

Tort in Legal Medicine: Literature Review

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Abstract

Legal medicine relies on tort law to address civil wrongs in healthcare. Medical malpractice, informed consent violations, and negligence are common torts. They provide a legal framework for patients seeking redress due to harm caused by healthcare professionals' actions or negligence, ensuring accountability and upholding standards of care.

Keywords: Tort; Crime; Legal medicine; Negligence; Crime; Contract.

Synopsis

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- Contact vs Contract
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INTRODUCTION

Tort law plays a crucial role in legal medicine, serving as a framework that addresses civil

wrongs and liabilities arising from medical practices. In the context of legal medicine, a tort refers to a civil wrongdoing or harm caused by a healthcare professional's negligence or intentional misconduct. This area of law seeks to provide compensation to individuals who have suffered injury or harm due to the actions or omissions of medical practitioners.

One common type of medical tort is medical malpractice, where healthcare providers fail to meet the standard of care expected in their profession, resulting in harm to the patient. This may include misdiagnosis, surgical errors, medication mistakes, or inadequate treatment. Legal medicine often grapples with cases involving complex medical

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evidence, requiring expert testimony to establish the breach of duty and causation.

Another relevant tort in legal medicine is the concept of informed consent. Patients have the right to be fully informed about the risks, benefits, and alternatives of a medical procedure before giving their consent. Failure to obtain proper informed consent can lead to legal repercussions for healthcare professionals.

Moreover, the concept of negligence is paramount in legal medicine. Negligence in the medical context involves a breach of the duty of care owed to a patient, causing harm. Proving negligence requires establishing that the healthcare provider deviated from the standard of care, which is often a contentious and intricate process.

DEFINITIONS

TORT

The word 'tort' is derived from 'tortus' meaning 'twisted'. From there it came to mean 'wrong' and it is still so used in French. In English, the word 'tort' has a purely technical legal meaning—a legal civil wrong for which the law provides a remedy.¹

In Ballentine's Law Dictionary² the term has been defined comprehensively as under:

Tort: A wrong. A wrong independent of contract. A breach of duty which the law, as distinguished from a mere contract, has imposed. An injury or wrong committed, either with or without force, to the person or property of another. Such injury may arise by the nonfeasance, by malfeasance or by the misfeasance by the wrongdoer.

Extort: To get something by using threats or violence.

Distort: To change the shape or sound of something so that it seems strange.

CONTRACT

Contract: The term has been defined in Black's Law Dictionary³ as under:

"Contract. An agreement between two or more persons which creates an obligation to do or not to do a particular thing. As defined in Restatement, Second, Contracts: A contract is a promise or a set of promises for the breach of which the law in some way recognises as a duty. A legal relationship consisting of the rights and duties of the contracting parties, a promise or set of promises constituting

an agreement between the parties that gives each a legal duty to the other and also the right to seek a remedy for the breach of those duties. Its essentials are competent parties, subject matter, a legal consideration, mutuality of agreement, and mutuality of obligation. Express and implied.

Express Contract: An express contract is an actual agreement of the parties, the terms of which are openly uttered or declared at the time of making it, being stated in distinct and explicit language, either orally or in writing.

NEGLIGENCE

Negligence means: the omission to do something which a reasonable man, guided by those ordinary considerations which ordinarily regulate human affairs, would do or the doing of something which a reasonable and prudent man would not do.⁴

The term Negligence has been defined in the Book on Medical Negligence & Compensation. 4th Ed. By Dr. Jagdish Singh & Adv. Vishwa Bhushan. BLP (2014),⁵ as under: In case of Municipal Corpn. of Greater Bombay v Laxman Iyer, 2003,⁶ A case of Motor accident, Supreme Court observed that Negligence is not solely synonymous with absolute carelessness but rather denotes a lack of the requisite degree of care demanded by specific circumstances. It encompasses the failure to uphold the necessary level of care, precaution, and vigilance to safeguard the interests of another person, resulting in harm to that individual. The concepts of negligence and duty are inherently interconnected. Negligence can be understood subjectively as a state of mind marked by carelessness or objectively as negligent conduct. It is a relative, rather than absolute, term, lacking a universally fixed standard or precise formula for measurement. Determining negligence involves a comprehensive consideration of all relevant facts and circumstances, varying under different conditions. The key question in evaluating negligence lies in assessing whether a reasonable person would foresee the potential damage caused by a particular act. Non-compliance with legal obligations or a deviation from the prescribed manner, mode, or method outlined by the law inherently constitutes negligence. Thus, negligence is contingent on a contextual analysis of surrounding factors to ascertain whether an act qualifies as negligent.⁶

Professional Negligence

Negligence as defined above, committed by a professional person. A professional is one

engaged in one of the learned professions or in an occupation requiring a high level of training and proficiency.⁷

Medical Negligence

Medical negligence is defined as lack of reasonable care and skill or willful negligence on the part of a doctor in respect to acceptance of a patient, history taking, examination, diagnosis, investigation, treatment medical or surgical, etc. resulting in injury or damage to the patient.⁸ The law requires that the practitioner must bring to his task a reasonable degree of skill and knowledge and must exercise a reasonable degree of care. The law does not expect the very highest nor a very low degree of care and competence judged in the light of the particular circumstances of each case.⁹

Damage

The term 'damage' means physical, mental or functional injury to the patient.¹⁰

Gross Negligence

The term has been defined in Black's Law Dictionary¹¹ as under: The intentional failure to perform a manifest duty in reckless disregard of the consequences. Ordinary negligence, dealt with under an earlier question is based on the fact that one ought to have known results of his acts, while gross negligence rests on the assumption that one knew results of his acts, but was recklessly or wantonly indifferent to results.¹²

CRIME

A positive or negative act in violation of penal law; an offense against the State.¹³

Crimes are those wrongs which the government notices as injurious to the public, and punishes in what is called a "criminal proceeding," in its own name. A crime or public offense is an act committed or omitted in violation of a law forbidding or commanding it, and to which is annexed, upon conviction, either of the following punishments: (1) Death; (2) imprisonment; (3) fine; (4) removal from office; or (5) disqualification to hold and enjoy any office of honor, trust, or profit in this state.

Criminal Case

An action, suit, or cause instituted to punish an infraction of the criminal laws.¹⁴

Criminal Negligence

Negligence of such a character, or occurring under such circumstances as to be punishable as a crime by a statute; or such a flagrant and reckless disregard of the life and safety of others, or willful indifference to the injury liable to follow, as to convert an act, otherwise lawful, into a crime against the State when it results in personal injury or death. Here the negligence is so great as to go beyond matter of mere compensation.¹⁴ A crime or misdemeanor shall consist in a violation of a public law, in the commission of which there shall be a union or joint operation of act and intention, or criminal negligence.¹⁵

Criminal Assault and Battery

The term has been defined in Black's Law Dictionary¹⁶ as: An accused may be guilty of a "criminal assault and battery" if he intentionally does an act which by reason of its wanton and grossly negligent character exposes another to personal injury and in fact causes injury.¹⁷

Criminal Gross Negligence

The term has been defined in Black's Law Dictionary¹⁸ as: Gross negligence is culpable or criminal when accompanied by acts of commission or omission, of a wanton or willful nature, showing a reckless or indifferent disregard of the rights of others, under circumstances reasonably calculated to produce injury, or which make it not improbable that injury will be occasioned, and the offender knows or is charged with knowledge of the probable result of his acts; "culpable" meaning deserving of blame or censure.¹⁹

Criminal Instrumentality Rule

Where the wrong is accomplished by a crime, the crime and not the negligent act of the party which made it possible is the "proximate cause".²⁰

Criminology

The science which treats of crimes and their prevention and punishment.²¹

Criminal Insanity

Want of mental capacity and moral freedom to do or abstain from doing particular act.²²

ETHICS of profession

What is generally called the "ethics" of the profession is but consensus of *expert opinion* as to necessity of professional standards.²³

Expert Evidence

Testimony given in relation to some scientific, technical, or professional matter by experts, i.e., persons qualified to speak authoritatively by reason of their special training, skill, or familiarity with the subject.²⁴

EXPERT

An expert is a skillful or experienced person; a person having skill or experience, or peculiar knowledge on certain subjects, or in certain professions; a scientific witness.²⁵

The word 'expert' or 'expert opinion' is not directly defined anywhere in the Indian Evidence Act or in any other Statute. Section 45 of the Indian Evidence Act simply says that the persons who are specially skilled in foreign law, science, art, handwriting or finger impressions are called experts.²⁶ Thus, Section 45 limits the subject of expert testimony as stated. Section 45 of the Indian Evidence Act,²⁷ provides:

"When the Court has to form an opinion upon a point of foreign law, or of science or art or as to identity of handwriting or finger impressions, the opinions upon that point of persons specially skilled in such foreign law, science or art or in questions as to identity of handwriting or finger impressions are relevant facts. Such persons are called experts."

EXPERT WITNESSES

Expert witness may be men of science educated in the art, or persons possessing special or peculiar knowledge acquired from practical experience.²⁶

It was in *Balkrishna Das v. Radha Devi*,²⁷ and *State of Himachal Pradesh v. Jailal*,²⁸ the Court made an attempt to spell out the characteristics of a person to be called as an expert according to law. They are summarised as follows:

- (i) An expert is a person who has made the subject upon which he speaks a matter of particular study, practice or observation and thereby has a special knowledge of the subject;
- (ii) He is not a witness of fact and his evidence is really of an advisory character;
- (iii) He must have devoted sufficient time and study to the subject.

In India, qualification is necessary to admit an expert's evidence. A vague statement without any particulars of training or type of service does not

make any person an expert. Law does not permit any assumption without evidence on material point of competence. Therefore, it is the burden of the expert to prove his competence.

If the examination in chief clearly shows no competency the opinion given by the witness will be excluded. The regular practice is that the expert will be allowed to give his evidence and his competency can be challenged in cross-examination. The analysis of these judicial pronouncements would not only give us an acceptable definition of an expert but would also help to identify the role of an expert and scope of his evidence. Taking this into account, an expert can be defined thus: Expert is a person who has specialised in a particular field with his level of knowledge, skill, experience, training or education which is outside the ken of ordinary human being, and whose testimony shall be tested by significant cross-examination and received by Courts at its discretion, with adequate safeguards.

Modern definition regarding expert is paraphrased on the statement "an expert is what an expert does". From these words one can say that an expert becomes an expert, not only through academic qualifications, but also from the spectrum of activities, which he does in any specialised field.²⁹

DUTY OF EXPERT WITNESS

The duties of expert witnesses are summarized as follows:

- (i) Expert evidence should be independent and not influenced by the exigencies of litigation.
- (ii) Expert opinion should be unbiased and objective; an expert witness should never assume the role of an advocate.
- (iii) Facts or assumptions upon which the opinion was based should be stated, together with material facts which could detract from the concluded opinion.
- (iv) An expert witness should make it clear when a question or issue fell outside his experience.
- (v) If there was insufficient data upon which to reach an opinion, this had to be stated with an indication that the opinion was provisional and any doubts had to be stated.
- (vi) If the expert changed his mind, this had to be made known to the other side without delay.
- (vii) There ought to be full disclosure of documents referred to in the expert evidence.³¹

The function of an expert witness was clearly laid down by Lawton LJ in Regina v. Turner,³² as follows: "their function is to provide the Court with information about a point at issue or to help the tribunal of fact to interpret information about a point at issue, which is out with the knowledge and experience of that tribunal." In doing so, the expert may express an opinion as to the interpretation of the proven facts. Their task is to basic scientific or technical data and to present inference and conclusions. From the name (experts) itself it is clear that they are different from other witnesses and they are getting priority over ordinary witnesses. They can speak on a matter of special study, practice or observation. Their role is thus an educator to assist

the lawyers in the preparation of the case and as an advisor, if the case goes to the Court to assist the judge to reach of fair decision.³³

TORT Vs CONTRACT: Differences & Similarity

In a general way, a tort is distinguished from a breach of contract in that the latter arises under an agreement of the parties, whereas the tort, ordinarily, is a violation of a duty fixed by law, independent of contract or the will of the parties, although it may sometimes have relation to obligations growing out of, or coincident with a contract, and frequently the same facts will sustain either class of action. There is a well-marked distinction between a contract and a tort.³⁴

Table 1: TORT Vs CONTRACT: Differences

Difference	Contract	Tort
Act	For doing Rightful Act. As per the terms & conditions of contract.	Doing Wrongful Act. A wrong independent of contract
Violation	Breach of contract arises from the non-compliance, contradicting from terms under an agreement of the parties	Tort is a violation of a duty fixed by law, independent of contract or the will of the parties
Consent	A contract necessitates privity between the parties to it	a tort is inflicted against or without consent
Privity	A contract is founded upon consent	in tort no privity is needed.
Infringement/Violation of a right	breach of contract is an infringement of a right in personam, i.e., of a right available only against some determinate person or body, and in which the community at large has no concern.	a tort is a violation of a right in rem, i.e., of a right vested in some determinate person, either personally or a a member of the community, and available against the world at large.
Duty	In the case of a contract, the duty is fixed by the will and consent of the parties, and it is owed to a definite person or persons. ³⁵	In the case of a tort, the duty is one imposed by the law and is owed to the community at large.

Thus, if A assaults B, or damages B's property without lawful cause or excuse, it is a tort. In this context, the breached duty is one mandated by the law, specifically, the obligation to refrain from causing unlawful harm to the person or property of another. However, in the scenario where A agrees to sell goods to B at an agreed upon price, and if either party fails to fulfill their contractual obligations, it constitutes a breach of contract. In this situation, the duty is reciprocal, with A owing a duty solely to B, and conversely, B owing a duty exclusively to A.

The breached duty is a particular obligation owed exclusively by one party to the other, as

opposed to a general duty owed to the broader community. Secondly, in a breach of contract, the motive behind the breach is irrelevant, whereas in a tort, it is frequently considered. Thirdly, in a breach of contract, damages serve solely as compensation.³⁶

In a lawsuit for property related torts, the principles are typically similar. However, when the harm pertains to an individual's person, character, or emotions, and the circumstances reveal inappropriate motives or behaviors such as fraud, malice, violence, cruelty, or similar factors that exacerbate the plaintiff's injury, the court may grant aggravated damages.

Exemplary damages, designed to punish the defendant and discourage future misconduct, can be granted in specific tort cases but are infrequently awarded in contract disputes.³⁷ A contractual provision limiting liability is not applicable to individuals not party to the contract who incur liability in tort.³⁸ Another notable distinction lies in the objectives of these legal domains: tort law focuses on allocating and preventing losses, while contract law ensures the fulfillment of promises made within a contractual agreement.³⁹

Similarities between Tort & Contract

In Singh, J. Bhushan, V. Medical Negligence & compensation, the authors explained that an identical action can give rise to both a tort and a contract breach. Individuals, such as carriers, solicitors, or surgeons, who assume specific duties and willingly enter into contracts for their proper execution, may face liability for negligence or lack of skill in either a contract breach lawsuit or a tort action by a party to the contract. In the case of a person not party to the contract suffering harm, a tort action alone is applicable. The violation of such a contract is considered a tort as well, as these individuals would bear liability even in the absence of a contract, as they undertake a duty independently of any contractual agreement.⁴⁰

A father engages the services of a surgeon to care for his son. If the son suffers harm due to incompetent treatment, a contractual relationship exists between the father and the surgeon, but none exists between the son and the surgeon. Consequently, the father has the option to file a contract lawsuit against the surgeon, while the son is limited to pursuing a tort claim against the surgeon.⁴¹

In the celebrated case of *Donoghue v Stevenson*,⁴² a manufacturer, who provided a substandard product to a retailer, leading to its sale to a customer, was found responsible when a friend of the customer fell ill after consumption. The manufacturer had a contractual obligation to the retailer and breached that duty; additionally, the manufacturer also had a tortious duty to exercise reasonable care to avoid causing harm to the consumer.⁴³

The aforementioned distinctions between a tort and a contract, while fundamentally sound, are becoming increasingly blurred in certain domains. Although normally a duty in tort is independent of any consent or agreement and is fixed by the law there are cases where some sort of prior consent or agreement on the part of the defendant is necessary.⁴⁴

The duty of care owed to a person advised by a gratuitous advisor, who is placed in such a position that others may reasonably rely upon his judgment or skill, has been described as "equivalent to contract" and is dependent upon the advisor's agreeing to give advice in circumstances in which but for the absence of consideration there would be a contract.⁴⁵

It is noteworthy that the inherent obligation in a contract, akin to a duty in tort, arises solely through the force of the law.⁴⁶ Another parallel worth noting is that while initially, a tort duty is owed to individuals in general, following a breach of that duty, the obligation to provide compensation in tort becomes comparable to a contractual duty owed to specific individuals.⁴⁷

It is presently acknowledged that there can exist concurrent contractual and tortious duties owed to the same plaintiff, granting the plaintiff the option to pursue either a tort or contract claim.⁴⁸ Recent advancements in negligence law enable a plaintiff, even when their person or property remains unharmed, to seek recovery for economic losses resulting from the defendant's negligent actions in breaching a contract with a third party. This is contingent upon a close degree of proximity and the loss being a direct and foreseeable consequence of the defendant's negligence.⁴⁹ These developments suggest a trend towards the principle that every avoidable breach of contract is also a harm to a person foreseeably affected, extending even to the parties involved in the contract.⁵⁰

Thus, liability for negligence may sometimes be fixed by the courts simultaneously under contract and tort, as is the case with cases under the Consumer Protection Act.

Generally, a professional individual bears both a tortious and contractual duty to their client when providing advice or performing services.⁵¹ Medical practitioners do not enjoy any immunity and they can be sued in contractor tort on the ground that they have failed to exercise reasonable skill and care.⁵²

CONTACT VS CONTRACT

Tort means Wrong

The contract is with written consent.

Contact: Good touch or bad touch: It is part of sexual education for children to prevent them from undergoing any future incidence of sexual abuse, harassment or sexual assault.

Table 2: Contract Vs Contact: A Comparison

-	Contract	Contact
Mutual	Mutual agreement to be in touch with other	Mutually touching each other during act of meeting/hugging/assault/crime
Consent	Contract is with written/verbal/IMPLIED consent	Contact can be with or without consent
Mutual	Friendship is a Mutual agreement to be in touch with other (between males/female/boyfriend/girlfriend)	Locard's principle of mutual exchange of trace material between boyfriend & girlfriend kissing each other
Consensual	Relationship is Mutual verbal agreement to be in touch with other (between male & female committed to each other with honesty in relations: Faithfulness)	Locard's principle of mutual exchange of trace material between boyfriend & girlfriend having sexual act with consent & will (stains of semen/saliva/Love-bites/Hair/cloth thread fragments)
Crossing the boundaries	Courtship is Mutual agreement to be in touch with other (between male & female committed to marry each other, and involves in sexual act with mutual consent & will, to check their compatibility in sexual relationship)	Locard's principle of mutual exchange of trace material between assailant & victim, having forceful sexual act without consent (stains of blood/semen/saliva/bitemark/Hair/cloth-thread fragments)
Violent	Wrestling is Mutual agreement to fight with each other (between male withmale/ female with female) committed to not having any animosity & no actual intention to hurt grievously)	Assault is mutual physical violence to injure each other, having animosity & intention to hurt each other without any limits: hurt can be grievous & dangerous to life (stains of blood/saliva/bitemark/Hairs)
Sexual act	While Making Sexually Explicit Videos, the director signs a written contract of mutual agreement with the female actor to have sexual act with male actor, using all precautions & barriers (condoms) to prevent any infection, and its video recorded for commercial purposes	Sexual Assault is an act of sexual violence done by assailant (male) on private parts (genitalia) of victim (female): Locard's principle of mutual exchange of trace material (stains of blood/saliva/ Semen/ bitemark)

Toxic Riddle in Rhymes on the intoxicating aspects of Tort:

Do You Know Those Treacherous Beings, Hiding In Its Fort. Causing The Breach, In Your Trust, By Putting, In Its Snort. Do Causes, Personal Injury, To Its Rival, Playing Their Sport.
 Poison Clubbers, Seeks, To Settle Their Differences, To Sort.
 Which Is, of One Meter, Long, But Remain, One Inch, Short.
 Lies Twisted, In a Tortuous Manner, In A Wrong, Spoil-sport.
 Breaches The Contract, To Guard and Isolates Self To Abort.
 Injects its venom, during violent bite & disfigures to distort.
 Charmers misuse these creatures to exploit viewer & extort.
 Do Not, Punish It, By Killing, In the Revenge, As Last Resort.
 But Do Gets Compensation, In Form of Money, From Court.
 Let Us Prove the conspiracy In this Medicolegal Law of Tort!

Riddle Analysis Tortious

- Tort = Wrong

Do you know a poison clubber who has the right to be wrong (tort)!

- To go wrong (against the right direction)
- To do wrong (kill for food)

Nature has gifted snake with venom, as 🐍 has no limbs.

- To tort & twist in abnormal manner
- Double up in the wrong position (dis-tort) in infinity ∞ shape.
- It has a criminal mind (mens rea) to deceit by it's wicked nature, wicked keep 🐍 snake in the sleeve to kill in cold blooded manner.
- Snake like 🐍 shrewd defendant successfully defends that he had no duty of care, to the injured.

Breach of duty is the allegations in tort law.

As snake is 🐍 silent and can't 🗣️ speak 🗣️ for itself, but it's bitemark is telltale marker. Defendant's conduct is erroneous and wrong, and bitemark is Res ipsa loquitur, thing speaks of itself.

Table 2: Analogy Between the Law of Torts & Snake bites

-	Tortuous Snake	Law of Torts
Name	Tortuous & twisted in shape	Twisting (Tortus) the facts for personal gains
Breaches trust	Snakes are infamous for Breach of trust	Torts covers Breach of trust
Distort	For personal gains (To insure regular supply of food: for insuring life of self by violence to hunt)	For personal gains (insure illegal supply of money: insurance frauds for life insurance)
Damages	Damages by Tortuous twisting its curls forced around neck & chest of its prey (mouse/ rat)	Damages of Torts committed with force
Types	Non-venomous (not dangerous) & Venomous (dangerous to life/ limb)	Civil negligence (not dangerous) & Criminal (dangerous to life/limb) negligence
Wrongs	Wrongful injury dangerous to life	Wrongful act dangerous to life
Duty	Snake charmers have duty for care the well being of snakes they keep, but snakes are prone to neglect	Duty of care is a must in proving the law of torts in a negligence suit, against the caretaker (doctor)
works	Snake charmers are professionally negligent & their snakes don't survive long, due to malnutrition (snakes drink milk: a myth)	Professional Negligence is common among caretakers, who milk the customers, for selling branded products
crime	Personal injury, no crime against state	Personal injury, no crime against state
Intent	Personal gain to hunt for food to eat the kill	Fraud by duty officer for personal gain (bribery)
misuse	To murder human by snakebite, is crime against state	Harming humans to cause loss of life/limb by criminal act claiming as criminal negligence
Loss	Loss of life (death) /Limb (gangrene) permanently	Loss of life /Limb permanently is punishable
IPC	304 IPC: Culpable homicide not amounting to murder	304 IPC: Culpable homicide not amounting to murder
Medical	304-A IPC: Death due to negligence of snake charmer	304- A IPC: Death due to negligence of doctor
distort	Distorts vision due to ptosis of eyes, blindness caused by spitting cobra	Distorts the facts of case, due to neglected act, putting a blind eye to errors and omissions (Blind Justice)
Doctored in dark silence	Snakes may lie still in dark, manipulates its bite to inject venom & catches their prey for personal gains (fulfil their hunger)/ by causing personal injury to its prey	Manipulation of facts keeping in dark, for personal gains (fulfil greed of hunger)/personal injury is caused, as the documents are doctored to change facts by forgery/copying signature of others
Judge	Doctor judges the injuries & gives the antidote to neutralize the venom injected by snakebite to restore circulation & breathing to compensate the loss	Judge with blindfolds, judges the evidence of injuries caused, and provide judicial remedies of penalty to compensate the loss.
Abandonment of torts: Trespasses into another's personal territory	The relinquishment of animal (snake) who had committed a trespass to the person injured, in discharge of the (snake charmer) owner's liability for such trespass or injury.	The relinquishment of animal/ human who had committed a trespass to the person injured, in discharge of the owner's liability for such trespass or injury.
Actionable Tort	To constitute an "act against the Tortuous snake," there must be a legal duty, imposed by statute or otherwise, owing by defendant (doctor) to the one injured, and in the absence of such duty damage caused is "injury without wrong"	To constitute an "actionable tort," there must be a legal duty, imposed by statute or otherwise, owing by defendant (lawyer) to the one injured, and in the absence of such duty damage caused is "injury without wrong"
Aggravation of Tort	Any circumstance attending the commission of a crime of snakebite or tort which increases its guilt or enormity or adds to its injurious consequences, but which is above and beyond the essential constituents of the crime of snakebite or tortuous snake itself.	Any circumstance attending the commission of a crime or tort which increases its guilt or enormity or adds to its injurious consequences, but which is above and beyond the essential constituents of the crime or tort itself.
Torture	Tortuous Snakes are kept by snake charmers in their circular baskets by keeping them in Tortuous manner is torture & cruelty to these living beings against animal rights	Notice the Consumers' rights to prevent them suffering from wrongful acts, are drafted in consumer protection act, 2019.

Tortious

"Tortious" refers to conduct that constitutes a tort. In essence, tortious behavior encompasses any actions, excluding breach of contract, that can be subject to a civil lawsuit as a wrongful act.

Offence, Tort & Crime

Although the same act may constitute both a crime and a tort, the crime is an offence against the public pursued by the sovereign, while the tort is a private injury which is pursued by the injured party.⁵³

The focal point of criminal investigations predominantly resides in forensic science

laboratories. Consequently, scientific evidence has become indispensable in the resolution of criminal matters, spanning a diverse array of disciplines, all centered around the core element of science. Modern technology and recent advances in the scientific area have enlarged the scope of Forensic Science. The attorney who is going to practice Criminal law must know the problems faced in collecting scientific proof. He must understand the extent to which Science has been able to help the investigator in the criminal field.

In the current era, despite the plethora of resources accessible to prosecutors, scientific evidence that could have been accessible is either

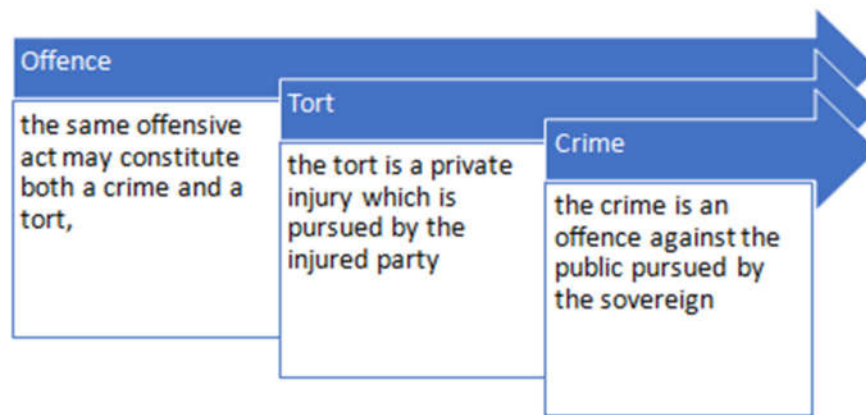


Fig. 1: Flowchart on Offence, Tort & Crime

overlooked, rendered useless due to contamination, or entirely escapes the notice of law enforcement and prosecutors in approximately ninety-five percent of the cases prosecuted.

Recent developments in the field of science can, when properly applied to the practice of criminal law, open up new doors, new channels of thought and entirely new gambits in the field of proof.⁵⁴

CONCLUSION

In conclusion, tort law in legal medicine is a vital component that provides a legal avenue for individuals to seek redress when they have suffered harm due to the negligence or intentional actions of healthcare professionals. It serves as a mechanism to uphold the standard of care within the medical profession and ensures that patients are protected from undue harm in the pursuit of healthcare services.

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 41. Gladwell v Steggall, (1839) 5 Bing NC 733: 8 LJCP 361. But, see, Klaus Mittelbachert v The East India Hotels Ltd., AIR 1997 Del. 201. p. 230 (It was held that beneficiary to the contract can also sue in contract).
 42. Donoghue v Stevenson, (1932) AC 562 (HL). This case finally exploded the "privity of contract fallacy" that if A undertook a contractual obligation towards B. and his non-performance or mis-performance of that obligation resulted in damage to C, then C could not sue A unless he could show that A had undertaken towards him the same obligation as he had assumed towards B. See, Salmond & Heuston, Law of Torts, 18th edn. (1981), p.9.
 43. Ratan Lal and Dhiraj Lal: Law of Tort, 26th edn., 2013, p.6.

44. Ratan Lal and Dhiraj Lal: Law of Tort, 26th edn., 2013, p.6.
45. Hedley Byrne & Co. v Heller and Partners Ltd., (1964) AC 465 (530) as stated in Ratan Lal and Dhiraj Lal: Law of Tort, 24th edn., 2002, Reprint 2004, p.6.
46. "A. contract is an obligation attached by the mere force of the law to certain acts of the parties". HAND, J., in Hotchkiss v National City Bank, (1911) 200 Fed. 287; HOHFELD, Fundamental Legal Conceptions, (edited by W.W. COOK), p. 31. "It is a misconception to say that obligations arising under a contract are created by the parties and not by the law. Parties merely settle the terms of a contract, but the obligation to carry out the terms arises from section 37 of the Indian Contract Act, 1872 which enacts that parties to a contract must either perform or offer to perform their respective promises, unless such performance is dispensed with or excused under the provisions of this Act or of any other law": Shri Ganesh Trading Co., Saugar v State of Madhya Pradesh, 1972 MPLJ 864 (FB), p.883 (G.P. SINGH, J.).
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48. Coupland v Arabian Gulf Petroleum Co., (1983) 3 All ER 226 (CA), p. 228. The election may be made at any time before judgment; Mahesan v Malaysia Government Officers Co-operative Housing Society Ltd. (1978). All ER 405 (411) (PC) (Case of money had and received and fraud.) as stated in Ratan Lal and Dhiraj Lal: Law of Tort, 24th edn., 2002, Reprint 2004, p. 8.
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