General defences under law of torts

Whenever a case is brought against the defendant for the commission of a tort and all the essential elements of that wrong are present, the defendant would be held liable for the same. Even in such cases, the defendant can avoid his liability by taking the plea of the defenses available under the law of torts.

Some defences are particularly relating to some offences. In the case of defamation, the defences available are fair comment, privileges and justification, etc.

Let's see what are these defences available to a person under the law of tort and how can it be pleaded along with some of the important cases.

Meaning of General Defences

When a plaintiff brings an action against the defendant for a tort committed by him, he will be held liable for it, if there exists all the essential ingredients which are required for that wrong. But there are some defences available to him using which he can absolve himself from the liability arising out of the wrong committed. These are known as '**General defences**' in the law of tort.

The defences available are given as follows:

- *Volenti non fit injuria or the defense of 'Consent'*
- The wrongdoer is the plaintiff
- Inevitable accident
- Act of god

- Private defense
- Mistake
- Necessity
- Statutory authority

Volenti non fit injuria

In case, a plaintiff voluntarily suffers some harm, he has no remedy for that under the law of tort and he is not allowed to complain about the same. The reason behind this defence is that no one can enforce a right that he has voluntarily abandoned or waived. Consent to suffer harm can be express or implied.

Some examples of the defence are:

- When you yourself call somebody to your house you cannot sue your guests for trespass;
- If you have agreed to a surgical operation then you cannot sue the surgeon for it; and
- If you agree to the publication of something you were aware of, then you cannot sue him for defamation.
- A player in the games is deemed to be ready to suffer any harm in the course of the game.
- A spectator in the game of cricket will not be allowed to claim compensation for any damages suffered.

For the defence to be available the act should not go beyond the limit of what has been consented.

In *Hallv. Brooklands Auto Racing Club*[1], 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.

In *Padmavati v. Dugganaika*[2], 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.

The conclusions which came out of this case are:

- 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.
- The principle of *Volenti non fit injuria* was not applicable here.

In *Wooldrige v. Sumner*[3], a plaintiff was taking some pictures standing at the boundary of the arena. The defendant's horse galloped at the plaintiff due to which he got frightened and fell into the horse's course and was seriously injured. The defendants were not liable in this case since they had taken due care and precautions.

In the case of *Thomas v. Quartermaine*[4], the plaintiff was an employee in the defendant's brewery. He was trying to remove a lid from a boiling tank of water. The lid was struck so the plaintiff had to apply an extra pull for removing that lid. The force generated through the extra pull threw him in another container which contained scalding liquid and he suffered some serious injuries due to the incident. The defendant was not liable as the danger was visible to him and the plaintiff voluntarily did something which caused him injuries.

In *Illot v. Wilkes*[5], a trespasser got injured due to spring guns present on the defendant's land. He knowingly undertook the risk and then suffered injuries for the same. This was not actionable and the defendant was not liable in the case.

Similarly, if you have a fierce dog at your home or you have broken pieces of glass at the boundaries, all this is not actionable and is not covered under this defence.

The consent must be free

- For this defence to be available it is important to show that the consent of the plaintiff was freely given.
- If the consent was obtained under any compulsion or by fraud, then it is not a good defence.
- The consent must be given for an act done by the defendant.
- For example, if you invite someone to your house for dinner and he enters your bedroom without permission then he will be liable for trespass.

In the case of *Lakshmi Rajan v. Malar Hospital*[6], a 40 year old married woman noticed a lump in her breast but this pain does not affect her uterus. After the operation, she saw that her uterus has been removed without any justification. The hospital authorities were liable for this act. The patient's consent was taken for the operation not for removing the uterus.

- If a person is not in a condition to give consent then his/her guardian's consent is sufficient.

Consent obtained by fraud

- Consent obtained by fraud is not real consent and does not serve as a good defence.

In *Hegarty v. Shine*[7], it was held that mere concealment of facts is not considered to be a fraud so as to vitiate consent. Here, the plaintiff's paramour had infected her with some venereal disease and she brought an action for assault against him. The action failed on the grounds that mere disclosure of facts does not amount to fraud based on the principle ***ex turpi causa non oritur actio*** i.e. no action arises from an immoral cause.

- In some of the criminal cases, mere submission does not imply consent if the same has been taken by fraud which induced mistake in the victim's mind so as to the real nature of the act.
- If the mistake induced by fraud does not make any false impression regarding the real nature of the act then it cannot be considered as an element vitiating consent.

In *R. v. Wiliams*[8], a music teacher was held guilty of raping a 16 years old girl under the pretence that the same was done to improve her throat and enhancing her voice. Here, the girl misunderstood the very nature of the act done with her and she consented to the act considering it a surgical operation to improve her voice.

In *R. v. Clarence*[9], the husband was not liable for an offence when intercourse with her wife infected her with a venereal disease. The husband, in this case, failed to inform her wife about the same. Here, the wife was fully aware of the nature of that particular act and it is just the consequences she was unaware of.

Consent obtained under compulsion

- There is no consent when someone consents to an act without free will or under some compulsion.
- It is also applicable in the cases where the person giving consent does not have full freedom to decide.

- This situation generally arises in a master-servant relationship where the servant is compelled to do everything that his master asks him to do.
- Thus, there is no applicability of this maxim *volenti non fit injuria,* when a servant is compelled to do some work without his own will.
- But, if he himself does something without any compulsion then he can be met with this defence of consent.

Mere knowledge does not imply assent

For the applicability of this maxim, the following essentials need to be present:

- The plaintiff knew about the presence of risk.
- He had knowledge about the same and knowingly agreed to suffer harm.

In the case of *Bowater v. Rowley Regis Corporation*[10], a cart-driver was asked to drive a horse which to the knowledge of both was liable to bolt. The driver was not ready to take that horse out but he did it just because his master asked to do so. The horse, then bolted and the plaintiff suffered injuries. Here, the plaintiff was entitled to recover.

In *Smith v. Baker*[11], the plaintiff was an employer to work on a drill for the purpose of cutting rocks. Some stones were being conveyed from one side to another using crane surpassing his head. He was busy at work and suddenly a stone fell on his head causing injuries. The defendants were negligent as they did not inform him. The court held that mere knowledge of risk does not mean that he has consented to risk, so, the defendants were liable for this. The maxim volenti non fit injuria did not apply.

But, if a workman ignores the instructions of his employer thereby suffering injury, in such cases this maxim applies.

In *Dann v. Hamilton*[12], a lady even after knowing that the driver was drunk chose to travel in the car instead of any other vehicle. Due to the negligent driving of the driver, an accident happened which resulted in the death of the driver and injuries to the passenger herself. The lady passenger brought an action for the injuries against the representatives of the driver who pleaded the defence of volenti non fit injuria but the claim was rejected and the lady passenger was entitled to get compensation. This maxim was not considered in this case because the driver's intoxication level was not that high to make it obvious that taking a lift could be considered as consenting to an obvious danger.

This decision was criticized on various grounds as the court did not consider contributory negligence while deciding the case but the court's reason for not doing so is that it was not pleaded that is why it was not considered.

A driver's past negligent activities do not deprive him of this remedy if someone travels with the same driver again.

Negligence of the defendant

In order to avail this defence it is necessary that the defendant should not be negligent. If the plaintiff consents to some risk then it is presumed that the defendant will not be liable.

For example, when someone consents to a surgical operation and the same becomes unsuccessful then the plaintiff has no right to file a suit but if the same becomes unsuccessful due to the surgeon's negligence then in such cases he will be entitled to claim compensation.

In *Slater v. Clay Cross Co. Ltd.*[13], the plaintiff suffered injuries due to the negligent behaviour of the defendant's servant while she was walking along a tunnel which was owned by the defendants. The company knew that the tunnel is used by the public and had instructed its drivers to give horns and drive slowly whenever they enter a tunnel. But the driver failed to do so. It was held that the defendants are liable for the accident.

Limitations on the doctrine's scope

The scope of the maxim volenti non fit injuria has been curtailed in the following cases:

-
    - Rescue cases
- *The Unfair Contract Terms Act, 1977*

In these cases, even if the plaintiff has done something voluntarily but he cannot be met with the defence of 'consent' i.e. *volenti non fit injuria*.

Rescue cases

- When the plaintiff voluntarily comes to rescue someone from a danger created by the defendant then in such cases the defence of volenti non fit injuria will not be available to the defendant.

In *Haynes v. Harwood*[14], the defendants' servant left two unattended horses in a public street. A boy threw a stone on the horses due to which they bolted and created danger for a woman and other people 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.

However, if a person voluntarily attempts to stop a horse which creates no danger then he will not get any remedy.

In the case of *Wagner v. International Railway*[15], a railway passenger was thrown out of a moving train due to the negligence of the defendants. One of his friends got down, after the train stopped, to look for his friend but then he missed the footing as there was complete darkness and fell down from a bridge and suffered from some severe injuries. The railway company was liable as it was a rescue case.

In *Baker v. T.E. Hopkins & Son*[16], due to the employer's negligence, a well of a petrol pump was filled with poisonous fumes. Dr. Baker was called to help but he was restricted from entering the well as it was risky. He still went inside to save two workmen who were already stuck in the well. The doctor himself was overcome by the fumes and then he was taken to the hospital where he was declared dead. When a suit was filed against the defendants, they pleaded the defence of consent. The court held that in this case the defence cannot be pleaded and the defendants, thus, were held liable.

- If A creates danger for B and he knows that a person C is likely to come to rescue B. then, A will be liable to both B and C. Each one of them can bring an action for the same, independently.
- If someone knowingly creates danger for himself and he knows that he will likely be rescued by someone, then he is liable to the rescuer.

In *Hyett v. Great Western Railway Co*.[17], the plaintiff got injured while saving the defendant's cars from a fire which occurred due to negligence on the part of the defendants. The plaintiff's acts seemed to be reasonable and the defendant was held liable in this case.

Unfair Contract Terms Act, 1977 (England)

The Unfair Contract Terms Act, 1977, limits the right of a person to exclude his liability resulting from his negligence in a contract.

Negligence Liability

- Sub-section 1 puts an absolute ban on a person's right to exclude his liability for death or personal injury resulting from the negligence by making a contract or giving a notice.
- Sub-section 2 is for the cases in which the damage caused to the plaintiff is other than personal injury or death. In such cases, the liability can only be avoided if a contract term or notice satisfies the reasonability criteria.
- Sub-section 3 says that a mere notice or agreement may be enough for proving that the defendant was not liable but in addition to that some proofs regarding the genuineness of the voluntary assumption and plaintiff's consent should also be given.

Volenti non fit injuria and Contributory negligence

- Volenti non fit injuria is a complete defence but the defence of contributory negligence came after the passing of the Law Reform (Contributory Negligence) Act, 1945. In contributory negligence, the defendant's liability is based on the proportion of fault in the matter.
- In the defence of contributory negligence, both are liable – the defendant and the plaintiff, which is not the case with volenti non fit injuria.
- In volenti non fit injuria, the plaintiff knows the nature and extent of danger which he encounters and in case of contributory negligence on the part of the plaintiff, he did not know about any danger.

Plaintiff the wrongdoer

There is a maxim "**Ex turpi causa non oritur actio**" which says that "from an immoral cause, no action arises".

If the basis of the action by the plaintiff is an unlawful contract then he will not succeed in his actions and he cannot recover damages.

If a defendant asserts that the claimant himself is the wrongdoer and is not entitled to the damages, then it does not mean that the court will declare him free from the liability but he will not be liable under this head.

In the case of *Bird v. Holbrook*[18], the plaintiff was entitled to recover damages suffered by him due to the spring-guns set by him in his garden without any notice for the same.

In *Pitts v. Hunt*[19], there was a rider who was 18 years of age. He encouraged his friend who was 16 years old to drive fast under drunken conditions. But their motorcycle met with an accident, the driver died on the spot. The pillion rider suffered serious injuries and filed a suit for claiming compensation from the relatives of the deceased person. This plea was rejected as he *himself was the wrongdoer* in this case.

Inevitable accident

Accident means an unexpected injury and if the same accident could not have been stopped or avoided in spite of taking all due care and precautions on the part of the defendant, then we call it an inevitable accident. It serves as a good defence as the defendant could show that the injury could not be stopped even after taking all the precautions and there was no intent to harm the plaintiff.

In *Stanley v. Powell*[20], 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.

In *Assam State Coop., etc. Federation Ltd. v. Smt. Anubha Sinha*[21], the premises which belonged to the plaintiff were let out to the defendant. The tenant i.e. the defendant requested the landlord to repair the electric wirings of the portion which were defective, but the landlord did not take it seriously and failed to do so. Due to a short circuit, an accidental fire spread in the house. No negligence was there from the tenant's side. In an action by the landlord to claim compensation for the same, it was held that this was the case of an inevitable accident and the tenant is not liable.

In *Shridhar Tiwari v. U.P. State Road Transport Corporation*[22], a bus of U.P.S.R.T.C. reached near a village where a cyclist suddenly came in front of the bus and it had rained heavily so even after applying breaks the driver could not stop the bus as a result of this the rear portion of the bus hit another bus which was coming from the opposite side. It was known that there was no negligence on the part of both the drivers and they tried their best in avoiding the accident. This was held to be a case of inevitable accident. The defendant i.e. U.P.S.R.T.C. was held not liable for this act.

In the case of *Holmes v. Mather*[23], the defendant's horse was being driven by his servant. Due to the barking of dogs, the horse became unmanageable and started to bolt. In spite of every effort of the driver, the horse knocked down the plaintiff. This makes it a case of an inevitable accident and the defendants were held not liable for the incident.

In *Brown v. Kendall*[24], the dogs of the plaintiff and the defendant were fighting with each other. The defendant tried to separate them and while doing so, he accidentally hit the plaintiff in the eye causing him some serious injuries.

The incident was purely an inevitable accident for which no claim could lie. So, the court held that the defendant is not liable for the injuries suffered by the plaintiff as it was purely an accident.

In *Padmavati v. Dugganaika*[25], 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.

The conclusions which came out of this case are:

- 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.
- The principle of *volenti non fit injuria* was not applicable here.
- It was a case of a sheer accident which no one could foresee.

In *Nitro-Glycerine case*[26], A firm of carriers i.e. the defendants, in this case, was given a wooden case which was to carry from one place to another. The contents of the box were unknown. There was some leakage in the box and the defendants took the box to their office so that they can examine it. After taking out the box, they saw that it was filled with Nitro-Glycerine and then it suddenly exploded and the office building which belonged to the plaintiffs got damaged. The defendants were held not liable for the same as the same could not be foreseen.

In the case of *Oriental Fire & General Ins. Co. Ltd. v. Raj Rani*[27], the front right spring and other parts of a truck broke all of a sudden and the driver could not control it and dashed into a tractor that was coming from the opposite direction. The driver and the owner of that truck could not prove that they had taken all reasonable precautions while driving the truck. The court held that this

case comes under negligence and has nothing to do with the inevitable accident and the defendant was liable.

Act of God

Act of God serves as a good defence under the law of torts. It is also recognized as a valid defence in the rule of '***Strict Liability***' in the case of *Rylands v. Fletcher*[28].

The defence of Act of God and Inevitable accident might look the same but they are different. Act of God is a kind of inevitable accident in which the natural forces play their role and causes damage. For example, heavy rainfall, storms, tides, etc.

Essentials required for this defence are:

- Natural forces' working should be there.
- There must be an extraordinary occurrence and not the one which could be anticipated and guarded against reasonably.

Working of natural forces

In *Ramalinga Nadar v. Narayan Reddiar*[29], the unruly mob robbed all the goods transported in the defendant's lorry. It cannot be considered to be an Act of God and the defendant, as a common carrier, will be compensated for all the loss suffered by him.

In *Nichols v. Marsland*[30], the defendant created an artificial lake on his land by collecting water from natural streams. Once there was an extraordinary rainfall, heaviest in human memory. The embankments of the lake got destroyed and washed away all the four bridges belonging to the plaintiff. The

court held that the defendants were not liable as the same was due to the Act of God.

Occurrence must be extraordinary

Some extraordinary occurrence of natural forces is required to plead the defence under the law of torts.

In *Kallu Lal v. Hemchand*[31], 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.

Private defence

The law has given permission to protect one's life and property and for that, it has allowed the use of reasonable force to protect himself and his property.

- The use of force is justified only for the purpose of self-defence.
- There should be an imminent threat to a person's life or property.

For example, A would not be justified in using force against B just because he believes that some day he will be attacked by B.

- The force used must be reasonable and to repel an imminent danger.

For example, if A tried to commit a robbery in the house of B and B just draw his sword and chopped his head, then this act of A would not be justified and the defence of private defence cannot be pleaded.

- For the protection of property also, the law has only allowed taking such measures which are necessary to prevent the danger.

For example, fixing of broken glass pieces on a wall, keeping a fierce dog, etc. is all justified in the eyes of law.

In *Bird v. Holbrook*[32], the defendant fixed up spring guns in his garden without displaying any notice regarding the same and the plaintiff who was a trespasser suffered injuries due to its automatic discharge. The court held that this act of the defendant is not justified and the plaintiff is entitled to get compensation for the injuries suffered by him.

Similarly, in *Ramanuja Mudali v. M. Gangan*[33], a landowner i.e. the defendant had laid a network of live wires on his land. The plaintiff in order to reach his own land tried to cross his land at 10 p.m. He received a shock and sustained some serious injuries due to the live wire and there was no notice regarding it. The defendant was held liable in this case and the use of live wires is not justified in the case.

In *Collins v. Renison*[34], the plaintiff went up a ladder for nailing a board on a wall in the defendant's garden. The defendant threw him off the ladder and when sued he said that he just gently pushed him off the ladder and nothing else. It was held that the force used was not justifiable as the defence.

Mistake

The mistake is of two types:

- Mistake of law
- Mistake of fact

In both conditions, no defence is available to the defendant.

When a defendant acts under a mistaken belief in some situations then he may use the defence of mistake to avoid his liability under the law of torts.

In *Morrison v. Ritchie & Co*[35], 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.

In *Consolidated Company v. Curtis*[36], 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 conversion. The court held auctioneer liable and mentioned that the mistake of fact is not a defence that can be pleaded here.

Necessity

If an act is done to prevent greater harm, even though the act was done intentionally, is not actionable and serves as a good defence.

It should be distinguished with private defence and an inevitable accident.

The following points should be considered:

- In necessity, the infliction of harm is upon an innocent whereas in case of private defence the plaintiff is himself a wrongdoer.
- In necessity, the harm is done intentionally whereas in case of an inevitable accident the harm is caused in spite of making all the efforts to avoid it.

For example, performing an operation of an unconscious patient just to save his life is justified.

In *Leigh v. Gladstone*[37], it was held that the forcible feeding of a person who was hunger-striking in a prison served as a good defence for the tort of battery.

In *Cope v. Sharpe*[38], 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 for trespass.

In the case of *Carter v. Thomas*[39], 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.

In *Kirk v. Gregory*[40], A's sister-in-law hid some jewellery after the death of A from the room where he was lying dead, thinking that to be a more safe place. The jewellery got stolen from there and a case was filed against A's sister-in-law for trespass to the jewellery. She was held liable for trespass as the step she took was unreasonable.

Statutory authority

If an act is authorized by any act or statute, 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.

In *Vaughan v. Taff Valde Rail Co.*[41], sparks from an engine of the respondent's railway company were authorized to run the railway, set fire to the

appellant's woods on the adjoining land. It was held that since they did not do anything which was prohibited by the statute and took due care and precaution, they were not liable.

In *Hammer Smith Rail Co. v. Brand*[42], 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 it was done as per the statutory provisions and if something is authorized by any statute or legislature then it serves as a complete defence. The defendant was held not liable in the case.

In *Smith v. London and South Western Railway Co*.[43], 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.

Absolute and conditional authority

The authority given by a statute can be of two types:

- Absolute
- Conditional

In the case of Absolute authority, there is no liability if the nuisance or some other harm necessarily results but when the authority is conditional it means that the same is possible without nuisance or any other harm.

In the case of *Metropolitan Asylum District v. Hil*[44], 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 disease can spread to that area. Considering it a nuisance an injunction was issued against the hospital. The authority, in this case, was conditional.

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.