

TORTS – PART I

CLATXPERTS

Premium notes for CLAT PREPARATION

WHY YOU SHOULD STUDY THIS ?

1. HIGH QUALITY.
2. BASED ON STANDARD SOURCES
3. POSSIBILITY OF DIRECT QUESTIONS
4. COMPLETELY SYLLABUS-ORIENTED.

GENERAL DEFENSES IN TORT : MADE EASY

What is defense ?

Defense (literal meaning) : save oneself when you are targeted.

Defense in tort : means to save oneself from liability when a tort is framed against you.

Concept : Literally to say that my act may have affected the plaintiff but I shall not be made responsible for following reasons. These recognized reasons form the general defenses in tort.

DEFENSES IN TORT :

The following can be good reason to relieve defendant from his liability against the tort committed by him.

1. **Consent** – *Voluntati non fit injuria* – victim consent to injury suffered .

Principle : plaintiff's consent will excuse the defendant of the wrongdoing. Basically, if a person consents to harm committed on him, that person cannot be permitted to sue the other for the tort.

Explanation : Although a defendant's conduct may be considered immoral, or harmful, if the plaintiff allows these interferences to occur, then the defendant is not considered to have committed a tort.

FORMS OF CONSENT : Consent to such harm can be either implied or expressed.

Express consent – consent said and written

Implied Consent – Consent by conduct – the way the persons behave.

Example 1 : A patient cannot sue a surgeon for bodily trespass after giving his consent to being operated upon.

Example 2: When a footballer is injured by another during the course of the game, he cannot sue the other footballer for a tort because it is understood by a reasonable man that there is a possibility of an injury during the course of the game. Same applies to one who goes as spectator to watch game.

CASE LAW : Wooldrige V. Sumner -

Fact - A photographer was taking photo in a horse show unfortunately he fell into horse course and was injured by galloping of horse.

Held - Here also defendant was not liable- because his entry into horse course was implied consent to such injury.

2. **When plaintiff is the wrongdoer** – *where victim has also committed wrong* .

MAXIM: Ex turpi causa non oritur actio- no legal remedy for one's own illegal Act.

Example: An example would be a plaintiff driving a truck over a bridge owned by the defendant and the bridge collapses. Plaintiff truck is overloaded. However the defendant did not maintain the bridge. Now defendant not liable because the major fault is on plaintiff.

Bird Vs Halbrook	Facts : When Plaintiff trespassed into defendant's land he was hit by spring gun kept in defendant's land. No notice of spring gun was kept. Whether defendant liable ?	Held : Defendant liable – even if plaintiff is wrong doer, the retaliation by defendant outweigh his wrong.	Plaintiff as wrong doer- Usually when tort is committed because of wrong act of plaintiff defendant will not be held liable. But in this case the proportion of harm caused is high thus it is an exception.
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3. **Inevitable accident** – *unavoidable accident* .

Accident which can never be avoided even if due care is taken is called inevitable accident. In such cases defendant will not be liable.

Stanley vs Powell 1891, the plaintiff and the defendant were members of a shooting party. The defendant shot a bird but the bullet bounced off a tree and hit the plaintiff. The defendant was not held liable because it was an accident and the defendant did not intend it and could neither have prevented it.

4. **Act of God** – *natural calamity* .

An act of god is a type of inevitable accident where the factors affecting the accident are natural causes.

Nichols vs. Marsland: Bridges owned by plaintiff was washed away due to heavy flood in reservoirs maintained by defendant.

Held: The flood was due to heavy rain thus it was act of god/ natural calamity thus defendant not liable.

5. **Act in relation to Private Defense** – *Act to save oneself* .

One can use reasonable force to protect oneself and his property from attack, he cannot be held liable for using such force.

Bird vs Halbbrook : (Dealt above) Using a gun to save property is not reasonable force, disproportionate thus not self defense

6. **Necessity** - *compulsion to act due to situation / circumstances* .

The defence of necessity arises when a person is forced to cause harm to prevent a greater harm from taking place.

Cope vs. Sharpe : Defendant trespassed into plaintiff land to stop fire –The court ruled that the defendant was not liable for trespass as he had committed an act of necessity.

Leigh vs. Gladstone: Defendant force fed the hunger striker (plaintiff) to save his life- defendant not liable as it was necessity .

7. **Act done in respect to statutory authority** – *Act done in official duty*.

When legislation is passed, empowering a person to commit a certain act, that authority granted by the statute is a defence against liability for torts.

Example : when the railways of a country build railway tracks across a person's land, the railways cannot be held liable for a tort because it is protected by a statute and has the authority to commit a certain action.

Exception : **Smith vs. London and South Western Railway co**

In this case the employees of the defendant company had trimmed the grass beside the tracks and had left the bales lying next to the tracks, these bales when burnt spread fire to plaintiff premises .The court said that the company had been negligent and awarded damages to the plaintiff. No authority was given to keep bales near track.

POINTS TO REMEMBER :

1. Consent – *Volunt non fit injuria – victim consent to injury suffered .*
2. When plaintiff is the wrongdoer – *where victim has also committed wrong .*
3. Inevitable accident – *unavoidable accident .*
4. Act of God – *natural calamity .*
5. Act in relation to Private Defense – *Act to save oneself .*
6. Necessity - *compulsion to act due to situation / circumstances .*
7. Act done in respect to statutory authority – *Act done in official duty.*

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