

RMM LAW COLLEGE SAHARSA

LAW OF TORTS

IIIrd Part

Paper -V

TOPIC- Volenti Non Fit Injuria

Lecture Notes by- INDRA BHUSHAN SINGH

Date:- 11/07/2020

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 B 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 A 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.

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.

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.