

# **RMM LAW COLLEGE SAHARSA**

## **LAW OF TORTS**

### **IIIrd Part**

### **Paper -V**

#### **TOPIC- Volenti Non Fit Injuria**

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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 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.

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 defence 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:

1. The plaintiff has the knowledge of the risk

2. 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.