

LEGAL KNOWLEDGE OF TORT LIABILITY FOR TEACHERS IN THE NIGERIAN SCHOOLS

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ABSTRACT

*This paper reviewed teachers' knowledge of tort liability in Nigerian secondary schools. Based on this, the paper deals with civil and criminal law, relationship and resemblance between crime and tort, tort and contract, constituents of tort, wrongful act, damage, *damnum sine injuria* (damage without injury), *injuria sine damno* (injury without damage), remedy, the teacher and victimless crimes in schools, some general conditions in torts, intention, motive, negligence and recklessness, malfeasance, misfeasance and nonfeasance, and Fault. However, opinion among jurist differ as regard tort liability. The tort law has been developed and rooted in the legal arena.*

Keywords: *Teachers, Legal Knowledge, Tort, Liability, Schools, Nigeria.*

INTRODUCTION

In common law, a tort is a civil wrong for which the law provides a remedy. The origins of the modern law of torts lie in the old remedies of trespass. The term itself comes from French law and means, literally, a 'wrong' (*avior trot* = "to be wrong" or to have wronged somebody). It is a crime for which an injured person can bring actions in court to recover damages against those who committed them. The law of torts in Nigeria is of great importance because it is designed to protect individuals and organisations, such as educational institutions, from civil wrongs other than breach of contract. Knowledge of tortious liability is important in education law and to teachers including other education officials in Nigeria. This is because most of the cases resulting from school activities belong to the category of civil actions by the rule of law since law is the science of what is good and just '*Jus est ars boni et aequi*' (Abumere, 1996).

A tort is a branch of a non-contractual duty potentially owed to the entire world, imposed by law. The majority of legal claims are brought in tort (Alexander, 1980). Also, already pointed out, the term tort is the French equivalent of the English word 'wrong' and of the Roman law term 'delict'. The term tort is derived from the Latin word "tortum" which means twisted, crooked or wrong and is in contrast to the word rectum which means straight. Everyone is expected to behave in a straightforward manner and when one deviates from the straight path into crooked ways he has committed a tort. Hence tort is a conduct which is twisted or crooked and not straight. As a technical term of English law, tort has acquired a special meaning as a species of civil injury or wrong. It was introduced in the English law by the Norman jurists.

Tort now means a branch of some duty of teachers independent of contract giving rise to a civil cause of action and for which compensation is recoverable. In spite of various attempts an entirely satisfactory definition of tort still awaits its meaning. In general terms, a tort may be defined as a civil wrong independent of contract for which the appropriate remedy is an action for unliquidated damages. Law is any rule of human conduct accepted by the society and enforced by the state for the betterment of human life in a wider sense it includes any rule of human action for example, religious, social, political and moral rules of conduct. However, only those rules of conduct of persons which are enforced by the state do really constitute the law of the land in its strict sense. There is no doubt, the law consists of rules recognized by courts of justice. The entire body of law in a state (*corpus juris*) and may be divided into two (civil and criminal law) (Nakpodia, 2007).

Civil law may be used in two senses. In one sense, it indicates the law of a particular state as distinct from its external law such as international law. On the other side, in a restricted sense, civil law indicates the proceedings before civil courts where civil liability of individual for wrongs committed by them and other disputes of a civil nature among them are adjudicated upon and decided. Civil wrong is the one which gives rise to civil proceedings, for instance, proceedings which have for their purpose the enforcement of some right claimed by the plaintiff as against the defendant. In another example, an action for recovery of debt, restitution of property, specific performance of a contract e.t.c. He who proceeds civilly as a claimant or in plaintiff demanding the enforcement of some right vested in him and the remedy he seeks is compensatory or preventive nature.

Criminal laws indicate the proceedings before the criminal courts where the criminal liability of persons who have committed wrongs against the state and other prohibited acts are determined. Criminal proceedings on the other hand are those which have for their project the punishment of the wrong doer for some acts of which he is accused. He who proceeds criminally is an accuser or prosecutor demanding nothing for him but the punishment of the accused for offence committed by him (Kodilinye, 1990). Historically, tort has its roots in criminal procedure. Even today, there is a punitive element in some aspects of the rules on damage. However, tort is species if injury or wrong. The distinction between civil and criminal wrongs depends on the nature of the remedy provided by law. A civil wrong is one which gives rise to civil proceedings. A civil proceeding concerned with the enforcement of some right claimed by the plaintiff as against the defendant. Whereas criminal proceedings have for their object the punishment of the defendant from some acts of which he is accused.

Sometimes, the same wrong is capable of being made the subject of proceedings both kinds. For example, assault, libel, theft, malicious injury to property e.t.c. in such cases the wrong doer may be punished criminally and also compelled in a civil action to make compensation or restitution. Not every civil wrong is a tort. A civil wrong may be labeled as a tort only where the appropriate remedy for it is an action unliquidated damages. Thus, public nuisance is not a tort merely because the

civil remedy of injunction may recover damages for loss sustained by him in consequence thereof (Alexander, 1980). However, it has to be borne in mind that a person is liable irrespective of whether or not an action for damages has been given against him. The party is liable from the moment he commits the tort. Although an action from damages is an essential mark of tort and its characteristic remedy, there may be often other remedies also.

RELATIONSHIP BETWEEN CRIME AND TORT

Being a civil injury, tort differs from crime in all respects in which civil remedy differs from a criminal one. There are certain essential marks of difference between crime and tort. The term crime applies to certain actions and people, and they see their jobs and explaining the processes by which the labels of "crime" is applied. There are two approaches to this view. The "interaction list" approach endeavour to define why some people and actions are defined and termed criminals in a given society by studying the meaning crime has for the society. They study the meaning crime has for the agents of social control and for the people who are classified as criminals.

The second approach is the "conflict hypothesis", which determines the question of power in the definition of crime. According to the conflict theory, people have some degree of power to influence the promulgation and enforcement of laws. Those who can influence legislation are those who define criminal actions that are contrary to their wish. In fact, crime is seen as the dictate of power and rarely labeled as criminals. However, insane persons (teacher) accused of having committed a crime may display no bizarre behaviour overtly. The individual whose sanity is in question may seem calm, well oriented and rational (Abumere, 1996). Therefore, tort may be characterized as follows:

- a. Tort is an infringement or privation of private or civil rights belonging to individuals, whereas crime is a breach of public right and duties which affect the whole community.
- b. In tort, the wrong doer has to compensate the injured party whereas in crime, he is punished by the state in the interest of the society.
- c. In tort, the action brought about by the injured party whereas in crime the proceedings are conducted in the name of the state.
- d. In tort, damages are paid for compensating the injured and in crime it is paid out of the fine which is paid as a part of punishment. Thus the primary purpose of awarding compensation in criminal persecution is punitive rather than.
- e. The damages in tort are unliquidated and in crime they are liquidated.

RESEMBLANCE BETWEEN CRIME AND TORT

There is, however, a similarity between tort and crime at a primary level. In criminal law, the primary duty is not to commit an offence, for example murder. Like any primary duty in tort is *Mens Rea* and is imposed by law. The same set of circumstance will in fact, from one point of view, constitute a crime and, from another point of view, a tort. For example, every man has the right that his bodily safety shall

be respected. Hence, in an assault, the sufferer is entitled to get damages. Also, the act of assault is a menace to the society and hence, will be punished by the state (Kodilinye, 1990). However, where the same wrong is a crime and a tort, its two aspects are not identical. Firstly, its definition as a crime and a tort may differ and secondly, the defenses available for both crime and tort may differ. The wrong doer may be ordered in a civil action to pay compensation and also criminally by imprisonment or fine. If a person punishes a defamatory reticule about another in a newspaper, both a criminal prosecution for libel as well as a civil action claiming damages for the defamatory publication may be taken against him. In P. Rathinam. V. Union of Indian, the Supreme Court observed, in a way there is no distinction between crime and a 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 ultimately turns to affect the society (Kodilinye, 1990).

There was a common law rule that when the tort was also a felony, the offender would not be used in tort unless he has been prosecuted in felony, or else a reasonable excuse has to be shown for his non prosecution. Infact, in the law of crimes, ignorance of the law is not an excuse (*ignoramus leges non excusat*). Therefore, it is desirable to publish all laws so that the individual will know what is offensive to the state. Any accusation should be publicly made. The idea of torture against a suspect is a negation of the rule of law and contrary the equity, good conscience and natural justice-*nemo es supra leges* (Abumere, 1996).

TORT AND CONTRACT

The definition given by Gould (2007) clearly brings about the distinction between tort and contract. It says, tortuous habits arise from the breach of a duty primarily fixed by law, this duty towards persons generally and its breach is redressable by an action for unliquidated damages. A contract is that species of agreement whereby a legal obligation is constituted and defined between the parties to it. It is a legal relationship, the nature, content and consequences of which are determined and defined by the agreement between the parties. According to Salmond on the law as cited in Heuston (1961), a contract arises out of the exercise of the autonomous legislative authority entrusted by the law to private persons to declare and define the nature of mutual rights and obligations.

At the present day, tort and contract are distinguished from one another in that, the duties in the former are primarily fixed by law while in the latter they are fixed by the parties themselves. Agreement is the basis for all contractual obligations. People cannot create tortuous liability by agreement. Thus "I am under not to assault you. Not to slander you, not to trespass upon your land because the law says that I am under such duty and not because I have agreed with you to undertake such duty" (Nwagu, 1987). Some of the distinctions between tort and contract are given below:

- a. A tort is inflicted against or without consent, a contract is founded upon consent.

- b. In tort, no privity is needed, but it is necessary implied in a contract. A tort is a violation *in rem* (right vested in some person and available against the world at large); a breach of contract infringement of a right *in personam* (right available against some determinate person or body).
- c. Motive is often taken into consideration in tort, but it is immaterial in a breach of contract.
- d. In tort, the measure of damages is not strictly limited nor is it capable of being indicated with precision. In a breach of contract the measure of damages is generally more or less nearly determined by the stipulations of the parties.

In certain cases, the same incident may give rise to liability both in contract and in tort. For example, when a passenger whilst traveling with a ticket is injured owing to the negligence of the transporting company, the company is liable for a wrong which is both a tort and breach of a contract. The contractual duty may be owed to one person and the duty independent of that contract to another. For instance, the surgeon who is called by a father to operate his daughter. In *Austin V. G.W. Railway* a woman and her child were traveling in the defendant's train and the child was injured by defendant's negligence. The child was held entitled to recover damages, for it had been accepted as passenger (Peretomode, 2001).

CONSTITUENTS OF TORT

The law of tort is fashioned as an instrument for making people comply to the standards of reasonable behaviour and respect the rights and interest of one another. This it does by protecting interests and by providing for situations where person whose protected interest is violated can recover compensation for the loss suffered by him from the person who violated the same. By interest here is meant to claim, want or desired of a human being or group of human beings seeking to satisfy, and of which, therefore the ordering of human relations in civilized society must take account. It is however, obvious that every want or desire of a person cannot be protected nor can a person claim that whenever he suffers loss he should be compensated by the person who is the author of the loss. The law, therefore, determines what interest need protection and it also holds the balance when there is a conflict of protected interests. Every wrongful act is not a tort. To constitute a tort:

- a. There must be a wrongful act committed by a person;
- b. The wrongful act must be in the form of an action unliquidated damages.

WRONGFUL ACT

An act which prima facie looks innocent may become tortious, if it invades the legal right of another person. In *Roger V. Ranjendro Dutt*, the court held that the complained of should, under the consequences, be legally wrongful, as regard the party complaining (Gregory, 1995). That is, it must prejudicially affect him in some right; merely that it will however directly do harm in his interest is not enough. A legal right, as defined by Austin (1987) is a faculty which resides in a determinate party or parties by virtue,

a given law and which avails against a party (or parties or answers to a duty on a party lying on a party or parties) other than the party or parties in and private rights, to every right, corresponds legal duty or obligation. This obligation consists in performing some act or refraining from performing an act. Liability for tort arises, therefore when the wrongful act complained of amount either to an infringement of a legal private right or a breach or violation of a legal duty.

DAMAGE

In general, a tort consists of some act done by a person who causes injury to another, for which damages are claimed by latter against the former. In this connection, we must have a clear notion with regard to the words damage and damages. The word damage is used in the ordinary sense of injury or loss or deprivation of some kind, whereas damages mean the compensation claimed by the injured party and awarded by the court. Damages are claimed and awarded by the court to the parties. The word injury is strictly limited to an actionable wrong, while damage means loss or harm occurring in fact, whether actionable as an injured or not. The real significance of a legal damage is illustrated by two maxims, namely '*damnum sine injuria* and *injuria sine damnum*' (Nakpodia, 2007).

DAMNUM SINE INJURIA (DAMAGE WITHOUT INJURY)

There are many acts which though harmful are not wrongful and give no right of action to him who suffers from their effects. Damage so done and suffered is called *Damnum Sine Injuria* or damage without injury. Damage without breach of a legal right will not constitute a tort. They are instances of damage suffered from justifiable acts. An act or omission committed with lawful justification or excuse will not be a cause of action though it results in harm to another as a combination in furtherance of trade interest or lawful user of one's own premises.

In Gloucester Grammar School Master Case, it had been that the plaintiff school master had no right to complain of the opening of a new school. The damage suffered was mere *damnum absque injuria* or damage without injury (Nakpodia, 2007). Action v. Blundell, in which a mill owner drained off underground water running into the plaintiffs well, fully illustrate that no action lies from mere damage, however substantial, caused without the violation of some rights (Nakpodia, 2011). There are moral wrongs for which the law gives no remedy, though they cause great loss or detriment. Loss or detriment is not a good ground of action unless it is the result of a species of wrong of which the law takes no cognizance.

INJURIA SINE DAMNO (INJURY WITHOUT DAMAGE)

This means an infringement of a legal private right without any actual loss or damage. In such a case, the person whose right has been infringed has a good cause of action. It is not necessary for him to prove any special damage because every injury imports damage when a man is hindered of his right. Every person has an absolute right to

property to the immunity of his person and to his liberty and an infringement of this right is actionable per se. Actual perceptible damage is not therefore essential as the foundation of an action. It is sufficient to show the violation of a right in which case the law will presume damage. Thus, in cases of assault, battery, false imprisonment, libel, trespass on land, etc, the mere wrongful act is actionable without proof of special damage.

The court is bound to award to the plaintiff at least nominal damages if no actual damage is proved. This principle was firmly established by the election case of *Ashby v. White*, in which the plaintiff was wrongfully prevented from exercising his vote by the defendants, returning officers in parliamentary election. The candidate from whom the plaintiff wanted to give his vote had come out successful in the election. Still the plaintiff brought an action claiming damages against the defendants for maliciously preventing him from exercising his statutory right of voting in that election. The plaintiff was allowed damages by Lord Holt saying that there was the infringement of a legal right vested in the plaintiff (Kodilinye, 1990).

REMEDY

The law of torts is said to be a development of the maxim *ubi jus ibi remedium* or 'there is no wrong without a remedy' if a man 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 remedy; want of right and want of remedy are reciprocal. Where there is no legal remedy there is no wrong. Though, the absence of a remedy is evidence yet is not conclusive that no right exists.

THE TEACHER AND VICTIMLESS CRIMES IN SECONDARY SCHOOLS

The teacher stands in position of *in-loco-parentis* in the school. Although in respect of many crimes (torts) committed in the schools, the teacher claims to be ignorant, hence, Nakpodia (2011) opines that *ignoramus legis non est culpa* - ignorance of the law is not an excuse. In many crimes, the perpetrators are different from the victims. As a result, in the cases of crimes, there are two persons, namely, the perpetrator and the victim. Although, there are offences where the perpetrators did not victimized any other person than the perpetrators. These are called victimless crimes.

According to Kayode (1984), there are a number of behaviours that are mildly prohibited by law but that do not have a victim in the traditional sense of the term. There are four characteristics of victimless crimes:

- a. There is the time of argument between the parties involved in the crime.
- b. Those who participate in the crime do not complain to the police. But a non-participant may do so (*amicus legis*).
- c. The participants generally believe that they are not harmed by the crime if ever other people believe that they are harmed.

It is clear from the above that there are different types of victimless crimes in the school system which the teacher with his position *in-loco-parentis*. They are:

- a. Drunkenness
- b. Vagrancy and begging
- c. Gambling
- d. Restitution
- e. Adult consensual sexual offences
- f. Narcotic and drug law violations
- g. Driving skill intoxicated
- h. Disorderly conduct
- i. Violation of liquor laws

SOME GENERAL CONDITIONS IN TORTS

Act and Omission: To constitute a tort there must be a wrongful act whether of omission or commission but not such acts as are beyond human control and as are entertained only in thoughts. An omission is generally not actionable but it is so exceptionally. Where there is a duty to act an omission may create liability. A failure to rescue a drowning child is not actionable, but it is so where the child is one's own. A person who voluntarily commences rescue cannot leave it half the way. A person may be under duty to control natural happenings to his own land so as to prevent them from encroaching others' land.

Voluntary and Involuntary Acts: A voluntary act has to be distinguished from an involuntary act because the former may involve liability and the latter may not. A self willed act like an encroachment from business is voluntary but an encroachment for survival may be involuntary. The wrongfulness of the act and the liability for it depends upon legal appreciation of the surrounding circumstances.

Malice: Malice is not essential to the maintenance of an action for tort. It is of two kinds - 'Express Malice' (or malice in fact or actual malice) and 'malice in law'(implied malice) The first is what is called malice, a common acceptance means ill will against a person. The second means a wrongful act done intentionally without just cause or excuse. Where a man has a right to do an act, it is not possible to make its exercise of such rights actionable by alleging or proving that its motive for exercise was spite or malice in popular sense. An act not otherwise unlawful cannot generally be made actionable by an averment that it was done by evil motive. The malicious motive per se does not amount to *injuria* or legal wrong.

Wrongful Act of which malice is an essential elements are:

- a. Defamation
- b. Malicious prosecution
- c. Willful and malicious damage to property
- d. Maintenance and
- e. Slander of title

Intention, Motive, Negligence and Recklessness: The obligation to make reparation for damage caused by a wrongful act arises from the fault and not from the intention. Any inversion of the civil rights of another person is in its self a legal wrong carrying with its liability to repair if necessary or natural consequences, in so far as these are injurious to the person whose right is infringed, whether the motive which promoted it be good, bad or indifference. A thing which is not a legal injury or wrong is not made actionable by being done with a bad intent. It is known defense to an action in tort for the wrong doer to plead that he did not intend to cause damage, if damage has resulted owing to an act or omission on its part which is a actively or passively the effect of its violation. A want of knowledge of the illegality of its act or omission afford no excuse, except where fraud or malice is the essence of that act or omission. For every man is presumed to intent and to know the natural and ordinary consequences of its act. This presumption is not rebutted mere by prove that he did not think of the consequences or hoped or expected that they would not follow the defendant will be liable for the natural and necessary consequences of his act, whether he in fact contemplated them or not.

Malfeasance, Misfeasance and Nonfeasance: The term 'Malfeasance' applies to the commission of an unlawful act. It is generally applicable to those unlawful acts such as trespass, which are actionable per se and do not require proof of negligence or malice. The term 'Misfeasance' is applicable to improper performance of some lawful act. The term non-feasance applies to the failure or omission to perform some act which there is obligation to perform.

Fault: Liability for tort generally depends upon something done by a man which can be regarded as a fault for the reason that it violates another man's right. But liability may also be without fault. Such liability is known as absolute or strict liability. An important example is the rule in *Rylands v. Fletcher*. Thus, the two extremes of the law of tort are of non-liability even where there is fault or liability without fault. Since these two extremes are the variety of intentional and negligent wrongs to the question whether there is any consistent theory of liability, all that can be said is that it wholly depends on flexible public policy, which in turn is a reflection of the compelling social needs of the time (Peretomode, 2001).

CONCLUSION

To conclude, law of tort is a branch of law which resembles most of the other branches in certain aspects, but is essentially different from them in other respects. Although there are differences in opinion among the different jurists regarding the liability in torts, the law has been developed and has made roots in the legal showground. There are defined elements and conditions of liability in tort law. This brough of law enables the citizens of a state to claim redress for the minor or major damage cause to them. Thus the law has gained much confidence among the laymen.

REFERENCES

- Abumere, P. I.** (1996). *An Anatomy of Criminology*. Ekpoma: Inno Publishers Ltd.
- Alexander, K.** (1980). *School Law*. St. Paul, Min.: West Publishing Co.
- Austine A.** (1987). *Law for Everyman*. Onitsha: African - Fep. Pub. Ltd.
- Barrell, G. R.** (1975). *Teachers and the Law*. Great Britain: Methuen and Co. Ltd.
- Corporal Punishment** (February 2009). National Association of Secondary School Principals. Available at www.principals.org/content.aspx?topic=47093.
- Gould, B.** (2007). Sparing the Rod. *The Guardian*. London, 9 January, 2007.
- Gregory, J. F.** (1995). Crime of Punishment: Racial and Gender Disparities in the use of Corporal Punishment in U.S. Public Schools. *Journal of Negro Education* 64 (4): 454 - 462. doi:10.2307/2967267. www.findarticle.com/p/articles/mi_qa3626/is_199510/ai_n8721467. retrieved 2008-10-30.
- Henston, S. F. V.** (1961). *Salmond on the Law*. London: Fort Sweat and Maxwell Limited.
- Kayode A.** (1984). *Legal Obligations and Contractual Rights of the Secondary School Teacher in Nigeria*. *Secondary Education in Nigeria*. Ile-Ife: University of Ife Press, Nigeria.
- Kodilinye C.** (1990). *Nigerian Law of torts*. Spectrum: Law Publishing Ibadan - Owerri - Kaduna.
- Nakpodia, E. D.** (2007). *Education Law*. Warri: Jonakase Nig. Co.
- Nakpodia E. D.** (2009). The Potential of the Law of Torts and the Protection of Nigerian School Children. *Educational Research and Reviews* 4(1): 009-015. ISSN:1990-3839. Website: <http://www.academicjournals.org/ERR>
- Nakpodia, E. D.** (2011). Analysis of Cases of Violation of Students' Rights in Delta State Secondary Schools, Nigeria. *Prime Research on Education*, 1 (3). 050 - 059, May/June, 2011. www.primejournal.org/PRE
- Nwagu, N. A.** (1987) *Education and the law in Nigeria: The Rights of Teachers and Students*. Owerri: Kay BeeCee Publication Limited.
- Peretomode, V. F.** (2001) *Education Law: Principles, Cases and Materials on School Set*. Owerri: International University Press, Nigeria.