

## Defences to Negligence Claims:

<p><b>(1) Contributory Negligence</b></p>	<p><b>(2) Consent</b> <i>volenti non fit injuria</i> (no injury is done to one who consents)</p>	<p><b>(3) Illegality</b> <i>ex turpi causa non oritur actio</i> (an action in law cannot be founded on an illegal or immoral act)</p>
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### (1) Contributory Negligence

**Prior to 1945 Act:** Very Harsh - no compensation even if only partially to blame.

#### Law Reform (Contributory Negligence) Act 1945:

##### s1(1):

If harm is partially C's fault – can still get compensation – damages.  
**Reduction in damages** – courts discretion.

#### For D to raise defence.

Must prove both – C was at fault & C's fault was cause of the damage.

#### How do the Courts Work Out How Much Damages??

*Froom v Butcher*

*Owens v Brimmell*

*Badger v MoD*

Kids are judged against other kids - *Gough v Thorne*

### (2) Consent

*“one who has invited or assented to an act being done towards him cannot, when he suffers from it, complain of it as a wrong” (Smith v Baker)*

#### Better Defence – But more difficult to prove.

If the defence succeeds – **no valid claim at all – total defence.**

D must prove a **genuine choice** on behalf of C.

#### Difficult Areas:

##### Rescuers:

defence cannot be used

*Baker v TE Hopkins*

##### Spectator sports:

defence cannot be used

*Woolridge v Sumner*

##### Employees

Can use defence – as long as they are aware of risk they are taking

*ICI v Shatwell*

##### Drinking

if drinking was consented to – thus – acts done whilst drunk were too.

*Morris v Murray*

#### Legislation regulating the use of consent as a defence:

##### UCTA 1977 ss1&2

restricts where people can use consent as a defence:  
s.2 – death or personal injury.

##### Road Traffic Act 1988, s.149

when drivers should be insured cannot use the defence of consent.

### (3) Illegality/Public Policy

**Where C is doing something illegal or immoral when they were injured.**

Doesn't apply very often

Defence successful – no valid claim – Total Defence.

**D must prove C was doing the Illegal/Immoral act.**

#### Criticism:

unpredictable – sometimes damages are awarded.

*Revell v Newbery*

*Vellino v Chief Con. Of G. Manchester*

*Pitts v Hunt*

*Gray v Thames Trains*

*Moore Stephens v Stone Rolls Ltd*

