



General Defences Under of Torts

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Abstract: General Defences are basically set of those defences which have evolved over time and accepted by the courts from time to time which can be taken as excuses in order to escape the liability in torts as long as the defendant's action qualify the terms and conditions that are attached with respective defences. There are some defences which are particularly associated with certain offences, like in case of defamation, defence of truth, privilege and fair comment are available, while there are other defences can be used in all or many of the torts like Consent and Third Party's Fault.

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Introduction

There are various cases brought against the defendant parties for the costs of a tort and every one the weather that is essential of the incorrect done by the defendant, He would be held chargeable for the incorrect that has been accrued. Therefore in some cases, the defendant can avoid liability by taking the plea of the defences available under law of torts.

There would be some defences that are particularly associated with various offences, there's mainly just in case of defamation, the defences available are under the justification, comment and privileges, etc.

General defences are considered a collection of defences or excuses that the defendant undertakes to flee liability charged, but if the action has undergone a selected set of conditions that deals with the defences under the law of tort.

Every Suit in the Court of Law involves two parties, one who has filed a suit against another and the other who is defending himself against such suit. In Law of Torts, such parties are called Plaintiff and Defendants. After the suit is filed by the plaintiff alleging that defendant has committed a tort, it is for the plaintiff to prove that his legal rights have been violated by the wrongful actions of the defendant and once all essentials are met and his guilt is proved, the only way the defendant can save himself and get absolved of liability is through the General Defences that are available in Law of Torts which have evolved over time.

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.

Characteristics of Tort

There are three characteristics in law of tort:

Civil Wrong:

Tort is a civil wrong in the sense that it is a wrong against the person and not the society at large. However tort is different from other civil wrongs such as breach of contract or breach of trust. The act complaint of should, under the circumstances, be legally wrongful as regards the party complaining; that is, it must prejudicially affect him in some legal right, merely that it will, however directly, do him harm in his interests is not enough.

An act which, prima facie, appears to be innocent may become tortious, if it invades the legal right of another person. A familiar instance is the erection on no one own land of anything which obstructs to be the light to a neighbours house.

It is no doubt, lawful to erect what one pleases on ones own land but if by twenty years enjoyment, the neighbours has acquired the legal right to the obstructed transmission of the light across the land, the erection of any building which substantially obstructs it is an invasion of the right and so not only does damage, but is unlawful and injurious.

The crucial test of legally wrongful act or omission is its prejudicial affect on the legal right of another. Rights available against the world at large are very numerous. They are subdivided into private rights i.e. right in personam and public rights i.e. right in rem.

Right in Personam:

Those rights which are only available to a particular individual but not society at large. Eg: rights of reputation etc.

Right in Rem:

Those rights which are available against the society at large. Eg: right against exploitation.

Legal Damage:

There are two types of damages in general I.e. damages which means compensation and damage which means injury to a legal right.

Damage means the harm or loss suffered or presumed to be suffered by a person as a result of some wrongful act or omission.

The real significances of legal damage is explained by two maxims, namely, Injuria Sine Damnum And Damnum Sine Injuria.

By damnum is meant damage in the substantial sense of money loss of comfort, service, health, or the like. By injuria is meant a tortious act it need to be will fuel and malicious for though it be accidental, if it is tortious an action will lie. Any unauthorised interferences, however trivial, with some absolute right conferred by law. On a person, is an injury eg- the right of excluding others from ones house or garden.

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

The Latin maxim Volenti Non Fit Injuria means a person who is willing to suffer and give consent for suffering harm and injury caused by actions of defendant cannot complaint against such injury to his legal rights. In case where the plaintiff, with his own consent suffer the harm, he cannot make the defendant liable for such injury and the defendant can in turn use the defence of Volenti Non Fit Injuria to be absolved of any liability which may arise. The logical reasoning behind this defence of defendant is that a person cannot enforce such rights which he himself has wilfully and with his consent waived. Such kind of wilful consent may be in express or implied terms.

In the case of *Hall v. Brooklands Auto Racing Club*[2], there was a car racing going on and the plaintiff was a spectator of that race going on the track belonging to defendant. Two of the cars collided leading to one being skidded towards the spectators as a result of which the plaintiff was injured. In the action brought by him, the court held that there was plaintiffs wilful consent and he knowingly took the risk of watching the event in which such injury can be foreseen and the defendant was not liable.

However the consent must be free and not obtained by fraud or compulsion. In *R. v. Williams*[3], the music teacher raped a 16 year old girl under the misrepresentation by falsely pretending that it would improve her voice. The consent wasn't free in such case and the teacher was held liable. In addition, mere knowledge does not imply consent. In *Smith v. Baker*, the plaintiff being an employee for working on drill for cutting stones was busy in work while some stones were being conveyed from one end to the other passing over his head and a stone fell on him causing injuries. Although he had knowledge of stones being carried, the court held that mere knowledge didn't amount to consent and defendant were held liable.

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 *Hally. 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.

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.

This maxim is subject to a number of exceptions:

The game or sports or the operations must not be one which is banned by law. Football, Cricket, Hockey etc. are lawful games. However, boxing with open fists, duel with poisonous swords are legally prohibited. Similarly notoriously dangerous processes in cinema shootings. In such cases the maxim does not apply. The injury may be sustained by the persons who are participating in the games or by the spectators or by third parties.

Consent:

The consent must be free and voluntary. If consent is obtained by fraud it is no consent. In a case a music teacher obtained the consent from his pupil fraudulently to improve her voice and seduced her. Held: Music teacher was liable. Knowledge does not necessarily imply consent. The test of consent is objective, for the rule is not *Scienti* (Knowledge), but *volenti non fit injuria*. This is evident from two leading cases:

Thomas v. Quarter Maine:

In this case, Thomas, working in a Brewery, was removing the top roof of a boiling vat. But the lid came off suddenly and he fell into another vat containing scalding liquid and was injured. It was held that the damage was accidental to the legal act and hence the defendant was not liable. This was a wrong decision. The error was corrected in the leading case:

Smith v. Baker:

In this case a crane was jibbing from one place to another. The plaintiff P had no notice of it but had the knowledge of jibbing work being carried on by D. He knew the possible risk, involved, but was not warned as to when the jibbing work commenced. A stone glanced off from the crane and hit P who was injured. The House of Lords held that D was liable: Mere knowledge was not sufficient according to the court.

Negligence:

Cases of negligence are exceptions to the rule. In *Dann v. Hamilton*, P a lady passenger had knowledge that D who was driving a Taxi, was under the influence of drink. There was an accident due to negligence of the driver and P was injured. Held : D liable.

Rescue cases:

In circumstances where a person goes out to rescue another, the maxim does not apply. The leading case is *Haynes v. Harwood*. In this case a policeman P darted out from his police station to stop a van run by horses without a driver in a crowded street. The defendant D had left the van unattended on the highway and the horse had bolted when some boys threw stones at the horse. The police-man went to rescue and to stop the horses, but was seriously injured in this process. Held: D liable.

Case Law Reference:**Ashby vs White (1703):**

It was case refusal to register vote, the defendant an returning officer wrongfully refuse to register a duly tendered vote of the plaintiff. A legally qualified voter, at a parliamentary election and the candidate for whom the vote was tendered was elected, and no loss was suffered, never the less it was held that an action lay on account of violation of legal right of the plaintiff.

In this case if the officer started acting maliciously where therefore without any improper motive in exercising his judgement, honestly refuse to receive the vote of a person entitled to vote, may be held actionable per se.

Gloucester Grammar School Case:

It was a case related to setting a rival school where the defendant a school master setup a school next door to the plaintiff and students from the plaintiff's school took admission in defendant's school. It was held that no action could be maintained as there is no violation of any legal right.

Mogul Steamship Co. v/s McGregor And Co. (1892):

This case was related to driving rival traders out of market - A, B, C, and D, shipowners, who shipped tea from one port to another, combined together, to keep the entire trade in their hands and consequently to drive F, a rival shipowners out of trade by offering special terms to customers who deal with them to the exclusion of F, F sued A, B, C, and D for the loss caused to him by their act. It was held that F had no right of action, for no legal right to F had been infringed. Damage done by competition in trade was not actionable.

Use Of Title By Spouse After Dissolution Of Marriage:

Where the marriage of a commoner with peer had been dissolved by decree at the instance of the wife, and she afterwards, on marrying a commoner, continued to use the title she had acquired by her first marriage, it was held that she did not thereby, though having no legal right to the user, commit such legal wrong against her former husband, as to entitle him, in the absence of malice, to an injunction to restrain her the use of the title.

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.

Reference

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