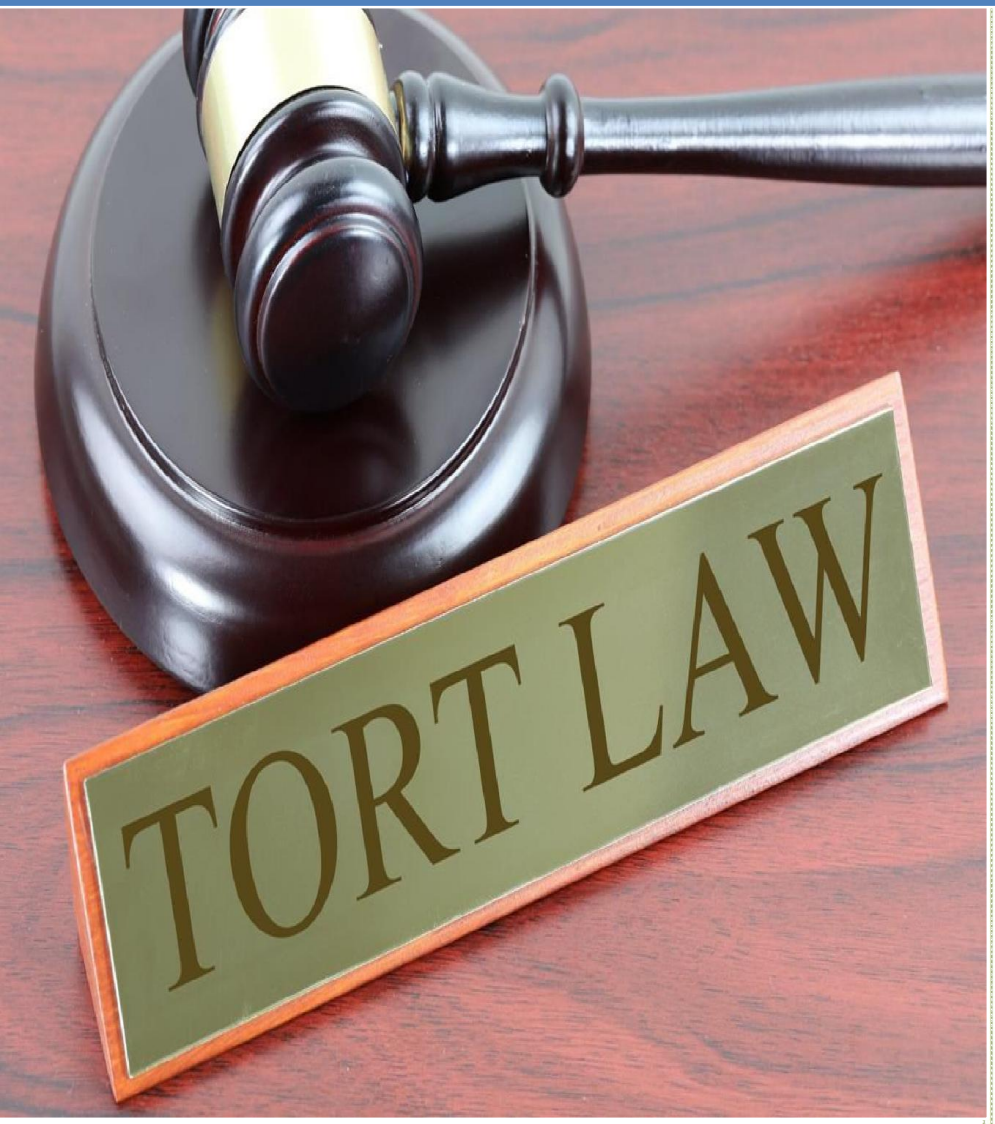
2020

LAW OF TORT



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Unit – 3

Part - 2

Syllubus

Unit-III	**Justification of Tort:** • Volenti non fit injuria • Act of God • Inevitable accidents • Plaintiff's default Private Defense • Nuisance and its kinds

General Defences - Defence against Tortious Liability.

INTRODUCTION

- **VOLENTI NON FIT INJURIA, OR THE DEFENCE OF 'CONSENT**
- **PLAINTIFF THE WRONGDOER**
- **INEVITABLE ACCIDENT**
- **ACT OF GOD**
- **PRIVATE DEFENCE**
- **MISTAKE**
- **NECESSITY**
- **STATUTORY AUTHORITY**

INTRODUCTION

General defences are a set of defences or 'excuses' that you can undertake to escape liability in tort only if your actions have qualified a specific set of conditions that go attached with these defences, when the plaintiff brings an action against defendant for a particular tort, providing the existence of all the essential 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 is some specific defence which is peculiar to some defence. There are some specific defences which are peculiar to some particular wrongs, for example, in an action for defamation, the defences of privilege, fair comment or justification are available. There is some general defence which may be taken against the action for a 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 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**

VOLENTI NON FIT INJURIA, OR THE DEFENCE OF 'CONSENT'

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 of that and his consent serves as a good defence against him. No man can enforce a right which he has voluntarily waived or abandoned. 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 activities. Similarly, no action for defamation can be brought by a person who agrees to the publication of matter defamatory of himself Many a time, the consent may be implied or inferred from the conduct of the parties as in the case of Hall v. Brooklands Auto Racing Club [(1932) All E.R Rep. 208] 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 is inherent in the sport which any spectator could foresee, the defendant was not liable.

The consent must be free

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. Moreover, the act done by the defendant must be the same for which the consent is given.

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

- **The plaintiff knew that the risk is there**
- **he, knowing the same, agreed to suffer the harm**

if only first of these points is present i.e., there is only the knowledge of the risk, it is no defence because the maxim is volenti non fit injuria. Merely because the plaintiff knows of the harm does not imply that he assents to suffer it.

In **Smith v. Baker [(1891) A.C 325]** the plaintiff was a workman employed by the defendants on working aa drill for the purpose of cutting a rock. With the help of a crane, stones were being conveyed from one side to the other, and each time when the stones were convey^ the crane passed from over the plaintiff's head. While he was busy in his work, a stone from the crane and injured him. The employees were negligent in not warning him at the moment of a recurring danger, although the plaintiff had been generally aware of the risk. It was held by the House of Lords that as there was mere knowledge of risk without the assumption of it, the maxim volenti non fit injuria did not apply and the defendants were liable

PLAINTIFF THE WRONGDOER

The law excuses the defendant when the act done by the plaintiff itself was illegal or wrong. This defence arises from the Latin maxim "ex turpi causa non oritur action" which means no

action arises from an immoral cause. So an unlawful act of the plaintiff itself might lead to a valid defence in torts. This maxim applies not only to tort law but also to contract, restitution, property, and trusts. Where the maxim is successfully applied it acts as a complete bar on recovery. It is often referred to as the illegality defence, although it extends beyond illegal conduct to immoral conduct. In Bird v Holbrook [(1828) 4 Bing. 628] The plaintiff, trespasser over the defendant's land was entitled to claim compensation for injury caused by a spring gun use by the defendant, without notice, in his garden.

Let us consider a situation in which a bridge, under the control of the defendant, given 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 above illustration, two situations can arise First in which plaintiff is the wrongdoer Second in which defended is the wrongdoer

If the plaintiff is the wrongdoer his action will fail and other hands if the defended is the wrongdoer his act wrongful act is the determining cause of the accident no of the plaintiff, the defended will be liable for example 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 plaintiffs action will succeed. Thus, if the plaintiff's being a wrongdoer is an act quite independent of the harm caused to him, the defender cannot plead that the plaintiff himself is a wrongdoer.

Under this defence it has to be seen as to what is the connection between the plaintiffs wrongful act and the harm suffered by him. If his own act is the determining cause of t harm suffered by him, he has no cause of action.

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 defender, it is the inevitable accident. It is, therefore, a good defence if the defended can show that he neither intended to injure the plaintiff nor could he avoid the injury by taking reasonable care.

In Stanley v Powell [1891] 1 QB 86 (QBD)] the plaintiff was employed to carry cartridge for a shooting party when they had gone pheasant-shooting. A member of the party fired at a distance but the bullet, after hitting a tree, rebounded into the plaintiff's eye. When the plaintiff sued it was held that the defendant was not liable in the light of the circumstance of inevitable accident.

It may be noted that the defence of the inevitable accident is available when the event is unforeseeable and consequences unavoidable in spite of reasonable precautions. Even if the event is like heavy rain and flood but if the same can be anticipated and guarded against and the consequences can be avoided by reasonable precautions, the defence of inevitable accident cannot be pleaded in such case this view explained by the supreme court in S. Vedantacharya v. Highways Department of South Arcot (1987 ACJ 783)

ACT OF GOD

The act of God or Vis Major or Force Majeure may be defined as circumstances which no human foresight can provide against any of which human prudence is not bound to recognize the possibility, and which when they do occur, therefore are calamities that do not involve the obligation of paying for the consequences that result from them.

The act of God is a defence used in cases of torts when an event over which the defendant has no control over occurs and the damage is caused by the forces of nature. In such cases, the defendant will not be liable in tort law for such inadvertent damage.

The act of the 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, tempest, tides and volcanic eruptions.

Two important essentials are needed For this defense:

There must be working of natural forces The occurrence must be extraordinary and not one which could be anticipated and reasonably guarded against.

WORKING OF NATURAL FORCES

Ramalinga Nadar v. Narayana Reddiar (AIR 1971 Ker 197) the plaintiff had booked goods with the defendant for transportation. The goods were looted by a mob, the prevention of which was beyond the control of the defendant. It was held that every event beyond the control of the defendant cannot be said Act of Cod. It was held that the destructive acts of an unruly mob cannot be considered an Act of God. It was observed that: "Accidents may happen by reason of the play of natural forces or by the intervention of human agency or by both. It may be that be that in either of these cases, an accident 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 an aid to be acts of God.

OCCURRENCE MUST BE EXTRAORDINARY

In the case of Nichols v. Marshland [(1876) 2 EXD 1], the defendant has a number of artificial lakes on his land. Unprecedented rain such as had never been witnessed in living memory caused the banks of the lakes to burst and the escaping water carried away four bridges belonging to the plaintiff. It was held that the plaintiff's bridges were swept by the act of God and the defendant was not liable.

PRIVATE DEFENCE

The law permits the use of reasonable force to protect one's person or property. If the defender uses the force which is necessary for self-defense, he will not be liable for the harm caused thereby.

To use this defence three conditions need to be satisfied.

1. There should be an imminent threat to the personal safety or property, for example, A would be justified in using a 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.

2. The force that is used is absolutely necessary to repel the invasion should be used for.

3. The force used by the defendant should be in proportion to the act committed and enough to ward off the imminent danger It should not be excessive and must not be out of the proportion to the apparent urgency of the occasion, for example, if A Strikes B, B cannot justify drawing his sword and cutting occ his hand

In the case of **Bird v. Holbrook [(1823) 4 Bing. 628,130 E.R. 91].** deals with the defence of protection of property. Holbrook, the defendant set up a spring-gun trap in his garden in order to catch an intruder who had been stealing from his garden. He did not post a warning. Bird, the petitioner chased an escaped bird into the garden and set off the trap, suffering serious damage to his knee. Bird sued Holbrook for damages. It was held

that while setting traps or "man traps" can be valid as a deterrent when notice is also posted, D's intent was to injure someone rather than scare them off. Hence he was held liable.

MISTAKE

Mistake, whether of fact or of law, is generally no defence to an action for tort. When a person willfully interferes with the rights of another person, it 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 is trespass, taking away another umbrella thinking that to be one's own and injuring the reputation of another without any intention to defame is defamation in such situations the defence of mistake cannot be taken.

In **Consolidated Co. v. Curtis [(1894) 1 Q.B. 495],** an auctioneer was asked to auction certain goods by his customer honestly believing that the goods belonged to the customer he auctioned them and he paid the sale proceeds to the customer. In fact, the goods belonged to the other person. In an action by the true owner, the auctioneer was held liable for a tort of conversion.

To this rule, there is some exception when the defender may be able to avoid his liability by showing that he acted under an honest but mistaken belief.

NECESSITY

An act causing damage, if done under a necessity to prevent a greater evil is not actionable even though harm was caused intentionally. Necessity should be distinguished from the 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. Necessity is also different from the inevitable accident because, in necessity, the harm is an intended one, whereas, in the inevitable accident, the harm is caused in spite of the best effort to avoid it, throwing goods overboard a ship to lighten it for saving the ship or person on board the ship, or pulling down a house to stop a further spread of fire is a common example of necessity.

In **Cope v. Sharpe [(1891) 1 K.B. 496.]** the defendant entered the plaintiff's land to preve the spread of fire to the adjoining land over which the defendant's master had the shootii rights. Since the defendant's act was considered to be reasonably necessary to save the game from real and imminent danger, it was held that the defendant was not liable for trespass.
If, however, that interference is not reasonably necessary, by the defender will be liable. In Carter v. Thomas [(1891) Q.B. 673], the defender, who entered the plaintiff's premises in good faith to extinguish a fire at which the fireman had already been working, was held liable for trespass

STATUTORY AUTHORITY

When an act is done, under the authority of an Act, it is complete defence and the injured party has no remedy except for claiming such compensation as may have been provided by the statue, 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 for example, if a railway line is constructed there may be interference with private land, when the train is run, there may also be some incidental harm due to noise, vibration, smoke, emission of sparks, etc. No action will lie either for interference with the land or for incidental harm, except for the payment of such compensation which the Act itself may have provided, because the construction and the use of the railway are authorized under a statute. However, this does not give the authorities the license to do what they want unnecessarily; they must act in a reasonable manner. It is, for this reason, certain guidelines that need to be followed during construction of public transport facilities.

In **Smith v. London and South Western Railway Co. [(1870) L. R 6 C. P. 14.]** the servants of a Railway Co. negligently left trimming of grass and hedges near a railway line. Sparks from an engine set the material on fire.

By a heavy wing, 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.

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