



**FACULTY OF JURIDICAL SCIENCES**

**COURSE: B.A.LL.B. I st Semester**

**SUBJECT: LAW OF TORTS**

**SUBJECT CODE: BAL 106**

**Name of Faculty: Dr. Aijaj Ahmed Raj**

## LECTURE 24

# TOPIC: JUSTIFICATION OF TORTS- ACT OF STATE, STATUTORY AUTHORITY, ACT OF GOD, NECESSITY, VOLENTI NON-FIT INJURIA, PRIVATE DEFENCE AND ACTS CAUSING SLIGHT HARM

Whenever a case is brought against the defendant for the commission of a tort and all the essential elements of that wrong are present, the defendant would be held liable for the same. Even in such cases, the defendant can avoid his liability by taking the plea of the defenses available under the law of torts.

Some defenses are particularly relating to some offences. In the case of defamation, the defenses available are fair comment, privileges and justification, etc.

### **Meaning of General Defenses**

When a plaintiff brings an action against the defendant for a tort committed by him, he will be held liable for it, if there exist all the essential ingredients which are required for that wrong. But there are some defences available to him using which he can absolve himself from the liability arising out of the wrong committed. These are known as '**General defences**' in the law of tort.

**The defences available are given as follows:**

- Statutory authority
- Act of god

- Necessity
- Volenti non fit injuria or the defense of 'Consent'
- Private defense
- Acts causing slight harm
- The wrongdoer is the plaintiff
- Inevitable accident
- Mistake

### ***Statutory authority***

If an act is authorized by any act or statute, then it is not actionable even if it would constitute a tort otherwise. It is a complete defence and the injured party has no remedy except for claiming compensation as may have been provided by the statute.

Immunity under statutory authority is not given only for the harm which is obvious but also for the harm which is incidental.

In *Vaughan v. Taff Valde Rail Co.*, sparks from an engine of the respondent's railway company were authorized to run the railway, set fire to the appellant's woods on the adjoining land. It was held that since they did not do anything which was prohibited by the statute and took due care and precaution, they were not liable.

In *Hammer Smith Rail Co. v. Brand*, the value of the property of the plaintiff depreciated due to the loud noise and vibrations produced from the running trains on the railway line which was constructed under a statutory provision. The court held that nothing can be claimed for the damage suffered as it was done as per the statutory provisions and if something is authorized by any statute or legislature then it serves as a complete defence. The defendant was held not liable in the case.

In *Smith v. London and South Western Railway Co.*, the servants of a railway company negligently left the trimmings of hedges near the railway line. The sparks from the engine set fire to those hedges and due to high winds, it got spread to the plaintiff's

cottage which was not very far from the line. The court held that the railway authority was negligent in leaving the grass hedges near the railway line and the plaintiff was entitled to claim compensation for the loss suffered.

### **Absolute and conditional authority**

The authority given by a statute can be of two types:

- Absolute
- Conditiona

In the case of Absolute authority, there is no liability if the nuisance or some other harm necessarily results but when the authority is conditional it means that the same is possible without nuisance or any other harm.

- In the case of *Metropolitan Asylum District v. Hi*, the hospital authorities i.e. the appellants were granted permission to set up a smallpox hospital. But the hospital was created in a residential area which was not safe for the residents as the disease can spread to that area. Considering it a nuisance an injunction was issued against the hospital. The authority, in this case, was conditional.

### **Exercise:**

1. Pointing a loaded pistol at another is an:
  - a) battery
  - b) false imprisonment
  - c) assault
  - d) insult
2. What is the imposition of total restraint without sufficient lawful justification known as?
  - a) Battery

- b) False imprisonment
- c) Assault
- d) Insult

3. Which is the essential requirement for false imprisonment?

- a) Total restraint
- b) Harassment
- c) Violence
- d) Mental torture

4. What are the various types of restraint?

- a) Total
- b) Partial
- c) Both (a) and (b)
- d) None of these

5. 'Wrong confinement' is an offence under

- a) Section 220 IPC
- b) Section 340 IPC
- c) Section 550 IPC
- d) Section 330 IPC