



# INTERNATIONAL JOURNAL OF CREATIVE RESEARCH THOUGHTS (IJCRT)

An International Open Access, Peer-reviewed, Refereed Journal

## DAMNUM SINE INJURIA

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### ABSTRACT

The legal maxim “Damnum Sine Injuria” means damage without injury. It means that the defendant is not liable for any damages if he is acting within his legal rights even if he is infringing the rights of the plaintiff. The damages may be monetary or physical.

The paper discusses the history and origin of the maxim and also its relevance in modern times. The Law of Torts has been around for very long and it has been constantly evolving with the changing time and mindsets of the society.

Two case laws have also been analyzed that highlight the usage of this maxim in the Indian Court of Law.

### INTRODUCTION

According to Winfield, Tort means “*Tortious liability arises from the breach of a duty primarily fixed by law; this duty is towards persons generally and its breach is redressible by an action for unliquidated damages*”.<sup>1</sup>The law of torts is regarded as “*an instrument for making people adhere to standards of reasonable behaviour and respect the rights and interests of one another*”<sup>2</sup>This is achieved by securing interests and ensuring in cases when a person whose protected interest is compromised can recover damages from the person who has breached the same person for the damage suffered by him.<sup>3</sup> By interest, we mean “*a claim, want or desire of a human being or group of human beings which the human being or group of human beings seeks to satisfy, and of which, therefore, the ordering of human relations in civilised society must take*

<sup>1</sup>Winfield & Jolowcz, Torts, (19 th ed. 2015).

<sup>2</sup>SETALVAD, Common Law in India, p. 109.

<sup>3</sup>Popatlal Gokaldas Shah v. Ahmedabad Municipal Corporation, AIR 2003 Guj 44 [LNIND 2002 GUJ 392], p. 55.

account".<sup>4</sup>A protected interest will then give rise to a legal right which will then give rise to a legal duty.<sup>5</sup> Any act that would infringe legal rights would be wrongful, but every wrongful act is not a tort.<sup>6</sup>

For any wrongful act to be a tort there shall be present three constituents. First, there shall be a wrongful act, secondly, there shall be legal damage arising out of the wrongful act. Lastly, there shall be a legal remedy in form of damages arising from the wrongful act.<sup>7</sup>

'Damage' means the harm or loss sustained or assumed to be suffered by a party as a result of some other person's wrongful act. The amount of money provided by the court to compensate for "damage" is referred to as "damages."<sup>8</sup>The rights are graded as (1) absolute and (2) qualified from the point of view of the presumption of harm. The law conclusively presumes injury when an absolute right is violated, while the injured party may have suffered no financial damage whatsoever. The damage thus re-established is called legal damage.<sup>9</sup>

The importance of legal damage can be established by maxims, *injuria sine damnum & damnum sine injuria*. In *Damnum Sine injuria*, *Damnum* means damage in the form of money, loss of comfort service and even health and *Injuria* means a tortious act, which not necessarily be willful or malicious.<sup>10</sup>

### **HISTORICAL PERSPECTIVE**

As per Halsbury's Laws of India, *damnum sine injuria* refers to—

*“Every damage that a person may suffer is not necessarily, a damage recognised by law. There may be a wrong done to a person, but, if it has not caused him legal damage, there is no tort in respect of which an action is maintainable.”<sup>11</sup>*

The Maxim before us is very old and can be traced to cases centuries ago. One such case is —

Gloucester Grammar School case (1410),<sup>12</sup>

Facts of the case —

The defendant in this case was a schoolmaster who was working in the plaintiff's school. Later he left his job. He established another school in the same neighbourhood. The defendant was a popular teacher, due to which children from the plaintiff's school flocked in the defendant's school. Which caused financial loss to the plaintiff. The plaintiff brought a suit for indemnification in the court of law.

<sup>4</sup>POUND, Selected Essays, p. 86; STREET, Torts, 6th edition, p. 3.

<sup>5</sup>Ratanlal & Dhirajlal, The Law of Torts, (26 th ed. 2010).

<sup>6</sup>Ratanlal & Dhirajlal, The Law of Torts, (26 th ed. 2010).

<sup>7</sup>Ratanlal & Dhirajlal, The Law of Torts, (26 th ed. 2010).

<sup>8</sup>Ratanlal & Dhirajlal, The Law of Torts, (26 th ed. 2010).

<sup>9</sup>Ratanlal & Dhirajlal, The Law of Torts, (26 th ed. 2010).

<sup>10</sup> Winsmore v. Greenbank, (1745) Willes 577 (581) as cited in Ratanlal & Dhirajlal, The Law of Torts, (26 th ed. 2010).

<sup>11</sup>Vol 35, Halsbury's Laws of India, Tort & Consumer Protection (2<sup>nd</sup> edition, 2018).

<sup>12</sup> Gloucester Grammar School case, (1410) YB 11 Hen IV, fo. 47, pl. 21, 23.

Issue –

Whether the defendant can be held liable for *damnum sine injuria*. Owing to the fact there was no legal injury.

Held –

The court held that no compensation can be awarded on the grounds that the plaintiff has suffered financial loss. Since the cause of the loss to the plaintiff was not due to infringement of any legal right. Since the defendant was right in establishing a school where he did and did not violate any legal right of the plaintiff.

Harm caused by lawful mine activity.

If a landowner induced subsidence of his surface by operating his mines, as a result of which the rainfall was gathered and transferred into an adjacent lower coal mine by gravitation and percolation.

It was held that no action could be taken by the owner of the latter because the right to operate a mine was a right of property that, when properly exercised, gave birth to no liability.<sup>13</sup>

Forcing out a competing trader from the market.

The shipowners who exported tea from one port to the other, A, B, C and D, collaborated to hold the full trade in their hands. Subsequently, by providing special terms to customers trading and get them to the exclusion of F, F sued A, B, C and D for damages suffered by their actions, F, a rival shipowner, to leave the trade.

This was held that F was not entitled to action, since no legitimate right of F were violated. Harm due to competition wasn't prosecutable in trade.<sup>14</sup>

#### CONTEMPORARY PERSPECTIVE

*Damnum sine injuria* is an important principle for examining damages under torts even in modern times.

Recently in the case of *Vijaya Education Trust (R) v. State of Karnataka Represented by Principal Secretary & Others*.<sup>15</sup>

Facts of the case –

Since the financial year 2004-2005, Petitioner Trust has been operating a Pre-University College at Vijayapura, Devanahalli Taluk, Bengaluru Urban District, in compliance with the sanction/permission given by the 2nd respondent-Director of the Pre-University Education Department.

<sup>13</sup> *Wilson v. Waddell*, (1876) 2 Appcas 95; *Fletcher v. Smith*, (1877) 2 Appcas 781; *Smith v. Kenrick*, (1849) 7 CB 515; *Westhoughton Coal and Cannel Co. v. Wigan Coal Corporation*, (1939) Ch 800.

<sup>14</sup> *Mogul Steamship Co. v. Mc Gregor, Gow & Co.*, (1892) AC 25: 61 LQB 295. See, Chapter XIV, title 4(B), text and notes 63, 64, p. 362.

<sup>15</sup> *Vijaya Education Trust (R) v. State of Karnataka*, Writ Petition No. 33929 of 2016.

Similar sanction/permission was given to the 4th respondent-Trust by 1st respondent-Government vide Order No. ED-108 SHH 2016 Bengaluru dated 31.05.2016 Written Petition for the establishment and operation of an educational institution, i.e., a P.U. College in the same city.

Petitioner contended that establishing institutes lie this was wrong.

Held –

While rejecting the petition court said that *“The contention of the petitioner that, the establishment of one more educational institution in the very same town would adversely affect petitioner's business, is hit by the maxim 'damnum sine injuria'. Centuries ago the English Court in the famous Gloucester Grammar School Masters Case (1410) Y B 11 Hen IV 27 in an identical fact matrix denied relief to the plaintiff, who had sought for an injunctive relief restraining the defendant therein from establishing a rival school. The principle in the said case squarely applies to the case of the petitioner herein”*<sup>16</sup>

### INDIAN CASE LAW

Usha ben v. Bhagyalaxmi Chitra Mandir<sup>17</sup>

In this case, the plaintiffs had asked the high court of Gujrat to issue a permanent injunction on the film. Film in the matter was called Jai Santoshi Maa. The petitioner has said that the film is depicted in a way that it hurts the religious sentiments of the plaintiffs. It shall be observed that here only the plaintiff was saying that her religious sentiments have been hurt but no one else.

Held – the court rejected the petition by the plaintiff. Since there was no legal damage done. The court said, *“No person has a legal right to enforce his religious views on another or to restrain another from doing a lawful act.”*<sup>18</sup>

*“The plaintiffs may propagate against the picture urging the How religionists not to see more be that the religious feeling of the plaintiffs is hurt, but considering all the material circumstances of the case as stated hereinabove, I am of the view that balance of convenience is in favour of the defendants. The expression of opinion hereinbefore is for the purpose' of temporary injunction only.”*<sup>19</sup>

### CONCLUSION

By what has been presented here it can be concluded that Damnum sine injuria is an essential principle of tort law. Though it is centuries old it is still very much useful and is used by courts very frequently. The meaning that there can be no legal implications without any legal damage is important. Because without this we would

<sup>16</sup>Vijaya Education Trust (R) v. State of Karnataka, Writ Petition No. 33929 of 2016.

<sup>17</sup>A.I.R. 1978 Guj. 13.

<sup>18</sup>A.I.R. 1978 Guj. 13.

<sup>19</sup>A.I.R. 1978 Guj. 13.

see several cases in the courts where people would be asking for compensation without any good reason. It also helps define the rights of a person better it protects the right of a person to do an act even in cases where it could cause loss to the other party. Thus, helping in preserving the legal rights of a person.

