

VOLENTI NON FIT INJURIA

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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 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 defences of tort.
- One such defence available to a defendant is the defence 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.

- 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.

Elements of Volenti non-fit injuria

- There are 2 essential elements in this defence:
 1. The plaintiff has the knowledge of the risk
 2. The plaintiff with the knowledge of risk has voluntarily agreed to suffer the harm.

Scienti non fit injuria

- 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.

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 :

1. The plaintiff had full knowledge of the act and

2. The plaintiff 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.

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.

Hall v. Brookland (1932) All E.R. Rep 208,

- In this case 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.

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 and 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.

CONCLUSION

- Volenti non fit injuria is one of the defences 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.