GENERAL DEFENCES

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Introduction

- When 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. The defendant may, however, even in such a case, avoid his liability by taking the plea of some defence.
- There are some general defences which may be taken against action for number of wrongs. For example, the general defence of 'Consent' may be taken, whether the action is for trespass, defamation, false imprisonment, or some other wrong.

The general defences discussed in this chapter are as follows :

- 1. Volenti non fit injuria, or the defence of 'Consent'
- 2. Plaintiff, the wrongdoer.
- 3. Inevitable accident.
- 4. Act of God.
- 5. Private Defence.
- 6. Mistake.
- 7. Necessity.
- 8. Statutory Authority.

1. Volenti non fit injuria

- When a person consents to the infliction of some harm upon himself, he has no remedy for that in tort. In case, the plaintiff voluntarily agrees to suffer some harm, he is not allowed to complain for that and his consent serves as a good defence against him.
- When you invite somebody to your house, you cannot sue him for trespass, nor can you sue the surgeon after submitting to a surgical operation because you have expressly consented to these acts.

1) Chapman v. Lord Ellesmere, (1932):-no action for defamation can be brought by a person who agrees to the publication of a matter defamatory of himself

- Many a time, the consent may be implied or inferred from the conduct of the parties. For example, a player in the games of cricket or football is deemed to be agreeing to any hurt which may be likely in the normal course of the game.
- 2) Holmes v. Mather, (1875) :- a person going on a highway is presumed to consent to the risk of pure accidents
- 3) Hall v. Brooklands Auto-Racing Club, (1932) :- spectator at a cricket match or a motor race cannot recover if he is hit by the ball or injured by a car coming on the track.

- In Hall v. Brooklands Auto Racing Club, the plaintiff was a spectator at a motor car race being held at Brooklands on a track owned by the defendant company. During the race, there was a collision between two cars, one of which was thrown among the spectators, thereby injuring the plaintiff. It was held that the plaintiff impliedly took the risk of such injury, the danger being inherent in the sport which any spectator could foresee, the defendant was not liable
- 4) Cutler v. United Dairies (London) Ltd., (1953):- If a person is injured in an attempt to stop a restive horse on another's cry for "help", he has no right of action and he cannot be permitted to say, "I knew the horse would plunge, but I did not know how much it would plunge.

- In Padmavati v. Dugganaika, while the driver was taking the jeep for filling petrol in the tank, two strangers took lift in the jeep. Suddenly one of the bolts fixing the right front wheel to the axle gave way toppling the jeep. The two strangers were thrown out and sustained injuries, and one of them died as a consequence of the same. It was held that neither the driver nor his master could be made liable, firstly, because it was a case of sheer accident and, secondly, the strangers had voluntarily got into the jeep and as such, the principle of volenti non fit injuria was applicable to this case.
- In Illot v. Wilkes, a trespasser, who knew about the presence of spring guns on a land, could not recover damages when he was shot by a spring gun.

- For the defence to be available, it is necessary to show that the plaintiff's consent to the act done by the defendant was free. If the consent of the plaintiff has been obtained by fraud or under compulsion or under some mistaken impression, such consent does not serve as a good defence.

For the maxim volenti non fit injuria to apply, two points have to be proved :

(i) The plaintiff knew that the risk is mere. (ii) He, knowing the same, agreed to suffer the harm

The scope of application of the doctrine of volenti non fit injuria has been curtailed in Rescue cases,

- **Rescue cases:-**
- 'Rescue cases' form an exception to the application of the doctrine of volenti non fit injuria. When the plaintiff voluntarily encounters a risk to rescue somebody from an imminent danger created by the wrongful act of the defendant, he cannot be met with the defence of volenti non fit injuria.
- **Haynes v. Harwood:-** the defendants' servant left a two-horse van unattended in a street. A boy threw a stone on the horses and they bolted, causing grave danger to women and children on the road. A police constable, who was on duty inside a nearby police station, on seeing the same, managed to stop the horses, but in doing so, he himself suffered serious personal injuries. It being a 'rescue case', the defence of 'volenti non fit injuria' was not accepted and the defendants were held liable
- Greer, L.J. adopting the American rule said that "the doctrine of the assumption of risk does not apply where the plaintiff has, under an exigency caused by the defendant's wrongful misconduct, consciously and deliberately faced a risk, even of death, to rescue another from imminent danger of personal injury or death, whether the person endangered is one to whom he owes a duty of protection, as a member of his family, or is a mere stranger to whom he owes no such special duty

- Wagner v. International Railway:- There, a railway passenger, was thrown out of a running railway car due to the negligence of the railway company. When the car stopped, his companion got down and went back to search for his friend. There was darkness, the rescuer missed his footing and fell down from the bridge resulting in injuries to him. He brought an action against the railway company. It was held that it being a case of rescue, the railway company was liable Cardozo, J. said : "Danger invites rescue.

- **Baker v. T.E. Hopkins & Son:-** In the case due to the employer's negligence, a well was filled with poisonous fumes of a petrol driven pump and two of his workmen were overcome by fumes. Dr. Baker was called but he was told not to enter the well in view of the risk involved. In spite of that, Dr. Baker preferred to go into the well with a view to make an attempt to help the two workmen already inside the well. He tied a rope around himself and went inside, while two women held the rope at the top. The doctor himself was overcome by the fumes. He was pulled from the well and taken to the hospital. He, however, died on the way to the hospital. The two workmen inside the well had already died. The doctor's widow sued the workmen's employers to claim compensation for her husband's death. The defendants pleaded volenti non fit injuria. The defendants were, thus, held liable

2. Plaintiff the wrongdoer

- Under the law of contract, one of the principles is that no court will aid a person who found his cause of action upon an immoral or an illegal act The maxim is "Ex turpi causa non oritur actio" which means, from an immoral cause no action arises. It means that if the basis of the action of the plaintiff is an unlawful contract, he will not, in general, succeed to his action.
- It is doubtful whether the defendant can take such a defence under the law of torts and escape liability by pleading that at the time of the defendant's wrongful act, the plaintiff was also engaged in doing something wrongful
- The principle seems to be that the mere fact that the plaintiff was a wrongdoer does not disentitle him from recovering from the defendant for latter's wrongful act

- Bird v. Holbrook:-
- **Holbrook, the defendant was an owner of a garden which was a mile away from his home in which he had a small dwelling and he used to grow tulips over there.**
- **Once a theft occurred there and his valuable tulips and roots worth Rs. 20 pounds got stolen.**
- **To avoid other future circumstances, he fixed/ placed a spring gun to protect his garden without putting any notice board for awareness.**
- **A nineteen-year boy named Bird, the plaintiff mistakenly entered into his garden to chase the peafowl with no intention of robbery.**
- **Bird got hurt just above the knee by the spring gun and he claimed damages for the hurt or injury caused to him due to the wrongful act of the defendant.**

- judgment was given in favor of the plaintiff.
- The court said that one who places a spring gun as a trap without putting the notice will be held liable and has to pay damages as a sort of compensation.
- In the above-mentioned case, the defendant intentionally decided not to put any kind of notice board to catch the thief therefore he is liable for the injuries caused to Bird

- The defendant placed a spring gun trap to protect his tulip garden from the thief.
- It was his duty to place a notice to make the people aware of the spring guns in the garden.
- Firstly, because not everyone enters into the garden with the intention of robbery.
- Secondly, once the spring gun gets tripped it can’t be stopped.
- Thirdly, spring gun can’t differentiate between the thief and the innocent.

- it has to be seen as to what is the connection between the plaintiff's wrongful act and the harm suffered by him. If his own act is the determining cause of the harm suffered by him, he has no cause of action.
- For example, a bridge, under the control of the defendant, gives way when an overloaded truck, belonging to the plaintiff, passes through it. If the truck was overloaded, contrary to the warning notice already given and the bridge would not have given way if the truck was properly loaded, the plaintiff's wrongful act is the determining cause of the accident. In such a case, even if the bridge was not under proper repairs, the plaintiff's action will fail. On the other hand, if the wrongful act of the defendant and not of the plaintiff, is the determining cause of the accident, the defendant will be liable. In the above illustration, if the bridge has been so ill maintained that it would have given way even if the truck had been properly loaded, the plaintiff's action will succeed.

3. Inevitable Accident

- Accident means an unexpected injury and if the same could not have been foreseen and avoided, in spite of reasonable care on the part of the defendant, it is inevitable accident.
- According to Pollock, "It does not mean absolutely inevitable, but it means not avoidable by any such precautions as a reasonable man, doing such an act then and there, could be expected to take."

- **Stanley v. Powell,** the plaintiff and the defendant, who were members of a shooting party, went for pheasant shooting. The defendant fired at a pheasant, but the shot from his gun glanced off an oak tree and injured the plaintiff. It was held that injury was accidental and the defendant was not liable.
- **In Assam State Coop., etc. Federation Ltd. v. Smt. Anubha Sinha,** the premises belonging to the plaintiff were let out to the defendant. The defendant, i.e., the tenant requested the landlord to repair the electric wiring, which was defective, but the landlord failed to repair the same. There occurred an accidental fire in those premises probably due to short circuit of electric connection. There was found to be no negligence on the part of the tenant. In an action by the landlord to claim compensation from the tenant, it was held that since it was a case of inevitable accident, the tenant could not be made liable for the same.

- **In Shridhar Tiwari v. U.P. State Road Transport Corporation,** while bus 'A' belonging to the U.P.S.R.T. Corporation reached near a village, a cyclist suddenly came in front of the bus. It had rained and the road was wet. As the driver applied brakes to save the cyclist, the bus skidded on the road, as a result of which the rear portion of this bus hit the front portion of bus 'B' coming from the opposite direction. It was found that at that time, both the buses were being driven at a moderate speed and .the accident had occurred despite due care on the part of the drivers of both the buses. It was held that the accident had occurred due to inevitable accident and, therefore, the defendant Corporation was held not liable for the same.

Accidental damage to the property has been considered not actionable in **Nitro-Glycerine case and National Coal Board v. Evans.**

- # 4. Act of God

Act of God is a kind of inevitable accident with the difference that in the case of Act of God, the resulting loss arises out of the working of natural forces like exceptionally heavy rainfall, storms, tempests, tides and volcanic eruptions5 It has been explained in Halsbury's Laws of England as under.

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Two important essentials are needed for this defence :

1. **There must be working of natural forces;**
2. **The occurrence must be extra-ordinary and can not be anticipated.**

- **Ramalinga Nadar v. Narayan Reddiar**
- **it has been held that the criminal activities of the unruly mob, which robbed the goods transported in the defendant's lorry cannot be considered to be an Act of God and the defendant is liable for the loss of those goods-as a common carrier.**
- **It was observed : "Accidents may happen by reason of the play of natural forces or by intervention of human agency or by both. It may be that in either of these cases, accidents may be inevitable. But it is only those acts which can be traced to natural forces and which have nothing to do with the intervention of human agency that could be said to be Acts of God."**
- **Nichols v. Marsland,**

There the defendant created some artificial lakes on his land by damming some natural streams. Once there was an extraordinary heavy rainfall, stated to be the heaviest in human memory, as a result of which, the embankments of the lakes gave way. The rush of water washed away four bridges belonging to the plaintiff. It was held that the defendants were not liable as the loss had occurred due to Act of God.

5. Private Defence

- The law permits use of reasonable force to protect one's person or property. If the defendant uses the force which is necessary for self-defence, he will not be liable for the harm caused thereby. The use of force is justified only for the purpose of defence. There should be imminent threat to the personal safety or property, e.g., A would not be justified in using force against B, merely because he thinks that B would attack him some day, nor can the force be justified by way of retaliation after the attack is already over - Cockcroft v. Smith, (1706).
- It is also necessary that such force as is absolutely necessary to repel the invasion should be used : thus, "if A strikes B, B cannot justify drawing his sword and cutting off his hand." The force used should not be excessive.

- **Mc. Neill v. Hill, (1929)**
- **"While the law recognizes the right of self-defence, the right to repel force with force, no right is to be abused and the right of self-defence is one which may be easily abused. The force employed must not be out of proportion to the apparent urgency of the occasion."**

6. Mistake

- Mistake, whether of fact or of law, is generally no defence to an action for tort. When a person wilfully interferes with the rights of another person, it is no defence to say that he had honestly believed that there was some justification for the same, when, in fact, no such justification existed. Entering the land of another thinking that to be one's own is trespass, taking away another's umbrella thinking that to be one's own, or driving of plaintiff's sheep amongst one's own herd, is trespass to goods, and injuring the reputation of another without any intention to defame is defamation.
- To this rule, there are some exceptions when the defendant may be able to avoid his liability by showing that he acted under an honest but mistaken belief. For example, for the wrong of malicious prosecution, it is necessary to prove that the defendant had acted maliciously and without reasonable cause and if the prosecution of an innocent man is mistaken, it is not actionable.

7. Necessity

- An act causing damage, if done under necessity to prevent a greater evil is not actionable even though harm was caused intentionally. Necessity should be distinguished from private defence. In necessity, there is an infliction of harm on an innocent person whereas in private defence, harm is caused to a plaintiff who himself is the wrongdoer.
- Mouse's Case [1609] :-Throwing goods overboard a ship to lighten it for saving the ship or persons on board the ship.
- In Leigh v. Gladstone,forcible feeding of a hunger striking prisoner to save her was held to be a good defence to an action for battery.
- In Cope v. Sharpe, the defendant entered the plaintiff's land to prevent the spread of fire to the adjoining land

8. Statutory Authority

- The damage resulting from an act, which the legislature authorizes or directs to be done, is not actionable even though it would otherwise be a tort. When an act is done, under the authority of an Act, it is complete defence .
- When the trains are run, there may also be some incidental harm due to noise, vibration, smoke, emission of sparks, etc. No action can lie either for interference with the land.
- In **Vaughan v. Taff Valde Rail Co**., sparks from an engine of the respondent's railway company, which had been authorized to run the railway, set fire to the appellant's woods on the adjoining land. It was held that since the respondents had taken proper care to prevent the emission of sparks and they were doing nothing more than what the Statute had authorized them to do, they were not liable

- Cockburn, C.J. observed : "When the legislature has sanctioned…the use of a particular thing, and it is used for the purpose for which it was authorized….the sanction of the legislature carries with it this consequence, that if damage results from the use of such thing…the party using it is not responsible."
- Hammer Smith Rail Co. v. Brand, the value of the plaintiff's property had considerably depreciated due to the noise, vibration and smoke caused by the running of trains on a railway constructed under statutory powers. The damage being necessarily incidental to the running of the trains, authorized by the statute/it was held that no action lies for the same.
- It is necessary that the act authorized by the legislature must be done carefully, and therefore, "an action does lie for doing that which the legislature had authorized, if it be done negligently. It is necessary that the act authorized by the legislature must be done carefully, and therefore, "an action does lie for doing that which the legislature had authorized, if it be done negligently.
- In Smith v. London and South Western Railway Co., the servants of a Railway Co. negligently left trimmings of grass and hedges near a railway line. Sparks from an engine set the material on fire. By a heavy wind, the fire was carried to the plaintiff's cottage, 200 yards' away from the railway line. The cottage was burnt. Since it was a case of negligence on the part of the Railways Co., they were held liable.