

AN ANALYSIS OF THE LEGAL TERM *TORT*

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Abstract

Legal language is a specialized language. Certain terms acquire a meaning only in the particular field of law. They are referred to in various ways: ‘purely technical terms’, ‘terms exclusively pertaining to the legal field’, ‘strictly specialized legal terms’, etc. We have selected the term *tort* in an attempt to make a lexico-semantic and functional analysis of this term of art, while examining its etymology, legal content, definitions from general-purpose dictionaries and terminological dictionaries. Tort denotes a notion that is widely used in both common law and civil law countries, as well as in legal systems deriving from them. It designates a wrongful act, harmful behaviour, such as interference with the person of another causing physical harm, infringement of certain personal and property rights, damage to the reputation of another. A monosemic, monoreferential term, *tort* occurs in a hyponymy relation and is confined to legal contexts.

Key-words: *legal language, specialized language, lexico-semantic analysis, functional analysis, tort*

Résumé

Le langage juridique est un langage spécialisé. Certains termes n'acquièrent un sens que dans le domaine particulier du droit. Ils sont désignés de diverses manières: «termes purement techniques», «termes d'appartenance juridique exclusive», «termes juridiques strictement spécialisés», etc. On a choisi le terme *tort*/ ‘*délit*’ pour faire une analyse lexico-sémantique et fonctionnelle de ce terme spécialisé, tout en examinant son étymologie, son contenu juridique, les définitions des dictionnaires généraux et des dictionnaires terminologiques. *Tort* désigne une notion largement utilisée dans les pays de common law et de droit civil, ainsi que dans les systèmes juridiques qui en découlent. Il fait référence à un acte illicite, un comportement préjudiciable, tel que l'atteinte à la personne d'autrui causant un préjudice physique, la violation de certains droits personnels et patrimoniaux, l'atteinte à la réputation d'autrui. Terme monosémique et monoréférentiel, *tort* apparaît dans une relation d'hyponymie et se limite aux contextes juridiques.

Mots-clés: *langage juridique, langage spécialisé, analyse lexico-sémantique, analyse fonctionnelle, tort / ‘délit’*

Tort – a technical term exclusively pertaining to the legal sphere

In every country, legal language stands for the particular use of common language. It consequently appears as a specialized language¹. Certain words have a meaning only in relation to the field of law and they are referred to in various ways. Varó and Hughes, for instance, call them “purely technical terms”². According to them, the lexical items of a language may be symbolic (representational) and functional. The former group can be divided into three subcategories: purely technical terms (relevant in the legal sphere exclusively), semi-technical or mixed terms (polysemic words having acquired legal meanings by a process of analogy), and shared terms (everyday vocabulary).

Cornu speaks of “termes d’appartenance juridique exclusive”/ ‘terms exclusively pertaining to the legal field’³. The legal vocabulary is not confined to these terms. It includes all the words which, having at least one meaning in ordinary usage and at least a different meaning with regard to law, are marked by external polysemy⁴. The terms of the second category are much more numerous. By extrapolating what the famous linguist said about the French legal vocabulary, we can say that the English legal vocabulary comprises all the lexical units of English which have at least one legal meaning.

In Romanian linguistics, A. Stoichițoiu-Ichim⁵ identifies three lexical strata within legal vocabulary: strictly specialized legal terms, “technical” terms taken over from other terminologies, and words from the general vocabulary used with a legal meaning.

We will try to make a lexico-semantic and functional analysis of the legal term *tort*, a genuine term of art, while discussing its etymology, legal content and definitions from general-purpose dictionaries, as well as terminological dictionaries. An essential term in any context, *tort* is monosemic and stable from the semantic point of view, referring to a single notion within the legal field of application.

1. Etymology of the legal term *tort* and historical background

The origin of the term *tort* dates back to the 13th century, coming from Old French *tort* and preserving its meaning, i.e. “wrong, injustice, crime” (11th century), in its turn borrowed from Medieval Latin *tortum* “injustice”, noun use of neuter of *tortus* meaning “wrung, twisted”, past participle of Latin *torquere* “turn, turn awry, twist, wring, distort” (from Proto-Indo-European root **terkw-* “to twist”). The terminologization of the word took place in the 16th century when it was first

¹ G. Cornu, *Linguistique juridique*, 2e édition, Montchrestien, Paris, 2000: 23.

² E. A. Varó & B. Hughes, *Legal Translation Explained*, Routledge, New York, 2002:16.

³ Cornu, *op. cit.*, 2000: 20.

⁴ *Ibidem*: 21.

⁵ A. Stoichițoiu-Ichim, *Semiotica discursului juridic*, Ediția a II-a, Editura Universității din București, București, 2006:112.

recorded with the legal sense “breach of a duty, whereby someone acquires a right of action for damages” (1580s)⁶.

In law, torts are civil wrongs, not criminal wrongs. They may be redressed if the injured person is awarded damages by a court decision. In early English law there was no distinction between civil wrongs and crimes. A wrong was brought before the early courts only if it threatened the peace of the community. Such wrongs were dealt with by the royal courts and were known as felonies, forming the basis of present-day crimes. The “lesser wrongs which, although involving a breach of the peace, nevertheless did not ostensibly threaten law and order, but only affected the party complaining of the wrong, formed the basis of torts, and were known generally as trespasses.”⁷

In the 13th century, these wrongs were actionable in the royal courts. In the 14th century, a new form of action developed, namely the action on the case, dealing with consequential injuries. The other form of action was trespass, involving direct injuries. These forms of action were abolished by the Common Law Procedure Act 1853, actions covering a broader variety of circumstances⁸.

2. Legal content

Tort denotes a notion that is widely used in both common law and civil law countries, as well as in legal systems deriving from them. It is perceived as “any instance of harmful behaviour, such as physical attack on one’s person or interference with one’s possessions or with the use and enjoyment of one’s land, economic interests (under certain conditions), honour, reputation, and privacy”⁹.

The terminology however varies. Thus, the Germans have unlawful acts, whereas “French-inspired systems use interchangeably the terms *délits* (and *quasi-délits*) and extra-contractual civil responsibility”¹⁰. In Romanian law, the phrase that notionally mirrors the term *tort* is “faptă ilicită cauzatoare de prejudiciu”/ ‘illicit act causing a prejudice’.

From a linguistic standpoint, although there is no dispute with regard to its meaning, it is hard to translate this term. As Varó and Hughes point out, the term *tort* is known to non-English jurists under a wide range of names: *agravio extracontractual*, *derecho de daños*, *préjudice*, *unerlaubte Handlung*, etc.¹¹

⁶ *Online Etymology Dictionary*, <https://www.etymonline.com/search?q=tort>.

⁷ P. W. D. Redmond, *General Principles of English Law*, 6th edition (revised by I. N. Stevens and P. Shears), Longman, London, 1990: 209.

⁸ *Ibidem*: 209-210.

⁹ Basil Markesinis, “Tort”, in *Encyclopedia Britannica*, 19 Sep. 2019, <https://www.britannica.com/topic/tort> (accessed 8 February 2021).

¹⁰ *Ibidem*.

¹¹ E. A. Varó & B. Hughes, *op. cit.*, 2002: 17.

In English law, the legal category of torts is often defined and explained in contrast with crimes. The protection of certain personal and property rights is not ensured by punishing wrongdoers in criminal proceedings, but by making them pay damages to the victim. Another solution of courts is the issuing of an injunction which prevents the wrongdoer from repeating the act. The infringement of these rights recognized by law is called a tort. Torts are various. Thus, “interference with the person of another causing physical harm could give rise to an action for the torts of battery or negligence. Damaging the reputation of another could lead to an action for defamation. Interests in land are protected by the torts of trespass and nuisance, and interests in goods by trespass to goods and conversion.”¹²

Similar situations and facts seem to be actionable from a western European and common law perspective, but laws and solutions have differed across legal systems and cultures in time. Yet, a common element is unacceptable conduct leading to the award of damages in a court of law, in civil proceedings.

Tortious liability or liability in tort implies an element of fault on the part of the author of the tort (“tortfeasor”). A tort does not necessarily involve an intentional or negligent act, but an omission in some cases. Fault may lack in torts of strict liability, when compensation is mandatory in the event of an injury, e.g. dangerous things escaping from land, dangerous animals, etc.¹³

3. An analysis of dictionary definitions

The following are definitions of the term *tort* found in several dictionaries:

“(law, specialized) an action that is wrong but can be dealt with in a civil court rather than a criminal court”¹⁴ [1]

“a wrongful act other than a breach of contract for which relief may be obtained in the form of damages or an injunction”¹⁵ [2]

“a wrongful act or omission for which damages can be obtained in a civil court by the person wronged, other than a wrong that is only a breach of contract”¹⁶ [3]

“**1.** A civil wrong for which a remedy may be obtained, usu. in the form of damages; a breach of a duty that the law imposes on everyone in the same relation to one another as those involved in a given transaction. **2.** (*pl.*) The branch of law dealing with such wrongs.”¹⁷ [4]

¹² S. B. Marsh & J. Soulsby, *Outlines of English Law*, 5th edition, Mc Graw-Hill Book Company, 1990: 114.

¹³ *Ibidem*.

¹⁴ *Cambridge Dictionary*, <https://dictionary.cambridge.org/dictionary/english/tort>.

¹⁵ *Merriam-Webster Dictionary*, <https://www.merriam-webster.com/dictionary/tort>.

¹⁶ Elizabeth A. Martin (editor), *Oxford Dictionary of Law*, Oxford University Press, Oxford, 1997: 467.

¹⁷ Bryan A. Garner (editor in chief), *Black's Law Dictionary*, Seventh Edition, West Group, St. Paul, Minn., 1999: 1496.

“a wrong; a private or **civil** wrong or injury resulting from a **breach** of a **legal duty** that exists by virtue of society’s expectations regarding interpersonal conduct, rather than by **contract** or other private relationship. The essential elements of a tort are existence of a legal duty owed by **defendant** to **plaintiff**, breach of that duty and a causal relation between defendant’s conduct and the resulting damage to plaintiff.”¹⁸ [5]

The first two definitions are from general-purpose or general language dictionaries. Such dictionaries contain pre-scientific definitions which should be accessible to the non-specialist speaker. Although addressed to non-specialists, the definitions in this case include specialized terminological units: *civil court*, *criminal court*, *breach of contract*, *relief* (in the sense of “legal remedy”), *damages* (in the sense of “compensation”), *injunction*.

In the first definition, there is a diastatic mark that indicates the domain of law and highlights *tort* as a specialized term.

Definitions [1] and [2] are similar, in point of legal content and lexical items employed to express this content, to definitions [3], [4], [5], which can be found in law dictionaries.

Definition [4] also explains the significance of the plural form *torts*, referring to the branch of law governing the wrongs in question.

Definition [5] introduces two other specialized terms, *defendant* and *plaintiff*, between which there is an essential relation for the existence of a tort.

The fact that general-purpose dictionaries, in defining the term *tort*, make use of other legal terms with a medium, even high degree of specialization, evidences the technicality of the term which exists only in a law environment.

Tort may develop a hyponymy relation, as a hyperonym or as a hyponym.

The hyperonym of *tort* is ‘wrong’ or ‘wrongful act’ (a term also used in the definition of offences), whereas among its hyponyms one can count: negligence, defamation, nuisance, trespass, four main types of wrongs for which the law of torts provides remedy¹⁹.

The hyperonym ‘wrong’ or ‘wrongful act’ (or synonymous expression ‘an action that is wrong’) is used in the definitions along with the synonyms of *tort*, namely ‘civil wrong’, ‘private or civil wrong or injury’.

All this proves once again the good conceptual-semantic structuring of the legal field.

¹⁸ Steven H. Gifis, *Dictionary of Legal Terms. A Simplified Guide to the Language of Law*, 3rd edition, Barron’s Educational Series, New York, 1998: 502.

¹⁹ S. Badea, *Legal English. Curs pentru IFR, anul II*, Editura Universitaria, Craiova, 2017: 29-30.

“Most of the time, the hyperonym is formally retained within the hyponym, which makes a large part of the subordinate elements be syntagmatically expressed terms.”²⁰

The term *tort* is contained in several legal phrases which are its hyponyms. These phrases consist of: adjective + *tort* (*constitutional tort, dignatory tort, intentional tort, maritime tort, negligent tort, personal tort, prenatal tort, public tort, toxic tort, willful tort*), noun + *tort* (*government tort, mass tort, property tort, sanctions tort*)²¹. Some phrases include Latin words, e.g. *quasi tort, prima facie tort*, where *quasi* is an adjective and *prima facie* an adverb quite often used in legal language and meaning “at first view”.

Tort occurs in various contexts and these contexts are always legal, usually in the form of articles (mainly in legal journals), law books, explanations on official legal sites, or sites promoting legal content, educational sites, etc.

e.g. “The principle, generally, is that the defendant to an action in *tort* is not liable for all the consequences of his actions, but only for those consequences which the law regards as sufficiently proximate.”²²

“But actual legal liability doesn’t count for much when the U.S. mass *tort* industry gets rolling.” (*WSJ*, 22 July 2021)²³

It is interesting to mention that Thesaurus.com provides 365 ways to say *tort*, including synonyms, antonyms, related words, sentences containing examples. The term *tortfeasor*, meaning “one who commits a tort; a wrongdoer”, looks like a compound, but is not an internal creation; it is borrowed from Old French (1650s) *tortfesor*, from *tort* “wrong, evil” + *-fesor* “doer”²⁴.

The adjective *tortious* is not derived from *tort*, it is a loan word from Anglo-French *torcious* (“wrongful, illegal” – 14th century), from stem of *torcion*, literally “a twisting”, from Late Latin *tortionem*. The legal meaning “pertaining to a tort” was entrenched in 1540s²⁵.

4. Conclusion

Although polysemy is present in the language of the law and many terms need a linguistic context in order to be understood and used properly, there are still numerous monosemic terms which do not need a context to update meaning. The

²⁰ A. D. Anghelina, *Terminologia IT între sistem și uz. O abordare descriptiv-lingvistică*, Editura Universității din București, București, 2018: 143.

²¹ *Black’s Law Dictionary*, 1999: 1496 -1497.

²² P. W. D. Redmond, *op. cit.*, 1990: 217.

²³ <https://www.merriam-webster.com/dictionary/tort>.

²⁴ *Online Etymology Dictionary*, <https://www.etymonline.com/search?q=tortfeasor>.

²⁵ *Online Etymology Dictionary*, <https://www.etymonline.com/search?q=tortious>.

term we have analyzed, *tort*, is a specialized term characterized by monoreferentiality and precision. It migrated from the common lexicon to the legal sphere where it underwent a process of terminologization. At present, it is strictly used in legal contexts and may enter a hyponymy relation (with the status of hyperonym or hyponym), becoming a member of lexico-semantic fields specific to legal terminology.

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