WHAT IS VOLENTI NON – FIT INJURIA?

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Volenti Non Fit Injuria means when a person has voluntarily agreed to under take risk for any activity or some act that they have volunteered for. When applied it is an absolute defence from liability. This defence makes it a requirement for the claimant to have agreed out of free consent, there should be an agreement between the two parties regarding the same. The Agreement made can be either expressed and implied. The claimant should also be made aware of the risks and its full knowledge and its extent.

To make a very simple translation of the Roman Law maxim Volenti Non Fit Injuria, it means that things suffered voluntarily are not fit/deemed to be an injury; or an injury cannot arise out of a voluntary act (of the aggrieved party).

Volenti non fit iniuria is an often-quoted form of the legal maxim formulated by the Roman jurist Ulpian which reads in original: Nulla iniuria est, quæ in volentem fiat.

The maxim states a principle of estoppels applicable originally to a Roman citizen who consented to being sold as a slave. Although pleaded and argued below, it was only faintly relied on by counsel for the first defendant in this court. In my view, the maxim, in the absence of express contract, has no application to negligence where the duty of care is based solely on proximity or ‘neighbour ship’ in the Atkinian sense.

The maxim in English law presupposes a tortuous act by the defendant. The consent that is relevant is not consent to the risk of injury, but consent to the lack of reasonable care that may produce that risk and requires on the part of the plaintiff at the time at which he gives his consent full knowledge of the nature and extent of the risk that he ran.
Defence of Volenti – Non Fit Injuria

This defence absolves the tort-feasor from any liability, if it is proved that the tort arose out of an informed and wilful act of the injured party. So, consent of the aggrieved party forms the essence of this defence.

To start with a classic example, if you go to a watch a match at a stadium, you know that the bowlers will be bowling and there is a chance that the ball might come towards the spectators at any time, But when the spectators bought the ticket, they had knowledge of the risk and consented to the risks when they bought the ticket.

The batsman hit the ball; and, let’s say for argument’s sake that the stadium operators did not put up ‘adequate protection’ such as fencing all over the stands but, the claimant was aware of all that, and still chose to run that risk.

Imagine yourself to be a law enforcer and have a duty to safeguard others rights, you see that a group of civilians are gathered on the roads and a bunch of horses getting unruly, the horses might have injured the civilians, so you jump in between the horses and civilians.

The defence of Volenti Non Fit injuria will not be available to the tortfeasor although you were aware of the dangers and undertook your course of action voluntarily. This is because – here we draw a distinction from the cricket match case – you cannot be said to accept the risk of getting injured by the horses.

A person’s duty-bound objective was to save the people from harm. Thus, there is a fine line between knowledge of the risk and acceptance of the risk. You cannot be said to accept everything that you happen to be aware of. If that were the case, then in case you accidentally get hit by a car on the road, the defence will simply be that accidents happen, and you went on the road being aware of the same, so the driver has no liability – it needs no telling how erroneous this argument is.

However, if as an ordinary citizen you take the risk of getting in between the horses then, the Claimant i.e. you may be able to claim the defence of Volenti Non Fit Injuria.

The acceptance of the risk may be implied (like when you go to a stadium for a cricket match, you accept the normal risks of the match) or expressed.
Also, the consent has to be free consent, and cannot be mitigated by factors such as coercion, undue influence, misrepresentation, etc. If the relationship between the parties show that one party holds a position of influence over the other (master-servant, worker-employee), Volenti Non Fit Injuria is unlikely to find application.

Consent is also a subjective element – in both cases of the cricket match and the horses, there is an apparent presence of both knowledge and acceptance; However the latter can . The outcome will depend on the facts and circumstances of the case (including the relationship between the parties, the legality of the act itself, etc).

In the case of Wooldridge v Summer ¹, The plaintiff was a professional photographer. During a horse show he positioned himself at the edge of the arena. He was knocked down and injured by a horse when the rider lost control while riding too fast. The Court of Appeal held that the defendant rider’s failure to control his horse was simply an error of judgement which did not amount to negligence. The standard of care owed by a competitor to a spectator was not to act with reckless disregard for the spectator’s safety. As this duty had not been broken there was no room for the defence of volenti non fit injuria to operate.

Finally, the act of the tortfeasor cannot be an illegal/unlawful act, in order to claim the defence of Volenti Non Fit Injuria. Also, the harm caused cannot exceed the harm consented, unless it is a foreseeable that excess harm will be caused. Harm caused by acts undertaken negligently cannot be said to have been consented to.

Therefore, Volenti Non Fit Injuria can thus be claimed when there is:

i. Knowledge of the risk, or the risk being such that there is a reasonable expectation that it might occur, and thus, the plaintiff is also expected to be aware of it;

ii. Consent/acceptance of the risk – either implied or expressed.

iii. Illegal Act

¹ [1963] 2 QB 43
“The defence of Volenti Non Fit Injuria can be denied by the Court after taking into consideration the facts of the case and circumstances with regard to the same.

The defence of Volenti non Fit Injuria cannot be given to the defendants when the claimant has not been informed of the risks properly or the agreement has been coerced using force or any other means that are illegal.

There are many instances where it has been found that the loss is being suffered by a person due to the act of the other, but for which he has no remedy in tort law. It so happens because that the person suffering the harm has consented for the same. Example, where a spectator of a cricket match gets hit by the cricket ball at the stadium without any part of negligence and wrongful intention on the part of player or the defendant, in that situation the plaintiff doesn’t have any remedy under tort law as he himself has consented for such risk at the time of purchasing the tickets. This consent is a good defence for the defendant under tort law and this is concept is termed as ‘Volenti Non Fit Injuria’. The term Volenti Non Fit Injuria is a Latin maxim which refers to a willing person, an injury is not done. It is a common law doctrine, according to this doctrine the person who voluntarily gives consent for any harm to suffer would not be liable to claim any damages for the same and this consent serves as a good defence against the plaintiff. The person who himself voluntarily waived or abandoned his right cannot have any claim over it. Provided this doctrine is only applicable to the extent that a normally prudent person would have assumed to have suffered the risk.”

In Dann v Hamilton, Asquith J expressed doubts whether the maxim ever could apply to license in advance a subsequent act of negligence, for if the consent precedes the act of negligence, the plaintiff cannot at that time have full knowledge of the extent as well as the nature of the risk which he will run.

In the case of Khimji Vs Tanga Mombasa Transport Co. Ltd (1962), The plaintiffs were the personal representatives of a deceased who met his death while travelling as a passenger in the defendant's bus. The bus reached a place where road was flooded and it was risky to cross. The driver was reluctant to continue the journey but some of the passengers, including the deceased,

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2 [https://lawtimesjournal.in/volenti-non-fit-injuria/, 04-01-2018, 12:45pm.](https://lawtimesjournal.in/volenti-non-fit-injuria/)
insisted that the journey should be continued. The driver eventually yielded and continued with some of the passengers, including the deceased. The bus got drowned together with all the passengers aboard. The deceased's dead body was found the following day. It was held that the plaintiff's action against the defendants could not be maintained because the deceased knew the risk involved and assumed it voluntarily and so the defence of Volenti Non Fit Injuria rightly applied.

In Condon v Basia⁴ standard of reasonable care was applied to participants in a football match. In Blake v Galloway ⁵a number of people were involved in horseplay involving throwing pieces of bark at one another and a participant was struck in the eye. The Court of Appeal set the standard of care in these circumstances as recklessness or a very high degree of carelessness.

Coming to home base, Consent has to be obtained freely as was held in

Lakshmi rajan vs. Malar hospital

In this case, the plaintiff had a tumour on her breast and went to a hospital to get it surgically removed; she consented to the surgical procedure for the removal of the tumour. The tumour had nothing to do with her uterus. The surgeon not only removed the tumour, but also removed her uterus. The hospital was held liable because they had performed an action without the consent of the patient and the court found the defendants liable.

▪ If the consent is obtained by fraud, the consent is not real and cannot be used as a defence in a tort.

▪ If the consent is obtained from a person who is forced to give his consent and is not given the freedom of choice. That consent is not taken into account because the person is no longer free to choose his options. This is usually present in master servant relationships where, the servant is forced to commit an act under pressure. Thus there is no principle of volenti non fit injuria does not apply to a servant if he is forced to carry out an act despite his protests.

In R. V. Williams, The defendant was a singer who use to teach students about singing. Defendant during the singing lesson convinced his 16 years old student to give her consent for sexual

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⁴ [1985] 2 All ER 453
⁵ [2004] 3 All ER 315
intercourse with him for the purpose of improving her voice that will make her a good singer. Here the consent obtained won’t be considered since the girl’s consent was taken fraudulently.

“Slater vs. Clay Cross Co Ltd

In this case the plaintiff was hit by a train while walking in a tunnel owned by the railway company. The railway company had instructed its train drivers to blow a whistle and slow down at the entrance of the tunnel. These instructions were not followed by the train driver. The court held the defendant liable for the injury because even though the plaintiff had taken the risk of walking in the tunnel, the defendant had enhanced that risk through negligence. When the plaintiff consents to take some risk, the presumption is that defendant will not be negligent.”

IN THE CASES OF SPORTING EVENTS:

“A participant in sporting events is taken to consent to the risk of injury, which occurs in the course of the ordinary performance of the sport. In the case of Condon v Basi The Claimant suffered a broken leg during a tackle from the Defendant during a football match. The Claimant was playing for Whittle Wanderers and the Defendant for the Khaslo Football Club. Both clubs were in the Leamington local league. The question for the court was the standard of care expected of a football player. Court of Appeal held that The standard of care varies according to the level of expertise the player has. The Defendant was in breach of duty as the tackle was reckless even with regards the standard expected of a local league player. Whilst a participant can be taken to accept the risks of injury inherent to such sporting activities they do not accept the risk of injury which occurs outside the rules of the game.”

This maxim however will only apply to the extent of risk consented to, other acts of the defendant like negligent or illegal acts are not consented to by the plaintiff and therefore a defence cannot be taken under the same.

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7 [1985] 1 WLR 866
CONCLUSION

Keeping in mind that tort law is not as prevalent in India and uncodified, the defence comes in use of the law bearers a lot, especially a cricket fanatic country like ours. Spectators are injured on a regular basis in the country when in stadiums to watch matches. This defence comes as a relief not only to the players but the stadium authorities as well. Of course an informed citizen on the roads when injured will also know the loop holes for the same. This defence is pretty straight forward and does not require too many essentials to be fulfilled. The conditions to be met are consent and Knowledge of the risk. If these essentials are fulfilled, this defence is considered by the Court.

Cases also have simplified situations with regard to the defences applicability.