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FACULTY OF JURIDICAL SCIENCES

COURSE: B.A.LL.B. I st Semester

SUBJECT: LAW OF TORTS

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LECTURE 27

TOPIC: JUSTIFICATION OF TORTS- ACT OF STATE, STATUTORY AUTHORITY, ACT OF GOD, NECESSITY, VOLENTI NON-FIT INJURIA, PRIVATE DEFENCE AND ACTS CAUSING SLIGHT HARM

Volenti non fit injuria- *In case, a plaintiff voluntarily suffers some harm, he has no remedy for that under the law of tort and he is not allowed to complain about the same. The reason behind this defence is that no one can enforce a right that he has voluntarily abandoned or waived. Consent to suffer harm can be express or implied.*

Some examples of the defence are:

- When you yourself call somebody to your house you cannot sue your guests for trespass;
- If you have agreed to a surgical operation then you cannot sue the surgeon for it; and
- If you agree to the publication of something you were aware of, then you cannot sue him for defamation.
- A player in the games is deemed to be ready to suffer any harm in the course of the game.
- A spectator in the game of cricket will not be allowed to claim compensation for any damages suffered.

For the defence to be available the act should not go beyond the limit of what has been consented.

In ***Hall v. Brooklands Auto Racing Club***, the plaintiff was a spectator of a car racing event and the track on which the race was going on belonged to the defendant. During the race, two cars collided and out of which one was thrown among the people who were watching the race. The plaintiff was injured. The court held that the plaintiff knowingly undertook the risk of watching the race. It is a type of injury which could be foreseen by anyone watching the event. The defendant was not liable in this case.

In ***Padmavati v. Dugganaika***, the driver of the jeep took the jeep to fill petrol in it. Two strangers took a lift in the jeep. The jeep got toppled due to some problem in the right wheel. The two strangers who took lift were thrown out of the jeep and they suffered some injuries leading to the death of one person.

The conclusions which came out of this case are:

- The master of the driver could not be made liable as it was a case of a sheer accident and the strangers had voluntarily got into the vehicle.
- The principle of Volenti non fit injuria was not applicable here.

In ***Wooldrige v. Sumner***, a plaintiff was taking some pictures standing at the boundary of the arena. The defendant's horse galloped at the plaintiff due to which he got frightened and fell into the horse's course and was seriously injured. The defendants were not liable in this case since they had taken due care and precautions.

In the case of ***Thomas v. Quartermaine***, the plaintiff was an employee in the defendant's brewery. He was trying to remove a lid from a boiling tank of water. The lid was struck so the plaintiff had to apply an extra pull for removing that lid. The force generated through the extra pull threw him in another container which contained scalding liquid and he suffered some serious injuries due to the incident. The defendant

was not liable as the danger was visible to him and the plaintiff voluntarily did something which caused him injuries.

In ***Illot v. Wilkes***, a trespasser got injured due to spring guns present on the defendant's land. He knowingly undertook the risk and then suffered injuries for the same. This was not actionable and the defendant was not liable in the case.

Similarly, if you have a fierce dog at your home or you have broken pieces of glass at the boundaries, all this is not actionable and is not covered under this defence.

The consent must be free

- For this defense to be available it is important to show that the consent of the plaintiff was freely given.
- If the consent was obtained under any compulsion or by fraud, then it is not a good defense.
- The consent must be given for an act done by the defendant.
- For example, if you invite someone to your house for dinner and he enters your bedroom without permission then he will be liable for trespass.

In the case of ***Lakshmi Rajan v. Malar Hospital***, a 40-year-old married woman noticed a lump in her breast but this pain does not affect her uterus. After the operation, she saw that her uterus has been removed without any justification. The hospital authorities were liable for this act. The patient's consent was taken for the operation not for removing the uterus.

- If a person is not in a condition to give consent then his/her guardian's consent is sufficient.

Consent obtained by fraud

- Consent obtained by fraud is not real consent and does not serve as a good defence.

In ***Hegarty v. Shine***, it was held that mere concealment of facts is not considered to be a fraud so as to vitiate consent. Here, the plaintiff's paramour had infected her with some venereal disease and she brought an action for assault against him. The action failed on the grounds that mere disclosure of facts does not amount to fraud based on the principle ***ex turpi causa non oritur actio*** i.e. no action arises from an immoral cause.

- In some of the criminal cases, mere submission does not imply consent if the same has been taken by fraud which induced mistake in the victim's mind so as to the real nature of the act.
- If the mistake induced by fraud does not make any false impression regarding the real nature of the act then it cannot be considered as an element vitiating consent.

In R. v. Wiliams, a music teacher was held guilty of raping a 16 years old girl under the pretence that the same was done to improve her throat and enhancing her voice. Here, the girl misunderstood the very nature of the act done with her and she consented to the act considering it a surgical operation to improve her voice.

In ***R. v. Clarence***, the husband was not liable for an offence when intercourse with her wife infected her with a venereal disease. The husband, in this case, failed to inform her wife about the same. Here, the wife was fully aware of the nature of that particular act and it is just the consequences she was unaware of.

Consent obtained under compulsion

- There is no consent when someone consents to an act without free will or under some compulsion.

- It is also applicable in the cases where the person giving consent does not have full freedom to decide.
- This situation generally arises in a master-servant relationship where the servant is compelled to do everything that his master asks him to do.
- Thus, there is no applicability of this maxim *volenti non fit injuria,* when a servant is compelled to do some work without his own will.
- But, if he himself does something without any compulsion then he can be met with this defense of consent.

Mere knowledge does not imply assent

For the applicability of this maxim, the following essentials need to be present:

- The plaintiff knew about the presence of risk.
- He had knowledge about the same and knowingly agreed to suffer harm.

In the case of ***Bowater v. Rowley Regis Corporation***, a cart-driver was asked to drive a horse which to the knowledge of both was liable to bolt. The driver was not ready to take that horse out but he did it just because his master asked to do so. The horse, then bolted and the plaintiff suffered injuries. Here, the plaintiff was entitled to recover.

In ***Smith v. Baker***, the plaintiff was an employer to work on a drill for the purpose of cutting rocks. Some stones were being conveyed from one side to another using crane surpassing his head. He was busy at work and suddenly a stone fell on his head causing injuries. The defendants were negligent as they did not inform him. The court held that mere knowledge of risk does not mean that he has consented to risk, so, the defendants were liable for this. The maxim volenti non fit injuria did not apply.

But, if a workman ignores the instructions of his employer thereby suffering injury, in such cases this maxim applies.

In ***Dann v. Hamilton***, a lady even after knowing that the driver was drunk chose to travel in the car instead of any other vehicle. Due to the negligent driving of the driver, an accident happened which resulted in the death of the driver and injuries to the passenger herself. The lady passenger brought an action for the injuries against the representatives of the driver who pleaded the defence of volenti non fit injuria but the claim was rejected and the lady passenger was entitled to get compensation. This maxim was not considered in this case because the driver's intoxication level was not that high to make it obvious that taking a lift could be considered as consenting to an obvious danger.

This decision was criticized on various grounds as the court did not consider contributory negligence while deciding the case but the court's reason for not doing so is that it was not pleaded that is why it was not considered. A driver's past negligent activities do not deprive him of this remedy if someone travels with the same driver again.

Negligence of the defendant

In order to avail this defence, it is necessary that the defendant should not be negligent. If the plaintiff consents to some risk then it is presumed that the defendant will not be liable.

For example, when someone consents to a surgical operation and the same becomes unsuccessful then the plaintiff has no right to file a suit but if the same becomes unsuccessful due to the surgeon's negligence then in such cases he will be entitled to claim compensation.

In ***Slater v. Clay Cross Co. Ltd.***, the plaintiff suffered injuries due to the negligent behaviour of the defendant's servant while she was walking along a tunnel which was owned by the defendants. The company knew that the tunnel is used by the public and had instructed its drivers to give horns and drive slowly whenever they enter a tunnel. But the driver failed to do so. It was held that the defendants are liable for the accident.

Limitations on the doctrine's scope

The scope of the maxim volenti non fit injuria has been curtailed in the following cases

I. Rescue cases- When the plaintiff voluntarily comes to rescue someone from a danger created by the defendant then in such cases the defence of volenti non fit injuria will not be available to the defendant.

- In ***Haynes v. Harwood***, the defendants' servant left two unattended horses in a public street. A boy threw a stone on the horses due to which they bolted and created danger for a woman and other people on the road. So, a constable came forward to protect them and suffered injuries while doing so. This being a rescue case so the defence of volenti non fit injuria was not available and the defendants were held liable.

- However, if a person voluntarily attempts to stop a horse which creates no danger then he will not get any remedy.

- In the case of ***Wagner v. International Railway***, a railway passenger was thrown out of a moving train due to the negligence of the defendants. One of his friends got down, after the train stopped, to look for his friend but then he missed the footing as there was complete darkness and fell down from a bridge and suffered from some severe injuries. The railway company was liable as it was a rescue case.

In ***Baker v. T.E. Hopkins & Son***, due to the employer's negligence, a well of a petrol pump was filled with poisonous fumes. Dr. Baker was called to help but he was restricted from entering the well as it was risky. He still went inside to save two workmen who were already stuck in the well. The doctor himself was overcome by the fumes and then he was taken to the hospital where he was declared dead. When a suit was filed against the defendants, they pleaded the defence of consent. The court held that in this case the defence cannot be pleaded and the defendants, thus, were held liable.

- If A creates danger for B and he knows that a person C is likely to come to rescue B. then, A will be liable to both B and C. Each one of them can bring an action for the same, independently.
- If someone knowingly creates danger for himself and he knows that he will likely be rescued by someone, then he is liable to the rescuer.

In ***Hyett v. Great Western Railway Co.***, the plaintiff got injured while saving the defendant's cars from a fire which occurred due to negligence on the part of the defendants. The plaintiff's acts seemed to be reasonable and the defendant was held liable in this case.

Volenti non fit injuria and Contributory negligence

- Volenti non fit injuria is a complete defense but the defense of contributory negligence came after the passing of the Law Reform (Contributory Negligence) Act, 1945. In contributory negligence, the defendant's liability is based on the proportion of fault in the matter.
- In the defense of contributory negligence, both are liable – the defendant and the plaintiff, which is not the case with volenti non fit injuria.
- In volenti non fit injuria, the plaintiff knows the nature and extent of danger which he encounters and in case of contributory negligence on the part of the plaintiff, he did not know about any danger.

Exercise:

1. When defamation word refers to ……., they cannot sue.

a) individual
b) group
c) women
d) author of a book

2. …. To the plaintiff is not enough in case of defamation.

a) Communication
b) Forcing
c) Leaving
d) None of the above

3. Which of the following is injury to reputation?

a) Negligence
b) Ignorance
c) Defamation
d) Trespassing

4. Which of the following defences is/are available for defamation?

a) Justification or truth
b) Privilege
c) False comment
d) Both (a) and (b)

5. Privilege can be of two types namely

a) Absolute and neglecting
b) Absolute and qualified
c) Qualified and unqualified
d) Neglecting and unqualified