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GENERAL DEFENCES IN TORT LAW ACROSS COMMON LAW JURISDICTIONS

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ABSTRACT:

With the rise of online relations and the increasing blur between public and private spheres, how are general defense concepts being interpreted in cases of breaches, or unauthorized use of personal information? Tort law is a fundamental component of legal systems in common law jurisdictions, furnishing remedies for individuals harmed by the unlawful conduct of others. Within this framework, general defenses play a pivotal role in determining liability and assessing the legality of actions. In tort law, general defenses are arguments used by defendants to avoid liability even when the plaintiff has established the elements of a tort. These defenses can vary across common law jurisdictions, but there are several common defenses that are widely recognized. These defenses can feel analogous but have distinct applications. Tort law is constantly evolving, and societal norms can impact how defenses are interpreted. How artistic perspectives on issues like self-defense or privacy might influence the application of general defenses. Analysis of general defenses in tort law across common law jurisdictions reveals both similarities and differences in how legal systems handle defenses against liability.[1]

"Better that ten guilty persons escape than that one innocent suffer."[2] - William Blackstone[3]

WHAT ARE GENERAL DEFENCES IN TORT LAW?

General defenses in tort law are legal arguments that defendants can raise to avoid liability for their actions or omissions. While specific defenses can vary somewhat between different common law jurisdictions, there are several common defenses that are generally recognized across many legal systems.

CONSENT - VOLENTI NON-FIT INJURIA:

[1]"General Defences in Tort: An Overview," Legal Service India, https://legalserviceindia.com/legal/article-8283-general-defences-in-tort-an-overview.html (accessed July 13, 2024)..

[2] files.allhoff.org, https://files.allhoff.org/research/Blackstone's_Ratio.pdf, (last visited June. 6, 2024).

[3]"What is Blackstone's Formulation in Criminal Law?," LawInfo, https://www.lawinfo.com/resources/criminal-defense/what-is-blackstone-s-formulation-in-criminal.html (accessed July 13, 2024)..

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The defense of consent, encapsulated in the maxim ***volenti non fit injuria*** (to a willing person, no injury is done), operates on the principle that one cannot claim for harm to which they have willingly consented.[4] Consent is a powerful defense in tort law. If the plaintiff consents to the defendant's conduct, they typically cannot later claim it was a tortious act. This defense can apply in cases of intentional torts, where the plaintiff agreed to the conduct that led to the harm. For instance, in sports, players implicitly consent to certain physical contacts where participants are aware of and accept inherent risks. Maxim applies when the plaintiff knowingly and willingly exposed themselves to a risk, thus consenting to the possibility of injury. [5]

SELF-DEFENSE:

The defendants acted to protect themselves from harm. This defense is commonly used in cases involving assault or battery. The defendant must show that the force used was reasonable and proportionate to the threat.[6]

DEFENCE OF OTHERS:

The defendant acted to protect another person from harm. Similar to self-defense, the defendant must prove that the force used was reasonable and necessary to protect the third party. Often invoked in situations where someone intervenes in a fight or attack to protect another person.

DEFENCE OF PROPERTY:

The defendant acted to protect their property from damage or intrusion. The use of force must be reasonable and not excessive. Deadly force is rarely justified in defence of property alone. This defence is applicable in trespass and conversion cases.

NECESSITY:

The defendant's actions were necessary to prevent greater harm. This defence can apply in emergency situations where the defendant's actions, although technically a tort, were justified to prevent more significant harm. Often seen in cases involving trespass or conversion where the defendant argues that the action was necessary to avoid significant harm.

[4] legalvidhiya, https://legalvidhiya.com/volenti-non-fit-injuria-and-necessity-2/, (last visited June. 6, 2024).
[5] "Law Bhoomi, https://lawbhoomi.com/general-defences-in-tort/, (last visited June. 6, 2024).
[6] amnesty.org.uK, https://www.amnesty.org.uk/files/2017-04/Module%201%20Use%20of%20Force.pdf?NKD_BwolbDBK5PcXl1SIG_YIQk7_UPI1=, (last visited June. 6, 2024).

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STATUTORY AUTHORITY:

The defendant's actions were authorized by legislation. This defence applies when a statute permits certain actions that would otherwise constitute a tort. This defence arises when an act is authorized by statute, providing immunity from tort liability.

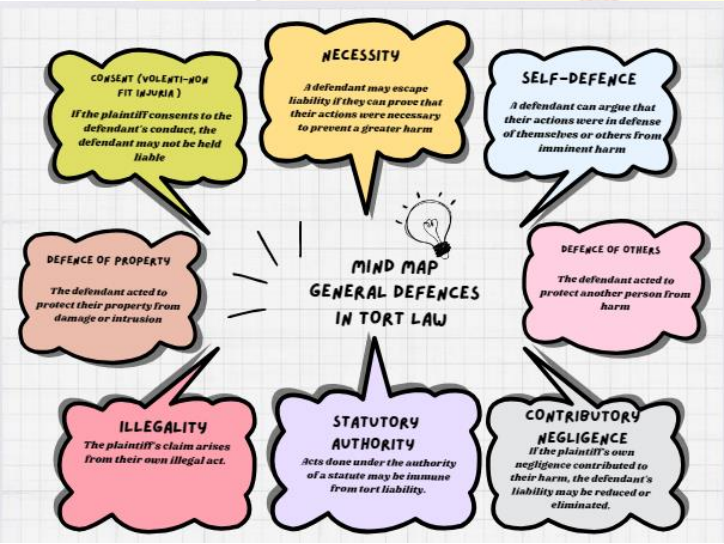
ILLEGALITY (EX TURPI CAUSA):

The plaintiff's claim arises from their own illegal act. This principle prevents a plaintiff from recovering damages if they were engaged in illegal activities at the time of the injury. This defence asserts that a claim cannot arise from a plaintiff's illegal act.

CONTRIBUTORY NEGLIGENCE:

The plaintiff's own negligence contributed to their harm. In jurisdictions recognizing this defence, the plaintiff's compensation may be reduced in proportion to their fault. This defence is prevalent in negligence cases.[7]

COMMON DEFENCES IN TORT LAW:



JURISDICTIONAL DIFFERENCES:

[7] "General Defences in Tort Law," Lawctopus, https://lawctopus.com/clatalogue/clat-pg/general-defences-tort-law/ (accessed July 13, 2024).

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States within the US may have different approaches to tort law defences, particularly in the realm of negligence (contributory vs. comparative negligence). The UK has its own common law principles but is influenced by European human rights legislation, which can impact defences like self-defence. These countries also follow common law principles but may have statutory modifications or interpretations that affect the application of defences.

COMPARATIVE ANALYSIS OF DIFFERENT JURISDICTIONS:

CONSENT	**UNITED STATES**	**UNITED KINGDOM**	**AUSTRALIA**
	Informed consent is crucial, particularly in medical malpractice cases.	Similar principles apply, but there is a strong emphasis on explicit and informed consent.	The High Court emphasizes the necessity of clear and unequivocal consent.
VOLENTI – NON-FIT INJURIA	**UNITED STATES**	**UNITED KINGDOM**	**AUSTRALIA**
	Often invoked in personal injury cases involving sports and recreational activities.	Strict in its application, requiring clear evidence that the plaintiff voluntarily accepted the risk.[8]	Similar to the UK, with a focus on the plaintiff's knowledge and acceptance of the risk.
SELF - DEFENCE	Self-defence laws can vary significantly between states, especially regarding the duty to retreat.	The force used must be necessary and proportionate.	Similar to the UK, with an added focus on the reasonableness of the belief in the necessity of force.

[8] justia.com, https://www.justia.com/injury/negligence-theory/assumption-of-risk/, (last visited June. 6, 2024).

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DEFENCE OF OTHERS	**UNITED STATES**	**UNITED KINGDOM**	**AUSTRALIA**
	The defender must reasonably believe that the person being protected is in imminent danger.	The principles are aligned with those of self-defence.	The defence is available if the force used is reasonable in the circumstances as perceived by the defendant
DEFENCE OF PROPERTY	**UNITED STATES**	**UNITED KINGDOM**	**CANADA**
	The use of deadly force is generally not permitted solely to protect property.	Reasonable force can be used, but there is a strong preference for non-violent means.	Emphasizes proportionality and reasonableness in the use of force to protect property.
NECESSITY	**UNITED STATES**	**UNITED KINGDOM**	**AUSTRALIA**
	The necessity must be immediate and the harm prevented must be greater than the harm caused by the defendant's actions.	Recognizes necessity in both private and public contexts, with strict scrutiny on the proportionality of actions.	Similar to the UK, with an emphasis on the immediacy and proportionality of the necessity
CONTRIBUTORY NEGLIGENCE	**UNITED STATES**	**UNITED KINGDOM**	**CANADA**

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	Many states follow a comparative negligence system where the plaintiff's recovery is reduced by their percentage of fault.	Contributory negligence can reduce but not entirely bar recovery.	Follows a similar approach to the UK, emphasizing a fair apportionment of fault.

STANDARD OF PROOF:

In tort law across common law jurisdictions (UK, US, Canada, Australia, etc.), the standard of proof is typically based on the balance of probabilities. This means the plaintiff must show that it is more likely than not (greater than 50%) that their version of events is true.[9] This standard, also known as preponderance of the evidence, requires that the evidence presented tilt in the plaintiff's favor. It's less stringent than the "beyond a reasonable doubt" standard used in criminal cases. This approach is used to establish liability and determine damages in civil disputes, ensuring plaintiffs must sufficiently convince the court that the defendant's actions likely caused harm.

CASE LAWS

1. **Consent: R v. Brown [1993]**

This case dealt with the issue of consent in the context of sadomasochistic activities. The House of Lords ruled that consent is not a valid defence to assault occasioning actual bodily harm in cases where the harm inflicted is serious or permanent.[10]

2. **Self-Defence: R v. Thomas [1985]**

[9] legalmatch.com, https://www.legalmatch.com/law-library/article/preponderance-of-the-evidence-vs-beyond-a-reasonable-doubt.html, (last visited June. 6, 2024).
[10] R v Brown, [1993] 2 All ER 75.

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This case is Also known as Thomas v. Quartermaine, this case involved a situation where the reasonableness of self-defence was considered. It established that a person is entitled to use reasonable force to defend themselves or another person from unlawful physical force.[11][12]

3. Necessity: Bird v. Holbrook (1828)

This case established the principle that necessity can be a defence to trespass. It recognizes that in some circumstances, committing a trespass might be justified if it prevents greater harm.[13]

4. Statutory Authority: Kirk v. Gregory [1879]

This case concerned the legality of actions carried out under statutory authority. It likely involved an interpretation of whether actions taken pursuant to a specific statute or regulation were lawful.[14]

5. **Illegality: Gray v. Thames Trains Ltd [2009]**

This case is about Illegality defence in negligence. The House of Lords (now Supreme Court) considered whether a claim for negligence arising from a suicidal act on railway tracks should be barred due to the claimant's own illegal conduct (trespassing). The court held that the defence of illegality could bar the claim if allowing the claim would be contrary to public policy.[15]

6. Defence for Others: Beckford v. R [1988]

This case discusses the use of force in defence of others. It established that a person can use force to defend another person if they reasonably believe that the other person is in immediate danger.[16]

7. Defence of Property: Basilica Management Corp. v. Johnson [1974]

[11] R v Thomas, [1985] QB 249.
[12] freelaw.in, https://www.freelaw.in/legalarticles/Right-to-Private-Defence, (last visited June. 6, 2024).
[13] Bird v Holbrook, (1828) 4 Bing 628
[14] Kirk v Gregory, [1879] LR 7 PD 8.
[15] Gray v Thames Trains Ltd, [2009] UKHL 33.
[16] Beckford v R, [1988] AC 130.

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This case explores the limits and justification of using force to defend property. It likely discusses under what circumstances and to what extent force can be used to protect one's property from unlawful interference.[17]

8. Contributory Negligence: Davies v. Swan Motor Co. (Swansea) Ltd [1949][18]

This case establishes principles around contributory negligence in tort law. It deals with situations where a person's own negligence contributes to their injury or loss, and how this affects their ability to recover damages.[19]

COMPARATIVE ANALYSIS:

While the general defences in tort law are largely harmonious across common law jurisdictions, there are notable differences in their application, operation, and interpretation. These differences are often influenced by local statutes, judicial precedents, and societal values. For instance, the extent of admissible force in self-defence or defence of property can vary significantly, reflecting, artistic, cultural, and legal attitudes towards protection and property rights.

OPINION:

The general defences in tort law serve as essential checks on the compass of liability, ensuring that defendants aren't unfairly held responsible for actions that are justified, acceded to, or authorized by law. However, the operation of these defences must be precisely balanced to avoid undermining the rights of plaintiffs. For instance, the doctrine of contributory negligence, while promoting personal responsibility, should not be applied so stringently as to deny justice to plaintiffs who are only minimally at fault.[20]

[17] Basilica Management Corp. v Johnson, [1974] AC 370.
[18] Martin Hogg, "Causal potency" and contributory negligence, obligations.law.ed.ac.uk, (May. 27, 2024, 7:19 AM), https://www.obligations.law.ed.ac.uk/2018/03/06/causal-potency-and-contributory-negligence/
[19] Davies v Swan Motor Co. (Swansea) Ltd, [1949] 2 KB 291.
[13] Preventive Officer, "General Defences in Tort to Avoid Tortious Liability: Case Laws," Preventive Officer, https://preventiveofficer.com/general-defences-in-tort-to-avoid-tortious-liability-case-laws/1675/ (accessed July 13, 2024).
[20] R.K. Bangia, *Law of Torts* (Allahabad Law Agency, 13th ed. 2023).

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CURRENT RELEVANCE:

In today's legal landscape, the applicability of these defences remains significant. With the advent of new technologies and evolving social norms, the operation of these defences continues to be tested. For example, in cases involving consent in digital spaces, similar such as social media and online contracts, courts must navigate the complications of what constitutes informed and voluntary consent. Similarly, the defence of necessity is decreasingly material in environmental law, where conduct taken to help ecological detriment may bring this defence.[21]

CONCLUSION:

Understanding the defences available in tort law is pivotal for both plaintiffs and defendants. While the principles underpinning these defences are generally harmonious across common law jurisdictions, the specifics can vary.[22] While common law jurisdictions share many foundational principles regarding defences in tort law, the specific application and acceptance of these defences can vary significantly. Understanding these differences is pivotal for legal interpreters and scholars operating in or across different jurisdictions to effectively navigate tort liability issues. As legal challenges evolve, so too must the interpretation and operation of these defences, ensuring they remain, applicable relevant, and effective in protecting the rights of all parties involved By recognizing these general defences, individuals can understand their rights and responsibilities within the legal system, eventually contributing to a more informed and indifferent society.[23]

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[21] Ratanlal & Dhirajal, *Law of Torts* (LexisNexis Butterworths, 27th ed. 2021).
[22] prolawctor.com, https://prolawctor.com/general-defences-under-law-of-torts-law-of-torts-notes/, (last visited June. 6, 2024).
[23] "Defences in tort and crime," ResearchGate, https://www.researchgate.net/publication/293071435_Defences_in_tort_and_crime (accessed July 13, 2024).

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