LAW OF TORTS - GENERAL DEFENCES

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ABSTRACT

The law of torts is a fundamental branch of civil law that governs private wrongs and compensatory justice. However, liability in tort law is not absolute; various general defences allow defendants to escape liability under specific circumstances. These defences ensure that individuals are not unfairly held accountable for harm due to unavoidable accidents, natural disasters, or voluntary assumption of risk. This paper provides a comprehensive analysis of the general defences in tort law, including volenti non fit injuria (consent to risk), inevitable accident, act of God, private defence, necessity, and statutory authority. Each defence is examined through landmark case laws such as Hall v. Brooklands Auto Racing Club (1933)[1], Nichols v. Marsland (1876)[2], and Rylands v. Fletcher (1868)[3]. The paper explores the legal principles behind these defences and their application in modern legal systems, focusing on key questions such as how courts determine whether an event was truly inevitable, can climate change-related disasters can still be classified as Acts of God, and how consent operates in medical negligence or sports injuries. Furthermore, this research discusses the challenges and evolving interpretations of these defenses in the 21st century, particularly in light of technological advancements, pandemics (COVID-19)[4], and environmental hazards. It argues that while these defenses remain crucial, legal frameworks must adapt to new realities such as cyber-torts, AI-related injuries, and complex medical ethics cases. By evaluating the historical context, judicial reasoning, and contemporary relevance of these defences, this paper aims to highlight their importance in maintaining a balanced and just tort system while proposing potential reforms for clearer legal standards.

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[1] Hall v. Brooklands Auto Racing Club, (1933) 1 K.B. 205 (U.K.)

[2] Nichols v. Marsland, (1876) 2 Ex D 1 (U.K.)

[3] Rylands v. Fletcher, (1868) L.R. 3 H.L. 330 (U.K.)

[4] World Health Organisation, The Impact of COVID-19 on Legal Systems, (2020), https://www.who.int/publications/covid-19-impact-on-law

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INTRODUCTION

General defences provide legal justification or excuse for actions that might otherwise be considered tortious. These defences ensure that liability is not imposed unfairly in situations where the defendant acted without negligence, with lawful authority, or in response to unavoidable circumstances. The principle underlying these defences is that tort law should not punish individuals unfairly when they have no control over the harm caused. For example, the doctrine of volenti non fit injuria (no injury can be done to a willing person) applies when a plaintiff voluntarily assumes the risk of harm. A classic illustration is found in sports and adventure activities—a person engaging in a boxing match or skydiving cannot later claim damages for injuries sustained during the activity, as they had accepted the inherent risks. Similarly, the defence of the Act of God applies to unforeseeable natural calamities, such as earthquakes or floods, where the damage caused was beyond human control and could not have been prevented through reasonable care. The law of torts serves as a mechanism for providing remedies to individuals who suffer harm due to wrongful acts committed by others. It is based on the principle that every person must act reasonably and not cause injury or damage to another. When a person breaches this duty, they may be held liable for the consequences of their actions. However, tort liability is not absolute; certain defences are available to defendants that allow them to escape liability under specific circumstances. These are known as general defences in tort law, which help balance individual accountability with fairness in legal proceedings[5]. General defences play a crucial role in limiting frivolous lawsuits and ensuring that only just claims succeed in courts. They also uphold public policy considerations by preventing individuals from being held liable for events they could not control or situations where the plaintiff knowingly accepted the risk. Furthermore, these defences maintain a balance between individual rights and legal responsibility, ensuring that legal actions are based on equity and fairness rather than an automatic imposition of liability.

[5] https://blog.ipleaders.in/general-defences-in-torts-an-overview/

GENERAL DEFENSES IN TORT LAW

Volenti Non Fit Injuria (Consent as a Defence)

The Latin maxim "Volenti non fit injuria" translates to "to one who consents, no injury is done". This defence applies when a plaintiff voluntarily accepts a risk, knowing its consequences. There are a few essentials as described below;

- The plaintiff must know the risk.
- The consent must be free and voluntary.
- The injury must be within the scope of the agreed risk.

This means a willing person is not wrong. When a person consents to the implications of harm upon himself, he cannot avail himself of any remedy for that because he willingly gave up his rights. The consent of the person can be expressed or implied. Let's understand this with an example, if I go to a doctor to get a blood test done, then I cannot see them for the pain I suffer during the process because I consented to the test, so I have lost the right to see them. The above statement is an example of express consent. If I have gone to watch a cricket match, then I am also agreeing to the risk of injury due to a pure accident that might arise during the match. Another significant essential part of this is reasonable harm. For instance, in the first example, I cannot hold the doctor liable if he does something that I have given consent to. Similarly, in the second case, where I went to watch a car racing match, I found a deadly snake underneath my seat, and it bit me, then I could see the concerned authority.

CASE LAWS

Hall v Brooklands Auto Racing Club (1933): Here, in this case, the plaintiff went to watch a motorcar race that was held by Brooklands. During the race, a collision occurred between two cars, one of which hit the spectators, injuring the plaintiff. He sued the defendant company that owned all the tracks. The court held that since the risk was reasonably foreseeable, considering the dangerous nature of the sport, the defendant company was not held liable for the same.

Padmavathi and Ors. v. Dugganaika and Ors. (1974): In this case, two strangers voluntarily took a lift in a jeep. All of a sudden, due to some mechanical defects in the jeep,

the Jeep toppled and they both suffered injuries. They both then see the driver and the owner. The court in this matter held that since both the plaintiff willingly took the lift and the action was reasonable here, the defendant wasn't held liable.

Wooldridge vs. Sumner (1963): Here, in this case, a photographer who was employed with horseshoe cues a horse that bolted towards a high place and knocked them down, which caused him injury. The reason he stated was that the rider lost control of the horse. Then he sued the show organisers for negligence. It should be noted that the photographer was standing in the ring where the horse show was going on and not behind the spectator's barrier. The Court held the plaintiff liable in the above case because, in such athletic sports and events, which are fast-paced, spectators are aware of their risks they expose themselves to. This risk could arise due to an error of judgement or skill, and in this case, there was an error in the judgement of the athlete, and the plaintiff also did not take the necessary precaution while standing within the ring and not behind the spectator's bar. So, in this case, can the defendant be held liable? Let's suppose that I go to watch a fighting match. In between the match, one of the fighters jumps out of the ring and punches me in the face, which knocks me out. I, as a plaintiff, can see the fighter as the fighter in his capacity as whatever association. He is associated with the defendant cannot plead Violin non-Fit injuria, because I consented to watch the fighting match, and the consequences suffered by me were not reasonably forcible. Therefore, there should be free consent.[6]

Lakshmi Rajan vs. Malar Hospital Ltd. and Anr. (1993): In this case, the plaintiff visited the hospital due to the presence of a painful lump in her breast. It was completely unrelated to her uterus, but when the surgery was performed, the doctors removed her uterus without any explanation or consent. Here in the court held that the Hospital is liable because the plaintiff never gave her consent regarding the removal of the uterus, rather, she consented to the removal of the lump in her breast.

CASE LAWS (CONSENT BY FRAUD)

R vs. Williams (1998): In this case, the defendant was a music teacher who raped his 16-year-old student by stating that the act would improve her voice. She gave consent to a music teacher, but couldn't understand the purpose of the sexual act he was performing on him. The

[6] Wooldridge vs. Sumner (1963)

court did not excuse the defendant because the consent that he had obtained was taken fraudulently.[7]

KNOWLEDGE OF THE RISK DOES NOT EQUATE TO CONSENT

Smith vs. Baker (1891): In this case, the plaintiff used to work for a railroad corporation. His work included drilling holes in rocks next to a crane operated by the corporation's employees. Once, it so happened that the plaintiff was not warned before the operation of the crane, and it flung stones over his head, thereby injuring him. The plaintiff was aware of the dangerous nature of his job. The plaintiff sued the defendant. The House of Lords held that the defendant is liable and did not grant the defence of volenti non fit injuria, as mere knowledge of the harm does not imply consent to the harm.

Consent obtained under Compulsion: For instance, if I ask my servant to clean the roof despite the heavy heat when it is very much reasonably foreseeable that he might fall sick, or otherwise, he would be removed from service. If he falls sick, then volenti non fit injuria will not apply because he did not have a choice; he was under compulsion. That's why he consented to such dangerous work, not out of his free will. On the other hand, if an employee does his work carelessly or in a dangerous environment under no compulsion and incurs damages, he cannot sue the employer because the defence of volenti non fit injuria will be applicable. The defence of volenti non fit injuria would not be applicable in rescue cases.

RESCUE CASES

Wagner vs. International Railway Co. (1921): In this case, a person travelling was thrown out of the running train due to the negligence of the railway company. His friend went to search for him when the train stopped, but he missed his footing and fell off a bridge, resulting in injuries. He brought up a suit against the railway company. The court held the defendant liable, and the defence of volenti non fit injuria was not granted.

Haynes vs. Harwood Haynes: In this case, Haynes was a police officer on duty at a popular street police station. A lot of people, including children, visited him often. A delivery car with two horses that belonged to the defendants (Harwood) was abandoned on the same street without a driver. No one had intervened when the two youngsters had thrown a stone at one of the horses at this time. The horses rested for a long time until they arrived in front of the

[7] R vs. Williams (1998)

police station, where the plaintiff was in the cellar. The driver had tied a chain to one of the van's wheels, which then broke. Upon witnessing the situation, the policeman realised that women and children were in grave danger. In an attempt to save them, he sidestepped the horse and attempted to halt both of them. The court did not grant the defence of volenti non fit injuria, and Hardwood was held liable.

Plaintiff, the Wrongdoer: In this general defence, it is stated that if the plaintiff himself is at fault for committing an illegal act, then he cannot file a suit against the defendant, even if he has incurred damages. In simple words, it is said that when the plaintiff himself does any wrongful act with the knowledge that the act done by him is fraudulent and could cause damages or injuries, the defendant would not be held liable even for the damages that occurred to the plaintiff, as the act was invoked by the plaintiff himself. It is governed by the maxim- ***Ex turpi causa non oritur actio***, which means "from an immoral cause, no action arises."

CASE LAWS

Hamps vs. Darby (1948): The plaintiff's pigeons were let out on the defendant's pea crop. The defendant, after shouting at them, fetched a gun and shot at them, killing four of them and wounding one. The courts decided in favour of the plaintiff, and the defence of the plaintiff, the wrongdoer, was rejected as the plaintiff acknowledged his actions[8].

Collins vs. Renison: In this case, the plaintiff's client ladder to put a notice on the defendant's garden wall. When the defendant asked him to come down, he denied, resulting in the defendant pushing the plaintiff off the ladder, which he pleaded was gentle. However, the court gave its judgment in favour of the plaintiff.

Pitts vs. Hunt (1991): In this case, there was a driver and his friend on a motorcycle, who were drunk and drinking. The other friend encouraged him to drive carelessly and negligently, and rashly. Due to this, they met with an accident where the driver died and his friend suffered several injuries. The court refused to grant damages to the plaintiff.

Bird vs. Holbrook: In this case defendant set up spring guns in his garden without any notice or warning about the same. The plaintiff, who was a trespasser on the defendant's land, got

[8] Hamps vs. Darby (1948)

injured and brought a suit against the defendant. The court granted the compensation claim by the plaintiff.

INEVITABLE ACCIDENT

This general defence comes into play when there has been a genuine accident where all reasonable care was taken by the defendant, but still, the accident occurred and injury was caused to the plaintiff.

Holmes vs. Mather: In this case, the defendant's servant was driving the horses on a public highway when suddenly a dog started barking, which alarmed the horses. Despite the reasonable care taken by the defendant's servant, the horses could not be managed, and thus, they injured the plaintiff. The court ruled in favour of the defendant because it was an inevitable accident that led to the injury to the plaintiff.

Stanley vs. Powell: In this case, both plaintiff and defendant were members of a shooting party, and they went for a pheasant shooting. The defendant aimed at the target and shot a bullet that blazed off an oak tree and hit the plaintiff. Where the court held that. The defendant was held not liable.

Brown vs. Kendall: In this case, the defendant's and plaintiff's dogs got into a fight. The plaintiff tried to intervene to stop the fight, and consequently, he hit the plaintiff in the eye. The courts held the defence of an inevitable accident applicable and therefore acquitted the defendant.

ACT OF GOD

This general defence of the law of nature, known as the act of God, says that an act which has occurred or an accident which occurs due to natural forces rather than man-made situations, is known as the act of God. This general defence is similar to the earlier one of inevitable accidents, except for the fact that in this defence, the accident occurs due to natural forces that are out of man's or humans' hands. These occurrences must be extraordinary and not ones that can be reasonably foreseeable and predictable.

CASE LAWS

R.R.N. Ramalinga Nadar vs. V. Narayan Reddiar (1970): In the landmark case of Ramalinga Nadar vs. Narayan Reddiar, the court grappled with the legal implications of a robbery incident that occurred during the transportation of goods in the defendant's truck. The question before the court was whether the defendant could be held liable for the loss of the goods or whether the incident could be attributed to an act of God, absolving the defendant of any responsibility.[9] The facts of the case revealed that the defendant had undertaken the transportation of goods on behalf of the plaintiff. During the transportation, an unruly mob intercepted the truck and forcibly took away the goods. The plaintiff subsequently filed a suit against the defendant, seeking compensation for the loss suffered. The defendant, in his defence, argued that the robbery was an act of God and hence, he could not be held liable for the loss. The defendant contended that the act of the unruly mob was an unforeseen and irresistible event beyond his control and, therefore, he should be exonerated from any liability. The court, after carefully considering the arguments presented by both parties, held that the robbery did not constitute an act of God. The court reasoned that while the act of the unruly mob was undoubtedly unforeseen, it was not irresistible. The court noted that the defendant could have taken reasonable steps to protect the goods, such as hiring security personnel or choosing a safer route for transportation. The court further observed that the defendant had failed to exercise due care and diligence in ensuring the safety of the goods entrusted to him. Consequently, the court held the defendant liable for the loss of the goods and ordered him to pay compensation to the plaintiff. This decision reinforced the principle that carriers are generally held responsible for the safety of goods entrusted to them during transportation and cannot escape liability by simply attributing the loss to an act of God. The court's ruling serves as a reminder to carriers of the importance of taking adequate measures to safeguard the goods they transport and to ensure that they are not exposed to unnecessary risks.

Nichols vs. Marsland (1976): In this case, the defendant made some artificial lakes on his land by damming some natural streams. The embankments of the lake gave way when there was an extraordinary rainfall, which was an extraordinary occurrence. The courts held the defendant not liable because the occurrence was indeed extraordinary, and thus the defence of the act of God was not granted.

[9] R.R.N. Ramalinga Nadar vs. Narayan Reddiar (1970)

Kallulal and Anr. vs. Hemchand and Ors. (1957): In this case, the wall of the defendant's building collapsed in the rainy season, which resulted in the deaths of the plaintiff's two children. The Madhya Pradesh High Court did not grant the defence of the act of God because rainfall of this magnitude in the context was not something extraordinary. The defendant argued that the collapse of the wall was an act of God and that he could not be held liable for the deaths of the children. However, the court rejected this defence, holding that the rainfall in question was not so extraordinary as to be considered an act of God. The court noted that the area in which the incident occurred was prone to heavy rainfall during the monsoon season and that the defendant should have taken steps to prevent the collapse of the wall. The court's decision in this case has had a significant impact on the law of torts in India. It established the principle that an act of God is not a defence to liability if the defendant could have reasonably foreseen the event and taken steps to prevent it. This principle has been applied in numerous subsequent cases involving claims for damages caused by natural disasters and other acts of nature. The Kallulal case is also notable for its discussion of the concept of negligence. The court held that the defendant was negligent in failing to take steps to prevent the collapse of the wall. This finding was based on the fact that the defendant knew that the wall was in a state of disrepair and that it was likely to collapse if it was not repaired. The court's decision in the Kallulal case has been criticised by some scholars, who argue that it is too strict and that it places an unfair burden on landowners. However, the decision has also been praised by others, who argue that it is necessary to protect the public from harm caused by dangerous structures. The Kallulal case remains a leading precedent in the law of torts in India and continues to be cited in cases involving claims for damages caused by acts of God and other natural disasters[10].

RIGHT TO PRIVATE DEFENCE

This general defence of the law of tort tells us that it is permissible to use reasonable force to protect a person or property or to protect his property. The essential conditions for this defence include the use of reasonable force, and the threat to which the force is being used must be immediate and reasonably foreseeable. The aggressor must be capable of causing the harm against which the reasonable force is applied. It must be necessary to use force, at times when any immediate help must be unavailable to the one causing her or to the one exercising the right to private defence. Below are some cases that would give useful insights into it.

[10] Kallulal and Anr. vs. Hemchand and Ors. (1957)

CASE LAW

Bird vs. Holbrook: In this case, the defendant set up spring guns in his garden without any notice or warning about the same. The plaintiff, who was a trespasser on the defendant's land, got injured and brought a suit against the defendant. The defendant pleaded that the traps were set up for the protection of property, but the defence of private defence was not granted by the courts because it was essential to post a warning or notice, and without either, it seems more probable that the defendant wanted to scare people off rather than protect his property.

MISTAKE

This general defence talks about mistakes. Mistakes can be classified as a mistake of law or a mistake of fact, that is, not knowing the correct facts or misunderstanding them. Neither of them qualifies as a legitimate defence under the law of torts.

CASE LAWS

Consolidated Co. vs. Curtis: In this case, an auctioneer auctions certain goods, honestly believing them to be his customers', and pays the sale proceeds to the customer; however, the goods did not belong to the customer, and the true owner sued the auctioneer. The court found the auctioneer to be liable. However, there are certain exceptions to this rule. One such example is the tort of malicious prosecution, where if the defendant succeeds in proving an honest but mistaken belief, he is not held liable. Even in the tort of vicarious liability, if the mistake of a servant is outside the course of employment, then the master is not held liable. In deceit, honest belief is a defence.

NECESSITY

This general defence, known as necessity, lays down certain conditions where the intentional damage to an innocent person is also allowed or permissible by law, provided that the action is taken to prevent greater damage comparatively. Here, it is essential to prove that the actions done by one are of necessity, in nature.

CASE LAWS

Kirk vs. Gregory (1876): In this case, a person dies, and his sister-in-law takes off the jewellery and places it in another room, thinking of it as a safer place. The person's executors

sued her for trespass. The courts held the sister-in-law liable because the interference was not reasonably necessary, and the defence of necessity was not granted.

Carter vs. Thomas (1935): In this case, the defendant went to the plaintiff's house to extinguish the fire when the firemen had already arrived. The plaintiff sued the defendant for trespass. The court did not grant the defence of necessity in this case because the firemen had already arrived and the defendant was held liable.

Cope vs. Sharpe: In this case, the defendant was sued by the plaintiff for trespass because he entered the plaintiff's property to prevent fire from spreading to the adjoining land, over which his master held shooting rights. The courts did not hold the defendant liable and granted the defence of necessity as the action was done reasonably.

STATUTORY AUTHORITY

If a tort is committed during an act authorised by the legislature or done on its orders, then the defence of statutory authority is granted against obvious as well as consequential injury. This defence can be asserted against both obvious injuries, which are directly and reasonably foreseeable consequences of the authorised act, and consequential injuries, which are indirect or unintended consequences. The rationale behind this defence is that individuals should not be held liable for actions taken in compliance with the law. The legislative authorisation is deemed to provide a sufficient justification or excuse for the actions, even if they would otherwise constitute a tort. For example, if a police officer arrests an individual under a valid warrant, the officer is not liable for false arrest, even if the warrant was later found to be invalid. However, the defence of statutory authority is not absolute. It may be defeated if the individual exercising the statutory authority exceeds the scope of their authority, acts negligently or recklessly, or fails to comply with any applicable procedures or regulations. Furthermore, the defence is not available if the authorised act is inherently dangerous or if it violates a fundamental right.

Vaughan vs. The Taff Vale Railway Company(1860): In this case, an engine belonging to the defendant's railway company emitted sparks, which led to the plaintiff's woods catching fire. The courts did not hold the defendant liable because reasonable care was taken by the

company and the act was done in compliance with the statute, thus the defence of statutory authority was given.[11]

Hammersmith Rail Co. vs. Brand (1868): In this case, the value of the plaintiff's land depreciated due to noise and smoke caused by the running of trains for the defendant's company. The court granted the defence of statutory authority in this case.

Smith vs. London and South Western Railway Co. (1903): In this case, the plaintiff's cottage, which was located about 200 yards away from the railway line, caught fire. He brought up a suit against the railway company for its negligent actions. It was established that the workers of the railway company left trimmings of grass and hedges near the railway line, due to which, when the engine emitted a spark, the material caught fire, and due to strong winds, the fire reached the plaintiff's cottage. The courts held the defendant's company liable and did not grant the defence of statutory authority.

CONCLUSION

General defences in tort law play a vital role in ensuring that individuals are not held liable for harm in situations where their actions are justified and excusable. General defences like consent, necessity, and statutory authority highlight the law's attempt to balance an individual's right with broader social and societal interests. As observed, the court of law in various judgments continues to interpret the principle under various circumstances, and the scope of the defences may expand or shift. Nonetheless, their fundamental purpose remains the same, that is, to ensure the legal responsibility is assigned fairly, considering both intent and circumstances rather than mere causation.

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