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Plagiarism: A Tortious Act

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ABSTRACT

Plagiarism is the idea of taking someone's intellectual work and passing it off as one's own. Failing to acknowledge someone else's literature or ideas with an internal citation or bibliography is plagiarism. Plagiarism is not copyright infringement, but it came before the idea of copyright laws. In this research paper the author brings out the difference between plagiarism and copyright infringement. Further the author focuses on how plagiarism is connected to the law of torts and possible legal remedies available to the plaintiff.

I. INTRODUCTION

The word plagiarism has been derived from the Latin words “plagiarius” which means an abductor and “plagiare” which means to steal. The term previously had meant only the act of kidnapping or abducting someone. The modern concept of plagiarism emerged in England in the 18th century when writing became an occupation. Ben Johnson was the first person to use the “plagiary” in English to denote literary theft². Plagiarism in modern context refers to the borrowing or copying of another individual's work without giving due credit and representing it as one's own original work. Here the word “work” refers to ideas, thoughts, expressions, written work, and information from the internet, songs, dramatics, play, cinematography, and any other form/ type of literary work. Plagiarism was initially limited to academic work or research which was considered to be academic dishonesty and breach of journalistic ethics, which is ground for disciplinary action, suspension, expulsion etc., however with the growth of internet even online information has come under the purview of plagiarism.

(A) Types of Plagiarism

Plagiarism can be divided into four main types:

- a) Direct Plagiarism- It involves word to word transcription of the author's work without attribution and citation.

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² Brynn, K. (2016). When Did Plagiarism Become a Crime?, <https://historynewsnetwork.org/article/569>.

- b) Self- Plagiarism- In this kind of plagiarism the author republishes or reuses parts of his own work which is published somewhere else while authoring the new one.³ This kind of plagiarism can lead to copyright infringement
- c) Mosaic Plagiarism- It involves borrowing phrases from the source without using quotation marks or paraphrasing the author's language while keeping the same general structure and meaning as the original.⁴ It is also known as patchwork plagiarism.
- d) Accidental Plagiarism- It occurs when a person neglects to cite the sources or misquotes the sources or unintentionally paraphrases.

However, the main essence of plagiarism i.e., the passing off someone's work as one's own original work remains the same in all of the kinds.

(B) Difference between Plagiarism and Copyright Infringement

Often plagiarism is interchangeably used with copyright infringement. Even though plagiarism and copyright infringement overlap with each other, they are not the same concepts and many types of plagiarism do not constitute copyright infringement, which is defined by copyright law and adjudicated by the courts.

There is a lot in common between plagiarism and copyright infringement as both deal with a person's intellectual and intangible property and amounts to representing someone else's work as one's own. However, the main difference lies in the fact that- copyright is a set of exclusive rights granted to the creator of an original work and copyright infringement is considered to be violation of legal right which is protected by copyright laws whereas plagiarism is considered to be violation of moral and ethical rights which is considered to be a serious ethical offence and there are grounds for disciplinary action against it.

Plagiarism is a much broader concept than copyright infringement and it can even include copyright infringement. Plagiarism covers things which are not protected by copyright laws such as ideas, words, syntax, style, format etc. Copyright protects only works of copyright holder, which are registered under the copyright laws and only applies to works that are embodied in a tangible medium of expression and whereas plagiarism can apply to any work whether tangible or intangible, registered or unregistered under the copyright laws. Copyright ownership is limited to a time period depending on the nature of work as defined by the statute and damages for copyright infringement cannot be claimed after the expiry of the

³ Singh, B. (2016). GRIN - Plagiarism and Tortious Liability- Connection between Law of Torts and Plagiarism, <https://www.grin.com/document/345136>.

⁴ Bowdoin.edu. (n.d.). The Common Types of Plagiarism, <https://www.bowdoin.edu/dean-of-students/judicial-board/academic-honesty-and-plagiarism/common-types-of-plagiarism.html>.

ownership. But claims for plagiarism on the other hand is not bound by any such time period. For instance, if we were to claim to have written any of the literary works of Shakespeare for example “Hamlet” it would amount to plagiarism but not copyright infringement because the play is in public domain and thus, not protected by the copyright laws.⁵

Thus, not all plagiarisms are copyright infringement and not all copyright infringement are plagiarism. For instance, sources which are out of copyright (which are in public domain) do not commit copyright infringement, ideas and facts are not protected by copyright laws but can be definitely plagiarized and lastly copying and reuse of short passages without attribution is a form of plagiarism but not a copyright infringement. Plagiarism is concerned with whether or not the original work is properly cited and given due credits while copyright focuses on the use of original work without the permission of the copyright holder amounting to copyright infringement even if the work is properly cited. It can be said that copyright is a legal construct and plagiarism is an ethical/moral construct.

II. LEGAL ASPECTS OF PLAGIARISM

(A) Current Legal Status of Plagiarism

As it is well understood that plagiarism is considered as theft or stealing of someone else’s original work and representing as one’s own, however the concept does not exist in legal sense. The meaning of the word plagiarism is not clearly visible in legal sense, as even the court of law uses plagiarism interchangeably with copyright infringement. It is to be noted that plagiarism may even occur without copyright infringement. Till date plagiarism hasn’t been specifically mentioned in any of the current statutes in the world but is often talked along with copyright infringement under the copyright laws. However, plagiarism meets the legal definition of fraud or misrepresentation. Some cases can be treated as unfair competition or violation of doctrine of moral rights. (moral rights are the rights of creator’s copyrighted work generally recognized in civil law. These rights include right of attribution, right to integrity of work, etc.).⁶

(B) Plagiarism as a Legal Offence

Although plagiarism doesn’t come under the ambit of civil or criminal wrong under the law but is considered to be illegal only if it infringes the author’s intellectual property rights such as copyright. The “offence” of plagiarism has not been itself a discipline of lawsuit but has

⁵ Bailey, J. (2013). The Difference Between Copyright Infringement and Plagiarism, <https://www.plagiarismtoday.com/2013/10/07/difference-copyright-infringement-plagiarism/>.

⁶ En.wikipedia.org. (2019). Moral rights, https://en.wikipedia.org/wiki/Moral_rights#cite_note-1

been drawn in connection to copyright infringement. Often, plagiarism as an offence has been dealt only in academic and journalistic fields and the matter is usually taken to the disciplinary committee. For instance, in 2012, former Delhi University vice chancellor Deepak Pental was put in jail over the allegations that he plagiarized a colleague's research.⁷ The makers of the film 'Saaho' starring Shraddha Kapoor and Prabhas were alleged to have copied an artwork of a contemporary artist and used it in one of the posters.

Given the spectrum of morality practiced by people around the world, plagiarism can range from a small nuisance to a serious offence.

(C) Can plagiarism be considered as a civil wrong under tort law?

Within the purview of common law jurisdiction for protection of creative or intellectual property, several causes of action have evolved over a period by which the injured party or the plaintiff can seek redress for the injury caused. It can be defamation, breach of trust, unfair competition, misappropriation, etc. However civil cases involving plagiarism are rare and often these cases are dealt in the context of copyright infringement.

Is plagiarism a wrongful act under tort law?

Salmond defined tort as a- "civil wrong for which remedy is a common law action for unliquidated damages and which is not exclusively the breach of contract or breach of trust or other merely equitable obligation"⁸. Thus, tort is a civil wrong whereby the wrongdoer violates some legal rights vested in another person. For plagiarism to constitute as a tort, it should fulfil the essential conditions of tort which are as follows:

a) Act or omission

For a person to be made liable for a tort, it is necessary to prove that he/she has done some act which he is not expected to do, or he must have omitted to do something which he is supposed to do. However, the wrongful act or omission must be recognized by law. It is important to note that plagiarism has been regarded as a moral wrong and not a legal wrong. Thus, it becomes necessary to mention how plagiarism becomes a wrongful act. In contrast to Salmond, Winfield believed it is not law of torts but "law of tort" i.e., every wrongful act, for which there is no justification or excuse to be treated as a tort.⁹ This theory of his conveys that tort doesn't merely consist of those wrongful acts that have acquired a specific name but includes all unjustified harm as tortious. Landmark cases in the support of this theories are- In

⁷ Plagiarism.org. (2017). Is Plagiarism Illegal?, <https://www.plagiarism.org/blog/2017/10/27/is-plagiarism-illegal>.

⁸ Bangia, Law of Torts, 22nd ed., p. 4.

⁹ Bangia, Law of Torts, 22nd e.d., p. 16.

*Ashby v. White*¹⁰ where Chief Justice Holt said that “if man will multiply injuries, action must be multiplied too: for every man who is injured ought to have recompense”. Again, in *Chapman v. Pickersgill*¹¹ Chief Justice Pratt said that “Torts are infinitely various and not limited or confined”. The inclusion of deceit as a tort has its origin in *Pasley v. Freeman*¹², the rule of strict liability in *Raylands v. Fletcher*¹³ are examples having the basis of this theory. Thus, on the basis of this theory plagiarism is a “wrongful act” because it is misappropriation and misrepresentation of work publicly, misappropriation of credits, kind of misleading and misinforming the public about the source of work. The “wrong” of plagiarism is visited on third parties who are misled by the misrepresentation of authorship as much as on the original author.

b) Legal damage

In an action of tort, it is necessary for the plaintiff to prove that a legal damage has been caused to him i.e., it should be proved that there was a wrongful act, causing breach of legal duty or violation of legal right vested in the plaintiff. This is expressed by the maxim “**Injuria sine damno**” which means violation of legal right without causing any harm or damage to the plaintiff. This can be of two types- Firstly, torts which are actionable per se i.e., actionable without proof of any damage or loss and secondly, torts which are actionable only on the proof of some damage caused by an act.

The other maxim “**Damnum sine injuria**” which means occurrence of harm without violation of legal right. Such an act/ omission is not actionable under tort law.

Thus, the act of plagiarism not only causes damage/ injury to the original creator but also to the people who were lied to about the original source of work.

(D) Possible Cause of Action available under Tort Law for the Acts that constitute Plagiarism

Although more often plagiarism is treated as an ethical or moral wrong rather than legal, unattributed copying can also constitute variety of legal wrongs under the law of tort. It might constitute unfair competition, rule of strict liability, tort to incorporeal personal property.

a) Plagiarism and Unfair Competition

Among the collection of doctrines that comprise of the area of tort law known as unfair competition law, are the two doctrines that bear an obvious resemblance to the rule against

¹⁰ *Ashby v. White*, (1703) 92 ER 126

¹¹ *Chapman v. Pickersgill*, (1762) 2 Wils 145.

¹² *Pasley v. Freeman*, (1789) 100 ER 450.

¹³ *Raylands v. Fletcher*, (1868) LR 3 HL 330.

plagiarism: passing/palming off and misappropriation.

Passing off is the selling of goods under the name of another typically better known, competitor.¹⁴ For example, a restaurant that substitutes a similar (usually cheaper) product in response to our quest for Coca-Cola, or which refills genuine Coke bottles with a different brand, has committed the tort of palming off. Reverse passing off involves the selling of another's product under one's own name. For example, if Wal-Mart purchased Coca-Cola, removed the Coke name, and advertised the product as "Sam's Cola," its actions would constitute reverse palming off. The analogy between reverse passing off and plagiarism is that, like reverse passing off, plagiarism also consists of taking another's words or ideas, "removing" the other party's name, and representing the words or ideas as one's own.¹⁵

Doctrine of misappropriation is basically a tort protection for quasi property such as ideas, formulas, artistic creation, designs and information. The doctrine is premised on the notion that a commercial rival should not be allowed to profit unfairly from the costly investment and labour of one who produces information. For example, stealing a fried chicken competitor's "secret recipe" and using it for monetary gain. Thus, the analogy between misappropriation and plagiarism is that like misappropriation, plagiarism consists in representing someone else's work as one's own for gaining academic credit.

b) Plagiarism and rule of Strict Liability

In the legal system, strict liability is a concept where a person is held responsible and liable for their actions even though they did not act negligently nor deliberately to cause injury. One area where strict liability can be looked with is plagiarism. However, the concept of strict liability should be applicable to only those who do not adhere to the standards of plagiarism as set forth by the respective institutions.

c) Plagiarism as Civil Theft and Fraud

Civil theft is a tort based on the intentional taking of another person's property. In common law jurisprudence property consists of "any kind of property whether moveable or immovable, tangible or intangible and includes any right and interest in such property". There are two kinds of incorporeal rights i.e., *jura in re aliena* or encumbrances such as leases, easements, servitudes etc. and the other is *jura in re propria* which refers to ownership

¹⁴ Green, S. (2002). Plagiarism, Norms, and the Limits of Theft Law: Some Observations on the Use of Criminal Sanctions in Enforcing Intellectual Property Rights, https://www.researchgate.net/publication/228244566_Plagiarism_Norms_and_the_Limits_of_Theft_Law_Some_Observations_on_the_Use_of_Criminal_Sanctions_in_Enforcing_Intellectual_Property_Rights.

¹⁵ *ibid.*

of intangible property such as trademark, copyright, patent, and other intellectual property.¹⁶ Since plagiarism also deals with intellectual work, it can be considered as an intangible property. Thus, the analogy between theft and plagiarism is that plagiarism also sometimes consists in intentionally passing off of another's work as one's own.

Fraud can be defined as any act of deception carried out for the purpose of unfair, undeserved, or unlawful gain. The essentials of fraud to constitute as a tort are- the defendant made a false representation, intention to deceive, the defendant knew the statement is false and the plaintiff should suffer damage in consequences.¹⁷ Thus, plagiarism also fulfils these essentials to constitute it as a fraud. For example, Anthony Lamberis, an attorney in Illinois, was enrolled in classes in an LL.M. program at Northwestern University. In 1978, he submitted a 93-page thesis, of which 47 pages were plagiarized from two sources that Lamberis did not cite. His professors detected the plagiarism in June 1979. Lamberis attempted to resign from the law school, but Northwestern University expelled him, then reported him to the Attorney Registration and Disciplinary Commission. In an attorney disciplinary proceeding based on this conduct the Hearing Board found that the respondent had "knowingly plagiarized" the two published works and that this plagiarism constituted "conduct involving dishonesty, fraud, deceit, or misrepresentation" violating the Illinois Code of Professional Responsibility. The Hearing Board recommended that the respondent be censured. The Review Board adopted the Hearing Board's findings of fact and recommended that the respondent should receive a suspension of six months¹⁸.

(E) Possible Remedies available under Tort Law

The remedies that can possibly be claimed by the plaintiff or awarded by court to the plaintiff for an act constituting plagiarism can be either damages (unliquidated) or injunction.

In case of damages the court can award nominal damages when there has been violation of plaintiff's legal right, but he has suffered no loss or compensatory damages. In the *Haugh v. Bullis School*¹⁹ case (USA), Paul Haugh was suspended from a private high school for plagiarism. The high school notified colleges that had accepted Haugh. Haugh then sued in federal district court alleging breach of contract and libel. However, he "failed to offer any evidence whatsoever to refute the charge of plagiarism and neither in the pleadings or in the proof, ever assert that the charges of plagiarism or of lying were untrue." The district court

¹⁶ Kenton, W. (2018). Incorporeal Rights, <https://www.investopedia.com/terms/i/incorporeal-rights.asp>.

¹⁷ Bangia, Law of Torts, 22nd edition, p. 462.

¹⁸ Checkforplagiarism.net. (n.d.). Plagiarism Consequences - Plagiarism Law - Court Cases – Research, <https://www.checkforplagiarism.net/plagiarism-consequences>.

¹⁹ *ibid*.

granted the school's motion for summary judgment. Haugh then filed an appeal in the Court of Appeals, which affirmed the district court, and found the appeal to be both meritless and frivolous, and ordered Haugh to pay attorney's fees for the appeal to the school.

In case of injunction, the court can either grant interlocutory injunction i.e., during the proceedings, permanent injunction which is a final order and issued after the full consideration of the case, prohibitory injunction prohibits the defendant from doing an act which interferes with the plaintiff's lawful rights, and mandatory injunction which requires the plaintiff to do some positive act. For instance, a Bangalore civil court has issued an ex-parte interim injunction against Chetan Bhagat and his publishers, restraining them from selling copies of his recent book *One Indian Girl*.

III. CONCLUSION

The act of plagiarism cannot be justified in any circumstances. This act of plagiarism is not only condemned by the society in general but has also been recognized and addressed through formal disciplinary proceedings as a wrong through regulation by the respective institutions. Apart from the disciplinary proceedings, plagiarism can also attract legal and monetary penalties through the wide interpretation and further application of available legal recourses under the Tort Law. Considering the changing scenario with the availability of online information, plagiarism is now a lot easier to commit than it was earlier. The developing technology has provided a solution in the form of software applications checking the extent of plagiarism, but its use is limited to an educational scenario to combat plagiarism. The regulation by the educational institutions and their eventual decisions taken under this matter are not enough and do not justify the legal injury caused to the aggrieved person and because the scope of Law does not consider plagiarism as a violation of legal right, the available recourses are limited to academic plagiarism, whereas the scope of plagiarism is much wider in reality. Also, such a recourse does not really restore the aggrieved parties' right nor compensation is awarded to him. Instead, the plagiarist is subjected to harsh consequences almost to an extent of ruining his career. Therefore, it is necessary for the Law to recognize plagiarism and provide adequate remedies to the aggrieved and provide proportional punishment to the plagiarist.

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