

2020

LAW OF TORT



Ms. RUBI

School of Law

Monad University

Hapur

NAME OF TEACHER	Rubi
MOB. NO.	8755544779
E MAIL ID	Rubysingh109@gmail.com
DESIGNATION	Assistant Professor
UNIVERSITY NAME	Monad University, Hapur.
COLLEGE NAME	Monad School of Law.
STREAM NAME	Law
FACULTY NAME	Law
DEPARTMENT NAME	Law
SUBJECT NAME	Law of Tort
COURSE	LL.B & B.A.LL.B. 1 Sem & 3 Sem
COURSE DURATION	3 & 5 Years
Unit	III rd
SUBTOPIC NAME	Volenti non fit injuria
CONTENT TYPE	Text
SEARCH KEYWORD	Volenti non fit injuria

RUBI
(CONTENT CREATER/TEACHER)

Unit – 3

Part - 1

Syllabus

Unit- III	Justification of Tort: <ul style="list-style-type: none">• Volenti non fit injuria• Act of God• Inevitable accidents• Plaintiff's default Private Defense• Nuisance and its kinds
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Volenti non fit injuria

Introduction

In the law of torts, if any person commits any wrongful act which causes injury to another person, he is held liable and has to pay damages or provide some other remedy which the Court determines, to the victim of such an act.

But in some cases even if a person suffers some loss because of the act of another person, he cannot claim damages from that person because of the operation of defenses of tort. One such defense available to a defendant is the defiance of volenti non fit injuria in which the plaintiff is not entitled to damages because he consents to the act which has caused injury to him.

What is volenti non-fit injuria?

In the law of torts, there is a duty on every person do acts with reasonable care in order to avoid any harm which may occur due to their failure of taking such care. For e.g., If a person is driving his car, he has a duty to drive the car safely and within speed limits so that no accident occurs which can also harm any other person.

This is the general rule in torts but there are certain exceptions which are allowed in these cases and these called as defences to tort. Under these defences, a defendant can escape liability and volenti non-fit injuria is also one such defense which is available for the defendant.

In case a person gives his consent to doing of an act which leads to him getting injured, then even if an injury is caused by the other person, he cannot claim any damages from that person because the act was one for which he voluntarily consented. The consent of the plaintiff acts as a defence and this defence is called *volenti non fit injuria* which means to a willing person no injury happens.

Illustration: If A has a bike whose brakes do not work and B knowing about the conditions of the bike still chooses to sit on it with A driving it and due to the failure of such brakes they both sustain injuries in an accident, B cannot claim relief from A because he had voluntarily consented to sit on the bike.

But in the above illustration, if B was not aware of the conditions of brakes and then he sustained injuries sitting in it, he would not be stopped from claiming damages from A because here B did not give his consent to accept the risk of getting injured due to failure of the brakes.

Elements of Volenti non-fit injuria

For the application of the defence of *volenti non fit injuria* there are some essential elements or conditions which should be present in a case and only when they are fulfilled, this defence can be taken to prevent liability.

There are 2 essential elements in this defence:

- The plaintiff has the knowledge of the risk
- The plaintiff with the knowledge of risk has voluntarily agreed to suffer the harm.

Thus, whenever the plaintiff is aware of the possibility of harm which is likely to be caused by an act and when he still accepts to do that act and therefore agrees to suffer the injury, a defendant is relieved of his liability.

But only having knowledge about the risk is not enough for the application of this defence, It is known as *Scienti non fit injuria*, which means that mere knowledge does mean consent to the risk. Thus having knowledge is only a partial fulfilment of the conditions for the application of *volenti non fit injuria*.

Illustration: A goes for bungee jumping and he knows that he might get injured by it but he still decides to do it and as a result, he suffers injury despite all the necessary care being taken by the organisers. Here A cannot claim damages from the organisers because he had full knowledge of the risks and he had voluntarily agreed to suffer that injury by choosing to do bungee jumping.

In **Smith v. Baker & sons, (1891) AC 325**, the plaintiff was an employee of the defendant and the site where he used to work had a crane which carried rocks over their heads. The plaintiff had also complained to the defendant about it. One day the plaintiff was injured because of these rocks falling on him and thus he sued the defendant for damages. It was held that the defendant was liable and had to pay damages to the plaintiff because the plaintiff had consented to the danger of the job but not to the lack of care.

Burden of proof

In the cases where the defendant is taking the defence of *volenti non fit injuria*, the burden of proof is on him to show that the plaintiff had full knowledge of the act and he had consented to the risk involved in the act and the defendant has to show that the plaintiff was also aware of the extent of risk which was involved in the act for successfully taking this defence.

Illustration: A has to undergo an operation for his eye infection and the doctor fails to inform him about the risk of losing his vision due to the operation, as a result, A takes the operation believing that there is no such risk to his eye. In the operation, if A loses his eyesight, the doctor will be held liable because A did not have the knowledge about the extent of the risk which was involved in the operation and therefore, the defence of *volenti non-fit injuria* cannot be taken.

Consent of the plaintiff

The consent of the plaintiff is very important in the defence of volenti non fit injuria because only when he voluntarily gives his consent to an act, the defendant can take this defence.

In the case of Hall v. Brookland (1932) All E.R. Rep 208, the plaintiff went to see a car race in which two cars collided with each other and as a result of the collision, the plaintiff who was sitting as an audience was also injured when one of the cars flew into the audience. Here the defence of volenti non fit injuria was applied because the plaintiff had given his consent to such a risk by going to the race.

Consent may be Express or Implied

In the cases of this defense, the consent of the defendant is not required to be expressly given and even by his conduct, his consent can be taken.

Illustration: C is a cricket player and due to a full toss ball he gets hit by it on his shoulder. Here C cannot claim any damages because C has consented to the risk by agreeing to play cricket.

Illustration: A goes to watch a cricket match and while watching the match the batsman hits a six that hurts A's hands when he attempts to catch it. Here A cannot hold the batsman or the owner of the Cricket stadium liable because he had impliedly consented to this injury by his act of purchasing the ticket and sitting in the stadium and thus despite no express consent, the defence of volenti non fit injuria will apply here and his consent will be deemed to be implied for such injury.

Consent of the Plaintiff must be free

When a plaintiff gives his consent for an act such consent should be free from any coercion, fraud or any other such means by which the free consent can be affected.

For e.g., A has a heart problem and he goes to a hospital for surgery. There he is informed by the surgeons that the required surgery is very complicated and there is a chance of the surgery failing which can cause his death. If A gives his consent to have the surgery and the surgeon despite taking all reasonable care in doing the surgery is not able to save A, then the surgeon cannot be held liable because A had given his consent for it and this consent was given freely.

In case the consent of a person is not free, the defendant cannot claim this defence to escape liability and he will be held liable for damage caused.

For e.g., A having heart problem goes to a surgeon and he is told that he needs surgery to which he agrees. During the surgery, the surgeon removes one kidney of A without his knowledge. In this case, even though the surgery is successful the surgeon will be held liable because A did not give his consent to the removal of his kidney.

In the case of **Ravindra Padmanabhan (Dr.) vs Lakshmi Rajan And Anr.**, the plaintiff had a tumour on her breasts and therefore she went to the hospital to have it removed. While operating her the doctor also removed the uterus even though it had nothing to do with the tumour. Thus, the Court held the defendants liable and thus, the defence of volenti non fit injuria was rejected.

In the case of **Padmavati v. Dugganaika**, the plaintiffs had asked for a lift in the jeep of the defendants and while travelling in it one of the screws of the wheel of the jeep fell out, as a result, the jeep crashed and it caused the death of one of the plaintiffs. In the case, the Court held that the defence of volenti non fit injuria will apply and thus the defendants were not liable because by sitting in the jeep the plaintiffs had assumed the risk of being injured in an accident.

Consent by fraud

In cases of consent having been obtained by fraud, the defence of volenti non fit injuria will not apply and the defendant will be held liable for the wrong by him.

For e.g., in the case of *R v. Williams* (193) 1 KB 340, the defendant was a singing coach and he had convinced a 16-year-old student to have sexual intercourse with him by telling her that it will help her in improving her voice and singing. The defendant was held liable by the Court because the consent was obtained by fraud.

Consent in cases of intentional infliction of harm

In the cases where harm is caused to a person intentionally, the defence of *volenti non fit injuria* will apply if the person has given his consent to such harm.

Illustration: A is a boxer who is fighting B in a boxing match. During the match, B punches A very hard as a result of which he suffers head injuries. In this case, even though B had intentionally inflicted harm on A it will not make B liable because A had willingly given his consent.

Illustration: K is a football player and during a match, he gets injured due to a tackle another player, as a result of which he needs surgery. Here K cannot claim any damages because by playing the sport he has impliedly consented to the risk of being injured.

Limitations on the application of *volenti non fit injuria*

There are certain limitations under which the defence of *volenti non fit injuria* cannot be taken by a defendant even if the essentials of this defence are present in the case.

Rescue Cases

When the plaintiff suffers an injury as a result of him doing an act which he knows is likely to cause harm to him but it is an act to rescue someone, then this defence will not apply and the defendant will be held liable.

Illustration: A fire is caused due to the negligence of A, and B is trapped inside the fire. C sees B and jumps into the fire to rescue him but in doing so he is also burned. Here even though C went into the fire voluntarily, knowing fully well that he may be burned, A will be held liable for

negligence and the defence of volenti non fit injuria cannot be applied in this case, therefore, C will be entitled to receive damages from A.

In the case of **Haynes v. Harwood (1935), 1 KB 146**, the servant of the defendant brought two horses in the town near a police station and left them to do some other work. The horses were upset by the children and they broke free, seeing them in rage the plaintiff who was a police officer went to stop the horses and in doing so he got injured and brought a case against the owner for damages. The court held the defendant liable because the defence of volenti non-fit injuria did not apply in a rescue case.

Illegal Acts

If the consent is given for an act which is not allowed by law then, even on the fulfilment of all the essential conditions of this defence, the liability cannot be escaped and thus in such cases, this defence becomes inoperative.

Illustration: If A and B decide to do a fight with sharp swords, when such an act is prohibited by law, and A suffers a big cut due to which he suffers serious injuries, then in such case B cannot take the defence of having A's consent in doing this act because it was prohibited by law and thus B will be liable.

Negligence of the defendant

The defence of volenti non fit injuria is not applicable in a case where the defendant has been negligent. Thus only where there is no negligence by the defendant, he can claim this defence to escape liability.

Illustration: If A goes undergoes a heart operation and he gives his consent for it even though he knows that there is a risk of the operation failing which can cause his death, the surgeon will not be liable if A dies as a result of the surgery if he had taken all due care. But if the operation had failed because of the negligence in carrying out the surgery then in such a case, the

surgeon cannot claim the defence of having received the consent of A and he will be liable because there was negligence on his part in conducting the surgery.

In the case of Slater v. Clay Cros Co. Ltd. 1956] 2 QB 264, the plaintiff was hit by a train in the tunnel of the defendant railway company. The railway company had given instructions to all the drivers of its trains that they have to blow the whistle at the entrance of the tunnel and they should also slow the speed of the train but the driver did not follow these instructions and negligently drove it inside the tunnel, as a result, the plaintiff was injured. The defendant had taken the defence of volenti non fit injuria but the Court held that this defence could not be applied because even though the plaintiff took the risk of walking inside the tunnel, this risk was enhanced by the negligence of the driver. Thus, when a plaintiff gives his consent to take some risk, there is a presumption that the defendant has not been negligent.

Volenti non fit injuria and Contributory negligence

Both contributory negligence and volenti non fit injuria are used as a defence by the defendant to escape liability but they differ from each other.

In contributory negligence, the plaintiff who has suffered an injury is also at fault along with the defendant and therefore the quantum of damages which he can be awarded is reduced in proportion to the degree of his negligence in the act which caused him injury. Thus, both the parties are at fault in such a case and therefore this is a partial defence available to the defendant.

Illustration: A gets hit by a car while crossing a road, which was being driven by B and he drove it rashly and over speed limit due to which A sustained many injuries. But this accident happened because A decided to cross the road even though the traffic signal was on and thus the pedestrians could not cross it until the signal stopped for the vehicles. Here both A and B are at fault and therefore even though B will be held liable, the damages which he has to provide will be reduced because A was also at fault and thus the defence of contributory negligence applies here,

In volenti non fit injuria, the defendant is completely exempted from his liability because of plaintiff's consent and thus it is a total defence.

Conclusion

Volenti non fit injuria is one of the defence under the law of torts in which the person who has committed a wrong is exempted from liability because the victim of such a wrong gives his consent to the commission of such an act and such a consent must be free for the successful application of this defence in a case.

This defence is also subject to certain limitations such as rescue cases and the negligence of the defendant in which even if the consent is given by the plaintiff, the defendant is held liable.

Thus while allowing this defence, Courts have to ensure that the conditions of this defence are fulfilled and the act is not one which falls within the limitation imposed on this defence.

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