

Chapter 2 Subject tort date 01-09-2025 ADITI TYAGI

** breach of legal duty?

Legal damage --- through un liquidated damages.--- which are not pre determined.

- **Ubi jus ibi remedium** = “Where there is a right, there is a remedy.”
- It means if a person’s **legal right is violated**, the law must provide him with a remedy (a way to enforce that right).

☐ **Injuria sine damno** = “Legal injury without actual damage.”

☐ It means that if a person’s **legal right is violated**, he can claim remedy in court **even if he has suffered no actual loss or damage**.

☐ **Damnum sine injuria** = “Damage without legal injury.”

☐ It means that if someone suffers **loss or harm**, but there is **no violation of a legal right**, then no action lies in court.

Difference between Tort and Crime

Basis	Tort	Crime
Definition	A civil wrong against an individual, giving rise to a private remedy.	A public wrong against society, punishable by the State.
Nature of Wrong	Private wrong (injures a person’s private rights).	Public wrong (injures society at large).
Remedy / Purpose	Compensation (damages) to the injured party.	Punishment (imprisonment, fine, death penalty, etc.) to deter and reform.
Proceedings	Civil proceedings in a civil court.	Criminal proceedings in a criminal court.
Party Who Sues	Injured person (plaintiff).	State prosecutes the offender (e.g., State vs. Accused).
Burden of Proof	On the plaintiff, standard = <i>preponderance of probability</i> .	On the prosecution, standard = <i>beyond reasonable doubt</i> .
Intention	Intention is not always necessary (negligence also counts).	Intention or guilty mind (<i>mens rea</i>) is generally essential.
Example	Defamation, negligence, trespass, nuisance.	Murder, theft, rape, robbery.

Difference between Tort and Breach of Contract

Basis	Tort	Breach of Contract
Definition	A civil wrong arising from violation of a general duty imposed by law.	A civil wrong arising from violation of a specific duty agreed upon in a contract.
Source of Duty	Duty is fixed by law, owed to all persons generally.	Duty is created by agreement between specific parties to a contract.
Nature of Right	Violation of a right in rem (right against the world at large).	Violation of a right in personam (right enforceable against a particular person).
Consent of Parties	No prior consent or agreement between parties is required.	Always arises from a valid agreement between parties.
Remedy / Relief	Remedy is usually compensation (damages) for injury caused.	Remedy is compensation or specific performance for failure to perform.
Intention	Intention is not always necessary (negligence may be enough).	Breach is generally irrelevant of intention; non-performance itself is breach.
Examples	Defamation, nuisance, trespass, negligence.	Not delivering goods as promised, non-payment of agreed price, etc.

Difference between Right in Rem and Right in Personam

Basis	Right in Rem	Right in Personam
Meaning	A right available against the world at large (everyone has a duty to respect it).	A right available against a specific person or group only.
Scope	Wider in scope → enforceable against all.	Narrow in scope → enforceable against specific individuals only.
Nature	Usually related to property or status.	Usually arises from contracts, agreements, or obligations.
Duty Imposed	Creates a duty on every person in society not to infringe that right.	Creates a duty only on the particular person bound by the obligation.
Example	Right to property, right to life, right to reputation (Tort law).	Right to recover debt from a borrower, right to get goods under a contract.
Enforcement	Enforced against anyone who violates it.	Enforced only against the person who is obligated under the contract or duty.

LLB – Law of Torts: Important Questions

1. General Principles

1. Define “Tort”. Distinguish between Tort, Crime, and Breach of Contract.
2. What are the essential elements of a Tort?
3. Explain the maxim *Ubi jus ibi remedium* with case law.
4. Distinguish between *Injuria sine damno* and *Damnum sine injuria*.
5. What are the remedies available in Tort law?

2. Negligence & Liability

6. Define negligence. What are its essentials?
7. Explain *Res ipsa loquitur* with suitable case law.
8. Discuss the rule in *Rylands v. Fletcher* (Strict Liability).
9. Differentiate between Strict Liability and Absolute Liability.
10. Write short note: *Donoghue v. Stevenson* (Neighbour Principle).

3. Specific Torts

11. What is Defamation? What are its kinds and defences?
12. Explain Assault, Battery, and False Imprisonment with examples.
13. What is Trespass to land? Distinguish between Trespass and Nuisance.
14. Define Nuisance. Distinguish between Public Nuisance and Private Nuisance.
15. Explain Malicious Prosecution with its essentials.

4. Remedies & Defences

16. What are the judicial remedies available in Tort?
17. What are the general defences in Tort (e.g., consent, necessity, act of God, etc.)?
18. Distinguish between Damages, Injunction, and Specific Restitution.

5. Vicarious & State Liability

19. Explain the principle of Vicarious Liability with examples.
20. Discuss the liability of the State for tortious acts of its servants in India.
21. Explain *Sovereign Immunity* with reference to Indian cases.

6. Emerging Areas

22. Write short notes on:
 - a) Consumer Protection and Tort
 - b) Environmental Torts
 - c) Constitutional Torts

Short Notes – Law of Torts

1. Definition of Tort

A Tort is a civil wrong, other than breach of contract or trust, for which remedy is compensation in damages. It arises from violation of a duty imposed by law.

✦ *Winfield's definition + case: Ashby v. White (1703).*

2. Essential Elements of Tort

- Wrongful act/omission
- Legal damage (injuria)
- Remedy (compensation).

✦ *Case: Donoghue v. Stevenson (1932).*

3. Ubi jus ibi remedium

Means "Where there is a right, there is a remedy." If a legal right is violated, law provides a remedy.

✦ *Case: Ashby v. White (1703).*

4. Injuria sine damno

Violation of a legal right even without actual damage → actionable.

✦ *Case: Ashby v. White (1703).*

5. Damnum sine injuria

Damage without violation of a legal right → not actionable.

✦ *Case: Gloucester Grammar School Case (1410).*

6. Negligence

Breach of a duty to take reasonable care, causing damage to another.

✦ *Case: Donoghue v. Stevenson (1932).*

7. Res ipsa loquitur

Means "the thing speaks for itself." When facts show negligence directly, burden shifts to defendant.

✦ *Case: Scott v. London Docks (1865).*

8. Strict Liability

Person keeping dangerous things is liable if they escape and cause damage, even without negligence.

✦ *Case: Rylands v. Fletcher (1868).*

9. Absolute Liability

In India, no exceptions allowed for hazardous activity → stricter than strict liability.

✦ *Case: M.C. Mehta v. Union of India (Oleum Gas Leak, 1987).*

10. Defamation

Publication of false statement harming reputation. Two types: Libel (written), Slander (spoken).

✦ *Case: Ram Jethmalani v. Subramaniam Swamy (2006).*

11. Assault, Battery, False Imprisonment

- **Assault** → threat of force.
- **Battery** → actual use of force.
- **False Imprisonment** → unlawful restraint of a person's liberty.

✦ *Case: Bird v. Jones (1845).*

12. Trespass to Land

Unlawful interference with possession of land.

✦ *Case: Entick v. Carrington (1765).*

13. Nuisance

Unreasonable interference with enjoyment of property.

- Public Nuisance → affects community.
- Private Nuisance → affects individual.

✦ *Case: Sturges v. Bridgman (1879).*

14. Malicious Prosecution

Wrongful institution of criminal proceedings with malice and no reasonable cause.

✦ *Case: West Bengal State Electricity Board v. Dilip Kumar (2000).*

15. General Defences in Tort

- Volenti non fit injuria (consent)
 - Act of God
 - Necessity
 - Inevitable accident
 - Plaintiff's own wrong.
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16. Vicarious Liability

Liability of one person for acts of another (e.g., employer for employee).

✦ *Case: State of Rajasthan v. Vidyawati (1962).*

17. State Liability in India

State liable for non-sovereign functions, but immunity in sovereign acts.

✦ *Case: Kasturi Lal v. State of U.P. (1965).*

18. Constitutional Torts

Violation of Fundamental Rights → compensation under Art. 32 & 226.

✦ *Case: Rudul Shah v. State of Bihar (1983).*

**** lottery tickets only legal in kerla and rest of the stats is completely ban.

Case Reference – *Hall v. Brooklands Auto Racing Club (1933)*

- **Facts:** Spectators were watching a motor car race. Due to an accident, a car ran into the crowd and injured some spectators.
 - **Issue:** Could the spectators claim compensation for injuries?
 - **Held:** No. By voluntarily attending a dangerous event (car race), spectators accepted the inherent risks. The defence of **Volenti non fit injuria** applied.
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✓ **Where to use this case in exam answers:**

You can cite *Hall v. Brooklands* in:

1. **General Defences in Tort** → under *Volenti non fit injuria (Consent)*.
 2. **Negligence** → to show situations where defendant escapes liability because plaintiff consented to risk.
 3. **Sports Injury Cases** → consent by participation/spectating.
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Case Reference – *Padmavati v. Dugganaika (1975)*

- **Facts:** A jeep owner allowed his driver to give some villagers a lift. Due to a mechanical defect, the jeep toppled, injuring passengers and killing two.
 - **Issue:** Were the owner and driver liable for the injuries/deaths?
 - **Held:** No. The passengers voluntarily took the risk of traveling in the jeep without hire or reward. The principle of **Volenti non fit injuria** applied.
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✓ **Where you can use this case in exams:**

1. **General Defences in Tort** → Under *Volenti non fit injuria*.
 2. **Motor accident / passenger liability questions** → To show when free passengers cannot claim damages.
 3. **Negligence** → To explain situations where negligence claim fails because the injured party assumed the risk.
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Chapter 2 Law of tort

Essential elements which fit in scienti non fit injuria.

The phrase you are looking for is *volenti non fit injuria*, which is a complete defence in tort law. The maxim *scienti non fit injuria* means that mere knowledge of a risk is not enough to imply consent. This is a critical distinction that clarifies the two essential elements of the defence.

The maxim of *volenti non fit injuria*

The phrase *volenti non fit injuria* translates from Latin to "to a willing person, no injury is done". For this defence to be successfully argued, the defendant must prove two essential elements: the plaintiff had knowledge of the risk, and the plaintiff voluntarily consented to that risk.

he Latin maxim "***Scienti non fit injuria***" means:

👉 "*To a person who knows, no injury is done.*"

Explanation:

If someone voluntarily consents to a risk, they cannot later complain of injury arising from it. In tort law, this is also known as the **doctrine of volenti non fit injuria** (voluntary assumption of risk).

Case ref smith vs baker and sons

The case of *Smith v. Baker and Sons (1891)* is a landmark English tort law decision that fundamentally redefined the defense of *volenti non fit injuria* (to a willing person, no injury is done), particularly concerning employer negligence and employee rights. The House of Lords held that an employee's mere knowledge of a workplace risk does not amount to voluntary consent, and therefore does not prevent them from suing for negligence.

**law of tort is base of England law.

Case ref

The case of *Padmavati vs. Dugganaika (1975)* is a significant Indian tort law judgment decided by the Karnataka High Court. It is a key case for understanding the legal defense of *volenti non fit injuria*, which means "to a willing person, no injury is done".

The Karnataka High Court's verdict

The High Court ultimately dismissed the appeal and ruled in favor of the defendants, holding that they were not liable for the deaths.

The Court's reasoning:

- *Volenti non fit injuria* applied: The court held that the passengers, by voluntarily accepting a lift in the jeep, knowingly and willingly exposed themselves to the inherent risks of travel.
- Accident was unforeseeable: The mechanical failure that caused the wheel to come off was considered a latent defect, not a defect that could have been identified through regular checks. The court found no evidence of intentional wrongdoing or negligence on the part of the defendants.

- No new precedent set: The court followed established legal principles and did not create new law. The decision was based on the specific facts of the case, emphasizing the voluntary action of the passengers.

Exception for *Volenti non fit injuria* is given below:

Question 10-20 marks

Here are the **exceptions to the maxim *Volenti non fit injuria*** (i.e., situations where consent does not bar an action for damages):

☑ **Rescue Cases**

- If a person voluntarily takes risk to rescue someone from danger caused by the defendant’s negligence, the defendant cannot use this maxim as a defence.
- **Case: Haynes v. Harwood (1935)** – Policeman injured while stopping a runaway horse; defendant held liable.

☑ **Consent obtained by fraud, compulsion, or mistake**

- If consent is not free and informed, the defence is not valid.
- **Case: Lakshmi Rajan v. Malar Hospital (1998)** – Consent for one operation cannot be treated as consent for another.

☑ **Negligence of the defendant**

- If the defendant is negligent beyond the risk consented to, he remains liable.
- **Case: Hall v. Brooklands Auto Racing Club (1933)** – consent applies only to ordinary risks, not negligence.

☑ **Unlawful Acts**

- Consent to an unlawful act does not excuse the defendant from liability.

Got it 👍 I’ll give you the **table with English + Hindi explanation between the lines** so it’s exam-friendly.

Point of Difference	<i>Scienti non fit injuria</i>	<i>Volenti non fit injuria</i>
Meaning / अर्थ	<p>“Mere knowledge of risk does not amount to consent.”</p> <p>👉 केवल जोखिम की जानकारी होना सहमति नहीं मानी जाएगी।</p>	<p>“To one who voluntarily consents, no injury is done.”</p> <p>👉 जिसने स्वेच्छा से जोखिम स्वीकार किया हो, उसे चोट मानी नहीं जाएगी।</p>
Latin Maxim / लॉटिन सूक्ति	<p><i>Scienti</i> = knowing; <i>injuria</i> = injury → <i>mere knowledge does not bar action.</i></p> <p>👉 केवल जानकारी होना मुक़दमा रोकने के लिए पर्याप्त नहीं है।</p>	<p><i>Volenti</i> = willingness/consent; <i>injuria</i> = injury → <i>willing acceptance bars action.</i></p> <p>👉 जब व्यक्ति स्वेच्छा से सहमत होता है, तो मुक़दमा नहीं चलेगा।</p>
Consent Required /	<p>Only knowledge of risk is present, not necessarily consent.</p> <p>👉 यहाँ केवल जानकारी है, सहमति नहीं।</p>	<p>Both knowledge and free consent to accept the risk are required.</p>

Point of Difference	Scienti non fit injuria	Volenti non fit injuria
सहमति आवश्यक		👉 यहाँ जानकारी + स्वतंत्र सहमति दोनों ज़रूरी हैं।
Effect on Liability / दायित्व पर प्रभाव	Defendant may still be liable if only knowledge is proved. 👉 यदि केवल जानकारी थी, तो प्रतिवादी अभी भी जिम्मेदार होगा।	Defendant is not liable if plaintiff voluntarily consented to the risk. 👉 यदि वादी ने स्वेच्छा से जोखिम लिया, तो प्रतिवादी जिम्मेदार नहीं होगा।
Example / उदाहरण	A worker knows that his employer's machine is defective (knowledge alone is not consent; employer can be liable). 👉 मज़दूर जानता है कि मशीन खराब है, पर यह सहमति नहीं मानी जाएगी; मालिक जिम्मेदार होगा।	A spectator at a cricket match consents to the ordinary risk of being hit by a ball (cannot claim damages). 👉 दर्शक ने मैच देखने का जोखिम लिया, गेंद लगने पर हर्ज़ाना नहीं मिल सकता।
Key Case / प्रमुख मामला	<i>Smith v. Baker (1891)</i> – Knowledge of danger is not consent. 👉 खतरे की जानकारी सहमति नहीं है।	<i>Hall v. Brooklands Auto Racing Club (1933)</i> – Voluntary spectators accepted the risk. 👉 दर्शकों ने स्वेच्छा से जोखिम स्वीकार किया।

***** Corrected Version:**

No person can create danger for another person in the name of enjoyment. Moreover, no one can give valid consent in circumstances where his own life is put in danger.

Hindi (between the lines):

- 👉 कोई भी व्यक्ति मनोरंजन के नाम पर दूसरे के लिए खतरा नहीं बना सकता।
- 👉 और कोई भी व्यक्ति ऐसी परिस्थिति में वैध सहमति नहीं दे सकता जहाँ उसकी अपनी जान को खतरा हो।

Corrected Version (English):

According to Winfield:

“No consent can legalize an unlawful act. The process, game, or operation to which assent is given must not be one which, quite apart from tortious liability, is banned by law. No man can lawfully consent to his own death or even to an injury.”

Hindi (between the lines):

- 👉 विनफील्ड के अनुसार:
- “कोई भी सहमति किसी अवैध कार्य को वैध नहीं बना सकती। जिस क्रिया, खेल या प्रक्रिया के लिए सहमति दी गई है, वह कानून द्वारा प्रतिबंधित नहीं होनी चाहिए। कोई व्यक्ति अपनी मृत्यु या चोट के लिए वैध सहमति नहीं दे सकता।”

Ref in exception for volentia non fit injuria.

B rescue cases.

Ref case is.

Haynes v. Harwood (1935) – Police Constable Case

Facts:

- The defendant's servant left a horse van unattended in a crowded street.
- The horses bolted, creating danger for women and children nearby.
- A police constable (Haynes) tried to stop the horses to save the public and was injured.

Issue:

Could the defendant escape liability by arguing that the constable voluntarily took the risk (*volenti non fit injuria*)?

Judgment:

- The Court held the defendant **liable**.
- The constable's act was not treated as voluntary consent but as a **duty-bound rescue**.
- **Maxim exception:** In rescue cases, the doctrine of *volenti non fit injuria* does not apply.

Principle / Ratio:

👉 A person who voluntarily faces danger to protect others from the defendant's negligence is entitled to damages.

Hindi (between the lines):

👉 इस केस में घोड़े भाग गए और जनता खतरे में थी। पुलिस कॉन्स्टेबल ने बचाने की कोशिश की और घायल हो गया।

👉 कोर्ट ने कहा कि यह स्वेच्छा से खतरा लेना (consent) नहीं था बल्कि **कर्तव्य** था। इसलिए प्रतिवादी जिम्मेदार है।

Chapter 3 tort date 04-09-25

Define under volenti non fit injuria

Volenti non fit injuria is a Latin legal maxim meaning "to a willing person, no injury is done". In tort law, this principle is a complete defense that asserts a person who knowingly and voluntarily consents to a risk cannot later sue for any resulting injury.

Key elements of the defense

For this defense to be successful, two elements must be demonstrated: knowledge of the risk and voluntary acceptance of that risk. The individual must have been fully aware of the nature and extent of the risk, which is distinct from simply knowing a risk exists (*scienti non fit injuria*). Additionally, their acceptance of the risk must be free and voluntary, without any coercion or undue pressure

A Rescue cases

4 negligence

Case

"Braden vs Osborne.". This case is important for its contribution to the "rescue doctrine" in tort law and its expansion of liability for nervous shock.

Facts of the case

- The plaintiffs, a husband and wife, were shopping inside a store operated by

Osborne Garrett & Co.

Contractors, George Parker & Sons Ltd, were working on the roof. Due to their negligence, a piece of glass from a skylight fell and struck the husband.

- The wife, standing nearby, was not hit by the falling glass. However, instinctively believing her husband was in danger, she clutched his arm to pull him away.
- In doing so, she suffered a physical injury (a recurrence of thrombosis) from the strain.

The court's decision

The court held that both the husband and wife were entitled to damages from the contractors.

- For the husband: The court found his injuries were caused directly by the contractors' negligence and that he was entitled to damages.
- For the wife: The court ruled that her injury was also a **foreseeable consequence of the contractors' negligence**. The court reasoned that her act of attempting to save her husband was a natural and instinctive reaction to a perceived danger. The act of rescue was not considered an intervening event that **would break the chain of causation**.

Relation to *Haynes v Harwood*

The principle in *Brandon v Osborne Garrett & Co* is directly aligned with the "**rescue doctrine**" confirmed in *Haynes v Harwood*. Both cases establish that:

- A defendant who negligently creates a dangerous situation can be held liable not only for injury to the person immediately threatened but also for injuries to a third party who is reasonably attempting a rescue.
- The act of a rescuer is not seen as a voluntary acceptance of risk (*volenti non fit injuria*) but rather as a foreseeable and instinctual response to the emergency.

Expansion on *Haynes v Harwood*

Volenti non fit injuria

Table for LLB 1st Semester – Torts

Principle	Meaning	Essentials	Limitations / Exceptions	Leading Case Law	Notes
Volenti non fit injuria (To a willing person, no injury is done)	If a person voluntarily consents to a risk, they cannot later claim damages for injury arising from it.	1. Knowledge of risk 2. Voluntary acceptance of risk 3. Free consent	Does not apply when: - Consent obtained by fraud/compulsion - In rescue situations - Where public duty is involved	<i>Hall v. Brooklands Auto Racing Club (1933)</i> – Spectator injured at car race; consent implied. <i>Padmavati v. Dugganaika (1975)</i> – Jeep accident; no liability as ride was voluntary.	Complete defence in tort.
Rescue Doctrine	A rescuer who suffers harm while saving another is not barred from claiming damages, even though they voluntarily assumed risk.	1. Imminent danger 2. Rescue attempt reasonable 3. Injury suffered in rescue	The principle limits Volenti non fit injuria ; law encourages rescue.	<i>Haynes v. Harwood (1935)</i> – Policeman injured while stopping runaway horse; consent defence rejected.	Rescuer treated as acting under duty, not voluntarily accepting risk.
Ex turpi causa non oritur actio (No action arises from an immoral cause)	A person cannot bring a legal action if it arises from their own illegal or immoral act.	1. Plaintiff involved in unlawful act 2. Injury connected to that act	Even if injured, plaintiff cannot recover damages if claim is based on illegal activity.	<i>Ashton v. Turner (1981)</i> – No damages for injury during getaway from burglary.	Defence based on public policy.

Great idea 👍 mnemonics really help in law exams. Let's build one for your **three defences**:

- **Volenti non fit injuria**
 - **Rescue Doctrine**
 - **Ex turpi causa non oritur actio**
-

🧠 **Mnemonic: "Very Risky Escape"**

- **V** → **Volenti non fit injuria** (consent = no injury claim)
 - **R** → **Rescue Doctrine** (rescuer still gets claim, exception to Volenti)
 - **E** → **Ex turpi causa** (illegal act = no claim)
-

💡 **Memory Story:**

Imagine a person says:

👉 "It was a **Very Risky Escape!**"

- First he **Voluntarily** (Volenti) joined a dangerous game.
 - Then a **Rescuer** tried to save him.
 - Finally, since it was part of an **illegal act**, the court said **no claim** (Ex turpi causa).
-

✅ This way you can recall:

- **V** = Volenti
 - **R** = Rescue
 - **E** = Ex turpi
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Chapter 2 tort subject defence by Aditi date 08-09-25

Subject Defence against the case

Plaintiff the wrong doer

Pollock

The mere fact that the plaintiff himself is a wrongdoer does not in itself prevent him from recovering the loss he suffers, unless the unlawful act or conduct of the plaintiff is directly connected with the harm suffered by him as part of the same transaction.

👉 Yes, this principle is correct — it relates to the doctrine of **Ex turpi causa non oritur actio** (no action arises from an immoral/illegal act).

Triffel matters important.

"Triffel matters" is not a legal term, but the underlying principle of a matter being too trivial for a court to handle is very much accepted in the legal system. This concept is based on the legal maxim *De minimis non curat lex*, a Latin phrase meaning "the law does not concern itself with trifles".

In India, this principle is codified in Section 95 of the Indian Penal Code (IPC).

The principle of *De minimis non curat lex*

This principle helps prevent courts from being overloaded by minor disputes. Whether a matter is considered "trifling" depends on factors like the injury's nature and the intention behind the act.

Application in court

Courts may apply the *de minimis* principle to dismiss trivial matters. It can also be used as a defense argument against criminal punishment for actions causing minimal harm

The legal principle of *de minimis non curat lex*, meaning "the law does not concern itself with trifles," is recognized in the Indian judicial system and is codified in Section 95 of the Indian Penal Code (IPC). This section allows courts to refuse or dismiss cases where the harm is so slight that a person of "ordinary sense and temper" would not complain.

Here are some examples of cases where courts have applied this principle:

- In *S. Ramesh vs. State Through The Inspector of Police* (2018), the Madras High Court dismissed proceedings related to a minor physical altercation, applying Section 95 as the harm was deemed trivial.
- The Delhi High Court, in *India TV Independent News Service Pvt. Ltd. v. Yashraj Films Pvt. Ltd.* (2012), applied the *de minimis* doctrine to a copyright infringement claim where only five words were copied from a song for a commercial, considering the infringement too trivial for legal action.
- The Supreme Court of India, in *Veeda Menezes v. Yusuf Khan Haji Ibrahim Khan* (1966), ruled in favor of the defendant in a case involving minor property damage, stating the damage was too insignificant for a reasonable person to complain about and invoking Section 95.

However, the de minimis principle is not applied universally.

- For instance, in *State (Delhi Administration) v. Puran Mal* (1985), the Supreme Court refused to apply the doctrine in a food adulteration case, emphasizing that even small violations in public health matters can have serious consequences.
 - Courts also reject the defense of Section 95 in cases involving harm to a person's modesty, such as sexual harassment, considering the significant qualitative impact of such acts regardless of how minor they may appear.
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Essential of act of god.

The essential elements of an Act of God

1. A result of natural forces

The event must be caused solely by natural forces and must be completely free of human intervention.

- Example: An earthquake, an extraordinary flood, or a cyclone qualifies. A mob riot, however, does not, as it involves human agency.

2. An extraordinary and unusual occurrence

The natural event must be exceptional and not merely an ordinary or usual natural phenomenon.

- Example: In *Nichols v. Marshland* (1876), an unprecedented rainfall caused the defendant's artificial lake to overflow and destroy the plaintiff's bridges. The court accepted the "Act of God" defense because the rainfall was beyond living memory.
- In contrast, in *Kallulal v. Hemchand* (1958), a defendant's house wall collapsed after ordinary heavy rainfall, killing the plaintiff's children. The court rejected the defense because such rainfall was not extraordinary, and the poor condition of the wall indicated negligence.

3. Not reasonably foreseeable

The event must be one that could not have been reasonably anticipated or guarded against through normal human foresight and prudence.

- Example: While a shipping company can take precautions against normal weather patterns, damage from a completely unexpected, devastating tsunami could be covered by this defense. However, if the area is known to be prone to tsunamis, the defense may fail if precautions were not taken.

4. Impossible to prevent with reasonable care

The damage must have been practically impossible to prevent, even after taking all reasonable precautions. If the harm could have been mitigated or avoided with reasonable care, the defense will fail.

- Example: If a person's property was damaged by a flood due to a poorly maintained drainage system, they cannot claim "Act of God" even if the flood was severe, because their negligence contributed to the damage.
-
-

Case ref

The Nichols vs marsland 1875

Nichols v. Marsland (1876) 2 Ex D 1 is a significant case in English tort law, notable for establishing and clarifying the "Act of God" defense as an exception to the strict liability rule set out in *Rylands v. Fletcher*.

Case facts

- The defendant, Marsland, owned land containing a series of artificial ornamental pools, which were created by damming a natural stream that flowed through the property.
- The pools had overflow mechanisms (weirs) designed to handle typical water levels.
- Following an "extraordinary and unprecedented" rainfall, the pools and the stream swelled to levels that could not have been reasonably anticipated.
- The pressure of the water breached the artificial embankments of the pools, causing water to escape and flood the plaintiff's land downstream.
- The plaintiff sued the defendant for damages, arguing that the defendant should be strictly liable under the principle of *Rylands v. Fletcher*.

Legal issue

The central question was whether the defendant could be held liable for the damages caused by the escape of water, or if the extraordinary rainfall constituted an "Act of God," thereby exempting the defendant from liability.

Arguments

- Plaintiff (Nichols): Argued that by voluntarily storing a large quantity of water in artificial pools, the defendant had created a potential hazard. The plaintiff claimed that this was a "non-natural use" of land, making the defendant strictly liable for the damage under *Rylands v. Fletcher*, regardless of negligence.
- Defendant (Marsland): Argued that the event was an "Act of God" because the rainfall was so violent and extraordinary that it could not have been reasonably foreseen or prevented by any ordinary human prudence. Marsland maintained that there was no negligence on their part.

Judgment

- The Court of Appeal ruled in favor of the defendant, finding that the escape of water was caused by an "Act of God."
- The court emphasized that for an event to be an Act of God, it must be an extraordinary occurrence caused by natural forces that is so extreme it could not have been reasonably anticipated.
- The jury had found that the defendant was not negligent and that the rainfall was so extreme that it could not have been reasonably anticipated, even if the resulting overflow could have been prevented had it been foreseen.
- This case established an important exception to the strict liability rule in *Rylands v. Fletcher*, clarifying that if the escape of a dangerous thing is caused by an Act of God, the defendant may be absolved of liability.

AI responses may include mistakes. For legal a

Another case

Manindra nath mukharjee vs mathuradas chattubhuj 1946

Manindra Nath Mukherjee v. Mathuradas Chatturbhuj (AIR 1946 Cal 175) is a significant Indian tort law case concerning the principles of negligence and the "Act of God" defense. The case highlighted the responsibility of a property owner to ensure that objects on their premises do not pose a danger to the public.

Case facts

- The defendant, a cinema proprietor, had an advertising banner with a wooden frame attached to a sky sign on the roof of their building.
- The banner was not securely fixed with proper fittings but was simply tied with rope.
- On July 5, 1943, during the monsoon season, the banner fell from the roof and injured the plaintiff, a pedestrian on the public thoroughfare below.
- The plaintiff sued the defendant for damages for the injuries he sustained.

Legal issues

The main legal issues before the court were:

1. Negligence: Was the defendant negligent in not properly securing the banner?
2. Act of God: Could the defendant use the "Act of God" defense, claiming the banner fell due to a storm of unusual severity?
3. Res Ipsa Loquitur: Could the maxim *res ipsa loquitur* ("the thing speaks for itself") be applied, shifting the burden of proof to the defendant to prove they were not negligent?

Judgment and reasoning

The court ruled in favor of the plaintiff, holding the defendant liable for negligence.

- Rejection of "Act of God" Defense: The court dismissed the defendant's claim of an "Act of God." Meteorological evidence was presented showing that the weather on the day of the incident was typical for the monsoon season and that the wind speed was moderate (less than 27 miles per hour). This was not an "extraordinary and unprecedented" event that could not have been foreseen.
- Application of *Res Ipsa Loquitur*: The court applied the maxim *res ipsa loquitur*. The fact that the banner, which was under the defendant's control, fell and caused injury while the plaintiff was lawfully on a public road was sufficient prima facie evidence of negligence. The burden then shifted to the defendant to prove that they had exercised due care, which they failed to do.
- Failure to Exercise Reasonable Care: The court found the defendant negligent for not taking proper precautions against the foreseeable weather conditions. The insecure attachment of the banner with only coir wire ropes, rather than more robust fastenings, indicated a clear lack of reasonable care.

Significance of the case

- Clarification on "Act of God": This case provides an important precedent in Indian law by clarifying that the "Act of God" defense can only be used for genuinely extraordinary natural events and not for ordinary, foreseeable weather conditions.
 - Duty to the public: It reinforces the duty of care that occupiers of property owe to the public, particularly for objects placed near public areas.
 - *Res Ipsa Loquitur* in Practice: The case is a classic example of the application of the *res ipsa loquitur* principle, demonstrating how circumstantial evidence of negligence can be sufficient to secure a judgment when a defendant fails to offer a satisfactory explanation.
-

Chapter 3 date 10.9.25 time 11.30 am subject > tort> general defence.

Private defence.

**** no defence applicable in the case of contract act.**

No 5 follower by last lecture.

* Defence allows at the time when you feel that you are in danger.

* In the matter of defence, the how much level of danger you feel in the same manner you have permission to allow in defence.

* for revenge or in retaliation no defence is excuse or permissible.

5 Definition of Private Defence (Corrected Version):

A Private defence is a **human instinct to repel force by force**, and this instinct is recognized and approved by law. It is a valid ground to **negate tortious liability**. The law permits the use of **reasonable force** to protect one's person or property, provided certain conditions are satisfied:

1. There must be **imminent and immediate danger** to the person or property.
 2. The force used must be **reasonable and proportionate** to the threat.
 3. The right exists only when there is **no time to seek protection from lawful authority**.
-

👉 In **Indian Penal Code (IPC) Section 96–106**, the right of private defence is clearly provided.

👉 In **Law of Torts**, it works as a **general defence**.

Do you want me to also prepare a **short exam-style note** listing:

- Definition
 - Legal provisions (IPC + Tort)
 - Conditions for exercise
 - Case law (like *Bird v. Holbrook*, *Revans v. Mitchell*)
-
-

B the force employed was not out of proportion.

C the force is used only for the purpose of defence. It should not be use by way of retaliation after danger is over.

6 defence

Mistake * mistake of facts

And mistake of law

- In tort mistake of facts or mistake of law. (no defence).

Exception for defence under the tort

Ill will > bad intention.

Malicious prosecution > no one take defence.

The meaning of "ill will" is an unfriendly, hostile, or malicious feeling toward someone. It is a desire for something bad to happen to another person, or a state of holding a grudge or resentment.

Key characteristics of ill will include:

- Hostility: An unfriendly or angry feeling.
- Malevolence: A desire to cause harm or distress to others.
- Malice: A feeling of deep-seated, often unjustifiable, desire to see another suffer.
- Enmity: The state of being actively opposed or hostile to someone or something.

Examples of using "ill will"

- "He had no ill will toward his former competitor after losing the race".
 - "The historical rivalry between the two teams led to a lot of ill will among their fans".
 - "Despite the disagreement, she emphasized that she bore her colleagues no ill will".
 - "The careless remark provoked a feeling of ill will that soured their friendship".
-
-

Case ref

Consolidated Company v. Curtis & Son [1892] 1 Q.B. 495 is a landmark English tort law case concerning the tort of conversion. The case established that a mistake of fact is not a valid defense for conversion.

Factual background

- The Defendant: A firm of auctioneers, Curtis & Son.
- The Action: The auctioneers sold goods on behalf of a customer, believing in good faith that the customer was the rightful owner.
- The Reality: The customer did not actually own the goods.
- The Plaintiff: The true owner of the goods filed a lawsuit against the auctioneers for conversion.

Judgment and legal principle

The court found the auctioneers liable for conversion and delivered the following key findings:

- Auctioneer is liable: The court ruled that the auctioneer's honest and innocent belief that their customer owned the goods was not a valid defense to the charge of conversion.
- Strict liability for conversion: The case reinforced that conversion is a tort of strict liability, meaning the defendant's state of mind (whether they acted in good faith or with bad intentions) is generally irrelevant. The tort is based on the defendant's act of dealing with the goods in a manner inconsistent with the true owner's rights.
- Justification for the rule: By selling the goods, the auctioneers exercised dominion over them and denied the true owner's right to possession. The court emphasized that the auctioneer had a duty to verify that the goods being sold belonged to the seller.

Significance

The case remains a crucial precedent in tort law for several reasons:

- It is often cited to explain the general rule that mistake of fact is not a valid defense for the tort of conversion.
- It highlights the importance of protecting the property rights of the true owner, even against those who acted in an innocent and reasonable manner.

Date 11-09-2025 chapter 2 defence

- In criminal law mistake of facts is good excusable.
====

In tort> general rule is no defence of mistake in law as well as mistake in facts.

Exception in tort

Where motive is essential element of a tort.

Point 7 for defence

Necessity

✦ Jus Necessitatis

English Meaning

Jus Necessitatis = Right of Necessity

It means: *An act which would otherwise be unlawful may become lawful if done under the pressure of necessity.*

👉 In short: **Necessity knows no law.**

Hindi Meaning

Jus Necessitatis = आवश्यकता का अधिकार

इसका अर्थ है: *कोई कार्य जो सामान्य परिस्थितियों में अवैध होता, वह यदि आवश्यकता या आपात स्थिति में किया जाए तो वैध माना जा सकता है।*

👉 सरल शब्दों में: **आवश्यकता के समय नियम टूट भी सकते हैं।**

Example / Illustration

- अगर बाढ़ से बचने के लिए कोई व्यक्ति दूसरे के घर में शरण ले लेता है, तो यह Trespass नहीं माना जाएगा क्योंकि यह **Necessity** के कारण है।
- Self-preservation (स्वयं की रक्षा) या Public safety (जनहित सुरक्षा) के लिए ऐसा कार्य उचित माना जाता है।

👉 Formula to remember:

Jus Necessitatis = "Necessity justifies what is otherwise illegal."

✦ Important Legal Maxims

Latin Maxim	English Meaning	हिन्दी अर्थ	Example (उदाहरण)
Jus Necessitatis	Right of necessity	आवश्यकता का अधिकार	बाढ़ से बचने के लिए किसी के घर में घुसना Trespass नहीं है।
Ignorantia juris non excusat	Ignorance of law is no excuse	क़ानून की अज्ञानता कोई बहाना नहीं है	कोई कहे कि उसे ट्रैफ़िक नियम का पता नहीं था, फिर भी दंड मिलेगा।

Latin Maxim	English Meaning	हिन्दी अर्थ	Example (उदाहरण)
Salus populi suprema lex	Welfare of the people is the supreme law	जनता का कल्याण सर्वोच्च कानून है	आपातकाल में लोगों की सुरक्षा के लिए सरकार विशेष कदम उठा सकती है।
Ubi jus ibi remedium	Where there is a right, there is a remedy	जहाँ अधिकार है, वहाँ उपचार है	अगर आपके अधिकार का उल्लंघन होता है, तो कोर्ट में राहत मिल सकती है।
Volenti non fit injuria	No injury to one who consents	जिसने स्वेच्छा से सहमति दी, उसे चोट नहीं मानी जाएगी	खिलाड़ी खेल में चोट खाए तो कोर्ट में दावा नहीं कर सकता।
Res ipsa loquitur	The thing speaks for itself	वस्तु स्वयं बोलती है	सड़क दुर्घटना में कार का टायर फट जाना लापरवाही का सबूत हो सकता है।
Actus non facit reum nisi mens sit rea	An act does not make a man guilty unless there is a guilty mind	अपराध तभी है जब दोषी मन (mens rea) हो	गलती से किसी की चीज़ उठा लेना अपराध नहीं, पर जान-बूझकर चोरी करना अपराध है।
Injuria sine damno	Legal injury without damage	हानि हुए बिना भी विधिक चोट	Fundamental Right का उल्लंघन भले नुकसान न हुआ हो, फिर भी केस बनता है।
Damnum sine injuria	Damage without legal injury	नुकसान हुआ लेकिन विधिक चोट नहीं	नया बाज़ार खुलने से पुराना दुकानदार घाटे में जाए, तो यह Damnum sine injuria है।
Fiat justitia ruat caelum	Let justice be done though the heavens fall	न्याय हो चाहे आसमान क्यों न टूट पड़े	न्यायालय का निर्णय जनता की नाराज़गी से प्रभावित नहीं होना चाहिए।

Latin Maxim	English Meaning	हिन्दी अर्थ	Example (उदाहरण)
Audi alteram partem	Hear the other side	दूसरी ओर को भी सुनो	किसी को दंड देने से पहले उसे सुनने का अवसर देना चाहिए।
Nemo debet esse judex in propria causa	No one should be judge in his own cause	कोई अपने ही मामले में न्यायाधीश नहीं हो सकता	यदि किसी जज का व्यक्तिगत हित जुड़ा है, तो वह केस नहीं सुनेगा।

To save big loss as physical you can use jus necessitates (necessity) to cause small physical loss.

You can take a defence for necessity.

Case ref

बहुत अच्छा 👍 आपने **R v. Dudley and Stephens (1884)** केस पूछा है। यह **Jus Necessitatis (Necessity)** से जुड़ा बहुत प्रसिद्ध केस है।

🔴 Case: R v. Dudley & Stephens (1884) 14 QBD 273 DC

Facts

- A ship sank at sea.
- Dudley, Stephens, Brooks, and a 17-year-old cabin boy (Richard Parker) were stranded in a lifeboat without food or water.
- After many days of starvation, Dudley and Stephens killed Parker and ate his flesh to survive.

Issue

👉 Can necessity be a legal defence for murder?

Judgment

- The court held that necessity is not a defence to murder.
- Dudley and Stephens were found guilty of murder.
- Their death sentence was later commuted to 6 months' imprisonment.

Principle

👉 *Necessity may justify certain unlawful acts, but it cannot justify taking an innocent life.*

◆ हिन्दी में (संक्षेप)

तथ्य

- जहाज़ डूबने के बाद Dudley, Stephens और Brooks एक नाव में 17 वर्षीय केबिन बॉय Parker के साथ फँस गए।
- भूख-प्यास से परेशान होकर Dudley और Stephens ने Parker को मार दिया और उसका मांस खाकर जीवित रहे।

मुद्दा

👉 क्या आवश्यकता (Necessity) हत्या (Murder) का कानूनी बचाव हो सकती है?

निर्णय

- अदालत ने कहा: "आवश्यकता हत्या का बचाव नहीं हो सकती।"
- Dudley और Stephens को हत्या का दोषी माना गया।
- उनकी सज़ा बाद में मृत्युदंड से घटाकर 6 माह कैद कर दी गई।

सिद्धांत

👉 कुछ अवैध काम आवश्यकता से उचित ठहराए जा सकते हैं, लेकिन हत्या को आवश्यकता से उचित नहीं ठहराया जा सकता।

👉 Exam line (easy to write):

- English: *This case established that necessity is no defence to murder.*
- Hindi: इस केस ने सिद्ध किया कि आवश्यकता हत्या का बचाव नहीं है।

And

◆ Case: King v. Gregory (1893)

Facts (English)

- The accused (Gregory) used force to protect his property against people who tried to unlawfully enter it.
- The question arose: Was his act justified as **self-defence of property**, or was it unlawful force?

Judgment

- The Court held that **a person has the right to protect his property**, but the force used must be **reasonable** and **not excessive**.
- If excessive force is used, it becomes unlawful.

Principle

👉 *Right of private defence exists, but it is limited to reasonable force.*

🔴 हिन्दी में (संक्षेप)

तथ्य

- आरोपी (Gregory) ने अपने घर/संपत्ति की रक्षा के लिए उन लोगों पर बल प्रयोग किया जो गैरक़ानूनी रूप से प्रवेश करना चाहते थे।
- सवाल यह था कि क्या यह कार्य वैध आत्मरक्षा था या अवैध बलप्रयोग?

निर्णय

- अदालत ने कहा कि **व्यक्ति को अपनी संपत्ति की रक्षा का अधिकार है**, लेकिन प्रयोग किया गया बल **उचित (reasonable)** होना चाहिए।
- यदि बल अत्यधिक हो तो वह अवैध माना जाएगा।

सिद्धांत

👉 *निजी रक्षा का अधिकार है, लेकिन केवल उचित बल तक सीमित है।*

✅ Exam Line (Easy to Remember):

- **English:** *King v. Gregory (1893) – Private defence of property is allowed, but only with reasonable force.*
- **Hindi:** *King v. Gregory (1893) – संपत्ति की आत्मरक्षा उचित बल तक मान्य है।*

• Important Cases + Latin Maxims

Case	Facts (संक्षेप)	Judgment / Principle	Related Maxim	Exam Line
R v. Dudley & Stephens (1884)	Shipwreck के बाद नाव में फँसे लोगों ने जीवित रहने के लिए Parker की हत्या की और उसका मांस खाया।	Necessity is not a defence to murder. आवश्यकता हत्या का बचाव नहीं है।	Jus Necessitatis → <i>Necessity knows no law</i> (<i>आवश्यकता नियम नहीं मानती</i>)	Necessity no defence to murder.
King v. Gregory (1893)	Gregory ने अपनी संपत्ति बचाने के लिए घुसपैठ करने वालों पर बल प्रयोग किया।	Right of private defence exists, but force must be reasonable. निजी रक्षा का अधिकार है, पर बल उचित होना चाहिए।	Salus populi suprema lex → <i>Welfare of people is supreme law</i> (<i>जनता का कल्याण सर्वोच्च कानून है</i>)	Defence of property allowed, but only with reasonable force.

Case	Facts (संक्षेप)	Judgment / Principle	Related Maxim	Exam Line
US v. Holmes (1842)	नाव में जगह कम थी, नाव डूबने से बचाने के लिए कुछ यात्रियों को समुद्र में फेंक दिया गया।	Necessity cannot justify killing innocents. आवश्यकता निर्दोष की हत्या का बचाव नहीं है।	Fiat justitia ruat caelum → <i>Let justice be done though the heavens fall</i> (न्याय हो चाहे आसमान टूट पड़े)	Throwing passengers = Murder.
In re A (Conjoined Twins, 2000)	जुड़वां बच्चे: surgery से weaker twin की मृत्यु निश्चित थी, पर stronger twin बच सकता था।	Doctrine of necessity applied → surgery allowed to save one life. आवश्यकता के सिद्धांत से एक जीवन बचाने की अनुमति।	Salus populi suprema lex (again relevant here) → <i>Welfare is supreme law</i>	Necessity may justify act to save life.
