



FACULTY OF JURIDICAL SCIENCES

COURSE: LL.B. I st Semester

SUBJECT: LAW OF TORTS

SUBJECT CODE: LLB102

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LECTURE 26

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

Necessity

If an act is done to prevent greater harm, even though the act was done intentionally, is not actionable and serves as a good defence.

It should be distinguished with private defence and an inevitable accident.

The following points should be considered:

- In necessity, the infliction of harm is upon an innocent whereas in case of private defense the plaintiff is himself a wrongdoer.
- In necessity, the harm is done intentionally whereas in case of an inevitable accident the harm is caused in spite of making all the efforts to avoid it.

For example, performing an operation of an unconscious patient just to save his life is justified.

In *Leigh v. Gladstone*, it was held that the forcible feeding of a person who was hunger-striking in a prison served as a good defence for the tort of battery.

In *Cope v. Sharpe*, the defendant entered the plaintiff's premises to stop the spread of fire in the adjoining land where the defendant's master had the shooting rights. Since the defendant's act was to prevent greater harm so he was held not liable for trespass.

In the case of *Carter v. Thomas*, the defendant who entered the plaintiff's land premises in good faith to extinguish the fire, at which the fire extinguishing workmen were already working, was held guilty of the offence of trespass.

In *Kirk v. Gregory*, A's sister-in-law hid some jewellery after the death of A from the room where he was lying dead, thinking that to be a safer place. The jewellery got stolen from there and a case was filed against A's sister-in-law for trespass to the jewellery. She was held liable for trespass as the step she took was unreasonable.

Exercise:

1. In India libel and slander are criminal law under which rule?

- a) Section 440 IPC
- b) Section 550 IPC
- c) Section 499 IPC
- d) Section 599 IPC

2. What are the essentials of defamation?

- a) Statement must be defamatory
- b) Statement must refer to plaintiff
- c) Statement must be published
- d) All of the above

3. An imputation which exposes one to is defamatory?

- a) disgrace
- b) ridicule

- c) humiliation
- d) All of the above

4. Different ways of defamation include

- a) oral
- b) written
- c) Both (a) and (b)
- d) None of these

5. The defamatory statement should be

- a) Published
- b) Hidden
- c) told to plaintiff
- d) All of these