

# **RMM LAW COLLEGE SAHARSA**

## **LAW OF TORTS**

**IIIrd Part**

**Paper -V**

**TOPIC- Volenti Non Fit Injuria**

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### **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 defence, 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.