GENERAL DEFENCES

IN THE

LAW OF TORT

Although each tort has its own defences relating to its particular liability, for example that the respondent was not negligent or did not cause the nuisance, there are also a series of general defences which have a wider applicability to all or a number of different areas within tort.

Volenti Non Fit Injuria-volunteering to the risk of harm

The classic example of this is the case of medical examination and treatment. The defence can be said to apply when the plaintiff knew of the risk of harm or injury and had voluntarily submitted to that risk.
Simple examples would be sky diving, or rock climbing.

The defence is a complete defence to the tort in respect of which it is pleaded.

Imperial Chemical Industries Ltd v Shatwell [1965] AC 656

Two brothers tested a detonator in defiance of statutory regulations and of rules strictly enforced by the firm; one was injured and claimed against ICI for the negligence of the other.
Held - Lord Reid said volenti could succeed: this was not mere carelessness between employees but a deliberate breach of orders to save ten minutes, and the injured man knew very well the risks he was running.

However, not all volunteers are regarded as volens to the injury.

Chadwick v British Transport Commission [1967] 1 WLR 912

Mr. Chadwick tried to bring assistance to the victims of the Lewisham train disaster, and afterwards suffered Nervous Shock
Where an accident is of a particular horrifying kind and the rescuer is involved with the victims in the immediate aftermath it may be reasonably foreseeable that the rescuer will suffer psychiatric injury.
Held – The defendants were liable, their negligent act caused the accident and it was reasonably foreseeable consequence of the defendant's negligence.
The plaintiff was not "Volens", if he had been it would, to a large extent have undermined the rule that, a Duty of Care is owed to a rescuer.
But if you had a hand in causing the accident you may well be.

Morris v Murray [1991] 2 QB 6

The plaintiff and the defendant spent the afternoon in a heavy drinking session, during which the defendant drank the equivalent of 17 whisky's, The defendant then suggested that, as he held a pilot's license they go for a flight in his light aircraft.
The defendant took off downwind, rather than upwind as he should have done. The plane climbed to 300 feet, stalled and crashed. The pilot was killed and the plaintiff was injured.
Held – The defendant was not liable, as the plaintiff had consented to the risk.

Where the plaintiff is taken to have agreed the risk reference must always be had to the **Unfair Contract Terms Act 1977**.

One common area where the plaintiff might be regarded as volens is in sporting contests.

Condon v Basi [1985] 2 All ER 453

The plaintiff & defendant were playing football on opposite sides, the defendant made a foul tackle on the plaintiff, breaking his leg. The plaintiff sued for negligence & assault.
Held – The duty of care between sports players is to take reasonable care in light of the circumstances in which they are playing. The player is negligent if he acts in a way to which the other player cannot be expected to consent, i.e. serious & dangerous foul play which shows a reckless disregard for the player's safety.

This does not always suffice as there are some things you cannot consent to.

R v Brown [1993] 2 WLR 556

The appellants were a group of sado-masochists who were willing & enthusiastically entered into the commission of acts of violence against each other for sexual pleasure. That led to offences being brought by the police relating to wounding & ABH.
The defendants appealed.
Held – The HOL dismissed the appeal. Although the prosecutor had to prove absence of consent to secure a conviction for assault, it was not in the public interest that a person should wound or cause ABH for no good reason. The victims consent afforded no defence.
The satisfying of sado-masochistic desires did not constitute a good reason.

Contributory Negligence

Whilst not a total defence this reduces the liability of a respondent to the extent that a plaintiff contributed to the injury.

The problem was that originally it was a complete defence but this was remedied by the **Law Reform (Contributory Negligence) Act 1945.**

> "Where any person suffers damage as the result partly of his own fault and partly of the fault of any other person or persons, a claim in respect of that damage shall not be defeated by reason of the fault of the person suffering the damage, but the damage recoverable in respect thereof shall be reduced to such extent as the court thinks just and equitable having regard to the claimant's share in the responsibility for the damage."

Froom v Butcher [1975] 3 WLR 379

A motorist was injured in a road accident. The accident was the fault of the other driver, but the plaintiff was not wearing a seat belt, which was widely recommended but not legally required.
Held – The plaintiffs damages were reduced by 25 per cent. The Court suggested for the future a deduction of 25 per cent where wearing a seat belt would have prevented the injuries, or 15 per cent where there would still have been some injuries but they would have been less severe.

This may be the case even when the plaintiff has disobeyed an express instruction.

Bux v Slough Metals Ltd [1974] 1 All ER 262

The plaintiff was a die caster in the defendant's factory, he was given a pair of goggles to wear at work, but he claimed they misted up and refused to wear them. Molten metal splashed into his eye.
Held – The defendant was liable in negligence for failing to ensure that he wore the goggles, but the plaintiff was guilty of contributory negligence for failing to comply with regulations requiring him to wear protective equipment provided.

This area is very much the obverse side of the duty of care in that the respondent has a duty which the plaintiff has diminished by his own act.