AILET

# Defences under Law of Tort

Harshita Gulati · 26 Nov 2020

The law of torts exists for the purpose of preventing men from hurting another whether in respect of their property, their persons, the reputations or anything else which is theirs. wrongs:

1. Volenti non fit injuria

No injury is done to one who consents. No man can enforce a right, which he has voluntarily waived or abandoned. Consent to suffer the harm may be express or implied. The act causing the harm must not go beyond the limit of what has been consented. The maxim applies to the intentional acts which would otherwise be tortious. It applies to consent to run the risk of accidental harm which would otherwise be actionable as due to the negligence of the person who caused it.

In order to successfully plead the defence of volenti non fit injuria the following conditions must be fulfilled:

A. Consent- the consent must not have been induced by force, compulsion, coercion, undue influence, misrepresentation or mistake. The act done by the defendant must be the same for what the consent is given. Consent obtained by fraud is not real.

The consent obtained under a mistake will be effective unless the defendant is aware of the mistake and takes the advantage of it. Also that such a mistake extends to the essential character of the act itself, rather than to some collateral matter which merely operates as an inducement.The consent obtained under compulsion when the person has no freedom of choice is not a free consent. Such a situation generally arises in master servant relationship.

B. Knowledge- knowledge of a danger or risk is not the same thing as consent to bear the danger. In order to avail the defence of the knowledge, it is necessary to show that the plaintiff was aware of the risk and danger involved in the act and he, having the knowledge of the same, consented or agreed to be part of the act, despite risk of harm. Mere knowledge of the risk is not sufficient but the apprehension or acceptance of the risk also plays the important role.

### Limitations to the Application of the Maxim-

I. Illegal consent- No consent obtained by any kind of fraud, misrepresentation, coercion, compulsion, undue-influence, mistake is termed as free consent and therefore is not valid for using the defence of volenti non fit injuria.

II. Breach of statutory duty- The maxim is not valid in case the action is against any kind of breach of statutory duty. If any duty is imposed on the person by the statutory itself, and the person failed to follow the duty and because of that if any harm is caused then the person cannot take defence of this maxim. For example- it is duty of the police to take care of every prisoner present in the prison, but if because of  the suicidal tendencies the prisoner killed himself and died due to failure to take precautionary measured on the part of the police the police could not avail the defence of the maxim.

III. Negligence- the maxim doesn't apply to act of negligence. When the plaintiff consented for the risk or apprehended risk, then it is the presumption that the defendant must not ne negligent.

IV. Rescue case- when the plaintiff himself takes the risk of entering into the danger or caused harm to himself in any manner for rescuing someone from an imminent or potential danger caused due to the actions of the defendant, he cannot claim the defence of the maxim as the danger invites the rescue. Basically, even the person is under legal or moral duty to follow but he cannot claim defence of maxim as he himself acted despite knowing the situation of risk or harm.

### 2. Plaintiff, the wrongdoer-

In the case where the plaintiff himself has done something wrong doesn't entitle him from using the defence of volenti non fit injuria to recover loss which is suffered by him unless something unlawful act or conduct is done by the plaintiff in the same series of act. We can further say that in the case of loss or harm, the action is not fruitful because the act itself is unlawful. In order, to claim the compensation, the act of the plaintiff must be lawful or independent of the harm caused to him.




### Inevitable Accident

Inevitable accident means an accident which could not be avoided under any circumstances in spite of taking reasonable care on the part of the defendant. It may be caused by the natural forces or any natural factors which are uncontrollable by humans or cannot be prevented by human by any ordinary skill.

### Act of God

An act of god can also be termed as ‘inevitable accident’. The only difference between the two is that in the later one is no human intervention and accidents which took place are generally caused by the natural forces. To claim this defence we need to keep in mind two essentials of it-

- There must be act of god or any natural force which causes the damage without any kind of human intervention.
- The happening of the natural forces must be ‘extraordinary’ in nature, which cannot be either anticipated or prevented by ordinary course of nature.

### Private Defence

If the defendant use the reasonable amount of force to protect himself, any person or his property then the act will be counted under the act of private defence and can be claimed as the defence under maxim of volenti non fit injuria. Essentials for claiming this defence are-

- There must be imminent danger.
- The force used is necessary for the protection and is not out of proportion.
- The force is used for the act of defence. If by any case, the force used is inappropriate or out of proportion or used after the situation of the danger is over, the defendant, cannot claim the defence of the maxim.

### Mistake

Mistake cannot be claimed as the defence under any circumstances for an action of tort. Trespass, entering into land of another's thinking it belongs one's own, is not an excuse of the trespass and is actionable tort.

### Necessity (Jus necessitiates)

An act of necessity if done to prevent greater harm or damage, during such circumstances,is not actionable. For example- Throwing water or pulling down the private house to prevent fire further is necessity.

### Statutory Authority

If by any legislature, act or statue, the person is authorized to do an act then it does not consist an actionable claim even if any harm is being caused to any person and no remedy exist for such action even though it consists of a tort.

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