



THE SCHOLAR ISLAMIC ACADEMIC RESEARCH JOURNAL

ISSN: 2413-7480 (Print)

ISSN: 2617-4308 (Online)

DOI: 10.29370/siarj

Journal home page: <https://siarj.com>

UNDERSTANDING TORT THROUGH TWO TRADITIONS: THE COMMON LAW AND ISLAMIC LAW PERSPECTIVES

1. Hafiz Ghulam Abbas (corresponding author)

Email: gabbas.buic@bahria.edu.pk

ORCID ID: <https://orcid.org/0000-0003-4257-1891>

Associate Professor, School of Law,
Bahria University, Islamabad, Pakistan

2. Javed Hussain Bhayo

Email: javed.bhayo@salu.edu.pk

ORCID ID: <https://orcid.org/0009-0003-5742-6475>

Lecturer, Shaheed Zulfiqar Ali Bhutto
School of Law, Shah Abdul Latif
University, Khairpur Mirs, Pakistan

3. Muhammad Junaid Ilyas

Email: Junaid.ilyas@uoc.edu.pk

ORCID ID: <https://orcid.org/0000-0003-0553-7563>

Lecture Department of Law, University
of Chakwal, Chakwal, Pakistan

To cite this article:

Abbas, Hafiz Ghulam, Javed Hussain Bhayo, and Muhammad Junaid Ilyas. "UNDERSTANDING TORT THROUGH TWO TRADITIONS: THE COMMON LAW AND ISLAMIC LAW PERSPECTIVES." The Scholar Islamic Academic Research Journal 11, No. 2 (October 2025).

To link to this article: <https://doi.org/10.29370/siarj/issue21ar7>

Journal

The Scholar Islamic Academic Research Journal
Vol. 11, No. 2 | July -December 2025 | P. 187- 218

DOI:

10.29370/siarj/issue21ar7

License:

Copyright c 2017 NC-SA 4.0

Journal homepage

www.siarj.com

Published online:

2025-10-19

Journal Indexed by:

DOAJ | AIL | Almanhal | National Library of Australia | Academia, | DRJI | WorldCat | SCILIT | Gale | The Internet Archive | 10-A Digital Library | Harvard Library E-Journals | Library | University of Ottawa | ScienceGate | NAVER Academic, Asian Digital Library | Tehqeeqat, | SEMANTIC SCHOLAR | Publon | Repository | Globethics | EuroPub database | Cornell University Library | Advanced Sciences Index



UNDERSTANDING TORT THROUGH TWO TRADITIONS: THE COMMON LAW AND ISLAMIC LAW PERSPECTIVES

Hafiz Ghulam Abbas, Javed Hussain Bhayo, Muhammad Junaid Ilyas

ABSTRACT:

One of the most vibrant and ethically complex areas of legal theory is tort law, which serves as a remedy for civil wrongs. Islamic law (Shari'ah) conceptualizes civil liability through the principles of harm (ḍarar), wrongful conduct (ta'addī), and restitution (ta'wīḍ), which are intricately entwined with moral accountability and divine justice, whereas the common law tradition has developed a sophisticated system based on fault, duty of care, and compensatory justice. It examines the differences between the Islamic system's incorporation of the moral, social, and spiritual aspects of wrongdoing and the common law's secular, precedent-based reasoning. The study points out both similarities and differences, especially with regard to the origins of law, the extent of moral responsibility, and the significance of purpose. It concludes that comparing and contrasting common and Islamic legal concepts enhances theoretical knowledge and advances the growing conversation about harmonizing legal systems in multicultural countries. It follows a comparative method to discuss the idea of tort in these two legal traditions, with doctrinal research methods, and qualitative conduct of the research, which looks at the doctrinal frameworks, philosophical underpinnings, and responsibility goals of each.

KEYWORDS: Tort, Islamic law, Common law, Harm, Civil liability

Introduction:

As a remedy for civil wrongs, tort law is one of the most active and morally intricate subfields of legal theory. While the common law tradition has developed a sophisticated system based on fault, duty of care, and compensatory justice, Islamic law (Shari‘ah) conceptualizes civil liability through the principles of harm (ḍarar), wrongful conduct (ta‘addī), and restitution (ta‘wīḍ). These principles are intricately entwined with moral accountability and divine justice. The common law frames tortious liability within the ideas of duty of care, carelessness, and causation in order to highlight compensatory justice and deterrence. Islamic law, on the other hand, uses a moral-legal synthesis derived from the Qur'an, Sunnah, and juristic interpretation to solve civil wrongs. The broader ethical requirements of preserving societal harmony and avoiding harm (lā ḍarar wa lā ḍirār) are the source of liability. While common law prioritizes pragmatic consistency through case law and evolving judicial standards, Islamic law integrates tortious responsibility into a divine moral order that unifies purpose, accountability, and societal good. Nonetheless, there are certain essential parallels between the two systems, including the recognition of harm, the need for compensation, and the need for impartiality in judgment. Despite differences in rationale and enforcement strategies, this convergence highlights the universality of tort law's fundamental goals. Understanding tort via both traditions offers more than just a historical or doctrinal exercise in today's more interconnected legal environment; it encourages a reconsideration of how justice, morality, and the law interact to govern human behavior. It is necessary to investigate the idea of tort in these two legal systems, looking at their doctrinal frameworks, philosophical underpinnings, and responsibility goals. The main question of the study is how the Islamic system integrates the moral,

social, and spiritual aspects of wrongdoing with the secular, precedent-based reasoning of common law.

The Definition of Tort According to the Dictionary and Scholars:

Originating from the Latin word "Tortum," the word "Tort" denotes tortious behavior. It is the same as the word "wrong" in English and "delict" in Roman law. According to Chambers Dictionary, a 'Tort' is:

“Any wrong or injury not arising out of contract for which there is a remedy by compensation or damages.”¹

According to Black's Law Dictionary, a "tort" is defined as a civil wrong for which a remedy, typically in the form of damages, may be obtained; a violation of a duty imposed by the law on all parties involved in a particular transaction. According to Salmond:

“A tort is a civil wrong for which the remedy is a common law action for unliquidated damages, and which is not exclusively the breach of a contract or the breach of a trust or other merely equitable obligation.”²

According to this definition, four categories of wrongs are not torts: i) wrongs that are solely criminal in nature; ii) civil wrongs that do not give rise to a right of action for unliquidated damages but instead give rise to another type of civil remedy; iii) those civil wrongs that are solely breaches of contract; and iv) those civil wrongs that are solely breaches of trust or equitable duties. As a result, Salmond begins by defining a tort as a

¹Robinson, Mairi, and George W. Davidson. "Chambers 21st Century Dictionary". Chambers. Edinburgh. 15thed (165). 1996.

² John William Salmond, R. F. V. Heuston, and R. A. Buckley, *Salmond and Heuston on the Law of Torts*, 19th ed. (London: Sweet & Maxwell, 1987), 14.

civil wrong rather than a criminal one. However, he goes on to clarify that a tort is a civil wrong that is not solely related to a breach of a contract, a breach of trust, or any other equitable responsibility or duty. According to Frederick Pollock:

“Every tort is an act or omission, not being only the breach of an obligation occurring out of a personal relation, or undertaken by a contract, which is associated in one of the subsequent modes to harm, including intervention with an absolute right, whether there be measurable actual damage or not, undergone by a determinate person.”³

According to this definition, it could include:

- i) an act that the agent intended to cause harm without a valid reason or excuse and actually caused harm;
- ii) ii) an act that violates the law in and of itself, or an omission of a legal obligation or duty, and results in harm that the person acting or omitting did not intend;
- iii) iii) Which violates an inalienable right and is deemed unlawful regardless of the actor's awareness or intent. The general exceptions or immunities that are well-known in the legal systems of England and Rome are artificially extended in this way;
- iv) iv) that are causing harm when the person doing so or failing to do so did not intend to cause harm but could have and should have done so with due diligence;

³ Sir Frederick Pollock, *The Law of Torts: A Treatise on the Principles of Obligations arising from Civil Wrongs in the Common Law*, 4th ed. (London: Stevens and Sons Ltd., 1895), 1.

v) v) that only involve failing to prevent harm that the party was required to completely or partially avoid.⁴

Harry Street defines tort as: “A tort is a wrong, the victim of which is entitled to redress.”⁵

Similarly, according to John G. Fleming: “A tort is an injury other than a breach of contract, which the law will redress with damages.”⁶

'Tort' was first used in a documented case called *Boulston v. Hardy*.⁷

While wrong has remained broad, tort has become more particular in its use. We can now discuss the Islamic idea of "Tort" and how it is applied. The term "tort" and related terms employed by Islamic jurists (Fuqaha) in Shari'ah are identified in the section that follows. Additionally, it explains the Quranic and Sunnahic prohibitions against torts.

1. The Concept of Tort in an Islamic Perspective:

Literally, the word 'Tort' is equivalent to the Arabic terms such as: *madarraḥ*, *darar*, *ḥasarah*, and *adhiyyah*.⁸ Tortiously is *bi al-tiwa'* tortiousness is *iltiwa'*, and Tortious is *multawin*.⁹ 'Tort' is *fildarar* under

⁴Ibid.

⁵ Harry Street, *The law of Torts*, 6th ed., (London: Butterworths, 1976), 2.b.

⁶ John G. Fleming, "The Law of Torts," *Cambridge Law Journal* 48, no.1 (1989): 136. (pp. 135-160)

⁷ *Boulston vs. Hardy*, (1597) Cro. Eliz. 547, 548; Salmon and Heuston, *Law of Torts*, (1992) (20th ed) f.n. 54 as cited by Ratanlal & Dhirajlal, *the Law of Tort*, 25th ed. G. P. Singh (Nagpur: LexisNexis Butterworths Wadhwa, 2009), 4.

⁸ The concept of tort in the Islamic perspective has been well explained by the research of Abdul Basir bin Mohamad, "The Islamic Law of Tort" (PhD diss., the University of Edinburgh, 1997), 16-23.

⁹ George Percy Badger, *An English-Arabic Lexicon* (London: C. Kegan Paul & Co., 1881), 1111.

the dictionary of *al-Mughni al-Akhbar*¹⁰. According to law dictionaries, the meaning of tort is *fil al-darr*.¹¹ The appropriate meaning, under these dictionaries, of tort in Arabic is *dararor fil al-darr*.

Generally, the Arabic word '*jinayah*' is used for 'tort' in *Shari'ah*. It is frequently applied in the terms of the *fuqaha'* or of attorneys to injuries unlawfully imposed on the individual's body, such as death, grievous hurt, or only simple hurt,¹² and consequently gives rise to liability for *diyah* (compensation) or *qisas*.¹³ The word *al-jirah* is also used by some *fuqaha'* in preference to *al-jinayah*.¹⁴ Some *fuqaha'* use both these terms in their research.¹⁵

The meaning of the word '*jinayah*' can be divided into two categories under the literature of the *fuqaha'*, as under:

2.1. General Meaning of Tort:

The general meaning of '*jinayah*' is 'forbidden actions according to *shar*', which are done against the body (*nafs*) of humans or their property (*mal*). Some *fuqaha'* also use the word "*jarimah*" for this general meaning. For

¹⁰Hasan Karmi, *al-Mughni al-Akhbar, English-Arabic* (Lubnan: Librairie du Liban, 1988), 1487.

¹¹Harith Suleiman Faruqi, *Faruqi's Law Dictionary, Arabic-English* (Beirut: Librairie du Liban, 1983), p.259.

¹²Abdur Rahim, *The Principles of Muhammadan Jurisprudence According to the Hanafi, Maliki, Shafi'i and Hanbali Schools*, 6th ed. (Lahore: Indus Publishers, 1968), 352.

¹³ A.D. Ajijola, *Introduction to Islamic Law* (Karachi: International Islamic Publishers, 1989), 125.

¹⁴Muhy al-Din Abu Zakariyya Yahya b. Sharaf Al-Nawawi, Minhaj al-Talibin, ed. English translation by E.C. Howard, Minhajut Talibin: A Manual of Muhammadan Law (Lahore: Law Publishing Company, 1977), 269.

¹⁵ Al-Andalusi, Muhammad b. Ahmad b. Muhammad b. Ahmad b. Rushd al-Qurtubi, *Bidayat al-Mujtahid wa Nihayatal-Muqtasid* vo1.2 (Beirut: Dar al-Fikr, 1198), 296.

instance, Al-Mawardi defines: "*Al-Jara'im* (plural of *jarimah*) are forbidden or prohibited actions (*mahzurat*) under *Shari'ah* and consequently *Allah* punishes the person who commits it, with a *haddor ta'zir* (discretionary punishment).¹⁶ The meaning of prohibited actions is 'commission of a forbidden act' or 'omission of a commanding act'. So, the *Shari'ah* entails that the '*jarimah*' is a wrongful act which forms an act that is forbidden by the *Shari'ah*.¹⁷

2.2. Specific Meaning of Tort:

Specific meaning of '*jinayah*', whereas, is 'aggression or violence against the human or his limbs', such as murder, beating, corporal injury, and willful abortion.¹⁸ This word is also used for those wrongful acts which are punishable by *hudud* or *qisas*.¹⁹

Generally, the *fuqaha'* indicate by *jinayah* actions done against the human and body, for example, murder or injury to a bodily organ, and the recovery of injurious consequences are to be made by *qisas* or *diyah* (blood-money) or *arsh* (compensation).²⁰ Under Islamic jurisprudence, it can be generally and carefully stated that '*jarimah*' is synonymous with '*jinayah*', and occasionally '*jarimah*' is broader in its

¹⁶Al-Mawardi, Abu al-Hasan Ali b. Muhammad b. Habib al-Basri al-Baghdadi, *al-Ahkam al-Sultaniyyah wa al-Wilayat al-Duniyyah* (Cairo, Egypt: Shirkah Maktabah wa Matba'ah Mustafa al-Babi al-Halabiwa Awladuh, 1960), 219.

¹⁷Abdul-Qadir Awdah, *Al-Tashri al-Jina'i*, vol. I (Beirut, Lubnan: Mu'assasat al-Risalah, 1993), 66.

¹⁸*Ibid.*, p.6.

¹⁹*Ibid.*, p.67.

²⁰Abdur Rahim, *The Principles of Muhammadan Jurisprudence According to the Hanafi, Shafi, Mailiki and Hanbli School* (Madras: S.P.C.K. Depository, 1911), 351.

meaning than *'jinayah'*. In simple words, *'jinayah'* relates to infringement of the rights of the individual, liberty, honour, and their property. This infringement may be civil or criminal in nature.

There are some other jurists, such as Ibn Juzayy, who used the word *'al-ta'addi'* expressing the meaning of 'tort' in general. The meaning of *'al-ta'addi'* is 'trespass', 'transgression', or that which leads to injury to life, body, or property.²¹ Another term, *'al-siyal'*, has also been used by some jurists, which may be related to the word 'tort'. The meaning of *'al-siyal'* is 'attack', 'assail', 'assault' to body, property, etc.²²

In general, under the above-discussed various opinions of jurists concerning the word 'tort', we may conclude that tort is a legal term for all forbidden or prohibited acts done against a person or their property. It is a violation of the private right of an individual. Thus, it is a type of civil wrong, relating to the individual's safety, liberty, dignity, reputation, and property.

In brief, the violation of the rights of a person, honour, liberty, and their property is called *'jinayah'* in the *Shari'ah*, regardless of their being civil or criminal in nature.²³

1.3. The Concept of Tort in the Qur'ān and Hadith:

Islam, being a universal religion, insists that nobody should not i) interfere with the personal liberty of another, except for any legal right, or ii) deal

²¹Ali Ahmad Al-Nadwi, *al-Qawaid al-Fiqhiyyah* (Damascus: Dar- al-Qalam, 1994), 218; Mustafa Ahmad al-Zarqa, *al-Fil al-Darrwa al-Daman fih* (Damascus: Dar -al-Qalam, 1988), 78.

²²Shihab al-Din Abi al-Abbas Ahmad b. al-Naqibal-Shafi'i al-Naqibi, *Umdat al-Salik wa uddat al-Nasik*, printed with *Anwar al-Masalek* (Cairo: Shirkah Maktabah wa Matba'ah Mustafa al-Babi al-Halabiwa Awladuh, 1948), 358.

²³Abdul Basir Bin Mohamad, "The Islamic Law of Tort" (PhD diss., the University of Edinburgh, 1997), 21.

with another' property except with his consent, and iii) therefore, a person should not take another' property except legal cause and/or wrongfully destroy or appropriate another' property. These concepts have been given in the Qur'ān and Hadith²⁴ in different aspects. Some relevant and comprehensive verses from the *Qur'ān* and *Ahadith* are being discussed for our better understanding as under.

1.3.1. Tort According to the Qur'ān:

It has been mentioned in the Qur'ān, such as:

“And in no wise covet those things in which God bath bestowed His gifts more freely on some of you.”²⁵

This verse has been explained by *Al-Mawdudi* as under:

“Man (Human beings) in nature is tending to feel anxious whenever he sees someone else ahead of him. Basically, this is the basis of jealousy and envy, of cut-throat competition and hostility, of mutual strife and conflict. When anyone tries to wipe out all differences between humans, he actually involves in a war against nature and imposes wrong of another type.”²⁶

²⁴The meaning of *Hadith* is a collection of traditions containing sayings of the Prophet Muhammad (PBUH) which, with accounts of his daily practice (the Sunnah), constitute the major source of guidance for Muslims as well as non-Muslims apart from the Qur'ān. (Qur'ān Studies, s.v. “*Hadith*,” <http://www.quranicstudies.com/prophet-muhammad/the-meaning-of-hadith/> (December 30, 2024)

²⁵Al- Qur'ān 4:32.

²⁶Abdul Basir Bin Mohamad, “The Islamic Law of Tort”, 1997), 101-2 cited Abul Ala Al-Mawdudi, *Tafhim-ul- Qur'ān*, English translation by Zafar Ishaq Ansari, *Towards Understanding the Qur'an*, vol.2 (Leicester: The Islamic Foundation, 1988-1993.

The rights of human beings have been acknowledged in Islam. These rights have been mentioned in the following verses of the *Qur'ān* as: “Eat not up your property among yourselves in vanities.”²⁷ “And if ye do catch them out, catch them out no worse than they catch you out.”²⁸ “The recompense for an injury is an injury equal thereto.”²⁹ Now we can see the concept of tort according to the *Hadith* as under.

1.3.2. Tort According to the Hadith:

In harmony with the verses of the *Qur'ān* (mentioned above), there are *Ahadith*, that affirm the protection of personal liberty and other rights. For example, the Prophet (PBUH) stated regarding the sacredness and holiness of the body, property and honour of others (not only for the human but for animals) in his last sermon (*Khutbah Hujja-tul-Wida*) which is universal in nature, such as, “Your blood, your properties and your honour are as sacred as the sacredness on this day of yours, in this city of yours and in this month of yours.”³⁰

The Prophet also stated regarding harm in another *Hadith* as, “There should be neither harming nor reciprocating harm.”³¹

²⁷Al- Qur'ān 4:29.

²⁸Al- Qur'ān 16:126.

²⁹Al- Qur'ān 42:40.

³⁰Abu Abd Allah Muhammad b. Yazid al-Qazwini Ibn Majah, *Sunanl bn Majah* vol.2 (Cairo: Isa al-Babi al-Halabi wa Shurakah), 1015; Abu Isa Muhammad b. Isa Ibn Sawrah Al-Tirmidi, *Al- Jamia al-sahih (Sunan al-Tirmidi)*, vol.4 (Cairo: Matba'ah Mustafa al-Babi al-Halabi wa Awladuh, 1937-1978), 461.

³¹ Ahmad b. Muhammad Hanbal, *al-Musnad*, vol. I (Cairo, Egypt: Dar al-Marifah, 1954-1956), 313; Abu Abd Allah Malik b. Anas, *Muwatta Imam Malik*, English translation by Muhammad Rahimuddin (New Delhi: Kitab Bhavan, 1989); and English translation by Aishah Abdarahman (Tarjumana and Yaqub Johnson, Diwan Press, 1982), 529.

“It is incumbent upon a person who takes a thing from another to return the thing to the rightful possessor.”³² “It is not permissible for a man to take his brother's staff apart from with his goodwill.”³³ Similarly, He (PBUH) says: “No one among you should take a chattel of his partner with or without grave intention. If anybody takes, even the stick of his partner, he should return it to him.”³⁴

From the verses of the *Quran* and the *Hadiths* mentioned above, it can be concluded that Islam protects and promotes the life, property, and honour of people and lays down justice in society as a whole.

2. Developments of Tort Law:

History is the record of past events, developments, trends, and traditions resulting from human activity.³⁵ It provides important information on the gradual development of any field, including tort law. So, it becomes necessary to refer back to certain case laws and legal position for a better understanding of the position related to the extent of tort in England and subsequently its emergence in India and Pakistan, which is being discussed in this part.

3.1. Developments of the Law of Tort in Islam:

³² Shams al-Din Al-Sarakhsi, *Al-Mabsut*, vol. II (Beirut: Dar- al-Marifah, 1986), 49.

³³ Bulugh al-Maram *min Adillat al-Ahkam*, English translation by Muhieddin al-Selek (Beirut: Dar al-Fikr, 1993), 376.

³⁴ Muhammad bn Eisä al-Tirmidhi, *Sunan al-Tirmidhi*, vol.4, p.462.

³⁵ K.M. Munshi, *The History and Culture of the Indian People-The Vedic Age*, vol.1, 6th ed. (Bombay: Bharathiya Vidhya Bhavan Inland Printers, 1971), 5.

The rights of human beings have been acknowledged in Islam.³⁶ Islam, being a universal religion, insists that nobody should not i) interfere with the personal liberty of another, except for any legal right, or ii) deal with another' property except with his consent, and iii) therefore, a person should not take another' property except legal cause and/or wrongfully destroy or appropriate another' property. The Prophet (PBUH) emphasized the sacredness and holiness of the body, property, and honour of others (not only for humans but for animals) in his last sermon (*Khutbah Hujjatul-Wida*).³⁷

In the Muslim world, the *Shari'ah* is the Common law of the land, and hence, must be considered in all matters. Although there may not exist a distinct Islamic code of tort laws, this should not be construed to mean that the *Shari'ah* contains no laws regulating torts and wrongs. Some articles of the *Majallat al-Ahkam al-Adliyyah* (the Book of Rules of Justice) are purportedly the first code of tort in general. *Majallah or Mejelle* of the Ottoman Civil Code, which was enacted between 1867 and 1877, was an important source for the Islamic civil code.³⁸ The *Majallah* is, in fact,

³⁶ As the Qur'ān says: "Eat not up your property among yourselves in vanities." Al-Qur'ān 4:29; "And if ye do catch them out, catch them out no worse than they catch you out." Al-Qur'an 16:126. "The recompense for an injury is an injury equal thereto". Al-Qur'ān 26: 40.

³⁷ The Prophet (PBUH) says that: "Your blood, your properties and your honour are as sacred as the sacredness on this day of yours, in this city of yours and in this month of yours." Sunan Ibn. Majah, vol.2, 1015; Sunan al-Tirmidhi, vol.4, 461).

³⁸ In legal terminology, it is named "The Islamic Civil Code". It is divided into sections dealing with domestic relations, civil obligations, and legal results. The various parts of *Majallah* were published and put into effect over a period of several years. The first part (containing an introduction section and a book on sale) was published in 1870, while the sixteenth and last was published in 1877.

based on the doctrines of the *Hanafi* School of law. However, the code of Islamic tort never appears by itself in the transcripts, but rather is found in conjunction with the *fuqaha's* writings and treatises.

The cases of tort against a man (private rights), the injured, or the relative of a dead person have the full power to sue and bring the case to court. In the case of transgression against a man's property, the man has the option of claiming compensation or remission. In Islamic law, cases other than *Hudud*, which are treated in the topic of *jinayah* (offence), or of *qisas* (retaliation), or of *diyat* (blood-money/blood-wit), or of *arsh* (compensation), or of *siyal* (assault), or of *ghasb* (usurpation), or of *sulh* (compromise), are dealt with as tort. The most important fact to record here is that the early Islamic jurists, or *fuqaha*, or the founders of the legal schools, such as Abu Hanifah, Malik b. Anas, al-Shafi'i, and Ahmad binn Hanbal do not make any distinction between civil and criminal cases in their manual texts. They, in general, used the popular term "*al-jiniyah/al-jarimah*" in dealing with both cases above.

3.2. Development of the Law of Tort in Greece:

The Ancient Greeks, about 1200-900 BC, had neither state laws nor punishments to enforce. The victim's family members themselves had settled the cases of murder by killing the murderer. If, for example, 'A' murdered someone, that person's family had the right to kill 'A' back. This does not relate to the contemporary world because once you committed a crime, you had to go to jail as punishment. This, resultantly, frequently started continual blood feuds in that era. The Greeks formulated

See Majid Khadduri and Herbert. Liebesny, *The Majalla*, Law in the Middle East, Middle East Institute, 1955, 295; Abdul Basir Bin Mohamad, "The Islamic Law of Tort", 1997)

their state laws in the middle of the 17th Century BC.³⁹ The first known written law of Ancient Greece was laid down by Draco in 620, which was so harsh that his name gave rise to our English term “Draconian” meaning “an unreasonably harsh law”.⁴⁰

Draco's laws were refined by Solon, an Athenian legislator & statesman who formed many new statutes such as tort laws, family laws, public laws, and procedural laws.⁴¹ As far as tort law is concerned, a tort takes place when someone does harm to ‘A’ or to his property. For example, someone who has made an illegal change to the house or personal property of ‘A’. At that time, many of these laws were written by Draco and Solon. These laws were related to particular punishments for particular crimes. Most crimes involved monetary penalties. Murder was a tort law, and the punishment was exile as set down by Draco. According to these laws, the doer had to pay a fine for rape, which was 100 Drachmas,⁴² similarly, the punishment for theft depended on the sum/property stolen.

The law of ancient Greece developed most through Athens in the 5th & 4th centuries BC.⁴³ Before that era, archons (officials) had authority

³⁹M. Gagarin, “The Unity of Greek Law” in *the Cambridge Companion to Ancient Greek Law*, ed. M. Gagarin and D. Cohen, (Cambridge: Cambridge University Press, 2005), 35.

⁴⁰This term is referred, in modern times, to any extraordinarily harsh law. (Legal Dictionary, s.v. “Draconian Laws,” <https://legal-dictionary.thefreedictionary.com/draconian-laws/> (January 1, 2025))

⁴¹M. Gagarin, 35.

⁴² “The Drachma was the unit of money that was used in Greece. In 2002, it was replaced by the Euro. The Drachma was also used to refer to the Greek currency system.” (Cambridge Dictionary, s.v. “Drachma,” <https://dictionary.cambridge.org/dictionary/english/drachma> (January 1, 2025))

⁴³ M. Gagarin, 35.

to adjudicate the cases, hearing testimony and questioning them.⁴⁴ Athens, though, had written statutes and established a formal court system in the 5th century BC.⁴⁵ Two types of disputes were heard in these courts, namely private and public.⁴⁶ In private disputes, merely an individual having a personal interest could approach the court; in public disputes, any citizen could pursue the case. In a private dispute, parties had to pay court fees, and could resolve the dispute without any penalty. In a public dispute, there was a fine of 100 drachmas, but a court fee was not received from the parties.⁴⁷

There were three types of courts in which disputes were heard. In the first kind of courts, the majority of complaints were heard, except for killing or wounding. In the second kind of courts, homicide and wounding (including tort) disputes were heard.⁴⁸ And the third kind were the maritime courts to give predictable results to assist commerce.⁴⁹ In addition, certain *jurors* were also appointed from the old citizens aged thirty or more without a criminal record.

⁴⁴ A. Chroust, "The Legal Profession in Ancient Athens." 29 *Notre Dame Law Review* 339 (1954): 342

⁴⁵ Hornblower, S. and A. Spawforth, eds. *The Oxford Companion to Classical Civilization*, (Oxford: Oxford University Press, 1998), 221.

⁴⁶ Victor Bers and Adriaan Lanni, "An Introduction to the Athenian Legal System." (2003), 3. Available: http://www.stoa.org/projects/demos/article_intro_legal_system?page=3&greekEncoding=UnicodeC (January 2, 2025)

⁴⁷ M. Panezi, "Update: A Description of the Structure of the Hellenic Republic, the Greek Legal System, and Legal Research." 2017. Available: <http://www.nyulawglobal.org/globalex/Greece1.html> (January 1, 2025)

⁴⁸ A. Lanni, "Verdict Most Just: The Modes of Classical Athenian Justice." 16 *Yale Journal of Law and Humanities* (2004): 281.

⁴⁹ *Ibid.*, 287.

There were certain laws giving a set of penalties. However, in the absence of any guidelines in it the both parties had the option to suggest penalties, and a second vote would be used to decide which would be inflicted.⁵⁰No appeal was available from the decision of these jurors.⁵¹A memorable practice is mentionable here regarding the trial, which was a public event. All the citizens had the opportunity to attend the court proceedings.⁵²

In brief, if someone were to bring legal actions in ancient Athens, they would face a lot of confusing procedures and customs. Contemporary lawyers might experience complexity confining themselves to a one-day trial. Nevertheless, the fundamental doctrines to present pleadings, the right to have one's side of the narrative heard, and judgments made by one's member of society, would function two thousand five hundred years before just as they perform today.

3.3. Developments of Tort in Rome:

In Roman law, the term 'Delict' is equivalent to the term 'Tort', which means "an obligation to pay a penalty because of a wrong or injury: an offense; a violation of public or private duty had been committed".⁵³Until the 2nd & 3rd centuries AD, crimes related to the public were not divided from private crimes. From that era, the remedy for private wrongs

⁵⁰ S. Hornblower and A. Spawforth, eds. *The Oxford Companion to Classical Civilization*. (Oxford: Oxford University Press, 1998), 396.

⁵¹ Ibid.

⁵² A. Lanni, "Spectator Sport or Serious Politics? *oi periesthkotes* and the Athenian Lawcourts." 117 *The Journal of Hellenic Studies* (1997):183.

⁵³The Law Dictionary, s.v. "Delict," <https://thelawdictionary.org/delict/> title="DELICT">DELICT (January 3, 2025)

remained civil proceedings.⁵⁴The delict was fundamentally a punitive action, though compensation was used to receive from the accused as a fine, which was awarded to the victim party and not to the state. Delicts had four main kinds, such as: i) “*furtum* (theft); ii) *rapina* (robbery); iii) *injuria* (injury) and iv) *damnum injuria datum* (damage to the property)”.⁵⁵ To address the *injuria*, the ‘Twelve Tables’, the earliest codification of Roman law (451–450 BC),⁵⁶ demonstrated the law in a situation of evolution from a scheme of private revenge to a scheme of compensation in place of taking revenge. In this regard, the amount for compensation was fixed by the state.⁵⁷But *talion*⁵⁸ was still allowed in case a limb of one person was broken by another man, with the condition that no resolution was acceptable to both parties. It is, however, uncertain if reprisal was ever exercised. The compensation for each offense was established through law in the early period. These laws, though, became outdated due to fluctuation in the value of money. Afterward, some flexibility was permitted to settle on compensation in each case.⁵⁹

The provisions regarding “*damnum injuria datum*” (property loss) are not identified in the Twelve Tables. They were, however, in the early

⁵⁴F. H. Lawson, “Notes on the History of Tort in the Civil Law,” *Journal of Comparative Legislation and International Law* Vol. 22, No. 4, (1940): 138.

⁵⁵ Ibid.

⁵⁶James Muirhead. *Historical Introduction to the Private Law of Rome* (London: Adam and Charles Black, 1899), 97.

⁵⁷ Ibid.

⁵⁸By which the person wronged could inflict the same injury. See further at: talion (January 1, 2025)

⁵⁹David Ibbetson, “How the Romans Did for Us: Ancient Roots of the Tort of Negligence,” *U.N.S.W.L.J.* Vol. 26, No 2 (2003): 477.

3rd century BC in any case, superseded by the “*Lex Aquila*”. Three categories were incorporated under this law such as slaves, buildings, and animals.⁶⁰ An example is mentionable here; the compensation for the unlawful killing of a slave or an animal was equal to the uppermost worth of the slave or animal in the previous year. Similarly, compensation for any type of loss to the property was the amount to the uppermost worth in the last 30 days. In either case, the damage must have been caused by a wrong or negligent act.⁶¹ The objective of the *Lex* was to begin a primarily compensatory assessment of compensation, instead of the determined fines which we are familiar with having established previously.⁶² Though in the 2nd century BC, the inclusion of liability in the *Lex* into the Praetors’ Edict (an annual declaration of principles) put it in place as the major basis of liability for the wrongful causation of loss by the imposition of corporeal damage to property.⁶³

By the 2nd century AD, scholarly elucidation had brought into the *Lex* a doctrine that an individual must be responsible merely if the loss had been caused by his fault. Therefore, the *Lex* had started to be expanded by analogy in order that its doctrine possibly included any causation of monetary loss. After the era of the Emperor Justinian, the hide of Roman law permitted a break for breath, but the growth sustained with its revitalization to the end of the 11th century. In the beginning, there was little progress on the law because it was revealed in Justinian’s *Corpus*

⁶⁰ Ibid.

⁶¹ Ibid.

⁶² For example, in Table I, 13–15 of the *Twelve Tables* (Roman Statutes. Ed by Michael Crawford London: Institute of Classical Studies, 1996. (Bulletin of the Institute of Classical Studies Supplement 64), Vol. II, 565.

⁶³ Ibid.

Iuris Civilis, the modern name for a collection of fundamental works in jurisprudence, issued from 529 to 534 by order of Justinian I, Eastern Roman Emperor, for the glossators and commentators who were mainly interested to explain the manuscript rather than to construct on its foundations.⁶⁴

The 16th century, however, marked a move from this. Humanist scholars, mainly in France, started to discover the doctrines underlying the law. Similarly, neo-Scholastic scholars, principally in Spain, started the process of understanding Roman law. These two groups flowed together into the work of the Dutchman Hugo Grotius. A first statement found in his “*De Iure Belli ac Pacis*”⁶⁵ regarding a general doctrine of liability for loss caused due to the fault of an individual.

The work of Hugo Grotius became the foundation of the theorizing of the Natural law advocates of the 17th and 18th centuries.⁶⁶ The ideas of these advocates passed into the scholarly exchange of the Europe of the Enlightenment. They were accumulated in the 18th and 19th centuries, shaping the foundation of delictual liability provisions in two codes, such as the French *Code Civil* of 1804 and the Austrian *Allgemeine Bürgerliche Gesetzbuch* of 1811. These provisions, resultantly, gave the model for most of the codes of the 19th century.⁶⁷

3.4. Developments of the Law of Tort in England:

⁶⁴ David Ibbetson, 477.

⁶⁵ A book written by Hugo Grotius in Latin and published in Paris, on the legal status of war.

⁶⁶ Such as Samuel Pufendorf, Christian Thomasius, Jean Barbeyrac & Christian Wolff. (David Ibbetson, 477).

⁶⁷ David Ibbetson, 478.

The broad scope of tort law was never devised by any authority in England. But duties enforced by the tort law of England are those which the Roman institutional writers summarized in the precept of “*Alterum non Laedere*”⁶⁸ which means ‘not to injure another’.⁶⁹ There have been rules laid down under this Roman precept for the conduct-governing individuals of a civilized and cultured society.⁷⁰ In Europe, a systematic arrangement of law was given at the first time by the Romans.⁷¹

In this regard, the first impact of the Roman influence started after the invasion of Caesar in Britain fifty years before Christ, and they continued to stay there until 410 A.D. After three hundred years of rule, the Germans divided into three major groups: the Angles, the Jutes, and the Saxons and collectively known as the English.⁷² The land books (Diplomata) and laws of punishment and torts (Dooms) are the main basis of the Anglo-Saxon laws.⁷³

Harold, the King of England, was conquered by William I of Normandy, and the year 1066 A.D proved to be a turning point for England. The very significant characteristic of the Anglo-Saxon laws was the remedy in terms of cash and not in the shape of unliquidated damages,

⁶⁸ Encyclopedia Britannica, vol 22, 311. See at: <http://www.librarything.com/work/10035064> (January 10, 2025)

⁶⁹ Black’s Law Dictionary, Henry Campbell Black, s.v. “*Alterum non Laedere*,” 5th ed. (1979), 72.

⁷⁰ Anand and Sastri, *Law of Torts*, 5th ed. (Delhi: Law Book Co., 1985), 1.

⁷¹ J. M. Zane, *the Story of Law*, 2nd ed. (Indiana: Liberty Fund Publishers, 1998), 162-173.

⁷² T. F. Tout, *A History of Great Britain*, Indian ed. (Jaiypur: Law Book House, 1944), 6-20.

⁷³ Potter, *Historical Introduction to English Law*, 2nd ed. (London: Sweet & Maxwell Ltd., 1926), 6.

which was in fact unfamiliar to the courts in those days, whereas now it is a fundamental part of the definition of the term 'Tort'.⁷⁴ Under the Normans, the English law had made significant progress a lot which was primarily due to the establishment of 'Curia Regis'⁷⁵ by William.⁷⁶

The authority to issue original writ gave the Chancellors a large control over the rights which the Royal Courts recognized in the 12th and early 13th century. The writ and the right are correlative terms and gave a right system of actions in England.⁷⁷ The significant writ was 'Writ of Tress Pass' at that time.⁷⁸ It is said regarding the modern tort law that it originated from old forms of writs.⁷⁹ During the last half of the reign of Henry III, the trespass of civil nature became common.⁸⁰ These writs granted remedies for the victims only, and a fine was not provided to the King. In this regard, the writ of trespass upon the special case was supplemented by an extremely useful writ to give the relief harmed indirectly.⁸¹ However, it was with the start of the writ of trespass that the

⁷⁴Ramaswamy Iyer, *the Law of Torts in English and India*, 2nd ed. (London: LexisNexis, 2010), 23-24.

⁷⁵It means "Royal Council" or "King's Court". See further on <https://www.britannica.com/topic/Curia-Regis/> (January 11, 2025)

⁷⁶ Sir W.S. Holdsworth, *Essays in Law and History* (Oxford: The Clarendon Press, 1946), 9.

⁷⁷*Ibid.*, 398.

⁷⁸ There were also other writs such as: i) the writ of rights; ii) the writ of debt; iii) writ of datinue; and iv) writ of replevin. *Ibid.*

⁷⁹ L. A. J. Armour and G. H. Samuel, *Cases on Tort* (London: Sweet & Maxwell, 1979), 15.

⁸⁰ S.F.C. Milson, *Historical Foundations of the Common law*, 2nd ed. (Oxford: Butterworth-Heinemann, 1969), 288.

⁸¹ Sir Percy Henry Winfield, *the Province of the Law of Tort* (Cambridge: the Cambridge University Press, 1931), 11.

law of tort could consequently reach this contemporary development in England.⁸²

3.4. Developments of the Law of Tort in India:

The historical developments of tort law in India started with the advent of the East India Company to the Subcontinent. Therefore, the origin of the law of tort is associated with the formulation of the British courts in British India. A short history of the British Raj has revealed the development of torture in that period. For the first time, Queen Elisabeth permitted the “1st Charter of East India Company” in December 1600. The company was allowed to trade at Surat by ‘*Firman*’ from Emperor Jahangir in 1612.⁸³ The Company started, for the first time, to use the judicial powers in 1661 through “the Charter of Charles II”. It was limited only to the factories and their branches of the Company in India.⁸⁴

The Company was also given the powers to make laws; however, these powers were not amended till 1726.⁸⁵ The law and constitution were made for the betterment, good governance, and trade of the Company. It is considered 1726 that British Law was introduced by “the Charter of

⁸² W.W. Buckland and A. D. McIlair, *Roman Law and Common Law*, 2nd ed. (Cambridge: Cambridge University Press, 1966), 240-341; see also the study of Frederik F. Blachly and Miriam Oatman, “Approaches of Governmental Liability in Tort: A Comparative Survey” (pdf). It also describes the history of tort law in English Law perspective. 182-187; See chapter 1, page 11-54 for further study Carole Rhian Harlow, *Administrative Liability: A Comparative Study of French and English Law* (Ph.D diss., University of London, December, 1979).

⁸³ B.S. Sinha, *Legal History of India* (Lucknow: Eastern Book Company Co., 1953), 1.

⁸⁴ G.C. Rankin, *Background to Indian Law* (Cambridge: Cambridge University Press, 1946), 1.

⁸⁵ V.D. Mahajan, *Constitutional History of India*. 3rd Ed. (New Delhi: S. Chand Publishers, 1971), 5.

George I” in India. The courts of Mayors were established in Calcutta, Bombay, and Madras under the Charter. These courts had their powers to deal only with the Englishmen.⁸⁶ The area of colony increased on the one hand the matters to deal became more complex on the other hand. Therefore, the parliament extended the jurisdiction of the courts to offices, persons, and places. But, at the same time, there was a need for professional judges to deal with the matters before them.⁸⁷

In this regard, a Supreme Court was built in 1774 by replacing the mayors’ courts. The Recorders’ Courts were established in 1798 in place of the mayors’ courts of Bombay, Madras. However, a Supreme Court was established in Madras and Bombay in 1800 and 1823, respectively, by replacing the Recorder’s Courts.⁸⁸ Further, there was also established a supreme court of judicatures in the different towns of residence. The Supreme Court had powers and jurisdictions to deal with the matters of the court of King’s Bench in England, and common law was applied in this court.

It is significant to state here that the common law was also applied by this court in tort cases to give justice to people.⁸⁹ The Supreme Court had jurisdiction within the presidency towns only, but the Company had other courts having jurisdiction within and out of these presidency towns,

⁸⁶ Prof. A. L. Goodhart, *the Migration of the Common Law* (London: Sweet & Maxwell, 1960), 22.

⁸⁷ Ibid.

⁸⁸ Fawcett, *the First Century of British Justice in India* (Wotton: Clarendon Press, 1934), 227.

⁸⁹ *Waghela Rajsanji vs. Sheikh Masluddin*: (1887) L. R. 14 I, L. R. 11, Bombay HC. 551, 561.

Suddar Nizamat and *Diwani Adalats*.⁹⁰ The objectives of these courts were to deal with the people outside the Towns. These courts sometimes differed from the Supreme Court in many respects.⁹¹ In this regard, there was a dichotomy in the system of the courts that was not to be removed. By the Indian High Courts Act, 1861, matters were set right, and the old existing dichotomy came to an end.⁹² The English Law was made universal in India by the passing of “the Charter Act, 1833”.⁹³ Under section 8 of “the Act, 1861”, all the records of the Company Courts were transferred to the High Courts.⁹⁴ The High Courts of Bombay, Madras, and Calcutta applied the tort law by using their ordinary original jurisdictions. The formal rules of law of torts were introduced by the English Rulers since 1772.⁹⁵

The reception and adaptation of English law in India was made possible due to the common law-trained judges to whom freedom was given. They had the power to reconcile differences under justice, equality, and good conscience, and they also introduced these rules in the *Mufussil* area. However, since the end of the 18th century until yet, “the English

⁹⁰ Dr. N. A. Mannan, *The Superior Court of Pakistan* (Lahore: Zafar Law Books, 1973), 48.

⁹¹ The Employers’ Liability (Amendment) Act, 1951, through its section 3 (d) has changed the position altogether.

⁹² G.C. Rankin, *Background to Indian Law* (Cambridge: Cambridge University Press, 1946), 21.

⁹³ *Ibid.*

⁹⁴ Dr. N. A. Mannan, 50.

⁹⁵ After the Warren Hasting Plan. “By the time 1772, he was Governor in Council at Calcutta. He was of opinion that customs & traditions of the natives should protected. He realized the importance of the sound judicial system. Therefore, he introduced the judicial plans in 2 phases in the year 1772 & 1774.” See at: <https://notesmilenge.files.wordpress.com/2014/09/warren-hastings-judicial-plans.pdf> (January 20, 2025).

Common Law” as a whole and the law of tort in particular is a blend of “the English Common Law” applied to local conditions there. The British Court’s jurisdiction, as well as the function of the tort law enlarged till the independence of India, 1947. In this regard, tort law is to be applied in the light of justice, equity, and good conscience.⁹⁶ Hence, it is not rendered⁹⁷ when a judge is to go against this kind of justice.⁹⁸ The same has been observed by the Privy Council.⁹⁹ However, this situation intersected into both countries, Indo-Pak, through Section 18(3) of “the Independence Act, 1947”.¹⁰⁰

3.5. Developments of Tort in Pakistan:

Pakistan became independent on August 14, 1947, from British India. There was no system of law to run the State machinery at that time. Therefore, most of the laws previously applicable to British India had been permitted to follow on an emergency basis in Pakistan, including the law of tort. It was applied on the same footing of “English Common Law” as in British India. A relevant Section 18(3) of “the Indian Independence Act, 1947”¹⁰¹ is an important example in this regard.¹⁰²

⁹⁶*Surendra Kumar vs. Distt Board Nadia*: AIR 1942 Cal. 360, 365.

⁹⁷*Nawal Kishore vs. Rameshwar*: AIR 1955, All 585; *Khushro S. Gandhi vs. N. A. Guzder*: AIR 1970 SC 1468.

⁹⁸G. P. Singh, *the Law of Tort*, 25th ed. (Nagpur: LexisNexis Butterworths Wadhwa, 2009), 15.

⁹⁹*Ibid.*

¹⁰⁰Section 18 (3). The Independence Act, 1947 (IO & II GEO.6. CH. 30).

¹⁰¹ This Act made and adopted by the British Parliament by receiving royal assent on 18 July 1947. It established two new independent Dominions: India (Hindu) and Pakistan (Muslim). (The Independence Act, 1947 (IO & II GEO. 6. CH. 30).

¹⁰²*Ibid.*, Section 18(3).

The foundation of the legal system of Pakistan is “English Common Law”. But these laws have not been amended much since their independence to meet the requirements of society. As Section 18 (3) of “the Independence Act, 1947” (as mentioned above) has been adopted by the earlier Constitution of the Islamic Republic of Pakistan by its Article 224,¹⁰³ 225¹⁰⁴ and 280¹⁰⁵ respectively. Similar provisions have also been made in the Constitution of Pakistan, 1973, in its article 268 (1) that reads as, “except as provided by this Article, all existing laws, subject to the constitution, continue in force, so far as applicable and with the necessary adaptation, until altered, repealed or amended by the legislature.”¹⁰⁶

In this regard, Pakistan has not made efforts to amend the adapted laws from the British rule, except that the government has been held vicariously liable under the Constitution of Pakistan, 1973. Article 174 says that, “the Federation may sue or may be sued by the name of Pakistan and a province may sue or may be sued by the name of the province.”¹⁰⁷ Resultantly, the government frequently escaped from its liability related to torts committed by its servants under the guise of the act of the sovereign. So, the citizens are not able to get a remedy against the State and its servants, and they suffer ultimately.

However, some provisions have been made for the protection of employees working in factories in Pakistan.¹⁰⁸ Amendments have also been made in the copyright law to facilitate people in educational institutions to

¹⁰³ The Constitution of the Islamic Republic of Pakistan, 1956, Articles 224.

¹⁰⁴ The Constitution of the Islamic Republic of Pakistan, 1962, Article 225.

¹⁰⁵ The Constitution of the Islamic Republic of Pakistan, 1972, Articles 280.

¹⁰⁶ The Constitution of the Islamic Republic of Pakistan, 1973, Article 268.

¹⁰⁷ Ibid., Article 174.

¹⁰⁸ In this regard, the employer will pay compensation on contribution basis.

text textbooks by the federal government. “The Natural Environmental Protection Agency” (NEPA) has been established for the protection of the environment in Pakistan.¹⁰⁹

Although the tort law is dispersed in different statutes and in case laws but some Acts consist of a considerable part of the wrong and compensations.¹¹⁰ These enactments are mentionable here, for instance, “the Fatal Accidents Act, 1855”,¹¹¹ “Pakistan Penal Code, 1860”,¹¹² “Patent and Design Act, 1997”,¹¹³ “Patents (amendment) Ordinance, 2000”,¹¹⁴ “The Code of Civil Procedure, 1908”,¹¹⁵ “Trade Marks Act, 1940”,¹¹⁶ “The Code of Criminal Procedure, 1898”,¹¹⁷ “The Employers' Liability Act, 1938”,¹¹⁸ “The Provincial Employees Social Security Ordinance, 1965”,¹¹⁹ “The Punjab Consumer Protection Act, 2005”,¹²⁰ “Pakistan

¹⁰⁹ Muhammad Naeem, “Scope and Application of Law of Tort in Pakistan” (PhD diss., University of the Punjab, 1991), 101.

¹¹⁰ As mentioned by Warda Yasin, “Tort Liabilities of Multinational Corporations in the Perspective of the Principles of Separate Legal Entity and Limited Liability”, (PhD diss., International Islamic University, Islamabad, 2016), 39.

¹¹¹ The Fatal Accidents Act, 1855 (Act No. XIII of 1855).

¹¹² The Pakistan Penal Code, 1860 (Act XLV of 1860) Section 499 Defamation, Section 351 Assault, Section 339 Wrongful restraint, Section 340 Wrongful Confinement, Section 441 Criminal Trespass, Section 279-289 Negligence.

¹¹³ The Patent and Designs (Amendment) Act, 1997.

¹¹⁴ The Patents (Amendment) Ordinance, 2000.

¹¹⁵ The Code of Civil Procedure, 1908 Act No. V of 1908 (21st March 1908) Section 19, Suit for compensation for wrongs to person or movables, Section 91, Public Nuisance.

¹¹⁶ Trade Marks Act, 1940 (V of 1940).

¹¹⁷ The Code of Criminal Procedure, 1898, as amended by Act 2 of 1997, Section 133 Public Nuisance.

¹¹⁸ Employers' Liability Act, 1938.

¹¹⁹ The Provincial Employees Social Security Ordinance, 1965 (W.P. Ord. X of 1965).

Environmental Protection Act, 1997”,¹²¹“The Workmen’s Compensation Act, 1923”,¹²²“The Companies Act, 2017”¹²³ and “the Factories (Amendment) Act, 1934”.¹²⁴

It is a fact that the attitude of litigants related to tort actions has not been appreciable in Pakistan.¹²⁵ This attitude is due to certain reasons. Important changes have not taken place in the law of torts since its introduction by the British. For instance, amendments have not been made in the criminal law of negligence,¹²⁶ public nuisance,¹²⁷ and defamation¹²⁸ as these are described in the Pakistan Penal Code, 1860, and the Code of Criminal Procedure, 1898, respectively. Similarly, the law of torts has been applied by the Pakistan courts as it was applied by the British Raj in the Subcontinent. Negligence, defamation, and nuisance in the law of tort are important examples in this regard.¹²⁹ Though there have taken place the amendments in the law related to vicarious liability of the government,¹³⁰ copyright law¹³¹ and the common man as employer.¹³² But,

¹²⁰The Punjab Consumer Protection Act, 2005 (Pb. Act II of 2005).

¹²¹Pakistan Environmental Protection Act, 1997 (Act No. XXXIV of 1997).

¹²²The Workmen’s Compensation Act, 1923 (Act No. VIII of 1923).

¹²³The Companies Act, 2017 (Act no. XXI of 2017).

¹²⁴The Factories (Amendment) Act, 1934 (Act XXV of 1934).

¹²⁵These major reasons are: “likeness of criminal prosecution by the litigants, court-fee and the British, lack of interest by the lawyers, on codification of law of torts, doctrines of champerty and maintenance, expensive litigation and excessive tolerance by the people, therefore, due to these reasons tort law has failed to develop and provide relief to the poor and the injured party.” For further details, see the study of Warda Yasin, Failure of Tort Law in Pakistan. Available at: <http://www.pljlawsite.com> (January 20, 2025)

¹²⁶ The Pakistan Penal Code, 1860, Sections 279-289 & 336.

¹²⁷ The Code of Criminal Procedure, 1898, Section 133 & 142.

¹²⁸ The Pakistan Penal Code, 1860, Section 499.

¹²⁹Warda Yasin, Failure of Tort Law in Pakistan.

¹³⁰ The Constitution of the Islamic Republic of Pakistan, 1973, Article 174.

these changes were made to get the objectives for study, teaching, and research in educational institutions as a textbook.¹³³ It is pertinent to mention here that the compensation under “the Fatal Accidents Act, 1855” and *Diyat* in Islamic law are the same thing because both are blood money and ensue from the wrongful act of the killer, for example, “*Qatl-i-Khta*”.¹³⁴ It is worth mentioning here that “the Law and Justice Commission of Pakistan” has made recommendations to repeal “the Fatal Accidents Act, 1855” because the same issues are dealt with in the *Qisas* and *Diyat* provisions. According to Section 1 of “the Fatal Accidents Act, 1855,” a suit lies against a person who is guilty of some default, negligent and wrongful act.

A suit can be filed against him, and he would have been liable for the injury to the deceased person if the latter had not died of it.¹³⁵ A right of action on the child, parents, husband, and wife is not conferred in this section.¹³⁶ It entails that no suit for damages will be maintainable if there is no child, parent, husband, or wife of the deceased person under “the Fatal Accidents Act”, even if the deceased person has other living heirs.¹³⁷

The compensation is already incorporated in the code in the shape of *Diyat* and *Arsh* in the *Qisas* and *Diyat* law. Only in *Daman* cases, the

¹³¹ The Copyrights (Amendment) Act, 1973, Section 4.

¹³² The Employees Social Security Ordinance, 1965. Ibid.

¹³³ Muhammad Naeem, “Scope and Application of Law of Tort in Pakistan” (PhD diss., University of the Punjab, 1991), 101.

¹³⁴ *Qaiser Ali & Ors v. K.R.T. Corporation*: (P.L.D. 1986 [Karachi] 489, 509, 514).

¹³⁵ The Fatal Accidents Act, 1855, Section 1.

¹³⁶ Ramaswamy Iyer, *the Law of Torts in English and India*, 2nd ed. (London: LexisNexis, 2010), 78-79.

¹³⁷ Muhammad Naeem, “Scope and Application of Law of Tort in Pakistan” (PhD diss., University of the Punjab, 1991), 101-2.

discretion of the court will function, whereas the court is the only judge to grant the compensation under “the Fatal Accidents Act, 1855”. The damages may be granted under the Act, considering the status of the parties who are involved, whereas the court cannot exceed the amount in compliance with *Diyat* law. Nonetheless, it seems that in the existence of *Diyat* and *Qisas* law that the significance of the law of fatal accident is bound to suffer. Hence, it is suggested that the amendments to sue for damages by legal heirs and to fix the age of the deceased person to survive the law under “the Fatal Accidents Act, 1855”.¹³⁸

It is also pertinent to mention here that improvements were made for the protection of the health and safety of the workers. For example, “The Industrial Relation Ordinance, 1969” was amended to regulate relations between workers and employees. “The Workmen’s Compensation Act, 1923” was amended to grant more compensation through “Schedule IV of Workmen’s Compensation Amendment Act, 1957”.¹³⁹ “The Factories Act, 1934” was amended by “the Factories Rules” in the provinces.¹⁴⁰

By discussing developments, it is also worth mentioning here that there are such torts which are crimes as well, for example, malicious prosecution, assault, theft, and battery. The old rule of distinction between

¹³⁸The fixation of age is different in different cases for example; *Miss Shamsun Nissa & another vs. K.R.T. Corporation*: (P.L.D. 1975 [Karachi] 913) (60 years). See further for fixation of age in different cases Muhammad Naeem, “Scope and Application of Law of Tort in Pakistan” (PhD diss., University of the Punjab, 1991), 101.

¹³⁹*Hasham vs. Saeeda Begum*: (P.L.D. 1963 [Karachi] 21 at pp. 22-23).

¹⁴⁰Punjab Factories Rules, 1978 (No. 5-2(Lab-II)/72); Sindh Factories Rules, 1975 now Sindh Factories Act, 2016 (Act no. XIII of 2016); Factories (N.W.F.P) amendment Act, 1946.

civil and criminal prosecution does not apply to Pakistan¹⁴¹ as well as in India.¹⁴² This rule has been abolished in England.¹⁴³ The action can be started when a tort is either a civil wrong or a criminal wrong. In this regard, preference should be given to the tort action to follow the action related to the crime. To refrain from committing tort in the future, a tort action is necessary to award damages to ensure that these actions taken have eternal effects on the mind of the offender.

Conclusion:

The redress of harm and the maintenance of social order through the concepts of fairness and responsibility are the same moral and legal concerns that drive both common law and Islamic tort law, despite their different epistemological underpinnings. The common law emphasizes compensatory justice and deterrence by framing tortious liability within the concepts of duty of care, carelessness, and causation. It is based on court precedent and secular reasoning. In contrast, Islamic law addresses civil wrongs through a moral-legal synthesis based on the Qur'an, Sunnah, and juristic interpretation. Liability stems from the more general ethical imperatives of maintaining social peace and preventing injury (*lā ḍarar wa lā ḍirār*).

Islamic law incorporates tortious duty into a divine moral order that unifies purpose, accountability, and social benefit, whereas common law places a higher priority on pragmatic consistency through case law and

¹⁴¹*Muhammad Akram vs. Farman*: (P.L.D. 1990 S.C. 28.p. 36).

¹⁴²*Abdul Kader vs. Muhammad Mera*: I.L.R. (1881) 4 Mad. 410; *Keshab vs. Muniruddin*: (1908) 13 C. W. N. 510 as cited Munir Ahmed Khokhar, *Law of Torts* (Lahore: Irfan Law Book House, 2004), 9.

¹⁴³ Criminal Law Act, 1967, Chapter 58, Section 1.

changing judicial standards. However, there are fundamental similarities between the two systems, including the acknowledgment of injury, the requirement for reparation, and the importance of fairness in decision-making. Despite differences in rationale and enforcement strategies, this convergence highlights the universality of tort law's fundamental goals.

Understanding tort via both traditions offers more than just a historical or doctrinal exercise in today's more interconnected legal environment; it encourages a reconsideration of how justice, morality, and the law interact to govern human behavior. Both systems benefit from the comparative perspective, which encourages the common law to consider its ethical foundations beyond procedural formalism and highlights the moral depth of Islamic jurisprudence for contemporary legal thought. Finally, this investigation confirms that the search for redress for civil wrongs is not limited to any particular tradition but rather reflects a universal human need that is articulated in the concerned laws.



This work is licensed under a [Creative Commons Attribution-NonCommercial-ShareAlike 4.0 International \(CC BY-NC-SA 4.0\)](https://creativecommons.org/licenses/by-nc-sa/4.0/)