
ANALYSING JOINT TORTFEASORS UNDER TORT LAW

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ABSTRACT

When a tort is committed by a group of people, all of the individuals who participated in the tort are considered joint tortfeasors. In addition, all parties will be held jointly and severally liable for the same tort and will be regarded to be joint and severally liable in the eyes of the law. It is critical to recognise at this point that, in order to show the wrong done by joint tortfeasors, there must be some relationship between the conduct of one accused tortfeasor and the conduct of the other alleged tortfeasor. “There must be a concurrence in the act or actions producing injury, and not just a coincidence of individual actions, which, by their combined impact, generate harm,” writes Sargent L.J. in reference to this. In this article the author provides an analysis of fixing liabilities of joint tortfeasors, conditions and defences available to the joint tortfeasor.

Keywords: Liability, Tortfeasor, Joint Tortfeasor.

INTRODUCTION

A person who is injured or affected adversely can claim damages if he suffers a kind of civil wrong known as tort. A tortfeasor is a person who commits a tort and if the court of law finds that the defendants have indeed caused harm or loss to the plaintiff, then he will be liable to pay damages to the plaintiff. However, sometimes, more than one tortfeasor may be involved in contributing to a wrongful act or tort. Such tortfeasors are responsible for the same wrongful act which resulted in a tort. Joint tortfeasors are those persons who are two or more than two in number and they unite to cause damage to another person. In simple words, all the people who participate in the commission of a civil wrong are known as joint tortfeasors. If a tort is committed by more than two persons, then all the persons involved in it become joint tortfeasors. All the people responsible for the same tort will be considered to be joint wrongdoers in the eyes of law. Each joint tortfeasor has responsibility for paying a part of the

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total compensation that is awarded based on the percentage of damage caused by his negligent act. However, a person who pays more than his share of the compensation as damages more than he is at fault can bring a suit to recover the excess damages given by him. Also, the plaintiff can recover the damages awarded from both the tortfeasors if both are found to be at fault. There must be some sort of link between acts of both the tortfeasors to establish the wrongs committed by joint tortfeasors. Like for example, two buses collided with each other which resulted in the death of some passengers traveling on the ill-fated bus. Then the owners of both the bus companies will be liable to pay compensation to the deceased passengers. But if the same sort of harm or damage is caused by several people upon a single person, they may be called either joint or several tortfeasors, which means that any one of them can be made liable to pay the whole compensation even if the negligent act committed by both parties are unequal.

PRINCIPLES FIXING LIABILITY OF JOINT TORTFEASORS

Under the English Common Law¹, the liability of joint tortfeasors was both joint and several in nature if they committed a wrongful act against any person. The liability of such joint tortfeasors was fixed in those days of common law with the help of two principles, which are as follows-

- 1) According to the first principle**, if a judgment or compensation has been obtained against one of the joint wrongdoers who has committed a tortious act along with other joint tortfeasors against a person, then all the remaining tortfeasors who committed the same tort will be released of paying any damages. The person who suffered the damage need not be satisfied for all other tortfeasors to be released as a judgment obtained against any one of them will absolve the others of their liability. This principle was laid down in the landmark case of *Brinsmead v. Harrison*². The facts of the case were that the plaintiff (Brinsmead) had sued the defendant (Harrison) for the recovery of the cost of the plaintiff's piano. The defendant along with another person had damaged the plaintiff's piano.³ The plaintiff had sued the other person but he couldn't recover any amount from the previous defendant and hence he sued another tortfeasor for the recovery of his damages. The defendant then contended that since the plaintiff had

¹ J.H. Baker, *An Introduction to English Legal History* (London, 2002).

² *Brinsmead v. Harrison* (1871) L.C. 6 C.P. 584

³ Janhavi Arakeri, 'Who Are Joint Tortfeasors And Related Laws In India' (*iPleaders*, 2021) <https://blog.iPLEADERS.in/joint-tortfeasors-laws-india/> accessed 14 June 2021.

already recovered a judgment against the other tortfeasor, he would be freed from any liability arising out of the tort committed. It was held subsequently that the plaintiff cannot recover any amount from the defendant since the early judgment obtained against the second tortfeasor barred all further legal proceedings against the defendant. The court's decision was based on the legal maxim of "republicae ut sit finis litium", which means that it concerns the state that the lawsuit may not be protracted. Hence this principle stated that a judgment obtained against even anyone tortfeasor will release all other tortfeasors who committed the wrongful act against the plaintiff in unison.

CONDITIONS UNDER WHICH JOINT LIABILITY ARISES

There are in total three circumstances under which tortious liability under torts law could arise, namely⁴, -

- 1) **Agency** -Under the principle of agency, if a person is employed by another person to perform some work on his behalf and if the employee commits any tort during his action in performing the task given by his employer, then both the employer, as well as the employee, will be held responsible jointly as well as independently. It is because the law takes into account the wrongs committed by both persons. When a tort is committed by an agent, then both the principal along with his agent will be considered together as joint tortfeasors.
- 2) **Vicarious liability** – Under this principle, a person can be assigned the liability to compensate another person who committed a tort against a person even though the person being assigned the liability may not have committed the wrongful act. It is a concept under tort laws under which a person having superior legal relation with the person who committed the tort will be held liable for the tortious act. However, both the persons are held to be joint tortfeasors under vicarious liability and both are made liable for the tort committed.
- 3) **Joint action** - Under this principle, two or more than two persons can be held jointly as well as severally liable if all of them are joined together for common action and a tort

⁴ Namrata kandankovi, Joint Tortfeasor, (2021) <https://blog.iplleaders.in/joint-tortfeasor-tort-law/> accessed 14 June 2021.

is committed by them during their course of action.

DEFENCES AVAILABLE TO JOINT TORTFEASORS

Persons accused of being a joint tortfeasor in the commission of a wrongful act or tort have exactly three defences available to them to escape their liability, namely, -

- 1) Consent and Waiver-** A defendant or a joint tortfeasor against whom a lawsuit has been brought to recover damages for the tort committed by him may take the defence of having consent to commit the tort alleged. The defendant can take this defence if he already warned the plaintiff of the risk and danger of going ahead with the harmful activity that subsequently caused harm to the plaintiff. This defence is known as the defence of *volenti non fit injuria* which means that no injury is caused to a person who has himself consented to it.
- 2) Comparative Negligence-** Under this defence, joint tortfeasors can defend themselves if they can prove that the complaining plaintiff himself contributed to his damage by the commission of a reckless act or some kind of negligence. In this defence, the court of law measures and then assigns the fault percentage to all the parties involved in the lawsuit, and hence the percentage of total financial responsibility that a party has to bear is decided.
- 3) Illegality-** If the complaining plaintiff is asking compensation from the joint tortfeasors for a tort that they committed a tort which is in itself an illegal act, then in such cases the liability of joint tortfeasors involved in the lawsuit may be lessened or may also be eliminated.

REMEDIES AVAILABLE UNDER THE INDIAN CONSTITUTION

The Indian constitution ⁵provides for various remedies to the person against whom a wrongful act has been committed. The relevant articles are Articles 32 and 226 of the Indian Constitution. Both the articles confer powers as well as jurisdiction respectively on the Supreme Court as well as the High Courts in India for the effective enforcement of fundamental rights of the aggrieved person against whom a tort has been committed. Although the High Courts in India are in general given more additional jurisdiction as well powers to enforce other

⁵ The Constitution of India, 2019.

legal rights. The jurisdiction and the powers conferred by Articles 32 and 226 are not merely injunctive or preventive like the other powers that have conferred upon them. Rather the High courts have given remedial as well as the power to award compensations to the aggrieved persons in cases where a tort has been committed against a person and there is a need for compensation to correct that wrongful act committed.⁶ Though it has also been held that these powers and provisions cannot become a substitute for aggrieved persons to demand compensation from joint tortfeasors. The recourse to these two provisions can only be taken in rare and exceptional cases where there is no other remedy left with the aggrieved person.

Under public law, a legal wrong is committed if a fundamental right accorded by the Indian Constitution to a person is being violated or infringed upon because it is a class in itself (sue generis). However, damages suffered by the aggrieved party can also be claimed under the Right to life and personal liberty under Section 21 or 32 and 226 of the Indian Constitution, though this can be done only in rare cases when no other remedies are left with the plaintiff.

CONCLUSION

The doctrine of joint liability⁷ in cases where a wrongful act or a tort has been committed against a person by joint tortfeasors has been criticized for a long because the outcome of the lawsuits in such cases usually results in severe inequality. The reason behind the inequality is that in few cases, although there are more than two joint tortfeasors who committed a tort together against a common person, sometimes only a single tortfeasor is held liable amongst the rest of the joint tortfeasors although all of them had committed the wrongful act together. In such cases, sometimes only a single person is made to pay the whole amount of compensation to the plaintiff even though his share of damage caused is less than other joint tortfeasors. Like for example, a defendant that had contributed only 20% damage towards a tort along with another joint tortfeasor who contributed the rest 80% of the damage in a tort towards the plaintiff, can be made liable and forced to pay 100% compensation to the plaintiff even though his share of damage is very less in comparison to the other defendant. Joint liability has since time been regarded as one that protects the interests of the complainants or the plaintiffs only while giving very little room for joint tortfeasors accused of committing a wrongful act or tort to defend themselves. This doctrine always comes to the rescue of those plaintiffs in cases where one or more joint tortfeasors are not able to pay compensations by way of money towards the damage

⁶ Ratanlal & Dhirajlal, *The Law of Torts* (28th edn, 1897) 267-68.

⁷ Bharati T V, 'Principles Of Criminal Liability- Individual And Joint Liability - Law Times Journal' (*Law Times Journal*, 2020) <https://lawtimesjournal.in/principles-of-criminal-liability-individual-and-joint-liability/> accessed 14 June 2021.

that they have caused to the plaintiff. Hence, sometimes this doctrine of Joint Tortfeasors has been regarded as being biased towards the plaintiffs which in turn leads to inequality being suffered by a single tortfeasor. Although with time, the tort law has also gone through various changes and modifications concerning the liability of the joint tortfeasors to come in line with the existing environment of the society. However, it still has to undergo some more major changes over time to come to terms with the ever-evolving changes happening in the current times.