

GENERAL DEFENCES

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General Defences: Nature and Scope

A defence is a plea put forth by the defendant against the claims of the plaintiff. The following are the defences open to a defendant in an action for tortious liability.

- 1. Volenti non-fit injuria.
- 2. Inevitable accident.
- 3. Act of God
- 4. Private defence.
- 5. Necessity.
- 6. Statutory authority.

Volenti non fit injuria (Also called leave and licence)

This means that "if the suffering is willing, no injury is done." Accordingly harm or even grievous hurt may be inflicted on a person for which he has no remedy if he has consented to take the risk. The consent is not merely to the physical risk, but to the legal risk as well. Consent may be express or implied.

This maxim is subject to a number of exceptions :-

- 1. The game or sports or the **operations** must not be one which is banned by law.
- 2. **Consent** :- The consent must be free and voluntary. If consent is obtained by fraud it is no consent.
- 3. **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:**

Volenti non fit injuria (Also called leave and licence)

a) 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

b) 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.

Inevitable accident

Accidents are of two kinds :

- **Act of God (Vis major) and;**
 - In Act of God there is the operation of natural forces so unexpected that no human foresight or skill could reasonably be expected to anticipate.
- **Inevitable accident**
 - In inevitable accident, the accident is not avoidable by any such precautions as a reasonable man doing such an act then and there could be expected to take. (Pollock) Inevitable accident is a defence recognized in law. Hence, the defendant may set up a plea and prove that act was beyond a reasonable man and hence no liability would arise.

Inevitable accident

a) Nitroglycerin case:

- In this case Nitroglycerin packed in a box was sent through a common carrier. As there was some leakage, the servants of the carrier opened the box in the premises of P with a view to preventing the leakage. There was an explosion resulting in damage to the premises of P. P sued for damages. It was held that the defendant had taken all precautions and that he was not negligent. The defendant did not know the contents of the box and had no knowledge also. The accident was beyond the standard of a reasonable man. Hence the defendant was held not liable.

b) Fighting Dogs case:

- In this case the dogs of P and D were, fighting. D was beating with a stick to separate them. P was the onlooker. Accidentally D hit P in the eye resulting in a serious injury. It was held : D was not liable as there was no negligence. The hit was inevitable and could not be prevented (Brown V. Kendal)

Act of God : (Vis major)

- This is a circumstance where the injury is directly due to certain natural causes. There would be no human intervention, and no human foresight could visualize the act thereof. In such a case the primary reason is traced to nature or to God. No liability arises.
- **Nichols V. Marsland :**
 - The natural stream of a river had been dammed up. An extraordinary rainfall came and broke the embankments and water escaped and destroyed 4 country bridges for which the court held that D was not liable. Such a rainfall was an extraordinary act of nature which nobody could reasonably expect to happen.

Private defence; **Necessity**; Statutory authority

- **Private defence:**
 - **Things done in private defence:** (Section 96-106 of Penal Code 1860) .Nothing is an offence which is done in the exercise of the right of private defence. Right of private defence of the body and of property.
- **Necessity:**
 - **Communication made in good faith (Section 93):** No communication made in good faith is an offence by reason of any harm to the person to whom it is made, if it is made for the benefit of that person. Illustration: A, a surgeon, in good faith, communicates to a patient his opinion that he cannot live. The patient dies in consequence of the shock. A has committed no offence, though he knew it to be likely that the communication might cause the patient's death.
- **Statutory authority:**
 - **Act of judge when acting judicially (section 77 PC, 1860):**

Nothing is an offence which is done by a Judge when acting judicially in the exercise of any power which is, or which in good faith he believes to be, given to him by law

Thank You !!!