

General Defences Under Law of Torts: An Overview

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Introduction

Defences are those contentions which persuade the judge that the respondent is not liable of the demonstration that he is being blamed for conferring. Thusly, safeguards can be characterized as those contentions that can be utilized to escape obligation. Be that as it may, before we see how resistances work, we have to see how a tort is conferred.

What is a tort?

A tort refers to a civil wrong committed against an individual that violates their legal rights. The act's perpetrator is referred to as a tortfeasor. A plaintiff and a defendant are involved in a tort case filing. The plaintiff files the case on behalf of the defendant. In the event that the defendant is found to have committed the tort, the plaintiff is entitled to damages as compensation for the infringement of his legal rights.

How do defensive mechanisms operate?

Using a defence, the defendant might avoid paying damages for violating someone else's legal rights by absolving him of the tort's guilt. There are primarily two kinds of defences.

Special Defences

These defences are limited to certain categories of torts. As an illustration: Truth is an exceptional defence for the tort of defamation.

General Defences

These are defences that are available under all areas of tort law. The general defences available under tort law are as follows; they will be discussed as:

- Volenti Non Fit Injuria
- Act of God
- Inevitable Accident
- Plaintiff the wrongdoer
- Mistake
- Private Defence
- Necessity
- Act done with respect to Statutory Authority
- Parental and Quasi-Parental Authority

Volenti Non Fit Injuria

Volenti Non Fit Injuria literally translates to “**To one who is willing, no harm is done.**”

There are many occasions when there is no remedy available to somebody against whom harm has been done because he has consented, or at least assented, to the doing of the act which caused the harm.¹

The maxim volenti non fit injuria is often used to express the impact of such assent or consent. An injury incurred during a cricket match would be one example. Although the nomenclature is inconsistent, "consent" is typically used in reference to deliberate torts and "volenti non fit injuria" in regard to carelessness; nonetheless, the more accepted word of today is "voluntary assumption of risk." As an example: When someone parks their automobile in front of a sign that reads, "no parking, tyres will be deflated," and they continue to do so, so consenting to the deflation of their tyres, they are doing so voluntarily. As a result, the defendant may raise a defence if he files a lawsuit.

Essentials:

REFERENCES

¹ "One who has invited or assented to an act being done towards him cannot, when he suffers from it, complain of it as a wrong": *Smith v Baker* [1891] AC 325 at 360 per Lord Herschell

Consent and Intentional Torts: Consent may be implied as well as expressed in words so that the defendant escapes liability if he was justified in inferring that the claimant consented even though, secretly he did not.²

"Informed" Consent: Accepting a medical procedure does not make another acceptable.

This implies that consent does not imply that a doctor has permission to treat a condition that is discovered while a patient is receiving treatment for another ailment.

However, the patient's permission is not invalidated as long as he is aware of the general scope of the surgery and has been informed of the dangers associated with it.

Knowledge does not imply consent; rather, the claimant must possess knowledge of the danger of harm resulting from the defendant's carelessness.

Even when he is aware that the action he takes contains danger, this does not imply that he has given the defendant permission to act carelessly.

Consent must be Freely Given: The main point here is that

“[A] man cannot be said to be truly ‘willing’ unless he is in a position to choose freely, and freedom of choice predicates, not only full knowledge of the circumstances on which the exercise of choice is conditional, so that he may be able to choose wisely, but the absence of any feeling of constraint so that nothing shall interfere with the freedom of his will”

Consent and the Standard of Care: The main point here is that if somebody has been given consent to a certain level, but has not given him complete consent. This does not mean that just by being given consent by an individual, that he can forget his duty of care and be negligent while performing his job.

Act of God or Vis Major

When an injury is caused directly by natural causes without the interference of humans in, “circumstances which no human foresight can provide against and of which human prudence is not bound to recognize the possibility”, the defence of act of God applies. This means that when there is something that in no way can be predicted, and it is caused without human interference, then the act of god is applicable.

² A defendant is guilty even if he believes that there is consent where his belief is unreasonable

Illustration: Let us say there is a railway track. There is a pile of dry hay left on the side of it. Due to sparks from the railway track, the pile of hay catches fire. Due to a huge gust of wind in an otherwise non-windy area, the pile of ignited hay flies away and a house about 1KM away from the railway track catches fire. The defence of Act of God will be applicable here because even though the pile of hay was negligently left there, the fact that in an area that is never windy, a gust of wind so strong would blow that a house 1KM away would catch fire from the ignited hay could have never been predicted.

Inevitable Accident

Inevitable Accident is an accident that could not have been avoided by a reasonable man at the moment at which it occurred. To speak of it as a defence is to say that there are cases in which the defendant will escape liability if he succeeds in proving that the accident occurred despite the exercise of reasonable care on his part.

Illustration: If you are driving on the road and suddenly an animal runs in front of your car and you hit the animal. Another person sitting in the passenger seat is also injured. He decides to sue you. Then the defence of inevitable accident would be applicable because you could not have foreseen that the animal will run onto the road out of nowhere.

Difference between Inevitable Accident and Act of God

Inevitable Accident	Act of God
1. Inevitable accidents may occur by reason of the play of natural forces or by intervention of human agency or by both.	1. Acts of God or Vis Major occur without intervention of human agency. They occur by reason of the play of natural forces.
2. Traffic accident , train accidents, building collapses, etc. are the examples of this category.	2. Storms, earth-quakes, volcanic eruptions, etc. are the examples of Acts of God or Vis Major.
3. If the utmost care and caution are taken, an inevitable accident can be prevented or controlled.	3. The modern man acquired high scientific technology. However he cannot prevent or control the Acts of God/Vis Major.

4. A very cautious person can anticipate the inevitable accident.	4. The modern technical know-how can notice the Acts of God before they occur, but they cannot control them.
5. Their effect is limited to one or few persons concerning to that incident.	5. Their effect Is extraordinary. It affects entire public of that area.
6. It is a branch of Act of God.	6. It is a genus.
7. Strict liability can be imposed on the tortious liability occurred due to inevitable accidents.	7. Even strict liability can also not be imposed in cases of torts arising out of Acts of God.
8. The Courts have discretionary power in determining the defendant’s tortious liability in case of inevitable accidents.	8. The Courts have no discretionary power. They ought to give their judgment in justifying the defendant’s tortious liability arising out of Act of God.

Plaintiff the Wrongdoer

A plaintiff is not disabled from recovering by reason of being himself a wrongdoer, unless some unlawful act or conduct on his own part is connected with the harm suffered by him as part of the same transaction.³ A trespasser is liable to an action for the injury which he does; but he does not forfeit his right of action for an injury sustained.

Bird vs Holbrook⁴

³ Frederick Pollock, *The Law of Torts*, 15 Edition, p. 126.

⁴ *Bird vs Holbrook* (1828) 4 Bing 628.

The plaintiff was a trespasser as he climbed over defendant's wall in pursuit of a fowl, but he was held entitled to damages for the injury caused by a spring gun set by the defendant without notice in his garden, although the injury would not have occurred if the plaintiff had not trespassed.

Mistake

To begin with, mistake of law can never be used as a defence under law of tort. When we come to mistake of fact, one must examine the elements of whatever tort happens to be in question. There are many torts in which the liability hangs upon whether a person would have done what the defendant did, and mistake becomes relevant here, because a person might make one and yet be behaving reasonably.

Illustration: In false imprisonment, the defendant may be able to escape liability if he can show that he had reasonable cause to believe that the claimant was guilty of an offense.

Special Case in which mistake is a good defence:

- When an innocent man is prosecuted, it is not in itself an actionable wrong, as this would prevent the administration of criminal law. A prosecutor incurs no liability unless he acted both maliciously and without reasonable care.
- So the mistaken arrest of an innocent man on suspicion of felony is not actionable if the felony has actually been committed and there is reasonable ground to believe the person arrested is guilty of committing it.
- Mistake is always a defence where the plaintiff must prove malice.

Private Defence

The aim of this defence is usually for Self-help and Self-protection. According to Indian Law, every person has the right to protect himself and his properties. He also has the right to protect someone else and someone else's property. Therefore, he is entitled to use some degree of force to enforce this right, but it must be of a reasonable degree. Section 96 of the Indian Penal Code says that "Nothing is an offence when it is done in exercise of the right of private defence".

For example, if a trespasser enters my property and uses violence against me, I can repel his attack by using a reasonable degree of force. We are allowed to use force not to redress ourselves of the injury but to prevent it altogether.

Protective Devices against Trespassers

A person is entitled to expel a trespasser and, if necessary, even forcibly remove him from his property. The law allows a person to resort to a reasonable degree of force to protect himself from an unlawful use of force. He cannot use force greater than the threat he is facing.⁵ Illustration: If there is a thief that enters my house with a wooden stick and threatens to injure me with that and while doing that, I shoot him and kill him, the defence will not be applicable because the force I used was greater than the threat I faced. But if the thief enters with a gun, points it towards me and threatens to shoot me and then I shoot him, then the defence will be applicable.

Necessity

It is based on the maxim, “*salus populi suprema lex*” which translates to “the welfare of the people is the supreme law”. Necessity is a defence whose principal significance is in the relation to the torts of interference or trespass. Necessity cannot justify negligence in the sense of lack of care.⁶ It basically means to commit an action that is going to result in the benefit of the society, i.e. save someone’s life, etc. It may be a defence to the tort of trespass where administration of medical treatment is involved or in the case of emergencies. When it comes to trespass of goods and land, damage to properties is only justified if there is imminent danger to life and limb. ‘The necessity for saving life has at all times been considered a proper ground for inflicting such damage as may be necessary upon another’s property.’⁷

Essentials:

- Actual or apparent danger to public interest
- Danger was real and imminent
- To protect public interest
- Defendant was not at fault for creating the danger

Illustration: If there is a person using his mobile phone while walking on the road and there is a car incoming, which he does not see. If I see him about to be hit by the car and I push him out of the way,

⁵ *Cook v Beal*, (1697) *Lord Raym* 176

⁶ *Rigby v. Chief Constable of Northamptonshire* [1985] 1 WLR 1242

⁷ *Southport Corp v. Esso Petroleum Co.* [1954] QB 182 (Devlin J)

during which he sustains some scratches on him and he sues me, I can take the defence of necessity to escape liability.

Statutory Authority

When there is power given to somebody by a statutory authority and the person, with the power given to them applies that to do some act that is usually otherwise tortious, then this defence is applicable. But this does not mean that the power can be mistaken as immunity to committing of any otherwise unnecessary harm to somebody. Illustration: If a government gives a company the power to build a dam and due to that, there is a displacement of many people residing in that area, they cannot sue the company as the company was given statutory authority to displace the people of that area. But the people displaced should also be given an alternative place to reside in after their displacement.

Parental and Quasi-Parental Authority

Parents or persons in *loco parentis* may, for the purpose of correcting what is evil in the child, inflict moderate and reasonable corporal punishment, however, this punishment should be moderate and reasonable.⁸ The old view was that this authority is only restricted to parents, but modernization of views show us that now teachers of students have their own independent authority to act for the welfare of the child.⁹ This authority is not limited to offences committed by the pupil in the school but also outside the school premises.

Illustration: If there is a rule saying that children are prohibited from smoking in the premises of a school. A child was seen smoking in a street by a teacher and that teacher, the next day hit the child. This punishment was seen as reasonable and therefore the teacher was not liable as he used the punishment for the betterment of the child.¹⁰

⁸ *Ramsey v. Larsen* (1965) ALR 121.

⁹ *PER COCKBURN, C.J. in Fitzgerald v. Northcote*, (1865) 4F & F 656, 689.

¹⁰ *Rex v. Newport (Salop) Justices: Wright, Ex parte*, (1929) 2 KB 416.

Conclusion

This article is to emphasize the important role played by General Defences in avoiding one's liability in torts. While learning about tort it is necessary to learn about General Defences in the law of Tort. General defences are a set of 'excuses' that you can undertake to escape liability. In order to escape liability in the case where the plaintiff brings an action against the defendant for a particular tort providing the existence of all the essentials of that tort, the defendant would be liable for the same. It mentions all the defences which can be pleaded in cases depending upon the circumstances and facts. In order to plead a defence it is important to understand it first and then apply the suitable defence accordingly.

References

- "One who has invited or assented to an act being done towards him cannot, when he suffers from it, complain of it as a wrong": *Smith v Baker* [1891] AC 325 at 360 per Lord Herschell
- A defendant is guilty even if he believes that there is consent where his belief is unreasonable
- *Frederick Pollock, The Law of Torts, 15 Edition, p. 126.*
- *Bird vs Holbrook (1828) 4 Bing 628.*
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