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General Defenses under Law of Torts: An Analysis

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Abstract – Plaintiffs in tort cases seek a private legal remedy, most often monetary compensation for losses they have suffered. Similarly to criminal law, tort claims deal with state-sanctioned criminal misconduct. A civil lawsuit and a criminal investigation are both possible outcomes in countries where civil and criminal justice systems are separate. Unlike contract law, tort law provides civil remedies in the case of a breach of a contractual commitment; nonetheless, tort and criminal law responsibilities are more basic and are imposed regardless of whether the parties have a contract. In this paper discuss the review of defenses under the law of torts, volenti non fit injuria, plaintiff being the wrongdoer, inevitable accident, act of god/ vis major, statutory authority.

Keywords – General Defenses, Law, Torts, Statutory, Inevitable Accident

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INTRODUCTION

T Every lawsuit in a court of law involves two parties: one who has filed a lawsuit against another and the other who is defending himself. Plaintiffs and Defendants are the terms used in tort law to describe such parties. After the plaintiff files a lawsuit alleging that the defendant has committed a tort, it is up to the plaintiff to show that the defendant's wrongful actions have violated his legal rights, and once all of the essentials have been met and his guilt has been established, the defendant's only option for escaping liability is to use the General Defenses available in tort law, which have evolved over time.[1]

Although Roman law provided rules for torts in the form of delict, which eventually impacted civil law countries in Continental Europe, an unique body of law emerged in the common law world, which may be traced back to English tort law. The term 'tort' was first used in a legal context in the 1580s[e], however identical notions were previously referred to by various terms.

MEDIEVAL PERIOD

The Germanic system of compensating fines for wrongs (OE unriht) gave rise to torts and crimes under common law, with no clear difference between crimes and other wrongs. Most wrongs in Anglo-Saxon law mandated payment in cash or kind (bt, literally'remedy') to the injured individual or clan. Wte (meaning 'blame, fault') was a payment made to the monarch or the holder of a court for public disorder. Weregild, a murder fee depending on the value of the victim, was designed to discourage blood feuds. Some wrongs were botleas 'without remedy' in later law codes (e.g. theft, open murder, arson, treason against one's master), meaning they could not be reimbursed, and individuals convicted of botleas crimes were at the mercy of the monarch. As deodands, items or beings that caused death were likewise destroyed. The court was responsible for determining intent, however Alfred the Great's Doom Book did distinguish between inadvertent and purposeful harm, and guilt was determined by status, age, and gender.[2]

Fines were only paid to courts or the king after the Norman Conquest, and they immediately became an income source. A wrong became characterised as a tort or trespass, and a distinction was made between civil and crown charges. In 1166, the petty assizes (i.e., new disseisin, mort d'ancestor, and darrein presentment) were created as a remedy for interfering with freehold land holding. The trespass case was an early civil plea in which the defendant was ordered to pay damages to the victim if no payment was made; if no payment was made, the offender was sentenced to prison. Slander, violation of contract, or interference with land, property, or individuals were among the charges brought in local courts. Although the actual origins of the writ of trespass are unknown, it became so popular in royal courts that it was developed and made de cursu (accessible by right, not fee) in the 1250s; yet, it was limited to interference with land and forceful violations of the king's peace. It might have resulted through a "felony appeal," assize of new disseisin, or replevin. The "trespass on the case" suit came later, in the 1360s, after the Statute of Westminster 1285, for when the defendant did not direct force. As the scope

of the lawsuit grew, it was simply referred to as "activity on the case." The distinct proceedings of trespass and trespass on the case were eliminated by the English Judicature Act of 1873-1875.

In the English case Beaulieu v Finglam, strict liability was imposed for the escape of fire in 1401, as well as strict culpability for the release of livestock. Given the ability for damage and relatively limited firefighting resources, careless management of fire was especially important in ancient civilizations. In the mediaeval period, common carrier liability, which originated about 1400, was also stressed. In the mediaeval age, unintentional injuries were very uncommon. Collisions and negligence grew increasingly common in court records as transportation improved and carriages became more popular in the 18th and 19th centuries. In general, English intellectuals such as William Blackstone were adverse to litigation, and there were laws against champerty, maintenance, and vexatious litigation. A analogous rule based on public policy prohibits the assignment of a cause of action.[3]

COMPARATIVE LAW

Common law states based on English tort law have basic distinctions from civil law jurisdictions, which may be founded on the Roman idea of delict, in worldwide comparisons of current tort law. However, there are substantial variances even across common law nations. In England, for example, the loser pays the winner's legal expenses (the English rule versus the American rule of attorney fees). United States tort law, Australian tort law, Canadian tort law, Indian tort law, and tort law in a number of Asian and African states are all examples of common law systems. While founded on a combination of local tradition and Roman law, Scots delict law has affected and been influenced by English common law, with the Scottish case Donoghue v Stevenson being the foundation for product responsibility in the majority of Commonwealth of Nations nations. Despite the fact that Israeli tort law was recognised by British Mandate of Palestine authorities in 1944 and came into existence in 1947, the Jewish law of rabbinic damages in Israel is another example. The gap between the Commonwealth and the United States is more pronounced.[4]

Even in comparison to other common law nations, the United States has been seen as being unusually prone to filing tort claims, however this impression has been questioned and challenged. Outside of the United States, class actions were very infrequent in 1987. Plaintiffs had fewer rights under English law in 1987 because of restrictions on contingent fee arrangements, the collateral source rule, the use of English judges to try more cases and set damages rather than juries, and limitations on wrongful death lawsuits, punitive damages, and strict liability, such as in product liability cases. The welfare state in England, which includes free healthcare through the National Health Service, may reduce the number of lawsuits. There was no workers' compensation system in place in England until 1987, so workplace injury lawsuits were fairly common, and trade unions made them easier, whereas in the United States, the workers' compensation insurance system compensates injured employees, even if the employee is partially to blame, but prevents most employee lawsuits against their employers (although lawsuits against third parties who are responsible for the injury are permitted). In certain places, no-fault insurance for automotive liability has also increased in the United States. Ombudsmen in England may also consider matters that may otherwise result in tort litigation.

While Indian tort law is mostly based on English law, there are certain distinctions. Indian tort law is unusual in that it provides remedies for constitutional torts, or government activities that infringe on constitutional rights, as well as a system of absolute accountability for enterprises engaging in hazardous conduct, as stated in the M. C. Mehta v. Union of India ruling. The Indian Penal Code, which was first adopted in 1860 and is similar to other common law jurisdictions, criminalises behaviour that gives rise to a cause of action under tort law. Due to the early codification of criminal law in India, courts in the former British Indian Empire (e.g. Pakistan, Bangladesh) and the British colonies in South East Asia that adopted the Indian Penal Code (e.g. Singapore, Malaysia, and Brunei) have interpreted the tort of assault, battery, and false imprisonment in accordance with the Indian Penal Code.[5]

CATEGORIES

- **Statutory torts**

A statutory tort is similar to any other in that it imposes obligations on private or public parties; however, the legislature, not the courts, creates them. For example, the Product Liability Directive of the European Union establishes severe liability for faulty items that cause injury to people; such strict liability is very uncommon, although it is not always mandatory.

Another example is the Occupiers' Liability Act 1957, which replaced common law liability of a landowner to guests or trespassers in England; a similar situation occurred in the United States State of California, where a judicial common law rule established in Rowland v. Christian was amended by a 1985 statute. Workplace health and safety rules, as well as food safety laws, are all covered by statutory torts. Although proceedings in the United States for medical equipment are precluded owing to Riegel v. Medtronic, Inc. (2008), actions in the United States for medical medicines are not due to Wyeth v. Levine (2009).

- **Business torts**

Tortious interference with commerce or contract, fraud, harmful lie, and careless misrepresentation are all examples of business torts (also known as economic torts). Because there is no privity of contract in

negligent misrepresentation torts, they are more likely to contain pure economic damage, which has been less typically recovered in tort. The "foreseeability" theory is one criteria for deciding whether economic loss is recoverable. The economic loss test, which originated in a California case concerning strict responsibility for product defects in 1965 and was adopted by the United States Supreme Court in East River S.S. Corp. v. Transamerica Deleval, Inc. in 1986, is very complicated and inconsistently applied[56]. The economic loss concept was superseded with a "independent obligation doctrine" by the highest court of the United States state of Washington in 2010.

Modern competition law has mostly obliterated economic antitrust torts. Private parties may sue for anticompetitive tactics in the United States under specific situations, including under federal or state legislation or on the basis of common law tortious interference, which may be based on the Restatement (Second) of Torts 766. The Sherman Antitrust Act of 1890, followed by the Clayton Antitrust Act, prevent cartels and regulate mergers and acquisitions through the Federal Trade Commission. Articles 101 and 102 of the Treaty on the Functioning of the European Union apply in the European Union, however permitting private lawsuits to enforce antitrust regulations is still up for debate.[6]

- **Intentional torts**

Purposeful torts are any intentional activities that are reasonably foreseeable to cause injury to a person yet do so anyhow. There are various types of intentional torts.:

1. Assault, battery, false imprisonment, deliberate infliction of mental distress, and fraud are all torts against the person, while the last is also an economic tort.

2. Property torts are defined as any intentional interference with the claimant's property rights (plaintiff). Trespass to land, trespass to chattels (personal property), and conversion are among the most well-known.

An overt act, some sort of purpose, and causation are all required for an intentional tort. In most circumstances, transferred intent, which happens when a defendant means to harm one person but inadvertently harms another, will enough to meet the intent requirement. Causation can be established if the defendant played a significant role in producing the injury.

GENERAL DEFENCES

General Defenses are a collection of defences that have evolved over time and have been acknowledged by the courts from time to time as reasons to avoid tort responsibility as long as the defendant's actions meet the rules and circumstances associated with the various defences. There are some defences that are specifically related with certain offences, such as the defence of truth, privilege, and fair comment in the case of defamation, while others, such as Consent and Third Party's Fault, can be used in all or many torts.[7]

Some of the major General Defences in Law of Torts are as follows:

1. Volenti Non Fit injuria i.e. Consent
2. Plaintiff is the Wrongdoer
3. Inevitable Accident
4. Act of God
5. Private Defence
6. Necessity
7. Statutory Authority

VOLENTI NON FIT INJURIA (CONSENT)

Volenti Non Fit Injuria is a Latin adage that states that a person who is ready to suffer and consent to suffering pain and injury as a result of the defendant's acts cannot complain about such an infringement of his legal rights. If the plaintiff suffers harm with his own agreement, he cannot hold the defendant accountable, and the defendant can employ the Volenti Non Fit Injuria defence to avoid any obligation. The logical basis behind the defendant's defence is that a person cannot assert rights that he has knowingly and voluntarily relinquished. This type of willful consent might be expressed or implicit.

There was motor racing going on in the case of Hall v. Brooklands Auto Racing Club, and the plaintiff was a spectator of that race on the defendant's track. Two of the automobiles collided, causing one to drift towards the onlookers, injuring the plaintiff. The court found that the plaintiff gave his voluntary assent and consciously assumed the risk of seeing an occurrence in which such damage may be foreseeable, and therefore the defendant was not accountable. However, agreement must be freely given and not gained by deception or coercion. In the case of R. v. Williams, a music instructor raped a 16-year-old girl on the false pretence that it would improve her voice. In this case, the permission was not freely given, and the instructor was held accountable. Furthermore, simple information does not indicate agreement. In Smith v. Baker, the plaintiff, who worked on a drill for cutting stones, was at work when some stones were being transferred from one end to the other, passing over his head, and one of the stones dropped on him, injuring him. Despite the fact that he was aware of the stones being carried, the court determined that mere

awareness did not constitute consent, and the defendants were found accountable.[8]

PLAINTIFF BEING THE WRONGDOER

'Ex Turpi Causa Non Oritur Actio' is a Latin maxim that meaning 'no action originates from an immoral cause.' When the plaintiff's behaviour is improper or illegal, the defendant is exempted from culpability in torts. In many circumstances, the plaintiff is unable to seek legal redress from the court since he was wrong in the first place and his own acts resulted in his legal harm.

In the case of Pitts v. Hunt, an 18-year-old rider urged his 16-year-old companion to drive quickly while inebriated. The automobile was involved in an accident, and the younger child died. The older boy was injured, and he sued the deceased's relatives for compensation. The court rejected the plaintiff's claim of compensation since he was the perpetrator in this case, and the defendant may utilise this defence to avoid accountability.[9]

INEVITABLE ACCIDENT

An unexpected injury is referred to as an accident, and if the nature of the injury is such that it could not have been avoided despite all precautionary measures and carefulness exercised by the defendant, it is referred to as an Inevitable Accident, which serves as a defence for the defendant to absolve himself of any liability. The Inevitable Accident defence is effective because the defendant can demonstrate that the legal injury could not have been prevented despite taking all reasonable measures and care and having no intentional intent to hurt the other party.

Both of them went pheasant shooting in the case of Stanley v. Powell, and the defendant discharged a bullet for shooting down a pheasant. The bullet, however, was reflected by the oak tree and struck the plaintiff, causing catastrophic injuries. In the plaintiff's case against the defendant, the court determined that the occurrence was an unavoidable accident and that the defendant is immune from any culpability.

In the case of Sridhar Tiwari v. U.P. State Road Transport Corporation, as a U.P.S.R.T.C. bus approached a village, a cyclist suddenly appeared in front of the bus, and the day was so rainy that the bus did not stop even after he applied the brakes, and the rear portion of the bus collided with another bus approaching from the other side. It may be assumed that neither bus driver was at fault, and that they tried all possible to avoid a collision. The plaintiff's complaint was dismissed because it was an unavoidable accident for which the defendant U.P.S.R.T.C. could not be held accountable.[10]

ACT OF GOD/ VIS MAJOR

In Tort law, an act of God can also be used as a defence. Even in light of the Strict Liability rule established in the decision of Rylands v. Fletcher, the Act of God defence remains viable. The Act of God Defense is used in situations where an incident happens over which the defendant has no control and the damage is caused by natural causes. In basic terms, it is described as a set of events that no human foresight could prevent, and which a reasonably reasonable individual would not see as a possibility. The resulting damages are tainted by natural causes, and the defendant is not accountable for such injuries.

There are two essential of Act of God:

1. The forces of nature should be at work:

An angry crowd robbed all that was aboard plaintiff's vehicle in Ramalinga Nadar v. Narayan Reddiar. In a case presented by the plaintiff, the court ruled that the Act of God defence could not be used and that the plaintiff was entitled to compensation.

However, in Nichols v. Marsland, the defendant established an artificial lake by collecting water from a natural stream, but the embankments were demolished and the water swept away all of plaintiff's bridges owing to very strong rains. The court recognised that because the incident was a rare natural occurrence, the defendant could not be held accountable.

2. The occurrence must be extraordinary and unanticipated and could not be reasonably guided against:

The plaintiff's children were killed when the building's wall fell owing to natural rainfall in Kallu Lal v. Hemchand. The court stated that 2.66 inches of rain is regular and not unusual, and so the fundamental elements of the Act of God defence are not fulfilled, and the defendant will be held accountable.

PRIVATE DEFENCE

Every individual has the legal right to protect his or her own life and property, as well as the lives and property of others. This right is recognised under tort law, and any act performed by an individual in the exercise of this right is deemed to be free of tort responsibility.[11] The following are the two most important aspects of this defence:

1. A realistic and impending danger to life or property must exist.

2. The sole reason for using force is to defend yourself, not to get retribution.

3. The use of force should be proportional to the level of danger.

In the case of Bird v. Holbrook, the defendant had installed spring guns in his garden without giving warning, and the plaintiff was injured as a result of his

ignorance. The plaintiff is entitled to compensate since such a fixation of spring firearms without warning could not qualify as private defence lacking basic elements.

The defendant landowner in Ramanuja Mudali v. M. Gangan had placed wires on his property. Because there was no notice of such arrangements, when the plaintiff crossed his land to get to his land, he suffered a shock, resulting in significant injuries. Such conduct on the side of the defendant does not qualify as Private Defense, and he is thus accountable.

NECESSITY

Because of the General Defense of Necessity, the defendant may inflict legal harm on the plaintiff in order to prevent further harm. An individual may not be held responsible for an act that results in a violation of another person's civil rights in order to avert greater harm.

In the case of Leigh v. Gladstone, the court held that forcing a person on a hunger strike in jail to eat constituted to necessity, and thus the defendant could not be held accountable for violence.

In the case of Cope v. Sharpe, the defendant invaded the plaintiff's property to prevent the fire from spreading to surrounding properties. In a complaint filed by a plaintiff alleging trespass, the court found that the defendant was not liable for the trespass and that the defence of necessity was a viable defence.

STATUTORY AUTHORITY

An conduct that is authorised by a law or statute enacted by the relevant authorities is not actionable, even though it would otherwise be a tort. It acts as a complete defence to tort responsibility, leaving the injured plaintiff with no recourse other than the compensation allowed by the relevant legislation.

In the case of Vaughan v. Taff Valde Rail Co., sparks from the defendant's company's authorised railway engine set fire to plaintiff's forests on neighbouring territory. The defendant was found not to be liable since the authority was granted by legislation, and the defence of statutory authority was pleaded.

In Smith v. London and South Western Railway Co., the railway company's servants neglected to trim the hedges beside the railway track, causing sparks to be carried by wing to a neighbouring cottage, resulting in a fire. The defence of legislative authority was found to be ineffective where there was carelessness that was not covered by the act, and the defendants were held accountable for the damages.

CONCLUSION

Defenses for accused parties are an important aspect of any legislation, similar to the remedies accessible to aggrieved parties. Many times, the defendants are innocent and victims of circumstances that result in culpability for their actions after all of the elements of Torts law have been satisfied. The General Defenses in Tort Law play a significant role in this law, since they assist the defendant in avoiding any culpability that may occur. A thorough comprehension of such defences is necessary for their correct implementation in specific instances.

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