

Revision Summary Chapter 17

Tortious defences and remedies

Voluntary assumption of risk

- *Volenti non fit injuria* means 'to a willing person, no harm is done', and applies where the claimant consents to the act that causes his injury, or runs the risk of injury being caused and having no legal redress for such injury.
- The defendant will need to establish that the claimant actually knew of the risk, and that he voluntarily assumed the risk of having no legal redress.
- The claimant must expressly or impliedly agree to waive any liability for the injury that may befall him.

Illegality

- *Ex turpi causa non oritur actio* means 'an action does not arise from a base cause' and applies where the claimant sustained harm whilst engaging in a criminal act.

Contributory negligence

- Contributory negligence is a partial defence only, resulting in a reduction in the claimant's damages.
- The defence is regulated by the Law Reform (Contributory Negligence) Act 1945.
- The defendant will need to establish that the claimant failed to take reasonable care of his own safety, and that the claimant's conduct contributed to the damage suffered.
- The court will reduce damages based on what is 'just and equitable having regard to the claimant's share in the responsibility for the damage'.

Limitation periods

- The general limitation period in tortious cases is six years. In personal injury cases, the limitation period is reduced to three years. The period is reduced to one year in cases of defamation and malicious falsehood.

Remedies

- In tort, the general aim of compensatory damages is to put the claimant in the position in which he was before the tort was committed.
- Injunctions may be granted before a tort is committed (*quia timet* injunction), but are usually granted after a tort has taken place (interim and final injunctions).