

Difference between Tort and Breach of contract

A tort can be defined as civil wrong, for which remedy is an action for damages, and which is not only the breach of contract or other merely equitable obligation or the breach of a trust.

A breach of contract is a broken promise to do or provide something.

Breach of contract occurs when there is a complaint of a breach of duty arising out of the obligation undertaken by the contract. The duty is towards persons generally in tort. Nature of damages are always compensatory in a breach of contract,

In tort, sometimes, the motive is an essential factor to regulate the liability, for example, Malicious prosecution. A person injured may be allowed for such damages which he has not suffered actually.

In tort Exemplary or malicious damages are awarded and the factors do not affect the action of tort.

A motive is not an essential factor in breach of contract. The default party has to pay pre-settled and actual damages. No compensation is paid in breach of contract in cases of contracts induced by fraud, mistake, misrepresentation, coercion or undue influence.

A tort can be considered as civil wrong which is not completely the breach of contract. On the other hand, tortious liability arises out of a breach of duty is not a breach of contract.

Tort is a violation of legal right whereas Breach of Contract is an infringement of legal rights. Tort is right in rem and the other one is right-in-personem. Damages in Tort are always unliquidated. Damages in Breach of the contract are liquidated damages.

In a tort, every Person has a duty primarily fixed by law towards the community at large. Violation of such duties causes tortious liabilities. It can cause damages to the aggrieved parties.

Either party has some duty towards each other in any Legal contract in breach of contract. Violation of such duties amounts to a breach of contract. Such breach can cause pecuniary loss or financial loss to the aggrieved party.

The law of tort relates to precedents principles which are involved in case laws. Whereas law related to breach of contract is codified law.

DIFFERENCE BETWEEN TORT AND BREACH OF CONTRACT

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WHAT IS A CONTRACT?

A contract is an agreement between two or more persons, which obligates on those parties to perform specific acts.

One of the most essential factor to force a contract party must have something of value called as consideration something of money in value.

All parties must know the terms of a contract there must be a mutual agreement between the parties.

Essentials of a valid contract

- the contract made must be for the legal purpose not be illegal

Example;

Contracting to commit a crime of murder is not a valid one

- there must be an agreement between two or more persons

- the offer must be a valid one

- the offer must have been legally accepted

- there must be an exchange of something in return in the form of consideration

- the contract must be in written

- the parties be legally competent

- minors and mentally impaired cannot make a valid contract

- the parties must be a sound mind

- no fraud must have been done

Example in contract

> an offer I will pay you rs 1,000 for 10000 cakes

And acceptance of that offer for 10000 cakes of 10000 rupees

TYPES OF CONTRACT

- Unilateral contract

- Bilateral contract

- Express contract

-Implied contract

Unilateral contract

Is a type of contract where a single party is involved and where he promises to give something in value of contract.

This is also called as one sided contract

Bilateral contract

Bilateral contract involves both parties who make a promise of agreeing to exchange or something in value.

This is also known as two sided contract

TYPES OF CONTRACT BASED ON VALIDITY

-Valid contract

-Void contract

-Voidable contract

VALID CONTRACT is an lawful contract which satisfies all the essentials of a valid contract.

VOID CONTRACT is a contract which ceases to be enforceable by law becomes void when it ceases to be enforceable

Example

A agrees to pay B a sum of Rs.5,000 after 5years against a loan of Rs.10000.

Since a dies of a natural causes in 5 years. The contract is no longer valid and becomes void due to the non- enforceability of the agreed terms.

VOIDABLE CONTRACT has been defined under section 2(i)of the Act

Which reads in the following;

‘An agreement which is enforceable by law at the option of the one or more parties thereto, but not at the option of the other or others, is a voidable contract”

ILLEGAL CONTRACT

A contract which opposes to the public policy is a illegal one.

Example

If A agrees to sell narcotics to B

OR

If A agrees to murder B

WHAT IS A TORT?

The word "Tort" is derived from a Latin term 'tortum' which means 'twisted' (not straight or lawful)

This term was introduced in English law by Norman jurists.

This term was since used for certain special wrongs by English courts and later it was starting using in all the civil wrongs.

DEFINITION OF TORT

– TORT means a civil wrong. It is a breach of duty.

According to Salmond definition of TORT;

"A 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 a contract or the breach of a trust or other merely equitable obligation"

CHARACTERISTICS OF TORT

– Civil wrong

A tort is a civil wrong not a breach of contract or breach of crime one.

– Infringement of a right in rem

Tort is an infringement of a right in rem it is not a right in personam.

A right in rem is available against the whole world.

– Right fixed by the law

Rights in tort should be only based on the law fixed and it should not be on the basis of parties in tort.

– Remedy

Tort always provides an remedy in the form of compensation or damages also it will given in the form of injunction, restitution of land, ejectment of trespass etc.,

DIFFERENCES

1. A Tort is a civil wrong in which remedy is action for damages.

Whereas breach of contract is a breaching or breaking of a promise which he has do in the agreement of an contract.

2. Tort is a violation of legal right.

Breach of contract is an infringement of a legal right.

3. Damages in tort are always unliquidated.

Whereas in breach of contract the damages is liquidated.

4. In breach of contract the motive will be irrelevant and immaterial.

In tort motive may be taken into consideration.

5. In tort duty is bound towards the persons

Whereas in breach of contract the duty is bound towards a specific person or persons.

6. In breach of contract, nature of damages is compensatory

In tort the damages may be compensatory or even exemplary damages may also be awarded.

Overlapping

There is a lot of overlap between the tort and the breach of contract.

In case of *Jennings v Randal*

A minor took a hire to ride for a short journey. It was in the name of a contract of bailment. The minor took a long way of journey and due to some kind of accident she met with an accident. The owner sued the minor stating that it was a tort. And since we know that minor is incompetent party to enter into a contract since she is not an eligible one where she has no capacity to understand the terms of the contract. And she cannot be made legally binding under a contract. And when owner of mare tried to claim damages treating it as law of tort.

And since the court held that that owner cannot convert a breach of a contract by minor into an act of torts and claim damages here and he cannot be sued.

Conclusion

Even in India the high court of Bombay held in *Dr. Sharavait v Pentro*, that when a patient coming to a doctor it cannot be deemed that patient made a contract with doctor. Since the doctor provides a medical service which he is bond to do his capacity of the job and while in the if the doctor neglects to provide then he would be held responsible for the tort which he has committed. In absence of such contract between the tort and contract the doctor cannot be held responsible.

Though the difference between the tort and the breach of contract is confusing even in the England and was made several discussions by the various jurists in the law courts.