

Situational Analysis Questions

Mr. A employed an independent contractor Mr. Q to construct a drainage system. During the work the contractor left a heap of gravel on the road. Mr. A was warned by police to remove the heap of gravel so he undertook to cart the gravel away. Mean time a passerby Mr. Z slipped upon the heap of gravel and was injured Mr. Z wants to claim damages.

- i) Against whom should Mr. Z should claim the damages? Explain
- ii) What is the defence available?

i) Against whom should Mr. Z claim damages? Explain.

Mr. Z should claim damages against Mr. A (the employer) because:

1. Even though Mr. Q was an independent contractor, Mr. A assumed responsibility by undertaking to cart away the gravel after being warned by the police.
2. Under the principle of non-delegable duties, certain responsibilities, such as ensuring public safety, cannot be delegated entirely to independent contractors. Therefore, Mr. A remains liable for the negligence that caused injury to Mr. Z.

Relevant Case Law:

- *Municipal Corporation of Delhi v. Subhagwanti* – Non-delegable duties and liability for public hazards.

ii) What is the defense available?

1. Contributory Negligence: Mr. A could argue that Mr. Z did not exercise reasonable caution while walking on the road and contributed to the injury.
2. Act of Independent Contractor: Mr. A may argue that the negligence lies solely with Mr. Q as the independent contractor. However, this defense is unlikely to succeed since Mr. A undertook the responsibility to clear the gravel.



'A' was a manager of Tom Ltd. A firm dealing to ladies clothes for several years, 'A' was known to her customer as Miss Tom, 'A' after leaving the service of Tom Ltd. Started a rival establishment in the name of Miss Tom. On seeing this Tom Ltd. Sued 'A'.

- i) Name and explain the tortious activity for which Tom Ltd. Can sue 'A'
- ii) Advice 'A' on the same.

i) Name and explain the tortious activity for which Tom Ltd. can sue 'A'.

The tortious activity here is Passing Off.

- Definition: Passing off occurs when a person misrepresents their business or goods as being associated with or connected to another business, leading to confusion among customers.
- Application: By naming her establishment "Miss Tom," 'A' is deceiving customers into believing her business is associated with Tom Ltd., exploiting their goodwill and reputation.

Relevant Case Law:

- *Reddaway v. Banham*: Protecting business goodwill from misleading use of a name.

ii) Advice to 'A'.

1. 'A' should immediately change the name of her establishment to avoid further legal action.
2. If 'A' continues to use the name "Miss Tom," she risks not only losing the case but also being ordered to pay damages for misrepresentation and injunctions to stop her operations.



A consumer demanded packed tin of mango pulp of Rs. 50/- from a shop. But as he opened there was Strawberry pulp inside the packet. Which costed Rs. 80/-. But as he returned it to shopkeeper, shopkeeper refused to accept it and demanded more Rs. 30/-.

- i) Can shopkeeper recover Rs. 30/- from consumer? Why?
- ii) Advise consumer. On the same.

i) Can the shopkeeper recover Rs. 30 from the consumer? Why?

No, the shopkeeper cannot recover Rs. 30 because:

1. The goods supplied (Strawberry pulp) were not what the consumer had ordered (Mango pulp). This amounts to a defect in goods as per the Consumer Protection Act, 2019.
2. The consumer is entitled to either a refund or a replacement with the correct product at no additional cost.

ii) Advice to the Consumer.

The consumer should:

1. File a complaint under the Consumer Protection Act, 2019 with the District Consumer Disputes Redressal Commission if the shopkeeper refuses to refund or replace the product.
2. The consumer can claim damages for the inconvenience caused.

Relevant Case Law:

- *Morgan Stanley Mutual Fund v. Kartick Das*: Protecting consumer rights against unfair trade practices.



'X' started classes in the neighborhood of 'B' because of which 'B' incurred heavy loss as his classes students diverted to 'X's classes.

- i) Whether Mr. X liable in torts? give reasons
- ii) Give two points of distinction between injuria sine damnum and damnum sine injuria.

i) Is Mr. X liable in torts?

No, Mr. X is not liable in torts.

- This case involves Damnum Sine Injuria (damage without legal injury). Mr. X starting classes caused economic loss to Mr. B, but there was no violation of any legal right.
- Competition in business or trade that leads to loss for a competitor is not actionable unless it violates a legal right or involves unfair trade practices.

Relevant Case Law:

- *Mogul Steamship Co. v. McGregor Gow & Co.*: Loss caused by competition is not actionable unless it violates legal rights.

ii) Two points of distinction between Injuria Sine Damnum and Damnum Sine Injuria:

Injuria Sine Damnum	Damnum Sine Injuria
Refers to legal injury without any actual damage.	Refers to actual damage without any legal injury.
Actionable in tort law.	Not actionable in tort law.
Example: Right to vote denied (<i>Ashby v. White</i>).	Economic loss due to competition (<i>Gloucester Grammar School Case</i>).



'X', undergone an eye surgery in Charitable medical camp and lost his eye.

- i) Can he file case against Charity trust?
- ii) What is deficiency in service? Explain.

i) Can X file a case against the charity trust?

Yes, X can file a case under the Consumer Protection Act, 2019 for deficiency in service, provided negligence is proven.

- A charitable trust providing medical services owes a duty of care to its patients.
- If the loss of X's eye occurred due to negligence in surgery or lack of skill by the doctors, the trust would be liable.

Relevant Case Law:

- *Indian Medical Association v. V.P. Shantha*: Charitable medical services fall under the Consumer Protection Act if negligence occurs.

ii) What is Deficiency in Service?

Deficiency in service is defined under Section 2(11) of the Consumer Protection Act, 2019 as:

- A fault, imperfection, shortcoming, or inadequacy in the quality, nature, or manner of performance of services required to be maintained by law or contract.

Example: A hospital failing to provide proper post-surgical care resulting in complications.



An employee, Mr. Y, a security guard working on payroll of Mr. X a lawyer. Commits a fraud after working hours.

- i) Is Mr. X liable under contract or tort? Explain.
- ii) Is Mr. X liable under crimes? Give two points of distinction between crime and tort.

i) Is Mr. X liable under contract or tort?

- Mr. X (the employer) is not liable in tort or contract because:
 - The fraud committed by Mr. Y (the security guard) was outside the scope of his employment (during non-working hours and unrelated to his assigned duties).
 - Under the doctrine of vicarious liability, employers are liable only for wrongful acts committed in the course of employment.

Relevant Case Law:

- *State Bank of India v. Shyama Devi*: Acts committed outside employment are not covered under vicarious liability.

ii) Is Mr. X liable under crimes?

No, Mr. X is not criminally liable unless:

- He was aware of or aided the fraudulent activity.

Two Points of Distinction Between Crime and Tort:

Crime	Tort
A crime is a wrong against society punishable by the state.	A tort is a wrong against an individual, addressed through compensation.
Involves punitive action (fines, imprisonment).	Involves compensatory remedies.
Example: Theft, murder.	Example: Negligence, defamation.



Mr. A parked his car in a street and left his dog inside. The dog had always been quite and docile. As Mr. B was walking past the car, the dog, which been barking and jumping about in a Car, smashed a glass panel and a splinter entered Mr. B's left eye, and he lost his eyesight

- (i) What is the remedy available to Mr. B?
- (ii) Will the answer change if dog is violent and aggressive generally?

i) What is the remedy available to Mr. B?

Mr. B can claim damages against Mr. A under the principle of strict liability.

- Even if the dog was generally docile, animals fall under the category of "dangerous things" under the rule of *Rylands v. Fletcher*.
- The owner is responsible for keeping the dog under control, and the injury caused due to the dog's act makes Mr. A liable.

ii) Will the answer change if the dog is violent and aggressive generally?

Yes, the degree of liability increases.

- If the dog is known to be violent, Mr. A has a higher duty of care to prevent such harm. Failure to restrain the dog would be treated as negligence on Mr. A's part.



At the end of journey, 'A', the conductor of an Omni bus Company, in the temporary absence of the bus driver, began to drive the bus for the purpose of turning it round for the return journey. In doing so he ran upon Mr. B?

- (i) Is there any remedy available to Mr. B? Explain.
- (ii) What would be the answer if the driver of the bus is driving the bus?

i) Is there any remedy available to Mr. B? Explain.

Yes, Mr. B can claim damages from the Omni Bus Company under the principle of vicarious liability.

- The conductor acted within the scope of his employment (turning the bus for its return journey), making the employer liable for the injuries caused.

Relevant Case Law:

- *State of Rajasthan v. Vidyawati*: Employers are liable for the wrongful acts of their employees if the acts are committed in the course of employment.

ii) What would be the answer if the driver of the bus is driving the bus?

If the driver was driving the bus, the Omni Bus Company would still be liable.

- The driver, being employed for driving, would be acting within the scope of his employment.



In the advertisement of hair dye, the manufacturer of hair dye represents that consumer would be quite safe in respect of Self spreading dye but evidence showed that its use was not quite safe. On its use on rats showed that rats suffered from tumors and on its experimental use on two women showed that it enhances possibility of cancer

- (i) Is the manufacturer liable for the advertisement? Explain
- (ii) How does it differ from Restrictive Trade Practice?

i) Is the manufacturer liable for the advertisement? Explain.

Yes, the manufacturer is liable for false advertising under the Consumer Protection Act, 2019.

- Making false or misleading claims about a product's safety constitutes unfair trade practice.
- Evidence that the hair dye causes tumors and increases cancer risk proves that the advertisement was misleading and unsafe for consumers.

Relevant Case Law:

- *Laxmi Engineering Works v. PSG Industrial Institute*: False representations in advertisements lead to manufacturer liability.

ii) How does it differ from Restrictive Trade Practice?

- Unfair Trade Practice: Involves false or misleading claims about products, deceiving consumers about quality or safety.
Example: Misrepresentation of the safety of hair dye.
- Restrictive Trade Practice: Involves practices that limit competition or impose unreasonable conditions on trade, such as price fixing or controlling supply.
Example: Forcing retailers to sell products at fixed prices.

Key Difference:

- Unfair trade practice affects consumers' rights directly, while restrictive trade practice focuses on competition and market fairness.



The defendant created artificial lakes on his land by damming some natural streams. Once there was an extra ordinary rainfall as a result of which the embankments of the lake gave way and water washed away four bridges belonging to the plaintiff.

- (i) Explain the tort committed by defendant.
- (ii) Explain the defence available to the defendant in the case.

i) Explain the tort committed by the defendant.

The tort committed is strict liability under the rule of *Rylands v. Fletcher*.

- Creating artificial lakes that caused damage due to the escape of water falls under this principle.
 - The defendant is liable as the water was a non-natural use of land, and its escape caused damage to the plaintiff's property.
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ii) Explain the defence available to the defendant in the case.

The defendant may use the defence of Act of God.

- The extraordinary rainfall is considered an unforeseeable natural event, beyond human control.
- If the defendant can prove the damage was solely caused by the extraordinary natural event and not negligence, they may escape liability.



A metallic wire was found in the food served by the airlines by which the plaintiff's gum was injured.

(i) Is this deficiency of service? How does it differ from defect?

(ii) State the procedure laid down for filing an appeal against the order of District forum.

i) Is this deficiency of service? How does it differ from defect?

Yes, this constitutes deficiency of service under the Consumer Protection Act, 2019.

- Deficiency of service: Failure to provide a service of reasonable quality or expected standard. The airline failed to ensure the food served was safe, injuring the plaintiff.
- Defect: Refers to a fault in a product, not a service. If the food itself (product) was faulty or contaminated, it would be classified as a defect.

ii) State the procedure laid down for filing an appeal against the order of District Forum.

1. Time limit: File an appeal within 45 days from the date of the District Forum's order.
2. Jurisdiction: Appeal to the State Consumer Disputes Redressal Commission (State Commission).
3. Mandatory deposit: Deposit 50% of the amount ordered by the District Forum or ₹25,000, whichever is less, before filing the appeal.
4. Filing process: Submit an appeal in the prescribed format, accompanied by a copy of the District Forum's order and relevant evidence.



There was a contract between airlines and hotel for stay of the Airline crew. A pilot while so staying drowned and died in the swimming pool due to the defective design of the pool.

- (i) Can the pilot's family members claim compensation from the owners of the hotel under contract.
- (ii) Give two points of distinction between Tort and Contract.

i) Can the pilot's family members claim compensation from the owners of the hotel under contract?

No, the pilot's family members cannot claim under contract law, as they are not parties to the contract between the airline and the hotel.

- However, they can claim under tort law for negligence. The defective design of the pool indicates the hotel breached its duty of care, resulting in the pilot's death.

ii) Give two points of distinction between Tort and Contract.

Tort	Contract
Breach of a duty imposed by law.	Breach of voluntary agreement.
The remedy is unliquidated damages.	The remedy is liquidated damages as agreed in the contract.
Right in Rem (right against the whole world)	Right in personam (right against the person)



A child of five years throws a stone and breaks the window of a Mercedes car.

- (i) Is the child liable in torts? Give reasons.
- (ii) Are the parent of the child liable? Give reasons.

i) Is the child liable in torts? Give reasons.

- No, the child is not liable in torts as liability in torts is based on intent or negligence.
 - A child of five years lacks the mental capacity to form intent or understand the consequences of their actions. Thus, they cannot be held liable.
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ii) Are the parents of the child liable? Give reasons.

- Parents are not automatically liable for the torts committed by their child unless negligence on their part is proven.
- If the parents failed to exercise reasonable supervision or control over the child, they may be held liable.



A couple visit a 5 star hotel and order for food. The hotel staff serves the food after an hour which is also not prepared properly.

- (i) Is this deficiency in service? Explain.
- (ii) Distinguish 'Deficiency' with 'Defect'

i) Is this deficiency in service? Explain.

- Yes, this is a deficiency in service under the Consumer Protection Act, 2019.
- Deficiency in service refers to the failure to provide a service of reasonable quality or standard.
- Serving food after an hour and in an unprepared condition breaches the reasonable expectations of quality and timeliness from a 5-star hotel.

ii) Distinguish 'Deficiency' with 'Defect':

Deficiency	Defect
Refers to substandard or inadequate service.	Refers to a fault in a product.
Example: Delayed service in a restaurant.	Example: Faulty or defective food item.



A minor of 12 years obtains a loan of 300 pounds by falsely representing his age.

- (i) Is the minor liable under contract or tort? Explain.
- (ii) Is the minor liable under crimes? Give two points of distinction between crime and tort.

(i) Is the minor liable under contract or tort? Explain.

- A minor is not liable under contract law as contracts with minors are void-ab-initio (invalid from the start).
- However, a minor can be liable in tort if the tort is separate from the contract.
 - Example: If the misrepresentation caused harm, it may lead to tortious liability.

ii) Is the minor liable under crimes? Give two points of distinction between crime and tort.

- The minor may be liable under crimes depending on the age of criminal responsibility (in most countries, it is above 12 years).
- However, if the minor is below the age of criminal responsibility, they are not liable under criminal law.

Crime	Tort
A wrong against the state or society.	A wrong against an individual.
The remedy involves punishment.	The remedy involves compensation.

