

GENERAL DEFENCES

- The defendant uses the defences as an excuse to absolve himself from the liability.
- If a tort is committed and all the ingredients of the tort are fulfilled then proving any of the following defences can avoid the liability of the wrongdoer.

1. Volenti Non Fit Injuria

2. Plaintiff is the wrongdoer

3. Inevitable accident

4. Vis Major i.e. Act of god

5. Private defence

6. Mistake

7. Necessity

8. Statutory authority

1. Volenti non fit injuria or the defense of 'Consent'

- '**Volenti non fit injuria**' literally translates to "To one who volunteers, no harm is done" which means the plaintiff has waived his rights and now he can't complain. He has consented to suffer harm.
- The consent could be express or implied.
- ✓ **Hall v. Brooklands Auto Racing Club 1932**, the plaintiff was a spectator of a car racing event and the track on which the race was going on belonged to the defendant. During the race, two cars collided and out of which one was thrown among the people who were watching the race. The plaintiff was injured.

The court held that the plaintiff knowingly undertook the risk of watching the race. It is a type of injury which could be foreseen by anyone watching the event. The defendant was not liable in this case.

- ✓ **Padmavati v. Dugganaika 1975**, the driver of the jeep took the jeep to fill petrol in it. Two strangers took a lift in the jeep. The jeep got toppled due to some problem in the right wheel. The two strangers who took lift were thrown out of the jeep and they suffered some injuries leading to the death of one person.

Court Held that the master of the driver could not be made liable as it was a case of a sheer accident and the strangers had voluntarily got into the vehicle.

- ✓ **Thomas versus quartermaine 1887** - the plaintiff, an employee, was trying to remove the lid from a boiling vat. The lid was struck but came off suddenly and the plaintiff fell back into the cooling vat and was severely injured. The defendant was held not liable because the danger was visible and the plaintiff voluntarily encountered the same.

- **Essential conditions**

- a) **The consent must be Free and should not be taken under any compulsion or by fraud** also if the person is unable to give consent the guardians consent is sufficient.

- ✓ **R v. Williams**, the defendant was a singing coach. He told one of his pupils that he was performing an act to open her air passages to improve her singing but he was actually having sexual intercourse with her. It was held that her consent was vitiated by fraud. This case has been used to illustrate the validity of a consent which has been obtained by unfair means.

- ✓ **In Bowater Versus Rowley Regis Corporation 1994** the plaintiff, cart driver was asked by the defendant's foremen to drive a horse which to the knowledge of both was liable to bolt. The plaintiff protested but ultimately led out the horse in obedience to the order. The horse bolted and the plaintiff was injured thereby. The court of that the Maxim volenti non fit injuria is one which in the case of Master servant is to be applied with extreme caution. It was

observed that a man cannot be said to be truly willing unless he is in a position to choose freely and freedom of choice predicted not only full knowledge of the circumstances on which the 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

b) “Scienti non fit injuria”- Knowledge of risk is not equal to consent of risk.

- ✓ **Smith v. Charles Baker and Sons**, [stone Quarry case], plaintiff was employed by the defendant in a stone Quarry. Large chunks of Rock were being conveyed from one site to another by the help of cranes. One of the stone fell and injured the plaintiff working there. It was held by the court that there is near knowledge of risk and there was no consent. Therefore maxim volenti non fit injuria was not made applicable.
- ✓ However the defendant should not be negligent himself, if the workman ignores the instructions of his employer and thus suffers injury because of his own negligence then ‘volenti non fit injuria’ will apply. [**Imperial chemical industries v. Shatwell 1965**]
- **Exception to Volenti Non fit Injuria:**
 - i. **Rescue cases:** When the plaintiff voluntarily comes to rescue someone from a danger created by the defendant then the defense of volenti non fit injuria will not be available to the defendant.
- ✓ **Haynes vs. Harwood**, the defendants’ servant left two unattended horses in a public street. A boy threw a stone on the horses due to which they belted and created danger for women and children on the road. So a constable came forward to protect them and suffered injuries while doing so. This being a rescue case so the defence of volenti non fit injuria was not available and the defendants were held liable.
- ✓ **Baker versus T.E. Hopkins and sons 1959-** a well was filled with poisonous fumes of a petrol driven pump on account of negligence of the employer, as a

result of which two workmen were overcome by fumes. Dr Baker was called to rescue their life but he was told not to enter the well in view of the risk involved. Still he preferred to enter the well with a view to save their lives. In an attempt of saving them he himself was overcome by fumes and died. The widow brought the action against the defendant. The court held the defendant liable as the act of risk was the natural consequence of defendant's negligence.

- ii. **Breach of statutory duty:** if an injury is caused to another person by breach of Duty, by defendants imposed by the statute then the defendant cannot lead *volenti non fit injuria*.
- iii. **Negligence:** when a plaintiff consents to take some risk then there is presumption that the defendant will not be negligent. Therefore if the patient dies after operation owing to negligence of the doctor the doctor cannot take the defence of *volenti non fit injuria*
- iv. **Unfair contract terms act 1977[England]-** it limits the right of person to restrict or exclude his liability resulting from his negligence by a contract term or by notice

2. Plaintiff is the wrongdoer

- ✓ ***“Ex turpi causa non oritur action”*** (from an immoral cause, no action arises)
- ✓ A plaintiff will be unable to pursue legal remedy if it arises in connection with his own illegal act
- ✓ According to Pollock- when the plaintiff himself is a wrongdoer, he is not disabled from recovering in tort unless some unlawful act or conduct on his own part is connected with harm Suffered by him as a part of the same transaction.

- ✓ **Bird v. Halbrook**, The defendant put spring guns in his garden and didn't fix any notice informing about the spring guns, the Trespasser (plaintiff) was injured by the guns, court held that he was entitled to recover damages suffered by him due to the spring guns set by the defendant because the force used by defendant here was greater than the occasion demanded and he did not even inform the public by a notice.

3. Inevitable accident

- ✓ An inevitable accident is one that was not intended, and which, under all the circumstances, could not have been foreseen or prevented by the exercise of reasonable precautions. It is a defence to a claim for negligence.
- ✓ **Stanley vs. Powell**, the defendant and the plaintiff went to a pheasant shooting. The defendant fired at a pheasant but the bullet after getting reflected by an oak tree hit the plaintiff and he suffered serious injuries. The incident was considered an inevitable accident and the defendant was not liable in this case.
- ✓ **Brown vs. Kendall 1850** the plaintiff and defendant dogs were fighting. While the defendant was trying to separate them, accidentally hit the plaintiff in his eye, who was standing nearby. The injury was the case of sheer accident, No claim can be brought against him.
- ✓ **Holmes vs. Mather 1857** the defendant's horses were being driven by his servant on a public highway. The horses were so startled by the barking of a dog that it became unmanageable, and in spite of the best care by the defendant's servant to control them they knocked down the plaintiff. It was held that defendant was not liable.
- ✓ **Nitro-Glycerine case**, A firm of carriers i.e. the defendants, in this case, received a wooden case for further transmission. They were not informed of its contents. The contents were found to be leaking and the defendant took them for examination. While examining the contents the nitro glycerine exploded and the

office building which belonged to the plaintiff got damaged. The defendants were held not liable for the same as the same could not be foreseen.

4. Vis Major i.e. Act of god

- ✓ Halsbury's law of England define an act of God as ' extraordinary occurrence of circumstances, which could not have been foreseen and which could not have been guarded against or more accurately, as accident due To a natural cause, directly and exclusively, without human intervention and which could not have been avoided by any amount of foresightThe occurrence need not to be unique nor that happens for the first time; it is enough that it is extraordinary and could not have been reasonably anticipated... and it must not rise from act of man'.
- ✓ Vis major is Latin term which means 'superior force' so for the application of this defence there should be an extraordinary occurrence due to natural forces which cannot be anticipated or which could not be prevented with reasonable means.

Therefore the two essential conditions for the defense of act of God are

1. are the event causing damage was a result of natural forces without any intervention from human agency
 2. the event was such that possibility of such an event could not be recognized by using reasonable care and foresight
- ✓ This defence is also recognized as a defence in the rule of 'Strict Liability' in the case of ***Rylands v. Fletcher***
 - ✓ **Nichols v. Marsland**, the defendant created an artificial lake on his land by collecting water from natural streams. There was an extraordinary rainfall and as a result of its water overflowed and washed away the nearby bridge of plaintiff. The court held that the defendants were not liable as the same was due to the act the God.

- ✓ **Blyth v Birmingham waterworks 1856** The main pipe was laid down by the defendant water work company. All the directions contained in the statute, authorizing the company to lay down pipes were followed. But by a severe Frost the pipe got burst and water escaped from the pipe and as a result damage was caused to the plaintiff's property the consequence was held to be an act of God.

- ✓ In **Kallu Lal v. Hemchand**, the wall of a building collapsed due to normal rainfall of about 2.66 inches. The incident resulted in the death of the respondent's children. The court held that the defence of Act of God cannot be pleaded by the appellants in this case as that much rainfall was normal and something extraordinary is required to plead this defence. The appellant was held liable.

5. Private defence

- ✓ The law permits the use of reasonable force to protect one's persons and property.
- ✓ The condition to exercise self defence is that there should be an imminent threat to a person's life or property.
- ✓ So if the Person uses reasonable force to protect himself or his property from danger the person he will not be held liable for the loss caused due to it. However the force must be restricted and justified to the extent of protection only such force cannot be used to counter attack.
- ✓ **Bird v. Halbrook**, The defendant put spring guns in his garden and didn't fix any notice informing about the spring guns, the Trespasser (plaintiff) was injured by the guns, court held that he was entitled to recover damages suffered by him due to the spring guns set by the defendant because the force used by defendant here was greater than the occasion demanded and he did not even inform the public by a notice.

- ✓ **Morris vs. Nugent 1836** Here the defendant was passing by plaintiff's house and the plaintiff's dog ran out and bit the defendant's sister and on the defendant's turning around raising his gun, the dog ran away but he shot as it was running away. It was held that defendant was not justified in doing so. To justify the shooting of a dog he must be actually attacking the party at the time.
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6. Mistake

- ✓ Mistake of law; Mistake of fact both are not a defence in tort.
 - ✓ **Morrison v. Ritchie & Co**, The defendant by mistake published a statement that the plaintiff had given birth to twins in good faith. The reality of the matter was that the plaintiff got married just two months before. The defendant was held liable for the offence of defamation and the element of good faith is immaterial in such cases.
 - ✓ **Consolidated Company vs. Curtis**: an auctioneer auctioned some goods of his customer, believing that the goods belonged to him. But then the true owner filed a suit against the auctioneer for the tort of conversation. The court held auctioneer liable and mentioned that the mistake of fact is not a defence that can be pleaded here.
 - ✓ So as a general rule mistake whether of fact or law, is no defence to an action in tort. However in certain Limited cases the defence of mistake can be taken
 - ✓ In torts requiring malice such as malicious prosecution, deceit etc, defendant can lead that he acted under honest and mistaken belief.
 - ✓ Does mistake is a good defence in case where mental element is required or essential ingredient in constituting wrong
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7. Necessity

- ✓ The basis of Defence of necessity is that if the act causing harm is done to prevent a larger harm then it is not actionable. This defence is confined to urgent cases of eminent danger. for example if a person pulls down a house in order to prevent the fire from reading two adjacent houses then the act will be justified in case of necessity.
- ✓ In Necessity harm is done intentionally compared to inevitable accident where harm is caused in spite of all attempts to avoid it.
- ✓ **Cope v. Sharpe**, the defendant entered the plaintiff's premises to stop the spread of fire in the adjoining land where the defendant's master had the shooting rights. Since the defendant's act was to prevent greater harm so he was held not liable trespass.
- ✓ **Carter v. Thomas**, the defendant who entered the plaintiff's land premises in good faith to extinguish the fire, at which the fire extinguishing workmen were already working, was held guilty of the offence of trespass.

8. Statutory authority

- ✓ If an act is authorized by any act or statue, then it is not actionable even if it would constitute a tort otherwise. It is a complete defence and the injured party has no remedy except for claiming compensation as may have been provided by the statute.
- ✓ Immunity under statutory authority is not given only for the harm which is obvious but also for the harm which is incidental.
- ✓ The authority given by a statute can be of two types:
 1. **Absolute**- It is mandatory or absolute when the statute expressly authorizes or commands that doing of an act notwithstanding the fact that it has injurious Consequences

2. **Conditional**- The authority is conditional when the statute merely permits such things to be done. It does not command, not doesn't prescribe a particular manner in which is to be exercised.

- ✓ When the authority is absolute the person who suffers from the exercise of it has no remedy except as provided for in the statute itself. Such authority is complete answer in respect to the entire injuries incidental to its exercise. But where the authority is not mandatory but merely Recommendatory the defence will apply only if it is not done maliciously or negligently.

- ✓ **Vaughan v. Taff Vale Rail Co.**, Sparks from a railway engine of defendant who had been authorized to run the Railway set fire to plaintiff's Woods on the adjoining land, it was held that since the defendant had taken a proper care to prevent the emission of sparks and they were doing nothing more than what statute at had authorized them to, they were held not liable

- ✓ **Hammer Smith Rail Co. v. Brand**, the value of the property of the plaintiff depreciated due to the loud noise and vibrations produced from the running trains on the railway line which was constructed under a statutory provision. The court held that nothing can be claimed for the damage suffered as if was done as per the statutory provisions and if something is authorized by any statue or legislature then it serves as a complete defence. The defendant was held not liable in the case.

- ✓ **Smith v. London and South Western Railway Co.**, the servants of a railway company negligently left the trimmings of hedges near the railway line. The sparks from the engine set fire to those hedges and due to high winds. It got spread to the plaintiff's cottage which was not very far from the line. The court held that the railway authority was negligent in leaving the grass hedges near the railway line and the plaintiff was entitled to claim compensation for the loss suffered.

- ✓ **Metropolitan Asylum District v. Hill**, the hospital authorities i.e. the appellants were granted permission to set up a smallpox hospital. But the hospital was created in a residential area which was not safe for the residents as

the diseases can spread to that area. Considering it a nuisance an injunction was issued against the hospital. The authority, in this case was conditional.