NOTES

General Defences under the Law of Torts (Part II): Complete Notes for CLAT PG!

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Welcome back to our next part on the *General Defences under the Law of Torts*. In this continuation to Part I, we will discuss the remaining key defences that are frequently tested in CLAT PG examinations.

Plaintiff the Wrongdoer (Ex Turpi Causa Non Oritur Actio)

The law of torts is founded on the principle that every individual is entitled to legal protection against wrongful acts. However, the law does not extend its protection to a person who seeks compensation for an injury that arises directly from their own illegal or immoral conduct.

This principle is embodied in the Latin maxim ***Ex Turpi Causa Non Oritur Actio***, which means **"no action arises from an immoral or illegal cause."**

It is important to note that this defence does not apply merely because the plaintiff has committed an unlawful act. The illegality must have a **direct connection** with the injury for which compensation is claimed.

Essential Requirements:

For this defence to succeed, the defendant must establish the following:

1. The Plaintiff Was Engaged in an Illegal or Immoral Act

The plaintiff must have been participating in an act prohibited by law or contrary to public policy. Mere negligence or carelessness is not sufficient.

2. The Injury Must Be Connected with the Illegal Act

There must be a direct and substantial relationship between the plaintiff's unlawful conduct and the injury complained of. If the injury is unrelated to the illegal act, the defence cannot be invoked.

Landmark Case: *Pitts v. Hunt* (1991)

The plaintiff and the defendant were both intoxicated. The defendant, who was riding a motorcycle recklessly, met with an accident, resulting in serious injuries to the plaintiff, who was travelling as a passenger.

The Court refused to award damages, holding that the plaintiff had voluntarily participated in an illegal and dangerous activity. Since the claim arose directly from their joint unlawful conduct, the defence of *Ex Turpi Causa* barred recovery.

Illustration

Suppose two individuals participate in an illegal street race on a public road. During the race, one driver negligently collides with the other, causing injuries. A claim for damages may fail because both parties were engaged in an unlawful activity that directly resulted in the accident.

PS: Remember that **every illegal act does not bar a claim**. The defendant must prove a clear nexus between the plaintiff's illegality and the injury suffered.

Inevitable Accident

Not every accident is the result of negligence. Sometimes, despite exercising reasonable care, an accident may occur that could not have been anticipated or prevented. In such situations, the defendant may rely on the defence of **Inevitable Accident**.

An inevitable accident refers to an accident that occurs despite the exercise of ordinary care, skill, and caution. Since the defendant has taken all reasonable precautions, the law does not impose liability for the resulting harm.

This defence reflects an important principle of tort law: liability arises only where there is fault or where the law specifically imposes strict liability.

Essential Elements

1. The Accident Was Unavoidable

The event must have been genuinely incapable of being prevented by reasonable human foresight or care.

2. Reasonable Care Was Exercised

The defendant must establish that they acted as a prudent person would have acted under similar circumstances.

3. Absence of Negligence

The accident should not have resulted from the defendant's negligence or lack of reasonable care.

Landmark Case: *Stanley v. Powell* (1891)

During a shooting expedition, the defendant fired at a bird. The bullet unexpectedly ricocheted off a tree and struck the plaintiff.

The Court held that the accident was inevitable and that the defendant had exercised reasonable care while shooting. Since there was no negligence, no liability arose.

This case remains one of the leading authorities on the defence of inevitable accident.

Illustration

A driver carefully follows all traffic rules while driving on a well-maintained road. Suddenly, a tyre bursts due to a hidden manufacturing defect, causing the vehicle to skid and injure a pedestrian. If the defect was undiscoverable through reasonable inspection, the accident may be treated as inevitable.

Note: Do not confuse **Inevitable Accident** with **Act of God**.

- Inevitable Accident may arise due to human or non-human causes.
- Act of God is exclusively the result of extraordinary natural forces.

Act of God (Vis Major)

The defence of **Act of God**, also known as ***Vis Major***, applies when damage is caused solely by extraordinary natural forces that no human foresight or prudence could reasonably anticipate or prevent.

The defence recognizes that certain natural events are so exceptional that imposing liability on a defendant would be unjust. Ordinary seasonal rain, normal storms, or predictable weather conditions do not constitute an Act of God. The event must be extraordinary, unexpected, and

irresistible.

Essential Elements

1. The Cause Must Be Natural

The event should arise exclusively from natural forces such as earthquakes, unprecedented floods, volcanic eruptions, or cyclones.

2. The Event Must Be Extraordinary

The natural event must be so exceptional that no reasonable person could have anticipated it.

3. Human Intervention Must Be Absent

If human negligence contributes to the damage, the defence is not available.

Landmark Case: *Nichols v. Marsland* (1876)

The defendant owned artificial lakes on her property. An exceptionally heavy rainfall caused the lakes to overflow, washing away nearby bridges.

The Court held that the rainfall was so extraordinary and unprecedented that it constituted an Act of God. Since the defendant had not been negligent, she was not liable for the damage.

This decision established the classic requirements for invoking the defence.

Illustration

A dam constructed according to all engineering standards is destroyed by an unprecedented earthquake, causing flooding in nearby villages. If the earthquake was unforeseeable and no negligence contributed to the collapse, the defence of Act of God may succeed.

Necessity

The law generally discourages interference with another person’s rights. However, there are exceptional situations where causing harm becomes necessary to prevent a much greater harm. In such cases, the law recognises the defence of **Necessity**, which permits an act that would otherwise amount to a tort if it is reasonably required to avert imminent danger.

The defence is based on the maxim ***Salus Populi Suprema Lex***, meaning **"the welfare of the people is the supreme law."** It reflects the principle that, in extraordinary circumstances, the law prioritises the prevention of greater harm over the strict enforcement of individual rights.

Essentials of the Defence

To successfully rely on the defence of necessity, the defendant must establish the following:

1. There Must Be an Imminent Danger

The danger must be real, immediate, and not merely speculative or remote. A person cannot invoke necessity based on a future or uncertain risk.

2. The Act Must Be Reasonably Necessary

The defendant must show that the act complained of was reasonably required to avoid the impending harm and that no less harmful alternative was available.

3. The Harm Prevented Must Outweigh the Harm Caused

The law applies a principle of proportionality. The injury caused must be significantly less serious than the injury sought to be prevented.

Landmark Case: *Cope v. Sharpe (No. 2) (1912)*

The defendant entered the plaintiff's land without permission to extinguish a fire that threatened to spread to neighbouring property. In doing so, he caused some damage to the plaintiff's land.

The Court held that the entry was justified under the defence of necessity because it was reasonably required to prevent a much greater loss. The defendant was therefore not liable for trespass.

This decision illustrates that temporary interference with another's rights may be lawful where it is necessary to prevent a serious and immediate danger.

Illustration

Suppose a firefighter breaks open the door of a locked house to rescue a child trapped inside during a fire. Although damage is caused to the property, the act is justified because it is necessary to save human life.

Private Defence

Every individual possesses the right to protect their own body, the body of another person, and their property from unlawful interference. The law does not require a person to remain passive when faced with an immediate threat. Consequently, acts done in the lawful exercise of **Private Defence**, also known as **Self-Defence**, do not amount to tortious liability.

The defence is founded on the principle that the law permits the use of **reasonable force** to repel an unlawful attack. However, the force used must be proportionate to the threat faced. Excessive or retaliatory force falls outside the protection of this defence.

Essentials of Private Defence

1. There Must Be an Imminent Threat

The threat must be immediate and unlawful. A person cannot use force in anticipation of a future attack or after the danger has passed.

2. The Force Used Must Be Reasonable

Only such force as is reasonably necessary to repel the attack may be used. The law does not justify excessive violence.

3. The Force Must Be Used for Protection

The purpose of the act should be defensive rather than retaliatory or punitive.

Landmark Case: *Bird v. Holbrook (1828)*

The defendant installed a spring gun in his garden to deter trespassers but failed to provide any warning. The plaintiff entered the garden in search of a stray bird and was seriously injured.

The Court held the defendant liable, observing that although a person has the right to protect their property, they cannot employ dangerous methods that are likely to cause serious injury without warning.

The case established that the right of private defence is limited by the requirement of reasonableness.

Illustration

If a person is suddenly attacked on the street and pushes the attacker away to escape, the act is protected by private defence. However, if the attacker has already fled and the victim later pursues and assaults them, the defence is unavailable because the force is no longer defensive.

Statutory Authority

Certain acts that would ordinarily constitute a tort are protected when they are performed under the authority of a statute. This defence is known as **Statutory Authority**.

The rationale behind the defence is that when Parliament or the legislature authorises a particular activity in the public interest, the person carrying out that activity should not ordinarily be held liable for consequences that are an inevitable result of exercising the statutory power.

However, statutory authority is not a licence to act negligently. Where the damage results from careless or negligent execution of the statutory power, liability may still arise.

Types of Statutory Authority

1. Express Statutory Authority

In some situations, a statute expressly authorises an act that may interfere with private rights. Where such authority exists, no action in tort lies, provided the act remains within the limits of the statute.

2. Implied Statutory Authority

Even where a statute does not expressly authorise the interference, the authority may be implied if the act is an unavoidable consequence of performing the statutory duty.

Landmark Case: *Vaughan v. Taff Vale Railway Co. (1860)*

The defendant railway company was authorised by statute to operate railway services. Sparks emitted from one of its engines accidentally set fire to the plaintiff's nearby property.

The Court held that the railway company was not liable because it had exercised all reasonable care while performing an activity authorised by statute.

The case demonstrates that lawful statutory powers provide protection only when exercised without negligence.

Mistake

A common misconception is that every mistake excuses liability in tort. In reality, **mistake is generally not recognised as a complete defence**. Whether a defendant can rely upon mistake depends upon the nature of the mistake and the tort committed.

The law distinguishes between a **mistake of fact** and a **mistake of law**, and the consequences differ accordingly.

Mistake of Fact

A mistake of fact arises when a person acts under an incorrect belief regarding factual circumstances. In certain torts, a genuine mistake of fact may be relevant if it negatives the intention required to establish liability.

However, where the tort imposes strict liability or does not depend upon intention, a mistake of fact ordinarily does not excuse the defendant.

Mistake of Law

The general rule is that **ignorance of law is no excuse**. A person cannot escape tortious liability merely because they misunderstood the legal consequences of their actions.

Illustration

Suppose a person mistakenly enters another's land believing it to be their own property. Although the mistake is genuine, it does not ordinarily provide a defence to an action for trespass.

Similarly, a police officer who arrests the wrong person under an honest but mistaken belief may still be liable if the arrest lacks legal justification.

General defences occupy an important position in the law of torts because they ensure that liability is imposed only where it is fair and legally justified.