Q: Define Tort And Distinguish it from crime and breace of contract?

Ans:- Tort and Crime distinguished.—The main points of distinction between tort and crime are the following :-

(i)A crime is generally considered an offence against the community. It is a breach and violation of public rights and duties which affect the whole community. Thus crime may be said to be a public wrong. On the other hand, civil wrong is an infringement of the private or civil rights belonging to individuals, considered as individuals. Thus a civil wrong may be said to be a private wrong. Tort is distinguished from crime because the former is a private or civil wrong whereas the latter is a public wrong. Law of Torts "serves a forum for the vindication of individual right".

(ii) A crime is a wrong for which the common remedy is punishment, A tort is a civil wrong and the remedy for which is an action for unliquidated damages. Since crime is deemed to be an offence against the whole community, the person guilty of commune the crime is punished not only for giving him a lesson but also to serve as an eye-opener to other members of the community to safeguard the interests of the whole community**.**

Tort being a civil wrong, the remedy is compensatory in nature, i.e., to restore the parties, as far as possible, to the position in which they were had the tort not been committed. That is why, in tort the remedy is an action for unliquidated damages. One may, however, argue that in crime also damages in terms of money may be awarded by the court and until the amount is specified by the court, the exact amount to be awarded remains uncertain. "But there is one peculiarity which marks them off from damages in tort. In every case they

are obtainable only as a result of a process the primary purpose of which, when it is initiated, is the imposition of punishment or something in the nature of punishment. In crime, the award of compensation is ancillary to the criminal process; in tort it is normally its very object." Thus while punishment remains an essential element of crime, an action for unliquidated damages or pecuniary compensation is an essential feature of tort.

(iii) It need not be overemphasised that as distinct from crime, tort is a civil wrong. Tort and crime are distinguished from each other as their proceedings are also different. "A civil wrong is one which gives rise to civil proceedings, that is to say, which have as their purpose the enforcement of some right claimed by the plaintiff as against the defendant. Criminal proceedings, on the other hand, are those which have for their object the punishment of the defendant for some act of which he is accused. 35 There may, however, be cases (such as those relating to assault and defamation) where the same wrong is both a civil and criminal leading to civil as well as criminal proceeding. But, "speaking generally, in all such cases the civil and criminal remedies are not alternative but concurrent, cach being independent of the other. The wrongdoer may be punished criminally by imprisonment or otherwise, and also compelled in a civil action to make compensation or restitution to the injured person."

(iv) Tort being a private wrong, the party which suffers injury is required to file the suit against the defendant and at any stage of the proceedings may withdraw the suit by entering into any agreement of compromise with the defendant or even without it. On the other hand, crime is a public wrong and therefore the person who is wronged or suffers injury, is not required to

launch the case himself. In case of crime, the case is filed on behalf of the State (i.e., the whole community). For example, A assaults B in Lucknow and causes grievous hurt. B is not required to file the case. He may report it to the police and after investigating the case, case will be filed by State of U.P. against A.

In P. *Rathinam/Nagbhusan Pamaik v. Union of India*, the Supreme Court, while considering the question whether Section 309 of Indian Penal Code, 1860 was violative of Article 21 of the Constitution, considered the distinction of tort with crime. The Apex Court observed :

"In a way there is no distinction between crime and tort, inasmuch as a tort harms an individual whereas a crime is supposed to harm a society. But then, a society is made of individuals harm to an individual, is ultimately harm to society.

A crime presents these characteristics : (1) It is a harm brought about by human conduct which the sovereign power in the State desires to prevent; (2) Legal proceedings of a special kind are employed to decide whether the person accused did in fact cause the harm, and is according to law to be held legally punishable for doing so.

Protection of society is the basic reason of treating some acts as crime. Indeed it is one of the aims of punishment....."

Tort and Breach of Contract. -The main points of distinction between tort and breach of contract are the following: -

(i) As noted earlier, a tort is a civil wrong which is not exclusively the breach of contract. "A contract is an agreement enforceable by law.Contractual liability therefore, arises out of agreement between the parties. Tortious liability, on the other hand, arises out of the breach of duty which is not a breach of contract. In *Jarvis v. Moy. Devies' Smith, Vandervelle &Co.* 4Green, L.J., pointed out the distinction between tort and breach of contract in the following words :-

"The distinction in the modern view, for the purpose between contract and tort may be put thus Where the breach of duty alleged arises out of a liability independently of the personal obligation undertaken by contract it is a tort, and it may be tort even though, there may happen to be a contract between parties, if the duty in fact arises independently of contract. Breach of contract occurs where that which is complained of is a breach of duty arising out of the obligation undertaken by the contract."

This observation was quoted with approval by the Division Bench of the Madhya Pradesh High Court in *Durga Prasad v. Mst. Parveen and others.*

(ii) In tort, the duty is towards persons generally. In contract, on the other hand, the duty is towards a specific person or persons. That is to say, the privity of contract does not apply in case of tort because there the duty is not towards any specific individual or individuals but towards persons generally. For example, A enters into a contract to supply some goods to B. If A fails to supply goods to B, he will be liable to B for breach of contract. But in tort the duty is towards persons generally. For example, we are under a duty not to injure others. If A by negligent and rash driving injures D, a person walking on the road and who is a stranger for him A will be liable to D. It may be D or

any other person suffering injury. A owes a duty towards such persons and will be liable to them.

(iii) Yet another distinction between tort and breach of contract is that in the former the remedy is an action for unliquidated damages, in the latter the remedy is an action for liquidated damages. That is to say, in case of tort the actual damages to be awarded depend upon the discretion of the court and of course depending upon the facts and circumstances of each case. In an action for breach of contract, generally the plaintiff "sues for a pre determined and inelsastie sum of money." In case of tort, the court awards damages in its discretion irrespective of the fact that the party has specified a particular sum of money in its suit. But this is not so in case of contract.

(iv) In a breach of contract, motive of the party breaking the contract is immaterial. In tort also generally motive is irrelevant but sometimes it may be taken into consideration and in such exceptional cases, the evil motive on the defendant, if proved, will tip the scales of liability against him.42

(v) In a breach of contract, nature of damages is always compensatory. In tort also generally the nature of damages is compensatory but in cases of injury to person or character, exemplary damages may also be awarded if the facts of the cases reveal malice or fraud. In a breach of contract, damages are never exemplary, i.e., they are never awarded by way of penalty. Even where the parties mention a sum in the contract as the amount to be paid in case of breach of contract, the court award reasonable compensation. The only limitation of the powers or discretion of the court is that it cannot award damages exceeding the amount so named or the penalty stipulated for.

It is also said that "in tort the content of the duties is fixed by the law whereas the content of contractual duties is fixed by the contract itself." But it has been rightly remarked……. this distinction, however, is by no means always valid for today in many cases the content of contractual duties is also fixed by the law. Statute provides, for example, that certain quite specific obligations shall be contained in contracts for the sale or hire-purchase of goods, and it is now no longer true as once perhaps it was that implied terms in a contract in the absence of a statutory rule, are always to be based upon the presumed intention of the parties. Conversely, there are tortious duties which are subject to variation by agreement, whether or not that agreement amounts in law to a contract between the parties.

There may also be situations when the same wrong is both a breach of contract and a tort. For example, a doctor or a surgeon guilty of negligence towards his patient commits breach of contract as well as tort. So is also the case of bailees and carriers. Similarly, if a person contracts to perform a duty which he is already bound to perform by law, the breach of such a duty will also be a tort for the obvious reason that the duty already existed independently of contract.48 As pointed out in Salmond on the *Law of Torts*, 49 Liability may really depend on status rather than on contract. ..... There seems to be certain unwillingness to hold professional men liable to their chients in tort as distinct from contract, and this unwillingness has ioneseased rather than diminished since a new duty to take care in making statements has been recognised. It may be that the line of distinction is between cases in which failure to perform the duty will result in physical injury to person or property, when there is liability, both in tort and contract, and cases in which it will not. But there is little support for the view that once parties are in a

contractual relationship their rights and duties are governed by that contract alone so that one cannot sue the other for a tort arising out of the performance of the contract." Thus the fact that there is a contract between the parties does not preclude the aggrieved party from bringing an action in tort. An action in tort will lie, even though there may happen to be a contract between the parties, if the duty in fact arises independently of contract.

Question:-Define remoteness of damages. What are the rule for Determining Remoteness of Damage?

Answer:-

REMOTENESS OF DAMAGES AND NERVOUS SHOCK

Introduction. It may be noted at the outset that the question of remoteness of damages may arise only after it has been decided that there has been a breach of duty and that the damage has been due to the said breach of duty. If the plaintiff fails to establish that the damage suffered by him was in fact as the result of the breach of duty, he will not succeed. For example, in *Barnett v. Chelsea and Kensington Hospital Management Committee, three night-watchmen*, who were vomitting after drinking tea, went to the defendant's hospital in the early morning. On being contacted on phone by the nurse on duty, the doctor asked them to go home and consult their own doctors later in the morning. Thus the doctor committed breach of duty by not examining the said persons. It was alleged by the plaintiff, wife of one of the night-watchmen, that as a result of this breach of duty, her husband died the same day. It was found that it was a case of murder and that he died of arsenical poisoning. But it was held that the defendants were not liable because the death of the plaintiff's husband was not due to the breach of duty, i.e. failure to examine the deceased for there was every possibility that even if he had been examined and given proper treatment, he would have died.

Thus, if it is established that the damage would have taken place, even if there has been no breach of duty, plaintiff's claim will fail. This is further evident from another illustrative case, namely, *The Empire Jamaica*. In this

case, due to the negligence of the officer of the watch on board the ship, the Empire Jamaica, a maritime collision had taken place. The officer concerned did not possess the requisite certificate of competence as required under the law. The court had to consider the question, inter alia whether this breach of duty was responsible for collision. On the basis of the evidence adduced, the court found that the officer was otherwise fully competent and had he applied he would have been granted exemption from the requirements of law. The court, therefore, held the there was no casual connection between the breach of the duty and the collision

In case, however, it is established that the damage was due to the breach of duty, the question of remoteness of damages becomes relevant. But before discussing the question of remoteness of damage, it will be desirable to note here briefly "some conclusion which both on principle and authority seem to be indisputable." In the first place, an event may be the consequence of several causes. Secondly, the doctrine of remoteness of damages is not limited to wrongs of negligence but also applies to wrongs of all kinds. Thirdly, a consequence cannot be held to be too remote if it was actually intended by the wrongdoer. Fourthly, the question of remoteness of damages arises only after it is established that the defendant has been guilty of a wrongful act. Fifthly, question of remoteness of damages is one of fact.

Doctrine of Remoteness of Damages." -Even after it is established that the damage was as the result of the breach of duty, the plaintiff will not succeed if the damage was too remote. No defendant can be held liable ad infinitum for all the consequences of his wrongful conduct. On the basis of the theory of

causation there can be no effect without a cause and that the consequences of any conduct may be endless. For example, A is seriously sick and lying in a hospital. Doctors advise B his near relation to bring a particular medicine, which is very rare and only one phial of that is available in the reputed medical store of the city, without which he cannot be saved. B procures the medicine but while carrying it to A is knocked down by a car due to the negligent drive of the owner of car, C. B is seriously injured and admitted to the hospital in a serious condition and the medicine that he was carrying was also destroyed. As A does not get the medicine in time, he dies. A was an employee and his wife and two children were fully dependent upon him. The wife could not bear the death of her husband and subsequently. A pertinent question, therefore, arises can law take into consideration a these consequences of the negligent dr. ing of C. It is not possible for a judge to take into account everything that follows a wrongful act. The law must, therefore, draw a line somewhere.

As aptly observed by Lord Wright of House of Lords in *Owners of Dredger Liesbosch v. Owners of Steamship Edison.*

"The law cannot take account of everything that follows a wrongful act: it regards some matters as outside the scope of its selection, because it were infinite for the law to judge the cause of causes' or consequences of consequences. Thus the loss of a ship by collision due to the other vessel's sole fault, may force the shipowner into bankruptcy and that again may involve his family in suffering, loss of education opportunities in life, but no such loss could be recovered from the wrongdoer. In the varied web of affairs,

the law must abstract some consequences as relevant, not perhaps on grounds of pure logic but for practical reasons."

Sometimes, it is said that the defendant will be liable for "natural and proximate consequences" of his wrongful conduct. But even this is not always correct. For example, *in Scott v. Shepherd*, A threw a lighted squib into a crowded market. It fell upon X who, in order to save himself, threw it away and it fell upon Y, who in his turn, threw it away and this time it fell upon Z It exploded and caused serious injury upon his eye, putting out his eye. A was held liable although injury to Z was farthest, rather than nearest to the damage.

It is well settled that the plaintiff will succeed if the damages are not remote. As noted earlier, remoteness of damage is a question of fact. The next pertinent question is how it can be determined in a particular case as to whether the damages are remote or not. There are two main tests to determine whether damages are remote-(1) The Test of Directness and (2) the test of Reasonable foreseeability.

Test of Remoteness of Damages

(1)The Test of Directness.-According to this test, if a reasonable man could foresee that the plaintiff was likely to suffer some damage from the wrongful act of the defendant, he (i.e. the defendant) would be liable for all the direct consequences of it suffered by the plaintiff and it is immaterial whether a reasonable man could have foreseen the actual damages suffered by the plaintiff. That is to say, foresight of a reasonable man is relevant to determine whether the defendant owed a legal duty to take care towards to

plaintiff. If it is established that he owed a legal duty to take care the defendant will be liable for all the direct consequences of the breach of this legal duty. Thus foreseeability of a reasonable man is relevant to determine as to whether the defendant owed a legal duty to take care but it is irrelevant whether the consequences of the breach of the legal duly were too remote or not. The test of directness was firmly established by the Court of Appeal in Re Polemis. Before this case, the prevalent test was that of reasonable foreseeability. That is to say, consequences were considered to be too remote if a reasonable man would not have foreseen them. On the other hand, consequences were not too remote if a reasonable man would have foreseen them. This rule was replaced by the rule of directness in Re Polemis, the facts of which are the following:

In the Wagon Mound case, the Judicial Committee of the Privy Council disapproved the test of directness (i.e. rule in Re Polemis) and refused to follow it.

(2) **The Test of Reasonable Foreseeability: The Rule in the Wagon Mound."** - According to this test, in negligence foreseeability of a reasonable person is the criterion not only to determine whether the defendant owed a duty to take care to the plaintiff but also for remoteness of damage. As remarked by the Judicial Committee of the Privy Council in The *Wagon Mounds* case, "It is the foresight of the reasonable man which alone can determine responsibility. The *Polemis* rule by substituting 'direct for reasonably' foreseeable' consequence leads to a conclusion equally illogical and unjust". The Privy Council observed: "If some limitation must be imposed upon the consequences for the negligent actor is to be held responsible—and

all are agreed that some limitation there must be-why should that test (reasonable eforeseeability) be rejected which, since he is judged by what the reasonable man ought to foresee, corresponds with common conscience of mankind, and a test (the 'direct' consequence) be substituted which leads to no-where but the never-ending insoluble problems of causation. In the view of the Privy Council, rue in Re Polemis was objectionable for not being "consonant with current ideas of justice or morality that for an act of negligence, however, slight or venial, which results in some trivial foreseeable damage the actor should be liable for all consequences, however unforeseeable and however grave, so long as they can be said to be 'direct'. It is a principle of civil liability, subject only to qualifications which have no present relevance, that a man must be considered to be responsible for the probable consequences of his act. To demand more of him is too harsh a rule, to demand less is to ignore that civilized order requires the observance of a minimum standard of behaviour" The facts of the case are briefly stated below:

It may, however, be noted that The Wagon Mound being a decision of the Privy Council, is not binding upon English Courts according to the strict doctrine of precedent. Despite this, it has been regarded by English Courts (including House of Lords and Court of Appeal) to be good law. In Hughes v. Lord Advocate, a manhole in the street was opened by the employees of the Post Office and after doing the work in the day, in the evening they left it open covered by a canvas shelter and surrounded by warning paraffin lamps but no one was left there to attend to it. A boy of eight years took one of the lamps into the shelter and while playing with it stumbled over the lamp which fell into the manhole. There ensured a violent explosion as a result of which

the boy fell into the manhole and suffered serious burn injuries. The defendants were held liable. Lord Reid observed: "The appellant's injuries were mainly caused by burns and it cannot be said that injuries from burns were unforeseeable. As a warning to traffic the workmen set lighted red lamps round the tent which covered the manhole, and if boys did enter the dark tent it was very likely that they would take one of these lamps with them. If the lamp fell and broke it was not at all unlikely that the boy would be burnt and the burns might well be serious. No doubt, it was not to be expected that the injuries would be serious as these which the appellant in fact sustained. But the defender is liable although the damage may be a good deal greater in extent than was foreseeable."

Lord Guest of the House of Lords observed: the accident which occurred and which caused burning injuries to the appellant was one which ought reasonably to have been foreseen by the Post Office employees and that they were at fault in failing to provide a protection against the appellant entering the shelter and going down the manhole."

Effect of the Wagon Mound (No. 1) and the present position.-As noted earlier, merit of the rule propounded in The Wagon Mound is that it provides a single test for each of the three component parts of the tort of negligence, duty, breach and damage. "The essence of the Wagon Mound is that in negligence foreseeability is the criterion not only for the existence of a duty of care but also for remoteness of damage, and the Privy Council clearly attached importance to the supposed illogicality of using different torts at different states of the inquiry in a given case....." Moreover, 'Bearing in mind that negligence involves the creation of an unreasonable risk of causing some

foreseeable damage to the plaintiff it might be thought that even though 'justice' may be impossible of achievement where unforeseeable damage occurs, greater justice is produced by The Wagon Mound than by Re Polemis".

However, "The Wagon Mound has made little difference to the law in terms of practical result, . In this connection, reference may be made to Steward v. Levigne, a Brunswick decision where the court held that the kind of damage in suit was reasonably foreseeable. The court quoted with approval the following passage from the judgment of Eveleigh, J, in Weiland v. Cyril Lord Carpets Ltd. 38 who in his turn was expressing his approval with Hughes v. The Lord Advocate: "

I do not read the Wagon Mound (No.1) as dealing with the extent of the original injury or the degree to which it has affected the plaintiff, still less do I regard it as requiring foreseeability of the manner in which that original injury has caused harm to the plaintiff."

In Brunswick decision, *Penman et al v. Saint John Toyota et al*, decided by the New Brunwick Supreme Court (Appeal Division) highlights the need for judges to keep separate in their minds the legal requirements for establishing initial liability in negligence and the rules which then come into play to determine the extent and measure of damage once liability has been established."41 The facts of this case may be summarised as follows:

It has rightly been pointed out : "These two new Burnswick decisions, Stowart and Penman, serve to emphasize how little practical difference the

introduction of the Wagon Mound (No. 1) foreseeability requirement has made to the actual decisions of the courts.

Assuming initial liability, it is clear that neither before nor after Wagon Mound (No. 1) was foreseeability relevant to the extent or to the quantum of damages. Further, the foreseeability requirement has been so diluted by not requiring foreseeability of the extent or the precise manner of infliction that it is difficult to find examples of cases where recovery has been denied to plaintiff who would have succeeded under the 'directness test' of *Re Polemis.* Nor are the cases where recovery has been denied in any way a fulfilment of the high ideals of logic and justice on which the Privy Council based the Wagon Mound (No. 1) test". 2 47

Foreseeability of Risk.-In Jolley v. Sutton London Borough Council, boat was left abandoned for atleast two years beside a block of flats on land that was owned by the defendant Council. The Council knew of the presence of the abandoned boat and even made plans to remove it but somehow the plans were not implemented. Two boys, the plaintiff (aged 14) and his friend (aged 13) started to repair the boat and the process used a car jack the boat and some wood to prop it up, while the boys were working on the boat, they fell of the prop, thereby crushing the plaintiff who suffered serious spinal injuries resulting a paraplegia with major complications. He sued the Council for damages in negligence and breach of duty under Occupier Liabilities Act, 1957.

Deciding in favour of the plaintiff, the Judge held that the Council was responsible because the presence of the boat would attract children and the

type of accident and injury that occured was reasonably foreseeable. However, the Judge reduced damages by 25% holding contributory negligence.

Q:-Explain the Terms "Damnum sine Injuria" and "injuria sine Damnun" Giving suitable Examples of edcu…….

Ans:- Injuria sine damno. — The maxim injuria. sine damno means that if a private right is infringed, the plaintiff will have a cause of action even though the plaintiff has not suffered any actual loss or damage. Thus, according to this maxim, what is necessary is the infringement of a legal right and not the proof of actual loss or damage. Injuria means infringement of a right (of plaintiff) conferred or recognised by law, and damnum means actual damage or loss.

An illustrative case on the maxim of injuria sine damno is Ashby v. White.33 In this case, the plaintiff was a legally qualified voter of the Borough of Aylesbury and the defendant was the returning officer. The defendant wrongfully, maliciously and fraudulently refused to register a duly tendered vote of the plaintiff. Thus the legal right of the plaintiff to cast his vote was infringed. But he did not suffer any actual loss because the candidate for whom he tendered his vote was elected. Yet it was held that an action lay and that the defendant was liable. Lord Holt, C..., observed : "If the plaintiff has a right, he must of necessity have a means to eradicate and maintain it, and a remedy if he is injured in the exercise or enjoyment of it, and indeed it is a vain thing to imagine a right without a remedy for want of right and want of remedy are reciprocal".

In India also the same principle is followed. In Jadu Nath Mullick v. Kali Krishna Tagore, their Lordships of the Privy Council observed : "There may be, where a right is interfered with, injuria sine damno sufficient to found an action but no action can be maintained where there is neither damnum nor

injuria". If a person who is entitled to be upon the electoral roll, is wrongfully omitted from. such roll and thus deprived of his right to vote, an action will lie. But if the returning officer acts in good faith and honestly without malice or bad mistive and refuses to receive the vote of a person legally qualified to vote, at an election, no action will lie.

Thus the maxim injuria sine damno means that infringement of a legal right will give rise to an action irrespective of the fact that no actual loss or damage has taker. place. For example, if a customer has sufficient funds in his account in a bank and the banker refuses to honour his cheque, an action will lie even though the customer may not have sustained actual loss or damage.

Damnum sine injuria." - This maxim means that no action will lie if there is actual loss or damage but there has been no infringement of legal right. As noted earlier, tortious liability arises out of a breach of duty primarily fixed by law. Thus breach of a legal duty or infringement of a legal right is the essential condition for arising of liability in tort. Thus, if I have a mill and my neighbour builds another mill, whereby the profit of my mill is diminished, I shall have no cause of action against the neighbour, although I am damaged. This illustration was given by Hankford, J., in Gloucester Grammar School Case, where the plaintiff suffered loss of fees because the defendant set up a rival school next door. It was held that no action would lie because there was no infringement of any legal right of the plaintiff. Thus if

there is no infringement of legal rights no action will lie, lawful competition is no ground of action 40 "But if a miller hinders the water from running to my mill, or causes any other like nuisance I have such action as the law gives".

Another illustrative case on the point is Chasemor v. Richards. 42 In this case a landowner and mill-owner had enjoyed the use of a stream for about six years. The stream was supplied by percolating underground water. An adjoining owner dug a well on his own ground for supplying water to the inhabitants of the district. Consequently, the land owner and mill-owner lost use of the stream. But it was held that no action would lie because there was no infringement of a legal right.

In *Mogul Steamship Co. v. McGregor Gow & Co.*, the defendant, owners of certain ships established an association with a view to secure an exclusive trade for themselves between China and Europe. They reduced freight by offering rebate to customers who would deal with them. They thus drove the plaintiff out of trade of carrying tea between China and Europe. The house of Lords held that the plaintiff had no cause of action because what the defendants did was for protecting and extending their trade so as to increase their profits.

Reference may also be made here to another leading case, Bradford Corporation v Pickles. In this case the plaintiff corporation wanted to purchase some land for starting a scheme of water supply for the inhabitants of the town. The defendant wanted the corporation to purchase his land. But the corporation refused to purchase his land. This refusal annoyed Pickles and in order to get himself avenged, he sank a shaft on his land with the intention of diverting underground water from a spring that supplied the plaintiff

Cornoration's works. Consequently, the water which percolated through his land from corporation's land on a higher level was discoloured and diminished when it passed again to the lower land of the corporation. The House of Lords held that Pickles was not liable because he was exercising his lawful right. Lord Macnaghten observed : "It is the act not motive from the act that must be regarded. If the act, apart from motive gives rise merely to damage without legal injury, the motive, however, reprehensible it may be, will not supply that element". Thus the exercise by a person of a legal right does not become illegal because the motive of action is improper or malicious.

In 1898 in *Allen v. Flood*, the above rule was reaffirmed by the House of Lords. In this case a ship, *Sam Wellar'* was being repaired by the Glengall Iron Co. in the Regent Dock at Millwall. The woodwork was being done by Shipwrights including two members of the tiny Shipwright's Provident Union, Flood and Taylor, and the iron work was being done by a member of boilermakers, belonging to the huge Independent Society of Biolermakers and Iron and Steel Ship Builders whose delegate at London was Allen Discovering that Flood and Taylor had been employed on iron work by another company, boilermakers wired for Allen. After talking to the biolermakers, Allen asked the manager to dismiss Flood and Taylor otherwise boilermakers would go on strike. Flood and Taylor were dismissed that very day under the assumption that all contracts were determinable at will. They filed the suit against Allen. The trial Court gave judgment for the plaintiff holding that the defendant was liable for maliciously inducing a master to discharge a servant from employment and thereby causing injury to the servant. The Court of Appeal affirmed this decision. Allen appealed to the House of Lords. The House of Lords allowed the appeal. Lord Herschell of the House of Lords observed : "I

can imagine no greater danger to the community than that a jury should be at liberty to impose the penalty of paying damages for acts which are otherwise lawful, because they choose, without any legal definition of the term, to say that they are malicious".

Lord Macnaghten also observed : I do not think that there is any foundation in good sense or in authority for the proposition that a person who suffers loss by reason of another doing or not doing some act which that other is entitled to do or to abstain from doing at his own will and pleasure, whatever his real motive may be, has a remedy against a third person who, by persuasion or some other means not in itself unlawful, has brought about the act or omission from which the loss comes, even though it could be proved that such reason was actuated by malice towards the plaintiff, and that his conduct if it could be inquired into was without justification or excuse."

Lord Shand also held : .....I think that the defendant only exercised a legal right in intimating that the boiler-makers would leave work if the plaintiffs were continued, he used no fraud or illegal means in the assertion of that right, and the exercise by a person of a legal right does not become illegal because the motive of the action is improper or malicious : *Bradford Corporation v. Pickles,* AC 587 (1895) and the Mogul Steamshiup case, ." Thus so long as a man is exercising his lawful right, no action will lie, even though the plaintiff suffers actual loss or damage and that the defendant has acted maliciously.

There may be various reasons for the application of the maxim of damnum sine injuria such as "the harm done may be caused by some person who is merely exercising his own rights; as in the case of the loss inflicted on

individual traders by competition in trade, where the damage is done by a man acting under necessity to prevent a greater evil. or in the exercise of statutory authority. Or the courts may hold, on balancing the respective interests of the parties, that sound policy requires that the interests of e defendant should prevail over those of the plaintiff".so also the harm done may be o such a nature that the law considers it inexpedient to confer any right of pecuniary compensation upon the individual injured, but provides some other remedy, such as criminal prosecution,.

Q: Explain the maxim ubi jus ibi remidum.

Ans:- Legal Remedy.—A tort is a civil wrong for which the remedy is an action unliquidated damages. "An action of tort, therefore, is usually a claim for pecuniary. compensation in respect of damage suffered as the result of the invasion of a legally protected interest." There may be other remedies also such as specific restitution and injunction, but an action for unliquidated damages is the essential mark and the characteristic remedy for a tort. Therefore, usually if not always, wrongful act to be a tort must be such as gives rise to a civil (as distinguished from criminal action for damages. Thus a tort is a civil wrong but all civil wrongs are not necessarily torts. A tort is a civil wrong which is not exclusively the breach of contract or the breach of a trust or other merely equitable obligation.

It is said that the development of the law of tort owes much to the maxim, ubi jus ibi remedium which means that there is no wrong without a remedy. As remarked by Holt, C.J., "If the plaintiff has a right, he must of necessity have a means to vindicate and maintain it, and a remedy if he is injured in the exercise or enjoyment of it; and indeed it is a vain thing to imagine a right without a remedy, for want of a right and want a remedy are reciprocal."49. There are, however, certain moral and political wrongs for which there is no legal remedy. The maxim simply means that legal wrong and legal remedy are co-relative terms and as remarked by Stephen J. in Bradlaugh v. Gosset50 that it would be proper and correct to reverse the maxim and to state "where there is no legal remedy there is no legal wrong."

Salmond has aptly remarked, "The forms of action are dead, but their ghosts still haunt the precincts of the law. In their life they were powers of

evil, and even in death they have not wholly ceased from troubling. 51 In practice, to some extent atleast, in order to succeed, plaintiff is required to bring his case under one of the recognised heads of torts. This is despite the fundamental principle that if law confers a right upon a person, it must also provide a remedy in case of infringement of that duty. It has been recognised in a number of cases that the fact that there is no remedy is simply the evidence, and nothing more than the evidence that no right exists."52 And as rightly remarked by Lord Denning M.R. in a recent case, Hill v. Parsons, (C.A.) of Co. Ltd., 53 this principle enables the court "to step over the tripwires of previous cases and to bring the law into accord with the needs of today."