

## GENERAL DEFENCES OF

### TORTS

#### A) Plaintiff's Default / Contributory Negligence.

This defence may be relied upon if the plaintiff is to blame for his suffering. The defendant must prove that:

- i. The plaintiff exposed himself to danger.
- ii. The plaintiff was negligent.
- iii. The plaintiff's negligence contributed to his suffering.

#### B) Acts of God.

The defence of act of God applies if the damage is caused directly by natural circumstances which no human foresight can provide against. For this defence to succeed, it must be shown that the act was not foreseeable and that it was unusual. It was stated in *Ryde v Buchanan*, that to qualify as an act of God then occurrence should be exclusively of natural causes of so extraordinary a nature that it could not reasonably have been foreseen.

#### C) Volenti non-Fit Injuria.

This defence is available in circumstances where the plaintiff with full knowledge of risk voluntarily agrees to undertake the same. The defendant must prove:

- i. That the plaintiff had actual knowledge of nature and extent of the risk.
- ii. That the plaintiff agreed to incur the risk voluntarily.

The defence was used in *Khanji v Tanga Mombasa Transport Co.*, where a passenger lost his life after the passengers had pressed the driver to cross a swollen river which he had been unwilling to do. It was held that the danger was apparent to the passengers and that they had proper warning as well and that they had adequate opportunity of electing whether to accept the risk or not and the claim in negligence failed.

#### D) Necessity.

It may be relied upon if the tort complained of was necessary to protect the society. It is usually relied upon by the state for acts taken to protect the society at large as the interests of the public prevail. It was noted in the case of, *Esso Petroleum v Southport Corporation*, that, the necessity for saving life is considered a proper ground for inflicting such damage that may be necessary upon another's property.

#### E) Self Defence.

The main criterion is reasonableness. In defending himself, a man may use such force as is reasonably necessary and the means of defence must be related to the harm which would otherwise be suffered. In the case of, *State v Johnson [2018]*, the defendant shot and killed a

# Torts General Ed 6e

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