

## TABLE OF CONTENTS

Press Details	i
Preface	ii
Table of Contents	iii

### **PART - I - GENERAL**

#### **CHAPTER - I**

1. Nature and Concept of Delict	1
2. Definition of Delict	2
3. What constitutes Delict?	5
4. Distinction of Delict from other wrongs	8
(a) Delict and Crime	8
(b) Delict and Contract	10
(c) Delict and quasi contractual liability	13
(d) Delict and Liability on Bailment	14
(e) Delict and Breach of Trust	15
(f) Delict and Human Rights	16

#### **CHAPTER - II - AIMS AND OBJECTIVES OF THE LAW OF DELICT** 18

1. <i>Injuria sine damnum</i> and <i>Damnum sine injuria</i>	18
2. Competition in Trade	21
3. Liability in delict	25

#### **CHAPTER - III - INTERESTS PROTECTED BY THE LAW OF DELICT** 29

1. Personal interest	30
2. Property interest	32
3. Economic interest	33
4. Interest in Reputation	35
5. Misuse of legal process	35
6. Insurance and Compensation	36
7. Insurance Ombudsman	39

#### **CHAPTER - IV - INTERFERENCE WITH CONTRACTUAL AND ECONOMICAL RELATIONS** 41

1. Inducement or Procurement of Breach of Contract	41
2. Interference with Trade, Business or Employment	43

#### **CHAPTER - V - SCOPE OF AQUILIAN ACTION** 47

1. Classification of <i>Lex Aquilia</i>	47
2. The Aquilian action	51
3. Conditions of liability in Aquilian action	52
4. Wrongful act or omission	52
i. Prior-conduct	55
ii. Control of dangerous things	58
iii. Positive law	59

iv.	Relationship of the parties	59
v.	Public office	60
5.	Pecuniary loss ( <i>Damnum</i> )	61
6	Fault ( <i>Dolus</i> and <i>Culpa</i> )	61
i.	<i>Dolus</i>	62
ii.	<i>Culpa</i>	63

CHAPTER - VI - <i>ACTIO INJURIARUM</i>	65
The Requisites of liability in <i>Actio Injuriarum</i>	65

## PART - II

CHAPTER - VII- NEGLIGENCE	67
Error of Judgement	71

1. Rights and duties	72
2. Standard duty of care	76
3. <i>Diligens Paterfamilias</i>	77
Disability	78
4. Breach of duty of care	80
Manufacturers	81
5. Duty of care to those coming upon property	83
6. Duty of care to Invitees	84
7. Duty of care to Licensees	86
8. Possession and dispossession	87
9. Ouster	89
10. Duty of care to a trespasser	91
11. A child as a trespasser	93
12. Landlord and Tenant	97
13. Duty of care to a consumer	100
14. Liability under the Consumer Affairs Authority Act	104

CHAPTER - VIII FORESEEABILITY OF HARM	107
---------------------------------------	-----

1. Reasonable foreseeability	107
2. Proximity between the parties	108
3. Two stages approach	112
4. The category approach	114
5. Precedent approach	117
6. Incremental approach	118

CHAPTER - IX PROFESSIONAL NEGLIGENCE	121
--------------------------------------	-----

1. Medical negligence	125
2. Material risks and patient's consent	127
3. Corporate medical negligence	131

CHAPTER - X PRINCIPLE OF ABUSE OF RIGHT	135
---	-----

1. Violation of statutory duty	138
2. Malicious breach of duty by public authority	140
3. Proceedings against Fiscal and other officers	144
4. Rules of <i>Res ipsa loquitur</i>	148

CHAPTER - XI - ESSENTIALS FOR NEGLIGENCE IN DELICT 160

1. Burden of proof of negligence and rebuttal	160
2. Liability for dangerous property – Strict Liability rule	163
3. Applicability of rule in <i>Rylands vs. Fletcher</i> in Sri Lanka	165
4. Defences to the rule in <i>Rylands vs. Fletcher</i>	167
a. Escape of substance necessary	167
b. Natural and non-natural user of land	168
c. Damage by overhanging tree	169
d. Default of plaintiff	171
e. Common benefit	172
f. Act of Stranger	172
g. Statutory authority	174
h. Act of God ( <i>Vis Major</i> )	175
i. Damage by fire	179

CHAPTER --XII  
GENERAL DEFENCES EXCLUDING LIABILITY IN DELICT 185

1. Contributory negligence	185
(a) Contributory negligence of children	189
(b) Rule of last opportunity	191
(c) Dilemma produced by negligence	195
(d) Rule of reasonableness	197
(e) Law Reform (Contributory Negligence and Joint wrongdoers) Act	200
2. <i>Volenti non fit injuria</i>	204
3. Rescue cases	212
4. Application of the defence in action by dependants	217
5. Necessity	217
6. Inevitable accident	220
7. Mistake	224
8. Statutory authority	224
9. Wrong authorised by legislature	227
10. Illegality or ( <i>ex turpi cause non oritur actio</i> )	229
11. Defence of property	230
(a) Flow of water from one land to another	230
(b) Killing of trespassing animal	233

CHAPTER - XIII - VICARIOUS LIABILITY 235

1. Master and servant	236
(a) A Master may be an individual or a company	238
(b) In the course and scope of employment	239
(c) Close connection	240
(d) Knowledge of servant, when imputed to employer	250
(e) Actual & ostensible authority	252
(f) Effect of prohibition	255
2. Servant and independent contractor	257
3. Principal and agent	264
4. Delegation of duty – one servant two masters	267
(a) <i>Respondet superior</i>	267
(b) Lending vehicle with driver	272
(c) Lending vehicle without driver	273
(d) Ownership of the vehicle	274

5. Liability of casual delegation	275
6. Doctrine of agent of necessity	279
7. Common employment	280
8. Servant acting contrary to master's instruction	282
9. Master's liability to a third party	284
10. Instances where master becomes non-labile	289
11. Employment for illegal purposes	297
12. Claim for damaged vehicle by non-owner	298
CHAPTER - XIV	
Workmen's Compensation Ordinance	300
<b>PART - III</b>	
CHAPTER - XV - CAUSING OF BODILY HARM	303
1. Nervous shock, Neurosis, Psychosis	303
2. Primary and secondary victim	313
3. Causing wrongful death	317
(a) Compensation for death of <i>paterfamilias</i>	319
(b) Death of wife	321
(c) Death of child	321
(d) Paternal support by children and vice versa	323
(e) Prospective support/loss	327
CHAPTER - XVI - SURVIVAL OF ACTION UPON DEATH	331
1. <i>Actio personalis moritur cum persona</i>	331
2. Transmissibility of the rights of the injured person	335
3. Survival of action under <i>Lex Aquilia</i>	336
4. Action for loss to Estate	336
5. Action by dependents for loss of support	337
6. Husband's claim for wife's consortium	338
7. <i>Litis contestatio</i> stage	342
CHAPTER - XVII - REMEDIES UNDER DELICT	349
a) Continuing injuries	350
b) <i>Ubi jus ibi remedium</i>	351
c) Extra-judicial remedies	351
d) Judicial remedies	353
e) Release of the wrong doer	353
CHAPTER - XVIII - DAMAGES	355
(a) Kinds of Damages	355
1. Contemptuous damages	355
2. Nominal damages	356
3. Exemplary damages	358
4. Real or Compensatory damages	360

5. Patrimonial damages	362
6. Damages in action in the <i>lex aquilia</i>	362
7. Loss or damage to property	364
8. Conviction in Magistrate's Court is relevant	366
<b>(b) Recoverable Damages</b>	<b>371</b>
(a) Damages for personal injuries	371
(b) Medical and hospital expenses	372
(c) Loss of future earnings	373
(d) Damages for pain and suffering	373
(e) Damages for bodily injury and disability-non pecuniary loss	375
(f) Claimant's income	377
(g) Disfigurement and impairment of bodily integrity	377
(h) Shortening of life	377
(i) Loss of pleasures and amenities of life	378
<b>(c) Measure of damages</b>	<b>379</b>
1. Uniformity in assessment of damages	381
2. Prospective damages	389
3. Effect of subsequent extraneous events	393
<b>(d) Recoupment of loss and the collateral source rule</b>	<b>395</b>
<b>(e) Causation and Remoteness of damages</b>	<b>399</b>
1. Principles of causation	399
2. Natural and probable consequences or foreseeability school	400
3. The direct consequence school	403
4. Navus actus interveniens	410
5. Intervening natural events	412
6. Acts of third parties	414
7. Intervening act of the plaintiff	416
8. Onus of Proof	420
<b>CHAPTER - XIX- OTHER REMEDIES</b>	<b>421</b>
(a) Injunction or Interdict	421
(b) Interim injunction	424
(c) <i>Quia timet</i> injunction	426
(d) Injunction in defamation	428
(e) No injunction if damage is claimed	431
(f) Enjoining orders	432
(f) Specific restitution of property	434
(g) <i>Restitutio in integrum</i>	434
<b>CHAPTER – XX– JOINT AND SEVERAL TORT-FEASORS</b>	<b>439</b>
1. Distinction between joint and several liability	439
2. Contribution among joint tort- feasors	441

## PART - IV

CHAPTER – XXI - THE <i>ACTIO INJURIARUM</i>	447
THE REQUISITES OF <i>ACTIO INJURIARUM</i>	447
1. Impairment of Plaintiff's personality	447
2. <i>Animus Injuriandi</i>	448
3. <i>Injuria per consequentias</i>	449
4. <i>Damages in Actio injuriarum</i>	455

## PART V

CHAPTER–XXII- WRONGS AGAINST CHASTITY AND MARRIAGE RELATIONSHIP	457
---	-----

SECTION – I: SEDUCTION	457
1. Grounds for action on seduction	461
(a) Sexual intercourse between the parties	461
(b) Seductive acts by the defendant	462
(c) Plaintiff's virginity at the time of seduction	463
(d) Corroborative evidence	465
(e) What is corroborative evidence	467
(f) Following are non-corroborative evidence	468
2. Defences in action for seduction	471
(a) Plaintiff's knows defendant was a married man	471
(b) Minority of the defendant	472
(c) Defendant is deprived of marrying the plaintiff's	472
(d) Absence of <i>animus injuriandi</i>	474
(e) When Plaintiff's was the seducer	475
3. Damages in seduction	475
4. Transmissibility of rights of parties	478
5. Prescription for action on seduction	479

SECTION - 2 ADULTERY	480
(a) The applicable law	481
(b) Character of the parties	485
(c) Defences for action for adultery	487
(i) Condonation	487
(ii) Connivance	490
(iii) Collusion	491
(d) Proof of Adultery	491
(e) Rights of Parties	494
(i) Husband's right	494
(ii) Wife's rights	496
(iii) Rights of children	497
(f) Forfeiture of benefit	498
(g) Damages and Costs in actions for adultery	503

SECTION – 3. REFUSAL TO CONSUMMATE MARRIAGE	511
---	-----

SECTION– 4. INTERFERENCE WITH A SPOUSE'S RIGHT TO CONSORTIUM OF THE OTHER	514
---	-----

SECTION – 5. BREACH OF PROMISE OF MARRIAGE	521
--	-----

## PART - VI

CHAPTER – XXIII – WRONGS AGAINST PERSON	526
1. Assault and Battery	526
2. False imprisonment	530
3. Malicious arrest	534
4. False imprisonment and Malicious prosecution	538
CHAPTER – XXIV TRESPASS ON PROPERTY	541
(1)Trespass on subsoil	542
(2)Trespass on Air space	542
(3) Continuing trespass	543
(4) Defence to trespass	544
(a)Licence and consent	544
(b)Justification by law	545
(c) inevitable accident	546
CHAPTER - XXV – ABUSE OF LEGAL PROCEDURE	547
1. Malicious prosecution	547
(a) Motive and malice	549
(b) Requirements for action for malicious prosecution	552
(c) Existence of the prosecution	554
(d) Defendant instigated and affected the arrest	555
(e) Defendant acted without reasonable and probable cause	557
(f) Criminal proceedings ended in favour of the plaintiff	559
(g) Instances where defendant is not liable	567
2. Burden of proof in Malicious Prosecution	571
(a) Bringing of the prosecution	572
(b) Failure of the prosecution	574
(c) Absence of reasonable & probable cause on the part of the defendant	575
(d) Malice on the part of the defendant	578
(e) Damages in actions for malicious prosecution	581
3. Malicious prosecution by corporation	582
4. Malicious civil proceedings and Sequestration	583
5. Actions for damages against <i>mala fide</i> sequestration	590
6. Maintenance and champerty	597

## PART - VII

CHAPTER – XXVI – DEFAMATION	601
1. Essentials of liability in defamation	602
(a) The defamatory statement	602
(b) The statement must refer to the plaintiff	603
(c) The statement was maliciously published	604
2. Libel and slander	605
3. Innuendo	610
4. Defamation of a Group or class of persons	615
5. Husband and wife	617

6. Defamation of a deceased person	618
7. Defamation of companies and Corporations	619
8. Malice or <i>animus injuriandi</i> in defamation	621
(a) Proof of malice or <i>Animus injuriandi</i>	622
(b) Publication by newspaper	627
(c) Defamation by internet	628
(d) Defamation by agent	629
9. Pleadings in defamation	630
10. Defences in defamation	633
(a) Truth	633
(b) Justification	638
(c) Public benefit or interest	640
(d) Fair Comment	645
(e) Privilege	651
(i) Absolute privilege	654
(ii) Statements made in Parliament	655
(iii) Judicial proceedings	656
(iv) Proceedings of quasi-judicial bodies	664
(v) Protection of witnesses	668
(vi) Communication between Attorney-at-law and client	673
(vii) Qualified Privilege	674
(viii) Qualified Privilege and Responsible journalism	677
(ix) Statements made in the Discharge of duty	679
(x) Relevance	681
(xi) Recipients	683
(xii) Whether the occasion is privileged?	684
(f) Examples of privileged occasion	690
11. Other defences in defamation	693
(a) Mistake	693
(b) Jest	696
(c) <i>Rixa</i>	697
(d) <i>Compensatio</i>	699
(e) Absence of <i>Animus injuriandi</i>	699
(f) Offer of amends	700
(g) Innocent dissemination	700
(h) Consent of the plaintiff	700
12. Burden of proving absence of malice or <i>animus injuriandi</i>	701
13. Measure of damages in defamation	703
14. Mitigation of damages in defamation	706
(a) Apology	706
(b) Character of the Plaintiff	708
(c) Partial justification	709
15. Aggravation of Damages	710
16. Remoteness of damages	713
CHAPTER- XXVII - LIABILITY FOR NON-DEFAMATORY STATEMENTS	715
1. Deceit or fraudulent misrepresentation	715
2. Innocent misrepresentation	722
3. Conspiracy	724
4. Injurious falsehood	726
5. Trademarks, copy rights and passing-off	730
6. Intellectual Property Act	731
CHAPTER - XXVIII - ACTION BY OR AGAINST PROFESSIONALS	735



## PART VIII

### CHAPTER – XXIX – PARTIES AND THEIR CAPACITY TO ACTIONS 743

1. Persons who may sue and be sued in delict 743
2. Action *ex-delicto* against the Crown 744
3. Liability of the State in delict 749
4. Public officers 750
5. Judicial officers 751
6. Corporations and companies 752
7. Parents and school masters 755
8. Lunatics 757
9. Minors 759
10. Drunkards 762
11. Husband and wife 762

### CHAPTER - XXX - ANIMALS 767

1. Action for damage caused by animals 767
2. Brute Animals 769
3. Shooting an animal by mistaken belief. 772

## PART – IX

### CHAPTER – XXXI – WRONGS AGAINST PROPERTY 775

#### Nuisance 775

1. Essentials of nuisance 777
2. Classification of Nuisance 778
  - (a) Public nuisance 779
  - (b) Private nuisance 785
  - (c) Nuisance and servitudes 787
  - (d) Nuisance by overhanging trees 788
  - (e) Discharge of foul water 790
  - (f) Reasonableness 792
  - (g) Abnormal sensitivity 794
  - (h) Temporary injury 795
  - (i) Malice in nuisance 796
3. Difference between nuisance and negligence 797
4. Defences in action for nuisance 798
5. Liability for nuisance caused by a third party 799
6. Continuing nuisance 799
7. Abatement of nuisance 800

### CHAPTER – XXXII – SERVITUDES 803

1. Classification of servitudes 804
  - a) Praedial servitude 805
  - b) Personal servitude 806
    - (i) *Habitatio* 807
    - (ii) *Usus* 808
    - (iii) *Usufruct* 808

c)	Rural Servitude	809
d)	Urban Servitude	809
e)	Positive and Negative servitude	810
f)	Natural servitude	811
2.	Principles of servitude	812
3.	Character of servitude	813
(a)	Indivisibility	813
(b)	Existence of dominant and servient tenements	814
(c)	Encumbrance on the servient tenement	814
(d)	Benefit accruing to the dominant tenement	814
4.	Creation of servitude	815
(a)	By grant	815
(b)	By prescription	815
5.	Kinds of servitude	816
1.	Rural Servitudes	816
(a)	Right to build on another's land - <i>jus superficiarum</i>	816
(b)	Servitude of surface water	819
(c)	Natural discharge of rain water from upper tenement	823
(d)	<i>Actio aqua pluviae arcende</i>	829
(e)	Way of footpath	830
(f)	Gates and stiles on pathways	832
(g)	Way of necessity	834
2.	Urban Servitude	838
(a)	Servitude of light and air	838
(b)	Projecting Eaves over neighbour's land	841
(c)	Right to build on common wall	843
(d)	Excavation by adjoining land owner-right to lateral support	844
(e)	Damage and cause of action in excavation	847
(f)	Right to build wall on common boundary	848
(g)	Right to fencing or erecting scaffolding on neighbour's land	849
(h)	Right to have beams on neighbour's building	851
3.	Right of way	851
(a)	Over another's land	851
(b)	Over a co-owned property	855
4.	Right of way by prescription	858
5.	Extinction and revival of right of way	866
6.	Dedication of roadway	871
7.	Public roads	872
8.	Right to fishery	875
9.	Right to draw water-right of <i>acquae ductus</i>	878
10.	Usufructuary's right to dig for minerals	879
3.	Transfer of servitude	880
4.	Cause of action in action on servitude	882
5.	Continuing cause of action	883

**PART - X**

<b>CHAPTER – XXXIII</b>	
Action for definition of boundaries of lands	885
Onus of proof of the boundary	888

<b>CHAPTER - XXXIV – PRESCRIPTION FOR ACTIONS IN DELICT</b>	890
---	-----

<b>General Index</b>	897
----------------------	-----

**APPENDICES**

A. The Law Reform (Contributory Negligence and Joint Wrongdoers) Act	905
B. The State (Liability in Delict) Act	910
C. Specimen Form for Pleading in Defamation Action	915

<b>Table of Cases</b>	917
-----------------------	-----