

UNIT – II

General Defences & Vicarious Liability

Law of Torts • Defences & Secondary Liability

Core Concepts

What We Will Cover

01

General Defences – Overview

When a defendant can escape liability

02

Volenti non fit injuria

Consent as a complete defence

03

Other Major Defences

Accident, Act of God, Necessity, Private Defence etc.

04

Vicarious Liability – Meaning

Liability for the acts of another

05

Master & Servant

Course of employment & key tests

06

Independent Contractor & Other Relations

Exceptions and special cases

When the Defendant is Not Liable

General defences are those grounds on which a defendant can avoid liability even if the plaintiff proves the ingredients of the tort. They apply across different torts (with some variations).

Volenti non fit injuria

Consent

Plaintiff the Wrongdoer

Ex turpi causa

Inevitable Accident

Unavoidable mishap

Act of God

Natural forces

Private Defence

Self-protection

Necessity

Lesser evil

Statutory Authority

Act authorised by law

Act of State

Sovereign acts

Consent as a Defence

Volenti non fit injuria means “to a willing person, no injury is done”. If the plaintiff has voluntarily consented to the risk of harm, he cannot later complain of that harm.

Essentials

1. Knowledge of the risk
2. Free and voluntary consent
3. Consent must be real (not under compulsion)

Key Cases

- Hall v. Brooklands Auto Racing
- Dann v. Hamilton
- Haynes v. Harwood (rescue exception)

Limitations

- Consent obtained by fraud is invalid
- Rescue cases are an exception
- Mere knowledge ≠ consent (sciens non est volens)

Modern View

Courts examine whether the plaintiff agreed to take the risk, not merely knew of it. Especially important in sports and employment.

Quick Overview of Key Defences

Inevitable Accident

An accident that could not have been avoided even with reasonable care. No liability if the defendant acted without negligence.

Act of God

Damage caused by natural forces without human intervention (extraordinary rainfall, earthquake, storm) and which could not be reasonably anticipated.

Private Defence

Right to protect person or property from imminent threat. Force used must be proportionate and necessary.

Necessity

Act done to prevent a greater harm. Differs from private defence as the threat need not come from the plaintiff.

Statutory Authority

If an act is authorised by statute, no action lies for the consequences that are inevitable result of the authorised act.

Plaintiff the Wrongdoer

Ex turpi causa non oritur actio — no action arises from a base cause. Plaintiff engaged in illegal activity may be barred.

Liability for the Acts of Another

Vicarious liability means the liability of one person for the tort committed by another. The most common instance is the liability of a **master for the torts of his servant** committed in the course of employment.

Control Theory

Master has control over the servant's work and method of doing it.

Benefit Theory

Master takes the benefit of the servant's work; should also bear the burden.

Deep Pocket Theory

Master is usually better able to pay compensation (and insure against risk).

Essentials of Vicarious Liability

1

Relationship of Master & Servant

There must exist a relationship of master and servant (control test / organisational test / multiple test).

2

Tort Committed by Servant

The servant must have committed a tort (negligence, trespass, etc.).

3

In the Course of Employment

The tort must have been committed while the servant was acting in the course of his employment.

When is the Master Liable?

Authorised Acts

Acts which the servant is employed to do, or which are incidental to his duties.

Wrongful Mode

Even if the servant does an authorised act in a wrongful and unauthorised manner, the master remains liable.

Express Prohibition

Master may still be liable if the servant does the act (though prohibited) while performing his duties.

Frolic & Detour

If the servant goes on a frolic of his own (major deviation), master is not liable. Minor detours may still attract liability.

Key Case – Century Insurance

Driver lighting a cigarette while transferring petrol — master held liable (act done in course of employment).

Key Case – Beard v. London Omnibus

Conductor driving the bus without authority — master not liable (outside course of employment).

Master Generally Not Liable

General Rule: An employer is **not vicariously liable** for the torts of an independent contractor. The contractor is independent and not under the detailed control of the employer.

Exceptions to the Rule

- Employer remains liable for the negligence in selecting an incompetent contractor
- Non-delegable duties (e.g., extra-hazardous work)
- Work done on a highway
- Absolute liability situations

Control Test

If the employer controls not only what work is done but also how it is done → servant.

If only the result is controlled → independent contractor.

Principal–Agent, Partners & State Liability

Principal & Agent

Principal is liable for torts committed by the agent while acting within the scope of authority (actual or apparent).

Partners

Each partner is liable for the torts of other partners committed in the ordinary course of business of the firm.

State Liability

State is vicariously liable for torts of its servants committed in the course of employment (subject to sovereign functions doctrine).

Key Indian Case

State of Rajasthan v. Vidyawati — State held liable for the negligence of its driver. Sovereign immunity does not apply to ordinary torts.

IMPORTANT CASE LAWS

Landmark Decisions

Century Insurance v. Northern Ireland Road Transport

Driver lighting cigarette while transferring petrol — master liable (course of employment).

Limpus v. London General Omnibus

Driver racing against instructions — master still liable.

Beard v. London General Omnibus

Conductor driving without authority — master not liable.

Storey v. Ashton

Major deviation (frolic) takes the act outside course of employment.

State of Rajasthan v. Vidyawati

State vicariously liable for negligence of government driver.

Kasturilal v. State of U.P.

Distinction between sovereign and non-sovereign functions (later diluted).

KEY TAKEAWAYS

Summary of Unit-II

01

General Defences

Volenti, inevitable accident, Act of God, private defence, necessity, statutory authority and ex turpi causa are major defences.

02

Volenti non fit injuria

Requires free and voluntary consent to the risk. Knowledge alone is not enough (sciens non est volens).

03

Vicarious Liability

Master is liable for servant's torts committed in the course of employment.

04

Course of Employment

Includes authorised acts done in a wrongful manner. Frolic of one's own excludes liability.

05

Independent Contractor

Generally no vicarious liability, subject to important exceptions (non-delegable duties, hazardous work).

Thank You

“Qui facit per alium facit per se”

He who acts through another is deemed to act himself.

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