Contributory negligence and volenti non fit injuria essay sample

Law

The common law recognises the need for defendants to have defences such as contributory negligent and volenti when deems reasonable to impose them. Both defences are similar in nature and effect.

Contributory Negligent refers to the claimant being party responsible for their actions and thus contributes to their harm. Volenti Non Fit Injuria, on the other hand, is defined as volenti(willingly) injuria(suffer harm) non fit(that is not actionable). In both defences, the claimant have played a part in causing harm to themselves, and ought to sustain some responsibility- rather than allowing the defendant to bear the whole liability for what in essence was not wholly their fault. Their similarities are great as in they lessen the defendant's liability, by acting as defences the defendants can raise. zl

For contributory negligence to be raised, it must prove that the claimant had contributed to their harm. An example is the case of Baker v Willoughby where the claimant was involved in a car accident that was a result of the defendant's negligence. Later the claimant was shot in the same leg by a robber. However the defendant successfully claimed for contributory negligence, lessening the damages by 50% as the claimant was careless in the way that he had a clear view of the road for 200 yards and had not done any form of evasion. This shows that this is a partial defence, as a claimant cannot be fully responsible of his own negligence.

The claimant must prove that they had fallen under a standard of care. This standard of care is an objective one it is of a reasonable person involved in the relevant activity. For example in children, the standard of care of one

which could be reasonably expected, after taking into account the child's age and development. In the case of Evans v Souls Garage, the claimant had injured himself by inhaling fumes from petrol. He successfully sued the defendant for negligently selling petrol to him but the damages were reduced by a third for his contributory negligence.

This there are a few notable points that are similar to the defence of Volenti non fit injuria which states that where consent is given, no harm can be done to the willing participant. Both defences are raised in negligence claims as a way to lessen the liability of the defendant, and uphold justice where needs be.

To define the latin phrase of Volenti, it means Volenti (To one who is willing) Injuria(No actionable harm) Non Fit (can be done). The test of consent is objective, clearly it is impossible for courts to see inside the minds of the claimants hence they will look for whether it was reasonable for the defendant to think that there was consent rather than whether the claimant has actually consented.

Where the claimant had knowledge of a risk, it may be evidence that they had consented to it but it is not in itself conclusive proof. The consent will only amount to a defence if it is freely given, consents under pressure if not satisfactory. Both of these principles can be seen in the case of Smith v Baker where the defendant had negligently using a crane, so that stones swung over the claimant's head while he worked. The claimant was aware of it happening, and told the employer but it was to no avail. When he continued to work, he was injured as a stone did fall on his head. The

defendant tried to plead volenti, when he continued to work, he knew of the risk and was taking it. However this plea failed as taking on a work which was intrinsically dangerous would amount to consenting to the risk but a job which is not supposedly dangerous but is will not.

This differs in Contributory Negligence when usually knowledge of a risk and acting on it may amount to a person being negligent. In the case of Cavendish Funding v Henry Spencer, the claimant had obtained a valuation from the defendant at 1. 5 million pounds and later they obtained another at 1 million. It turns out that the property was merely 250000. The claimant sued the defendant and the plea of contributory negligence was awarded. The difference in the valuation showed that the claimant knew of the risk and in using it they had been contributory negligent.

However, there are some cases where volenti is not applicable. Drivers can never plead volenti. The Road Traffic Act 1988 excludes the use of volenti to allow drivers to avoid liability to passengers. It makes insurance compulsory for motorists and disregards any attempt to avoid liability to passengers. S. 147 prevents the use of motorists relying on any form of volenti defence with regards to passengers. In the case of Pitts v Hunt, the passenger had induced her friend to drive even though he knew that he was drunk and uninsured. The bike crashed seriously injuring the claimant who sued the defendant. The defendant tried to plea volenti but was restricted by s. 147. However, could the passenger be contributory negligent?

It is possible for a defendant to raise a plea of contributory negligence on the passenger. For example, if the passenger had failed to buckle up, and got

into an accident due to the defendant’s negligence, and sued the defendant, the defendant can definitely raise the defence of contributory negligence against the passenger. This differs from the defence of volenti when the passenger is protected.

Rescuers are also protected by the plea of volenti being used against them. They will not be said to be given consent merely because they have been conscious and deliberately acted to give help to the people in harm. Their freedom of choice has been forgone in exchange of their moral and social obligation. For example In the case of Haynes v Harwood, 2 horse bolted and the claimant was a policeman who was under the duty to keep peace, had tried to rescue the horses but suffered injuries as a result. The defendant could not use the plea of volenti against them.

The defence of contributory negligence used to be a full defence when the claimant has contributed to their injury, they would not be able to claim. However this is extremely unjust and the Law Reform changed it, into a partial defence, the claimant would still be able to claim, but the defence may apply, the defendant may only be liable for the part of the harm that they have contributed. Volenti, on the other hand, if applied is a full defence.

Though there are many similarities in both defences, there exist some differences making them to be applicable in different circumstances and garner different effects. Where one is a partial defence and another is a full defence, the former will leave the plaintiff with no remedy and the second with reduced remedy.