

---

# AN ANALYSIS ON THE DIFFERENCE BETWEEN TORTS AND BREACH OF CONTRACT

---

Ritik Kumar Singh, Maharashtra National Law University, Nagpur

## Introduction

The term "tort law" refers to a series of laws that are designed to:

To find out if one party is accountable for the harm caused to some other person?

To find out how much the affected party is be obligated in compensation?

Pain, payment of medical expenses, loss of future income and suffering, as well as property damage and unexplainable loss of wages, are all instances of harm. The goal of compensation is to cover the damages of a person's damaged rights just like pre-torts.

In some situations, the court may reward Disciplinary damages in addition to compensatory damages. Disciplinary damages are not primarily intended to reimburse the plaintiff. Instead, it is intended to penalize the defendant for particularly irresponsible behavior and to dissuade others from participating in similar behavior.

Torts<sup>1</sup> is classified in three ways:

**Intentional tort:** When someone intentionally does wrongful conduct that consequently causes harm to some other person, It's a tort. Intentional torts are distinguished from other forms of torts by the requirement of establishing that the defendant committed the tort on purpose.

**Negligence tort:** A negligent tort occurs when someone fails to exercise a reasonable standard of care. In order for a negligent tort action to be successful, four criteria must be present: duty of care, violation of that particular duty, causation, and presence of damages. The majority of tort claims are brought because of negligence.

**Strict liability torts:** Strict liability is a type of liability that does not pay heed to the presence

---

<sup>1</sup> R.K BANGIA ,The law of torts,22<sup>nd</sup> edition 2010 PP. 11- PP.12

of intention or the actuality of negligence. In this type of tort, the mental state of the accused does not come into consideration as well.

Examples of Intentional torts - Battery, Assault, Trespass, Fraud, and infliction of emotional distress.

Examples of negligence torts - car/bicycle/motorcycle accidents, Slip and fall, and medical malpractice.

Examples of Strict liability tort – Owning wild animals, exceptional dangerous activities.

### **Breach of contract**

The Indian Contract Act of 1872 is one of the country's oldest trade laws. The law was passed on September 1, 1872, and it applies to all of India. “Any agreement which is enforceable by the law,” according to Section 2 (h) of the Indian Contract Act 1872. Contracts can be written in formal or informal terms, and they can also be wholly oral.

A breach of contract is a violation of the binding agreement's terms and conditions, It happens when either of the party is unsuccessful to deliver according to the agreed terms of the agreement.

A "breach of contract" is a term that legally refers to when one party fails to fulfill its promises in line with the terms of an agreement or contract. Interfering with another party's ability to perform his or her commitments is also considered a breach of contract. A contract might be broken entirely or partially.

The majority of contracts conclude when both parties meet their contractual responsibilities, but a breach of contract occurs when one of them fails to do so. One of the most typical grounds for contract disputes being taken to court for settlement is a breach of contract.

There are 4 types of breach of contracts<sup>2</sup> –

1) Material breach of contracts-It occurs when the crucial part doesn't get fulfilled as mentioned in the agreement. It makes the prior reach of an agreement unhappening.

---

<sup>2</sup> <https://www.law.cornell.edu/>  
R.K BANGIA ,The law of torts,22nd edition 2010 PP. 11- PP.12

2) Minor breach of contract – It occurs when the major points of an agreement are fulfilled but are lacking only a minor portion of the points which were agreed. In this type of breach financial loss has to be proved

3) Anticipatory breach of contract -It occurs when either party fails to meet the commitments agreed before the deadline.

4)Actual breach of contract - An actual breach of contract occurs when a party fails to fulfill the terms of a contract. This indicates that the failure has already occurred rather than being predicted. Torts aren't just for civil wrongdoings. For certain civil wrongs, legal remedies such as injunctions, particular property return, and the payment of liquidated damages in the form of a penalty, among others, are available, while legal remedies are not available in the case of torts. In a tortious wrong, liquidated damages have no place. The tort-feasor is tortiously liable to the affected persons for the commission of a tortious act, causing such harm in the form of injury or loss for which the redress is in the form of damages, i.e.the legal remedy to the sufferer.

People dealing with the legal world, as well as common people who come across these terms, often get confused between the scopes of these two distinct terms. In this research paper, the author delves into the conceptual and legal distinction between the breach of contract and the torts. Thus, the Author will try to explore certain parameters on which distinction can be made in these two legal concepts.

## **Research Design**

### **I. Research Method**

The doctrinal model of the research design is advised for approaching the given study aims, an extensive literature evaluation will be conducted on the subject, and the themes under investigation will be thoroughly researched. This doctrinal study is both empirical and descriptive, and it is used to write analytical work. The investigator tried to look at all materials objectively, including books, journals, and e-resources. E-resources were used in the analysis to gain access to the most crucial and up-to-date site knowledge, allowing the researcher to look at the topic from many angles.

## **II. Research Aim and Objective**

This research paper deals with the nature of “Torts” by comparing torts with the boundaries of Breach of contract and civil wrongs and will also study the historical development drawn in the distinction of “Torts” and “Breach of contract” and in the end will throw light on the laws related to the same issue.

### **Research Questions**

This research paper deals with three major questions which are as follows: What is a breach of contract? What are the types of breach of contract? What is the distinction between Breach of contract and Tort?

### **Review Of Literature**

Ratanlal and Dhirijalal is the most important source of knowledge for this project. The book covers a broader range of themes and gives in-depth analysis. It enables us to comprehend sovereign immunity in India and how, via various case studies and legislation, it has evolved and developed as a concept first in Britain and subsequently in India.

In addition to books, the paper makes use of internet databases such as articles and blogs as sources of information. Internet law commentary websites like ejusticeindia, Indiankanoon, lexology, and other internet resources can be used to search for diverse interpretations of the term in India. The concept was introduced through several versions and definitions of the concept by various scholars and individuals in these internet databases. These databases also provide a brief overview of the concept's evolution in India, as well as a case study that explains the concept in diverse contexts.

### **Scope and Limitations**

The author has limited the scope of the study to the distinction between two legal concepts i.e Breach of contract and Torts but has also gone deep on the parameters that are built under these two legal concepts on an individual basis. The author has made sure that the reader of his work at the end of the reading would not only learn the distinction between these two, which is the major part of the study but will also understand the basic concepts of these two legal concepts distinctly. The research paper has also been treated with various judicial proceedings useful to the conclusive study of the issue.

## Analysis

It is between the parties if the alleged breach of duty stems from liability other than the personal obligation imposed by the contract. A breach of contract occurs whenever a petition is lodged concerning a breach of duty resulting from the contract's obligation.

The duty is owed to anyone in tort. A contract's duty, on either hand, is directed at a specific person or group of people. In a tort, the doctrine of privity does not apply because the responsibility is owed to all people rather than a specific individual or individuals.

A tort is a civil wrong which is not the same as a violation of the contract. Since contract law is a separate legal field from tort law, it contrasts with tort law. As a result, the legislation concerning contractual culpability diverges from those governing tort liability. Contractual and tortious responsibility are governed by different principles in their respective areas of the law.

A tort is a violation of law while Breach of contract is an infringement of legal rights as two of them are distinct in nature. Damages occurred in torts are always unliquidated in nature on the other hand in breach of contracts these are liquidated damages. Damages in a contract breach are generally punitive in nature. In a contract, liquidated losses should be contrasted from penalty or penal damages. Whenever there is a legitimate pre-estimate of the loss, losses are liquidated. Nevertheless, when the damages are exorbitant in order to prosecute the person who perpetrated the violation, they are penalized.

**Case:** Dunlop Pneumatic Tyre Company v New Garage & Motor co<sup>3</sup>

**Facts:** The Claimant (C) made and delivered items to the Respondents (R), who were dealers, and under an accord, C banned R from supplying an item for under their list price, so C bought a breach of contract claim and demanded R pay a fee of 5l. R claimed that the provision relied on by C was a penalty clause that could not be enforceable.

The court of the first instance sided with C, finding that their clause was in fact a damages clause. The Court of Appeal, on the other hand, disagreed, ruling that the clause was simply a punishment clause.

## The issue before the court

---

<sup>3</sup> [1915] AC 79

Were the five pounds penal or liquidated damages?

### **Judgment**

A clause is a penalty that applies to building contracts when “a single lump sum is made payable as compensation, on the occurrence of one or more of numerous occurrences, some of which may cause substantial, and others very minor, damage.” The Liquidated Damages Clause was a penalty on this premise since it imposed the same penalty on Grocon for various breaches, some of which were substantial and others of which were minor.

### **Analysis of Case**

This was one of the earliest and most important cases which helped the legal justice system around the world to be more enlightened about the boundaries of penal damages with respect to liquidated damages. This case seemingly helped people of the legal background to understand the questions that we need to ask before categorizing the damages as “Penal damages”.

In tort, damages are typically compensatory, though special damages may be imposed in instances of personal or reputational harm if the facts of the case show malice or dishonesty. Torts are general in nature i.e Every person owes a duty to care to any other person, the community at large. In contrast Breach of contract, Either party owes a duty towards one another for a specific duty.

**Case:** Tweddle v. Atkinson<sup>4</sup>

**Facts:** A couple was just about to plan a wedding. The bride's father and the father of the fiancé pledged to each pay the couple a certain amount of money. The bride's father died without having made a commitment. The son's father died as well, thus he was unable to litigate over the arrangement. The groom filed a claim against the will's executor.

**Issue Before the Court:** The court's primary concern was if the child, as a foreigner to the arrangement, could maintain the fathers' agreement, which will also eventually support him and his better half. It was stated that the expectation of the fathers' agreement was for the couple to earn a profit from the financial installment. Furthermore, it was asserted that denying the

---

<sup>4</sup> [1861] EWHC J57 (QB)

child the authority to achieve the agreement would effectively defeat the fathers' objective.

**Judgment:** The judge determined that the lawsuit would be rejected because anybody who is not a contracting party may pursue it, even if this was established for his benefit. The court ruled that promissory estoppel can't sue unless the promise's consideration has relocated from him. Consideration must be transmitted from the party who has the capacity to litigate under the contract to another party. Third parties to an agreement are not awarded any rights under the law. Third parties to the agreement have no rights under the agreement and are not entitled to any of its commitments. The issue of whether the groom's father may have sued the estate instead was left unanswered.

### **Analysis of Case**

Tweddle vs atinkson case threw light on the basic understanding of the capacity of different parties in a contract. It demonstrated the narrowness of the liability when it comes to the contractual liabilities as well as rewards with consequently helping us in making a distinction between one of the fundamentals of torts and breach of contract.

If we talk about liability, in this stream too both the fields are different from each other as Violation in torts causes tortious liability while there is just a breach of contract in other. In torts, there is a concept of duty towards the public that is silent in breach of contracts. In a contract breach, the motivation of the party who breaks the contract is irrelevant. Motive is usually immaterial in tort trials, but it can be considered in extraordinary cases, so in those cases, the defendant's vile motive, if demonstrated, will skew the results of liability against him.

To better explain the distinction, in 1961 the supreme court of India in the case of P.K. Kalasami Nadar vs Alwar Chettiar And Ors<sup>5</sup> held while citing Clerk and Lindsell on Torts . Tort and contract are now distinguished in that the former's obligations are primarily set by the law, whereas the latter's are determined by the parties themselves. Furthermore, whereas responsibility is owed to everyone in tort, it is owed to a single person or group of people in the contract. 'The distinction in the modern view for this purpose between contract and tort may be put thus: 'Where the breach of duty alleged arises out of a liability independent of the personal obligation undertaken by contract, it is a tort, and it's said Greer, L. J., in a case under

---

<sup>5</sup> AIR 1962 Mad 44

the Country Courts Act, 1919, where an action for breach of duty by a stockbroker to a client was held to lie in the contract: “It...Breach of contract occurs whenever the grounds of the grievance is a breach of duty resulting from the contract's responsibilities”.

On page 36 of Halsbury's British law, Vol. I (Simonds Edn.)<sup>6</sup>, the very same subject is addressed. When determining whether a lawsuit is based on contract or tort, the substance of the matter must be considered, not the form of the action as detailed in the pleadings. The action may be said to be founded on tort if the alleged breach of duty arises from a liability separate from the personal obligation undertaken by contract, and it may still be founded on tort even if the parties have entered into a contract if the duty in fact arises apart from that contract; an action may be said to be founded on contract if the alleged breach of duty arises from a liability separate from the personal obligation undertaken by contract, and it may still be founded on contract even if the parties have entered If the alleged breach of contract is proven, the action is said to be founded on contract.

However, it's plausible that the very same wrong constitutes a contract breach and a tort. Several times, a person intentionally enters into a contract to perform a duty that has already been obligatory in front of him without regard to the contract. For example, when a customer gets injured whilst commuting with a ticket attributable to the railway company's carelessness, the corporation performs a wrong which is both a breach of contract and a tort.

## **Conclusion**

A tort is a civil wrong that varies from trust and equitable responsibilities in that it is a civil wrong. In contract law, obligations and rights are created by the parties' actions of agreement, but in tort law, the court normally creates obligations and rights and uses the common law.

The parties determine the duties in contract law, whereas the law establishes the duties in tort law. This indicates that the parties can choose whether or not they want to be bound by the contract, but they can't choose whether or not they want to be bound by the law.

In addition, contract obligations are typically owed to specific individuals, whereas tort obligations are generally owed to the entire public. The Court of Chancery develops and originates the breach of contract or other equitable obligation (Court of Equity). The tort law was developed via judicial rulings, particularly in English common law. Trust, contract and

---

<sup>6</sup> <https://www.lexisnexis.co.uk/>



equitable obligations fall under a different branch of law. The law of torts, on the other hand, is a separate branch of law. Under their separate branches of law, these two civil wrongs are controlled by different principles.