AILET

Inevitable Accident: General Defences In Tort

Aparna Shukla · 20 Jan 2021

Inevitable Accidents are, as evident from the name, events which could not have been prevented by the parties through the exercise of **ordinary care, caution, and skill**.

The first instance that comes to mind when you think of Inevitable Accident is a car accident.

You are driving to your office through the busy streets of Central Kolkata during the morning rush hour. The traffic is maddening. You are at the crossing, waiting to hit the accelerator as soon as the signal goes green. The **signal turned green, the traffic in the front was clear**, so you hit the pedal.

However, a *kaku* (what Bengalis call middle-aged men/almost the age one's father), who is secretly a Tour de France-level cyclist, **swerves in fast from the right seeking to make a left turn**, narrowly clears the first row of cars on the right, but ends up colliding with your car, which was near that left turn. **You slammed the brakes in the nick of time**.

You get out of your car to help the person up.

The stereotypically curious Calcuttan (the entire locality, pedestrians AND your fellow commuters, actually) has now gathered around the spot. The traffic in-charge is quick to the scene too. The crowd roughs you up with their scathing "what do you think?"s and mini-lectures on rash driving.

They demand that you be "put behind bars…that should teach him something for being so hurried!". The injured (fell down and scratched his elbow on the asphalt, which made him apparently lose consciousness and regain it in a matter of 3 minutes) *kaku* is hell-bent on filing a plaint.

The traffic in-charge sees the large crowd, and chooses to let *vox populi* prevail to avoid yet another allegation of police inaction. He seizes your car and takes you to the police station. Your lawyer advises you to plead Inevitable Accident in the Traffic Court.

What the court will look for is whether:

- The event was (or was not) outside your control,
- You had (or did not have) the scope to avoid the said event through the exercise of reasonable care and caution (in this case it would include having the car in proper condition which would allow you to stop it given a reasonable amount of time, checking for oncoming vehicles/commuters); and,
- You DID (or did not) exercise that reasonable care and caution to avoid the said event/accident.

You only have to exercise reasonable care and caution, provided you *have the scope* to do so. If you do not have that, you will just need to prove the event was outside your control. Under usual circumstances, once all the three points above are proven in your favour, you will be free to go.

Not so far away, your friend Roshni was travelling in a taxi with her colleague to their workplace, the offices of Andersons & Associates, a law firm.

As it sped along the newly inaugurated flyover, the taxi suddenly burst a tire, spun out of control and hit the divider. The two passengers are injured.

The taxi owner claimed the defence of inevitable accident.

Upon investigation, it turned out that the taxi was running on **old and worn-out tires** and the owner had **not bothered to maintain them**. Thus, (by virtue of **point 2** above) the defence failed, and Roshni's claim succeeded.

The defendant needs to show that an event occurred over which (s)he had **no control** and the effect of which **could not have been avoided** by the exercise of care and skill. The defendant has to take all *reasonable measures* to avoid the accident.

This defence is however not applicable in the cases of Strict Liability (which, we have briefly discussed below, under "Note").

You might have a lingering question as to the similarity or the difference between '**Act of God**' (discussed in the previous article) and Inevitable Accident.

They are both very similar, but for the fact that Act of God happens to be a *subset* of Inevitable Accident.

Both are by nature 'inevitable', but Act of God is restricted only for natural occurrences. It's that simple!

Also, to avoid confusion, Act of God is held separately, as a defence against natural events, rather than being called a *part* of Inevitable Accident; so, we look at Inevitable Accident as *events caused by humans*.

Note:

Cases of Strict Liability are where the defendant is held 'strictly' liable, i.e., even when he has exercised reasonable care and caution.

This is because the thing/act causing the damage is so *inherently dangerous*, and that the damage can occur by virtue of that inherent danger of the thing/act alone rather than any fault of the defendant, that the law stipulates it must not cause any damage (the damage naturally being of a serious nature) to another party, at any cost.

This validity of the defence here was settled in the case ***Rylands v. Fletcher***, which also first introduced the concept of Strict Liability under tort law.

PRACTICE QUESTIONS:

Principle: *A defendant is protected against harm caused to the plaintiff, if the harm caused is outside his control and cannot be prevented. The check is to see if the defendant had the scope of resorting to reasonable measures to avoid that harm, and he exercised the same.*

1. The plaintiff was employed to carry a cartridge for the shooting party when they had gone game-hunting. A member of the party fired at a distance, but the bullet after hitting a tree, rebounded into the plaintiff's shoulder. The defendant claimed the defence of inevitable accident in court.

a. The defendant would be liable for not taking proper aim. It was natural that the bullet will bounce off of hard a surface.
b. The defendant would not be liable for his actions were in no way intended to injure the plaintiff. Amongst so many members of the hunting party, neither the plaintiff's presence in the exact spot could have been predicted by the defendant, nor the fact that the bullet would bounce off and hit the plaintiff.
c. The defendant would not be liable for his actions since the plaintiff should have taken safety precautions such as bullet-proof vests and such.
d. The defendant would be liable since a bullet travels very fast and he should have warned the party that he was taking aim.

(b – For the reasons given therein. The party was out to hunt, so it was obvious one would stay steady, quiet, and fire when the game was in sight, and as a matter of practice would not go about warning people with alarm bells.)

1. The defendant parked his sedan car in a street and left his dog inside. The dog has always been quiet and docile. As the plaintiff was walking past the car, the dog started jumping about in the car, smashed a glass panel, and a splinter entered into the plaintiff's left eye which had to be removed surgically. Decide for the plaintiff.

a. The case is one of strict liability. The plaintiff's claim will succeed.
b. The plaintiff's claim will fail since the event could not have been foreseen by the plaintiff and there was nothing he could do to avoid it.
c. The plaintiff's claim will fail as the dog was well-behaved and did not pose an inherent danger.
d. None of the above.

(b – The only possible harm that could have been caused by the dog was if the window were open. Which it was not. Also, given the fact that the dog was well-behaved, it was highly unlikely that it would cause *any* problems at all. The dog managing to 1) break the solid car-window and 2) getting a shard of glass lodged in the plaintiff's eye is not something that could have been foreseen by the plaintiff. Strict liability (a & c) has not been discussed in the principle, and in any case, the dog did not pose an inherent danger.)

1. Ashish, a forest dept. official, was driving back to the forest dept.'s lodge in his jeep through a forest area in Assam, after sunset, with his deputy Subir in the passenger's seat. Ashish was very disappointed with Subir's work in his absence, and did not hold back in expressing that. Ashish drove the car at a risky 70 kph, perhaps to blow off some steam. After a particular point down the road, there were several "ELEPHANTS AHEAD" warnings, spaced at a good distance from each other. Ashish continued to drive the jeep at 60 kph, down the narrow, winding path. The jeep collided with an elephant, which ran away, afraid but unscathed. Subir was thrown out of the jeep on impact, and suffered fractures on his hip. He claimed damages from Ashish.

a. It was Ashish's negligence that he did not slow down his car despite several warnings. He cannot claim a defence.
b. Ashish's was not in the right mind to drive due to the argument. That was contributed by Subir himself, who took no steps to calm him down, or ask him to drive slowly, or see the warning signs himself. He cannot blame others for his injury.

c. Ashish had ample time to slow down his car, given the warnings, which he ignored, and further it made no sense to drive so fast down a narrow road in the dark, inside a forest.
d. None of the above.

(c – covers all the aspects, which 'a' does not. As it is, such a situation increased the risks of hitting an obstacle. Drawing out Subir's liability in 'b' is very remote to say the least, and he cannot be made liable for something the driver has a responsibility towards, merely because he made Ashish angry.)

1. Shubham was engaged in the business of transporting of goods. His customers would mostly restrict their items to home and office goods. A wooden box was received, to be transported, and Shubham was not aware of its contents. It was labelled as a table lamp, and contained a flask of nitroglycerin along with it. While the box was in his office, it exploded (because of the nitroglycerine stored in it), causing damage to life and property. Shubham's landlord sued him for damages.

a. Shubham put his faith on the label, since he cannot reopen a box once it is sealed, and could not have expected such damaging substances to be present.
b. Shubham should have inspected the goods prior to storing it.
c. Shubham's office was rented out, so there is a demand to be cautious with what he keeps in his house. Sealed boxes with unknown contents should not be one.
d. Shubham had taken all possible care in not causing damage by storing it in his own house, rather than anywhere else where others would have been exposed.

(a – This one is tricky. Should he have or have not checked the contents of the box before storing? As a standard practice, verification is required. But since it was already boxed and sealed, verification was probably done, and he was right to trust the label. Now, who was responsible for putting the nitroglycerine there, is not what we need to answer. Here, since no negligence on Shubham's part is established, the defence of inevitable accident is available. He would usually receive harmless goods, and could not have foreseen the damage caused, and did not have any scope of taking precautions.)

1. The parties were travelling along a mountain road, which the defendant-husband was familiar with. He knew it to be treacherous in winters, so he checked the weather conditions, and found it to be suitable. The defendant stated that he was driving at 100 kph when he heard a clunking sound, following which the vehicle suddenly lost braking and steering capacity, and

veered towards the concrete barriers, injuring the plaintiff-wife. The plaintiff stated that she did not hear the clunking, but felt the vehicle take a sharp turn towards the concrete barriers. Decide for the plaintiff.

a. The claim will be successful since the defendant was familiar with the road and should not have been driving at such a great speed when he knew the road was treacherous.
b. The claim will fail since the defendant had lost control of his car inadvertently. Such a circumstance means that the situation was outside latter's control, and hence he was not liable.
c. The claim will succeed since a husband owes a greater duty of care towards his wife, than towards an ordinary person.
d. Facts are insufficient.

(d – the facts only mention the *versions of both parties*, if you notice carefully. There needs to be an independent investigation of the circumstances, which is absent in the facts. Thus, we cannot decide conclusively in favour of either party. Driving at 100kph implies nothing; the roads could have been really long and wide to justify the speed, or not, but we do not know of that.)

1. A bolted horse suddenly went out of control. Rajeev, the owner of the horse, tried to control the horse but in vain. He tried to avoid Yash, a passerby, from suffering injury since the horse had gone astray. However, Yash was knocked down by the horse.

a. The horse, bolted, went out of control. Rajeev tried to control the horse but could not. No liability can be affixed on him.
b. Yash should have taken note of where he was walking. The fact that he failed to notice a charging horse, within which time Rajeev managed to get to the horse and try and control it shows that Yash was walking mindlessly.
c. Rajeev had taken measures to tame the horse, which had gone out his control. This fufils the criteria for the defence of inevitable accident.
d. Both a and c.

7. Manav, a budding actor, was going for a celebrity gala, and was already running late. He was to meet big producers, and was sure of landing a major film with one of them. On the way, Madhav, who was driving his car, accidentally went into a puddle, which splashed some mud on Manav. Manav's tuxedo was ruined, and he could not attend the gala. The road was dark and the puddle was not visible although Madhav had switched on the car's headlights. Can Madhav plead inevitable accident?

a. Yes, because Madhav headlights were switched on and the puddle was not visible.
b. No, because Madhav should have been extra-cautious while driving on a dark road.
c. Yes, because Manav should have been careful to be as far away from puddles and the like, as possible.
d. Yes, because in going down a dark road, parties agree to harm suffered. Since the mud was splashed inadvertently, Madhav can claim inevitable accident.
(a – straightforward application of the principle.)

8. Brian was driving his bike to work, when he suddenly ran into a cyclist who suffered injuries as a result of the accident. The bike was serviced regularly, and the brakes were also checked during the process. The cyclist sues Brian for negligence. Brian claims inevitable accident. Can a claim of inevitable accident succeed?

a. Yes, since the bike was serviced regularly, it could not have been foreseen that such an event would have occurred.
b. Yes, because neither parties are at fault.
c. No, because she should have checked her brakes before setting out.
d. None of the above.
(a)

9. Suvesh drives an old, ill-maintained Tata Indica. One morning, while driving his car, he rammed into Shalini's Honda City. Shalini was driving on the wrong side of the road. Suvesh claims the defence of inevitable accident. Can he succeed?

a. Yes, because it was Shalini's fault that she was driving on the wrong side of the road.
b. Yes, but Shalini can claim a reduced amount as damages.
c. No, because the car was in a state of disrepair, which Suvesh had ignored to rectify.
d. Yes, because Shalini had no knowledge of road rules and safety.

(c – a and b takes contributory negligence into account, which is not provided for here. Also, the question simply asks whether the claim will succed, to which the answer is 'No', given and explained in c.)

This article is posted in association with clatapult.com