

LAW OF TORTS

KEY FEATURES

- ▣ Structured and In-depth Coverage of Various Topics
- ▣ Bulletized Presentation of Content
- ▣ Special Emphasis on Bare Provisions
- ▣ Inclusion of Leading Case Laws



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Chapter 1

LAW OF TORT: NATURE AND SCOPE



Tort law is a branch of civil law that deals with civil wrongs or injuries, whether intentional or accidental, that result in harm to an individual or their property. The purpose of tort law is to provide legal remedies for those who have been wrongfully injured by others.

Over time, the principles of tort law continued to evolve and adapt to changing social, economic, and technological conditions. Today, tort law encompasses a wide range of civil wrongs, from personal injuries and property damage to defamation and privacy violations. The essential nature of the law of torts is that it is not codified. The law of torts in India is based on English Common law, which is the product of judicial pronouncements.

ORIGIN AND DEVELOPMENT OF LAW OF TORTS IN ENGLAND

The law of torts in England originated from common law procedures, initially governed by royal writs issued by the Chancery.

- Trespass emerged as one of the earliest actionable torts, initially addressing direct, forcible, and immediate injuries. However, it did not encompass indirect or consequential harm until later statutes, such as the *consimili cassu* in 1285, expanded its scope to include such injuries under the writ of trespass.

CONSIMILI CASU

- *Consimili Casu* is a Latin term that means "in a like case."
- It refers to a writ of entry that allows a person with a reversionary interest in land to sue for the return of land that has been alienated by a life tenant or a tenant by courtesy.

- This writ was created by the second Statute of Westminster in 1285.
- The statute required the Chancery to issue a writ for any situation that called for a writ similar to one that had previously been issued. This means that if a writ had been issued in a similar case before, the Chancery had to issue a writ for the new case as well.

- During the 19th century, prior to the Judicature Acts, the landscape of tort law was characterized by various procedural forms of action, leading to the eventual unification of these actions under the Judicature Acts.
- Subsequently, tort cases were treated as civil suits and adjudicated based on common law principles. Thus, the English law of torts is a branch of English Common Law.
 - The word 'tort' was first used in the case of **Boulton v. Hardy (1597)**.
- According to Salmond, it is law of torts, i.e., constellation of certain specific and limited wrongs recognized by law in course of history and every plaintiff can only avail of the limited 'pigeonhole' categories to classify wrong against him and the doctrine '*ubi jus ibi remedium*' is not applicable to find remedy for every type of wrong.
- Initially, English tort law adhered to the fault theory, holding defendants liable only if they were at fault. However, as urbanization and industrialization advanced, strict liability principles began to replace fault theory, as evidenced by landmark cases like **Rylands v. Fletcher (1868)**.

- The legal system of the United Kingdom is rooted in common law, emphasizing the significance of precedent in judicial decisions. Consequently, English tort law is heavily influenced by decisions from higher courts.

EVOLUTION OF LAW OF TORTS IN INDIA

- Once English traders arrived in India, they were given the authority to use English laws to govern the East India Company's servants.
- The Charter of 1726 introduced both common law and statute law of England. In 1774, the Supreme Court in Calcutta was established, applying English law to everyone under its jurisdiction.
- Outside of the Presidency town, personal laws governed matters like adoption, inheritance, and marriage. In other cases, courts had to consider fairness and conscience. In tort cases, courts aimed to follow common law principles of fairness and justice.
- Despite the establishment of High Courts in 1861, there were no significant changes. Even after India gained independence, existing laws continued under Article 300 of the Constitution. In 1947, when India gained independence from British rule, a new era of laws and regulations began to take shape. Many of these laws were heavily influenced by English principles or common law, where "justice, equity, and good conscience" played a significant role.
- In the case of **M.C. Mehta v. Union of India (1986)**, Justice Bhagwati emphasized the importance of evolving new principles and norms to address the challenges posed by a highly industrialized economy. He stressed the need for India to develop its own jurisprudence, drawing inspiration from various sources but ultimately building its legal framework suited to its unique context.

- In **Rajkot Municipal Corp. v. Manjulben Jayantilal Nakum (1997)**, the Supreme Court held that "In the absence of statutory law in regard to tortious liability in India, the common law principles evolved in England may be applied to the extent of suitability and applicability to the Indian conditions."
- Several statutes have been enacted in India where the principles of tort law have been adopted and applied in various ways. For example, the 'Public Liability Insurance Act, 1991', 'Environment Protection Act, 1986', 'Consumer Protection Act, 1986', 'Human Rights Protection Act, 1998', and 'Prenatal Diagnostics Techniques Regulations and Prevention of Misuse Act, 1994' introduced new principles of tortious liability.
- Additionally, laws such as 'The Motor Vehicles Act, 1988' and judicial interpretations have contributed to the development of accident claims. The tragic Bhopal Gas Leak disaster also prompted a new direction in tort law. This led to the recognition of environmental torts, toxic torts, governmental torts, liability of multinational corporations, congenital torts, and the imposition of strict and absolute liability standards, among other developments.

DEFINITION OF TORT

The word 'tort' is derived from the Latin word 'tortum', meaning 'twisted'. In English, the word 'tort' has a purely technical legal meaning which is 'a legal wrong for which the law provides a remedy'.

- Salmond defined tort as "It 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."
- Winfield stated that "Tortious Liability arises from the breach of a duty primarily fixed by the law; this duty is towards persons generally and its breach is redressible by an action for unliquidated damages."

- Fraser said that "It is an infringement of a right in rem of a private individual giving a right of compensation at the suit of the injured party."
- The definition of the tort is provided under **Section 2(m)** of the Limitation Act, 1963, "Tort means a civil wrong which is not exclusively a breach of contract or breach of trust."

CONSTITUENTS OF TORT

To constitute an action of tort, it is essential that following conditions are fulfilled:

- There must be some act or omission on the part of the defendant and
- The act or omission must result in legal damages.
- Some legal remedy in the form of action against damages must be available.

Act or Omission

- The law of torts imposes an obligation on every individual to exercise a reasonable level of care when engaging in activities that could potentially cause harm to others.
- To hold someone accountable for a tort, they must have either committed an action they shouldn't have or failed to do something they should have, whether through an act or omission. For instance, acts like defamation, trespass, or false imprisonment fall under "acts," while negligence falls under "omissions."
- In **Glasgow Corp v. Taylor (1922)**, the corporation responsible for maintaining a public park neglected to erect a proper fence to keep children away from a poisonous tree. As a result, a child consumed the fruits of the poisonous tree and died. The corporation was held liable for the omission of not taking proper care.
- Similarly, in **Municipal Corporation of Delhi v. Subhagwanti (1966)**, where a clock tower situated in the Delhi's center, which was not adequately maintained, collapsed and resulted in the deaths of several people, it was determined that this

happened due to the omission of the Delhi Municipal Corporation to take care of the property.

- It's important to note that the wrongful act or omission must be recognized by law and not solely based on moral or societal values.

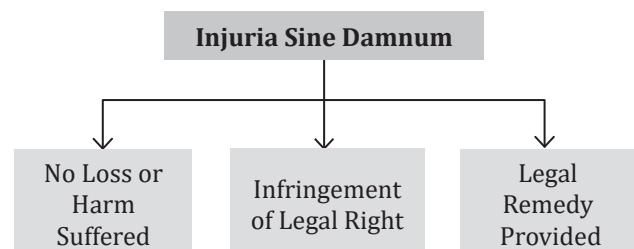
Legal Damages

- In order to be successful in an action for tort, the plaintiff has to prove that there has been legal damage caused to him. Unless there has been violation of a legal right vested in the plaintiff, there can be no action.
 - This is expressed by the maxim "**Injuria sine damno**", *injuria* means infringement of a right conferred by law on the plaintiff and *damno* means substantial harm, loss or damage in respect of money, comfort, health etc.
 - When there has been violation of legal rights (injuria) without causing any harm (damnum/ damno), the plaintiff can still go to the court of law because no violation of a legal rights should go unredressed. Reciprocally, when there is any harm without violation of legal rights i.e "**Damnum Sine Injuria**" it is not actionable per se.

- Thus the test to determine whether the defendant should or should not be liable is not whether the plaintiff has suffered any loss or not, but the real test is whether any lawful rights vested in the plaintiff has been violated or not.

Injuria Sine Damno

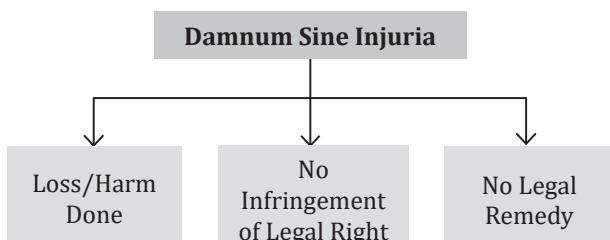
- Injuria sine damnum** translates as "injury without damage". It refers to the violation of a legal right without resulting in substantial harm or loss to the plaintiff.



- This legal maxim underscores that the essence of tort action lies in the infringement of a legal right. Therefore, even if there is injury due to the violation of a legal right, but no actual damage or loss to the plaintiff, the plaintiff can still seek redress through tort action.
- Following case laws are the instances pertaining to this maxim:
 - **Ashby v. White (1703)**, the plaintiff, a voter, was denied the opportunity to vote by the defendant, a returning officer. No loss was suffered by such refusal but the plaintiff intended to vote. The court held the defendant liable because of the infringement of the plaintiff's right to vote.
 - Similarly, in **Bhim Singh v. State of J&K (1986)**, an MLA was unlawfully detained by the police, preventing him from attending an assembly session. Although the MLA was eventually awarded Rs. 50,000 in damages, this case exemplifies how even a temporary deprivation of rights without tangible harm can constitute *injuria sine damnum*.

Damnum Sine Injuria

- **Damnum sine injuria** translates as "damage without injury," denotes a situation where there is no infringement of a legal right, and therefore no legal action can be pursued in court, even if the defendant's actions have caused some form of loss, harm, or damage to the plaintiff.



- Following case laws are the instances pertaining to this maxim:

- In the **Gloucester Grammar School Case**, the defendant, a schoolmaster, established a competing school, leading the plaintiffs to reduce their fees due to increased competition. However, it was determined that the plaintiffs had no legal recourse for the losses they incurred since no violation of their legal rights had occurred.
- In **Mogul Steamship Co. v. McGregor, Grow and Co. (1889)**, several steamship companies collaborated to offer reduced freight rates, which drove the plaintiff out of business. Despite suffering financial harm, the plaintiff was unable to pursue legal action as the defendants' actions were deemed lawful.
- In **Mayor of Bradford Corporation v. Pickles (1895)**, even when harm was inflicted maliciously, the House of Lords ruled that no action could be taken unless the plaintiff could demonstrate an actual injury. Malicious intent alone was held insufficient to establish legal liability.
- In **Chesmore v. Richards (1859)**, plaintiff, a mill owner, was using water from a stream for a long time. The defendant dug a well on their land deep enough to stop the water going from the stream to the plaintiff's side. A case was brought to seek the redressal and the defendant was held not responsible as plaintiff's legal right was not infringed.
- In **Town Area Committee v. Prabhu Dayal (1975)**, the plaintiff constructed a building without following municipal regulations. The defendants demolished the construction. The plaintiff sued the defendants contending that the demolition was illegal as some of the officers of the Town Area Committee were acting maliciously in getting the construction demolished. The Allahabad High Court held that the demolition of a building illegally constructed was perfectly lawful.

- In summary, ***damnum sine injuria*** highlights instances where damage occurs without a corresponding legal injury, precluding legal action even in cases of financial loss or harm caused by the defendant's actions.

Ubi Jus Ibi Remedium

- "***Ubi jus ibi remedium***" means "where there is a right, there is a remedy". It serves as a cornerstone of tort law, asserting that every legal right must be accompanied by a corresponding legal remedy. This maxim underscores the fundamental principle that no injustice should go unresolved.
- In ***Ashby v. White (1703)***, the court recognized this principle, emphasizing that having a legal right necessitates having the means to enforce and uphold it. Essentially, a right without a remedy lacks effectiveness and becomes meaningless.
- Tort law, rooted in English common law, has evolved primarily through judicial decisions,

shaping its principles and doctrines over time.

- In the case of **Rajkot Municipal Corporation v. Majnuben Jayantilal Nakum (1997)**, the Supreme Court of India affirmed that in the absence of specific statutory provisions concerning torts, common law principles developed in England could be applied in India.

TORT VIS-A-VIS OTHER WRONGS

- Tort differs from crime as it is redressed by compensation or damages and not by punishment or fine though the same wrong may be a tort as well as a crime concurrently.
- Tort differs from breach of contract as the rights and duties arise, in case of contract, from the agreement and are enforceable against the parties concerned. Breach of contract may be redressed by liquidated damages.

TORT AND CRIME: DIFFERENCE		
ASPECT	TORT	CRIME
Definition	A civil wrong resulting in infringement of the private or civil right of an individual.	Wrongful acts deemed harmful to society as a whole, prosecuted by the state.
Plaintiff	Typically initiated by the injured party (plaintiff) seeking compensation.	Prosecuted by the state and not by the injured party.
Burden of Proof	The plaintiff has the burden of proving their case by a preponderance of the evidence.	The prosecution must prove the case beyond a reasonable doubt.
Penalties	Compensatory damages, injunctions, or other civil remedies.	Fines, imprisonment, probation, or other criminal penalties.
Mens Rea	Intention of the wrongdoer is not of crucial importance. Certain cases that recognize strict and absolute liability make intention immaterial.	'Actus Non Facit Reum Nisi Mens Sit Rea' is a fundamental principle in criminal law that states an act does not make a person guilty unless there is a guilty mind. This shows that intention is a crucial element in criminal law.
Purpose	Compensate the injured party and deter similar conduct in the future.	Punish the offender and protect society from harm.
Examples	Negligence, defamation, trespass.	Theft, assault, murder.

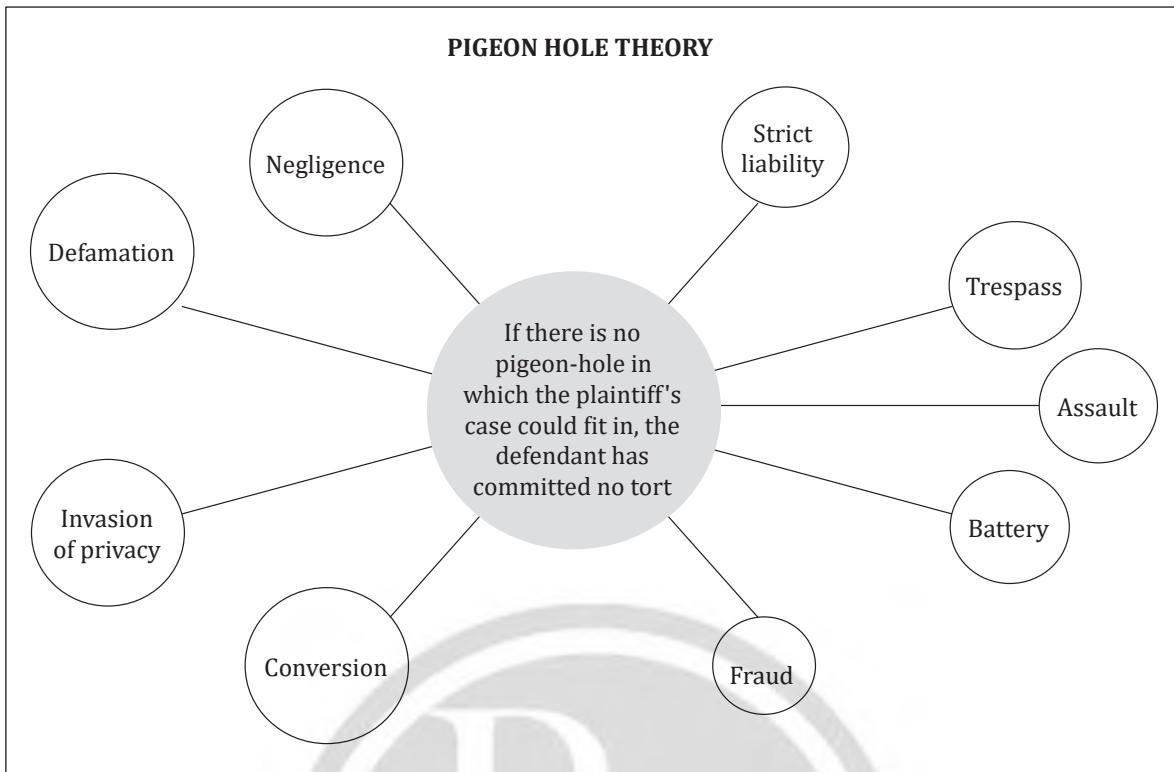
TORT AND CONTRACT: DIFFERENCE		
ASPECT	TORT	CONTRACT
Definition	A civil wrong resulting in infringement of the private or civil right of an individual.	A violation of a legal agreement between two or more parties to the contract, where one party fails to fulfill their obligations without a lawful excuse.
Type of Law	Governed by common law and statutes.	Governed primarily by Indian Contract Act, 1872.
Source of Duty	Duty imposed by law or society to refrain from certain actions.	Duty arises from the terms of the contract itself.
Intent	Can be intentional (e.g., intentional torts like assault) or unintentional (e.g., negligence).	Can be intentional (e.g., breach of contract with intent) or unintentional (e.g., breach due to negligence).
Damages	Compensatory damages to compensate for the harm suffered, and sometimes punitive damages to punish the wrongdoer.	Compensatory damages to cover losses resulting from the breach, but punitive damages are generally not awarded.
Nature of Right	It is a violation of a right in rem.	It is a violation of a right in personam.
Examples	Negligence, defamation, trespass, nuisance.	Failure to deliver goods as promised, failure to perform services as agreed, non-payment for goods or services provided.
Remedies	Damages (compensatory and sometimes punitive), injunctions.	Damages (compensatory), specific performance (in some cases), rescission, restitution of the contract.

RELEVANCE OF INTENTION, MOTIVE AND MALICE IN LAW OF TORTS

In the law of torts, intention, motive, and malice play crucial roles in determining liability and damages in certain situations:

□ **Intention:** Intention refers to the state of mind of the defendant at the time of committing the act. If the defendant intentionally causes harm or injury to another person or their property, they may be held liable for the tort. Intent can be either specific, where the defendant specifically intends the consequences of their actions, or general, where the defendant knows that harm is substantially certain to occur as a result of their actions.

- **Motive:** Motive refers to the reason or purpose behind the defendant's actions. While motive alone may not determine liability for a tort, it can help establish intent or provide context for the defendant's behavior. Courts may consider motive when determining the severity of the defendant's actions or when assessing punitive damages.
- **Malice:** Malice typically refers to ill will or wrongful intent towards another person. In tort law, malice can sometimes be used to establish certain intentional torts, such as defamation or malicious prosecution. Malice can also be relevant in cases involving intentional infliction of emotional distress, where the defendant's conduct is deemed to be particularly grievous or vindictive. In tort law, "malice" can refer to two distinct concepts: "malice in law" and "malice in fact."



- According to him, an individual who commits a wrongful act would only be held liable if the victim can categorize the act under one of these specified "torts" or "pigeon holes".
- If the act aligns with any of these categories, the victim can initiate legal proceedings.
- However, if the defendant's action does not fit into any of these categories, it implies that no tort has been committed.
- Salmond elaborates that "just as the criminal law comprises a set of rules defining specific offences, similarly, the law of torts comprises a set of rules defining specific injuries. In neither case is there any overarching principle of liability." Salmond's book is titled "Law of Torts".

Law of Tort

- Winfield stands as the principal advocate for the first theory, asserting that all actions causing harm to another person constitute torts unless justified by recognized legal principles.
- According to this perspective, tort law encompasses not only those wrongs with

specific names but also the broader principle that all unjustified harm constitutes a tort.

- This framework empowers courts to establish new torts. Winfield, endorsing this theory, concludes that the law of tort is evolving, with courts periodically introducing new torts over time.
- Winfield later revised his stance on his theory, suggesting that both his and Salmond's theories held validity, albeit from different perspectives.
- He believed that Salmond's theory offered a narrower, more practical viewpoint, while his own theory provided a broader outlook.
- According to Winfield, Salmond's approach sufficed for practical purposes, whereas his own theory offered a more comprehensive understanding.
- This indicates that the choice between the two theories depends on the perspective and angle from which one views the matter, with each theory being correct within its own framework.
- The Indian judiciary has embraced Winfield's theory, as indicated by Justice

Bhagwati's statement emphasizing the need to develop new principles and norms to address emerging challenges in a modern industrialized economy.

- He stressed the importance of not being bound solely by English law but instead evolving India's jurisprudence. In the case of **M.C. Mehta v. Union of India (1986)**, the Supreme Court of India introduced the concept of absolute liability, replacing strict liability, thus reflecting the judiciary's commitment to adapt legal principles to the country's unique context.
- It is noteworthy to mention that Law of Tort is not static but dynamic in its approach. The Supreme Court of India had also highlighted in **Jay Laxmi Salt Work (P) Ltd. v. The State of Gujarat (1994)** that law of torts is a developing field of law and that to barricade it would be injudicious.

PRESCRIBING STANDARDS OF HUMAN CONDUCT

In tort law, the concept of prescribing standards of human conduct refers to the rules and principles that dictate how individuals and entities should behave to avoid causing harm to others. These standards serve as a benchmark to evaluate whether someone's actions or omissions constitute a tortious act.

Key Elements of Standards in Law of Tort

- **Duty of Care**
 - A foundational principle in tort law, the duty of care refers to an obligation to act with a level of care and caution to prevent foreseeable harm to others.
 - It often arises from relationships or situations where there's an inherent risk of harm (e.g., drivers on the road have a duty to drive safely).
- **Breach of Duty**
 - This occurs when an individual or entity fails to meet the prescribed standard of care, acting in a manner that is unreasonable or negligent.

- Whether a duty has been breached is often determined by the "reasonable person" standard. A reasonable person is someone with reasonable caution who doesn't take actions likely to result in harm to themselves or others.

□ **Reasonable Person Standard**

- A hypothetical construct representing how a typical, prudent person would act in similar circumstances.
- It helps judges and juries determine whether a defendant's behavior fell below acceptable standards.

□ **Foreseeability**

- This concept plays a critical role in determining whether harm could have been anticipated by a reasonable person.
- It can also influence the extent of a person's duty of care.

Examples of Tort Law Standards

□ **Negligence**

- In negligence cases, standards are centered around the concept of reasonableness. A person or entity must exercise reasonable care to avoid harming others.
- For example, in medical malpractice, doctors are assumed to have a standard of care that is typical of other professionals with similar expertise.

□ **Strict Liability**

- Some situations involve strict liability, where the standard doesn't require negligence or intent to harm.
- Certain activities (e.g., using explosives, keeping wild animals) inherently carry risks, and those engaging in them have a strict standard of responsibility for any resulting harm.

□ **Common Law and Statutory Standards**

- Standards can derive from common law principles or specific statutes that mandate certain conduct.

FAMILY LAW

(HINDU AND MOHAMMEDAN LAW)



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SPECIAL CONTRACTS LAW (PARTNERSHIP AND SALE OF GOODS)



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CONSTITUTIONAL LAW OF INDIA



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LAW OF TRANSFER OF PROPERTY



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LAW OF CONTRACTS



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LAW OF CIVIL PROCEDURE AND LIMITATION



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LAW OF CRIMES

(BHARATIYA NYAYA SANHITA)



KEY FEATURES

- ✍ Structured and In-depth Coverage of Various Topics
- ✍ Bulletized Presentation of Content
- ✍ Special Emphasis on Bare Provisions
- ✍ Inclusion of Leading Case Laws

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LAW OF CRIMINAL PROCEDURE

(BHARATIYA NAGARIK SURAKSHA SANHITA)



KEY FEATURES

- ✍ Structured and In-depth Coverage of Various Topics
- ✍ Bulletized Presentation of Content
- ✍ Special Emphasis on Bare Provisions
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LAW OF EVIDENCE

(BHARATIYA SAKSHYA ADHINIYAM)



KEY FEATURES

- ▣ Structured and In-depth Coverage of Various Topics
- ▣ Bulletized Presentation of Content
- ▣ Special Emphasis on Bare Provisions
- ▣ Inclusion of Leading Case Laws

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SPECIFIC RELIEF ACT



KEY FEATURES

- ✍ Structured and In-depth Coverage of Various Topics
- ✍ Bulletized Presentation of Content
- ✍ Special Emphasis on Bare Provisions
- ✍ Inclusion of Leading Case Laws

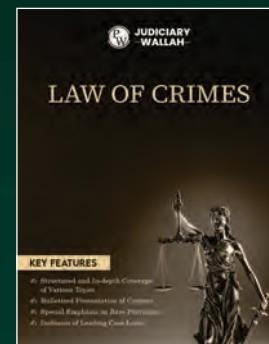
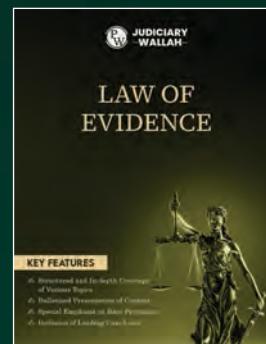
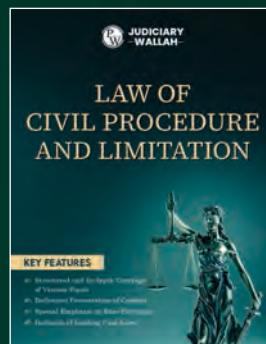
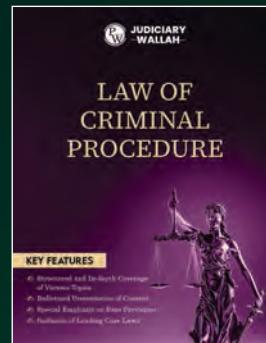
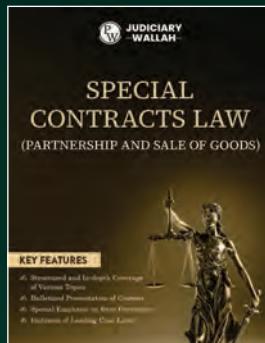
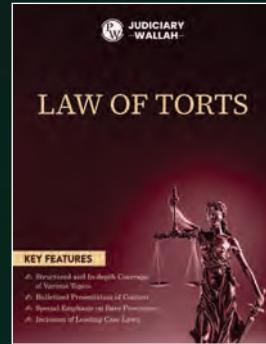
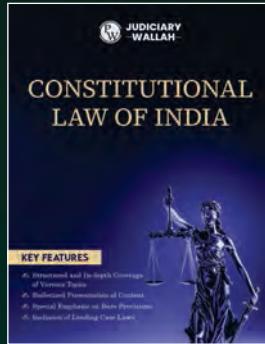
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