BLOGS

Notes on Law of Torts- General Defences

Anupama Bhattacharya · 06 Feb 2023

This article looks at general defences that may absolve the tortfeasor from liability in certain situations.

TABLE OF CONTENTS

General Defences in Tort Law
Volenti Non-Fit Injuria
Plaintiff's Fault
Act of God
Private Defence in Tort Law
Statutory Authority in Tort Law
Act of Necessity

General Defences in Tort Law

General defences can be explained as a special set of circumstances, due to the existence of which, a tortfeasor can be absolved from liability even though they fulfil all the elements of the act. In simpler words, they are an 'excuse' for committing a tort.

General defences apply to all torts, while specific defences are related to specific offences and used only for them, for example, the defences of truth and privileged are applicable to defamation only.

Now we will discuss some important general defences in Tort Law, which can be used by a tortfeasor to defend their act.

Volenti Non-Fit Injuria

Volenti non fit injuria is a Latin phrase which means “to a willing person, injury is not done”. This is often called the defence of consent. When a person consents to suffering and injury is then caused to them by the tortfeasor, the person does not have a legal right to damages. In simpler words, if a tort is committed, and damages are claimed, the tortfeasor will be absolved of liability, if they can prove to the court that the plaintiff consented to the harm or risk of harm.

Often, this principle is seen in consent forms for medical treatment or adventure sports like bungee jumping or sky diving. A famous case about the duty of care of owners of a racing track is ***Hall v. Brooklands***. The Court held that the owners did not have a duty to protect spectators from unforeseeable risks. Another landmark case on employee’s consent to risk is ***Smith v. Baker*** where the courts held that an employee whose work does not entail dangerous activity cannot be said to have consented to risk of injury from other department’s work.

An **important requirement of volenti non fit injuria** is that the consent from the plaintiff should not be acquired by fraud or vitiated in any other manner. Consent should be free and can be either express or implied. In short, the rules of consent that apply to Law of Contracts also apply to this!

Plaintiff’s Fault

The principle behind this defence is a really simple one, if the plaintiff is himself at fault, then no liability arises out of a tortious act by the defendant. This is different from volenti non fit injuria, because here an act of the plaintiff leads them to suffer harm while in the former, the plaintiff consents to the harm.

An example of this can be, if someone is knowingly drunk and driving, they cannot sue for damages if they meet an accident. Similarly if a person ignores a cautionary sign and trespasses into a property, they cannot sue the owner for damages.

Act of God

This is also known as Force Majeure. This is an instance when an unforeseeable event over which the defendant has no control takes place. It is defined as an extraordinary event that can be caused by forces of nature. This is a general defence that applies to law of torts as well.

Covid 19, for example, can be considered to be Force Majeure as many contracts could not be fulfilled on account of lockdowns, deaths and other mishaps caused by the pandemic. The defence of force majeure applies only when the event that occurs is not foreseeable. In the case of ***Kallu Lal v Hemchand***, the Court held that an owner of a dilapidated building was liable because the building collapsed after normal rainfall. The owners tried to escape liability by using the defence of force majeure however, the court held that normal rainfall cannot be considered to be force majeure.

Private Defence

The right to private defence is the right to protect your life and property, as well as the life and property of others. A tortious act done in exercise of self defence shall not be punished.

However, there are three essential elements that should be present to avail the defence-

1. The threat should be imminent.
2. Force should be used only to protect life or property.
3. Force used should be proportional to the threat.

This defence applies only when the threat is immediate. If the person is already aware of the threat and has enough time to inform the authorities, the defence will not apply. Similarly in case of theft, if the thieves are running away then there is no threat and right to private defence will not apply. If in an attack, the attacker does not have a weapon, then shooting them such that death may occur will not warrant the right to self defence as force used is not proportional.

Statutory Authority

When an act is authorised by law, even if it amounts to a tort, it will not lead to liability. The most common example of this is police officers. In the course of investigation and arrest, they have certain rights accorded to them by various statutes. Therefore, if a police officer enters into a property to investigate or effect an arrest, they cannot be held liable for trespass.

Shield of this defence applies to: (i) Obvious Harm (ii) Incidental Harm

Though not a case related to tort law, in ***Kasturilal Ralia Ram Jain v. State of UP***, police suspected that the plaintiff had stolen gold and seized it from him. A constable took the seized gold and fled to Pakistan. the Court allowed the Government to claim the defence of statutory

authority, even when the government officials were at fault and negligent in their duty.

State of Rajasthan v. Vidyawati: This case dealt with the vicarious liability of the State when the employee of the State does some tortious act. In this case, a pedestrian was killed by a vehicle in use of the State Government. The State was held liable for tortious act of its servant.

Act of Necessity

This defence is based on the Latin maxim: ***'necessitas inducit privilegium quod jura privata'*** which means that "Necessity induces a privilege because of a private right"). This can be applied when the risk of harm to an individual or society is greater than the harm to the property. The difference between this and self-defence lies in the fact that, unlike the privilege of self-defense, those who use the defence of act of necessity are usually free from any wrongdoing. For example, in the case of ***Leigh v. Gladstone,*** Leigh was imprisoned and went on a hunger strike and was later fed by the prison warden. The warden was accused of trespass against person and took the defence of act of necessity and succeeded.

R v. Dudley & Stephens: Necessity is not a defence to charge of murder. A yacht was wrecked and part of the crew was left out in the sea without any provisions. The crew ran out of food on the 12th day and they killed and ate the ship's cabin boy who had already fallen sick and would have died anyway. Once they were rescued, they were charged with murder and took the defence of act of necessity. However, it was held that this wasn't an act of necessity.

These are a few important defences, that can absolve liability of a tortious act. It is important to note that these defences will also apply to other cases and are not limited to the law of Torts.

Preparing for CLAT? Prepare with CLATalogue!