT Courts] handle those claims which are in relation to loss of life/property or those injury cases arising out of Motor Accidents.
- These Claims need to be directly filed in the respective Tribunal. MACT Courts are administered by Judicial Officers from Delhi Higher Judicial Service. Currently these Courts are under immediate supervision of the High Courts of various States. Under Section 165 (2) the number of members to be assigned in Claims Tribunal is more than/equal to two, one of them is to be nominated as the Chairman and under Section 165 (3), the eligibility for the appointment of members is that the member should be a Judge of a High Court or District Judge or ought to be eligible for appointment as a Judge of a High Court or District Judge
- **Claim for Compensation under Motor Vehicle Act:**
 - i. Who can claim compensation?
 - Section 166 of MV Act 1988 illustrates who can plead for compensation in MACT in a motor accident case. A person who has himself sustained injury or he owns the property or he is the legal representative of the deceased who died in the motor accident or he is the agent authorized by the injured person, or by the legal representatives of the deceased, as the case maybe- can claim compensation.
 - ii. When can compensation be claimed?
 - The limitation period i.e., the time period during which the claim for compensation can be realised is six months from the occurrence of the accident. This time period has been fixed under the 2019 Amendment Act.
 - It means that after the expiration of six months, application claiming damages cannot be claimed. It is further illustrated that if the victim claims compensation according to the procedures formed under Section 164 provided under Section 149, the application for compensation filed before the Claims Tribunal shall be dropped.
 - iii. Where can the application for compensation be filed?
 - It is at the option of the claimant to file an application for compensation. The application can be filed either at the Claims Tribunal of the area where the accident occurred or at the Claims Tribunal of the area where the claimant resides/ carries business or at the Claims Tribunal of the area where the defendant resides.
- **Powers and Procedures of Claims Tribunal:**
 - i. Under Section 169, the Claims Tribunal has the power to formulate and establish its own procedure. It possesses all the powers of the Civil Court in the case of taking evidence on oath, of effectuating the attendance of witnesses and of mandating the discovery and production of documents and material objects and for such other purposes as may be specified.

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- ii. It shall be considered a Civil Court for all the objectives to be fulfilled under section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973. The importance of this tribunal is that it ensures speedier adjudication of compensation suits without shaping it into elaborate and long drawn proceedings and hence, preventing undue delay in providing remedy.
- iii. Claims Tribunal has the liberty to nominate one or more persons who are equipped with certain special knowledge about any issue that is related with inquiry of the compensation claims. With the 2019 Act, for successful execution of Tribunal's decision on any compensation claim, it is authorised to execute a decree under the Code of Civil Procedure, 1908 which is similar to that of Civil Court.
- iv. Under Section 175, the civil courts do not have the authority to entertain any question related to compensation claims in areas where Claims Tribunal has been constituted and is not answerable to the Civil Court for any action or decision made by the Tribunal and also it does not have the authority to direct in any manner to the Tribunal with regard to any issues of compensation claims.

17. Liability without fault / The Non- Fault Liability (6m/13m)

- The principle of No Fault was developed to provide the victim with some sort of relief in case of hit and run and such cases. Being welfare state, denial of the compensation over the fact that: There was a contributory negligence on part of the victim or where the negligence of the driver of a vehicle was not established beyond the reasonable doubt, defeats the idea of social justice, and so the provision was made that driver or the owner should be held without taking the fact of contributory negligence into consideration.
- There was doubt as to in which way does the principle of No-fault liability differs from the principle of Strict liability. In the case of the No-fault liability the compensation is fixed, on the other-hand, in the case of Strict liability is not fixed, but is upon the discretion of the court. The former principle is different from the common law principle which says that the claimant should establish the act of negligent and rash driving on the part of owner or the driver to claim the compensation. However, the section 140 to section 144 of the Motor Vehicle Act, 1988 provides exception to such rule.
- Section 140 of The Motor Vehicle Act 1988:
The act provides the provision for the payment of the compensation to the aggrieved, in case of death or permanent disability by the vehicle of defendant, by himself or the driver of any such vehicle. According to section 140, No fault liability is to be invoked when a death or permanent disability has been resulted from an accident arising out of a motor vehicle.
- Case Laws:
 - i. Manjit Singh Vs. Rattan Singh: the court in the following case held that amended section.140 w.e.f. 14/11/1994 which has raised the amount of the compensation is applicable retrospectively. And so, for an accident leading to death, before the amended was made, the compensation was computed by the Tribunal for Rs.30,000/- was raised to Rs. 50,000/-. This verdict however needs reconsideration. The compensation shall be payable as per the law applicable as the time of accident took place.
 - ii. The Oriental Insurance Co. Ltd. Vs. Seela Ratnan and Ors.: The court in the above case ruled that, Section6(c) of the General Clause Act would be applied in the concerned case and the amendments made as in Section 140 of the Motor Vehicles Act, 1988 cannot be applied in the case retrospectively. And so, any claim made before the amendment came into the force shall not be governed as per the

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amendments made, meanwhile shall be subjected to the compensation as per earlier provisions. "When an accident has occurred before the commencement of 1988 Act no fault liability can be granted as per Section 92-A of the repealed Act and not under Section 140 of the 1988 Act.

- The no fault liability under section 140, of the Motor Vehicle Act, 1988, intend to provide the immediate relief to the aggrieved victim, or the heir or legal representative of the victim, of the accident caused by the Motor vehicle, resulting death or permanent disability. The compensation under section 140 of the act is Rs.25,000/- for the accident resulting permanent disability and Rs.50,000/- for the accident resulting death. It is noteworthy, that no burden of proof is laid upon the victim of the aggrieved party, neither the fact that they were negligent shall be subjected to decide the compensation.

18. Third Party Insurance / Third Party Risks:

(6m)

- In India, under the provisions of the Motor Vehicles Act, 1988, it is mandatory that every vehicle should have a valid Insurance to drive on the road. Any vehicle used for social, domestic and pleasure purpose and for the insurer's business motor purpose should be insured.
- Insurance is a contract whereby one party, the insurer, undertakes in return for a consideration, the premium, to pay the other, the insured or assured, a sum of money in the event of the happening of a, or one of various, specified uncertain events.
- There are two quite different kinds of insurance involved in the damages system. One is Third Party liability insurance, which is just called liability insurance by insurance companies and the other one is first party insurance.
- A third-party insurance policy is a policy under which the insurance company agrees to indemnify the insured person, if he is sued or held legally liable for injuries or damage done to a third party. The insured is one party, the insurance company is the second party, and the person you (the insured) injure who claims damages against you is the third party.
- **Salient Features of Third-Party Insurance:**
 - i. Third party insurance is compulsory for all motor vehicles. In *G. Govindan v. New India Assurance Co. Ltd.*, Third party risks insurance is mandatory under the statute. This provision cannot be overridden by any clause in the insurance policy.
 - ii. Third party insurance does not cover injuries to the insured himself but to the rest of the world who is injured by the insured.
 - iii. Beneficiary of third-party insurance is the injured third party, the insured or the policy holder is only nominally the beneficiary of the policy. In practice the money is always paid direct by the insurance company to the third party (or his solicitor) and does not even pass through the hands of the insured person.
 - iv. In third party policies the premiums do not vary with the value of what is being insured because what is insured is the legal liability' and it is not possible to know in advance what that liability will be.
 - v. Third party insurance is almost entirely fault-based. (Means you have to prove the fault of the insured first and also that injury occurred from the fault of the insured to claim damages from him)
 - vi. Third party insurance involves lawyers aid
 - vii. The third-party insurance is unpopular with insurance companies as compared to first party insurance, because they never know the maximum amounts, they will have to pay under third party policies.