

TORTS : REMEDIES

1. **What is remedy ?** In common terms it means to set right -an undesirable situation.
2. **Why remedy ?** The aim of any legal system is to provide remedy to the mischief committed. A law without redressal is futile and incomplete.
3. **What is the importance of remedy in tort law ?** The tort law is based on the principle of *ubi jus ibi remedium* (there is no wrong without remedy).
4. **How remedy is granted by law ?** The granting of redress by the law means that some person or group will be required by the law to do or refrain from doing something. This redress may take various forms. The important remedies provided in tort law can be categories in two fold.
5. **What are the types of remedies in tort law ?**

JUDICIAL REMEDIES – remedies granted by court

1. Damages – granting compensation – most important remedy

- **Nominal Damages** – very less amount of damage / warning . Eg rs.1
- **Contemtuous Damages** - When plaintiff has suffered a wrong but no monetary loss.
- **Compensatory, Aggravated, and Exemplary Damages**
- **Prospective Damages** - Compensation for future tort.

2. Injunctions - The court directing the doing of some act or restraining the commission or continuance of some act.

3. Specific restitution of Property – Bringing back the property as it was before.

EXTRA –JUDICIAL REMEDY- remedy out of court

1. **Expulsion of trespasser** - removing the trespasser.
2. **Recaption of chattels** - to take possession of one's goods.
3. **Abatement of nuisance** – Right to stop any nuisance that is affecting one's land.
4. **Distress Damage feasant** - Right to seize goods or cattle that has strayed on one's land until compensation is paid.

UNIQUENESS IN TORT LAW : For every law the remedy is fixed by the statute itself eg: IPC , at certain cases breaches were dealt by agreement between parties eg: Contracts. Unlike them tort does not have any prefixed remedy. Some of the important remedies are discussed below.

What are the issues to be decided by court before awarding such remedy? Before granting relief to plaintiff court must cautiously decide the following issue:

- i) Are the relief claimed by the plaintiff a consequential result of defendant's wrongful act.
- ii) Where such loss is foreseeable under the circumstances in which the tort is committed. In other words, damage (here it denotes loss caused to plaintiff) must not be too remote,
- iii) What is the appropriate relief to be given.

JUDICIAL REMEDIES

What are judicial remedies ? Remedies available to a plaintiff through a court of law are judicial remedies. To seek judicial remedy the victim must file a suit in civil court.

R1 : DAMAGES

Damages: Damages are primary remedy in an action for tort. Damages are the pecuniary compensation which is given to a person for the injury he suffers for the infringement of his rights. If a person sustain injury by the wrongful act of another, he may bring a suit for damages in a court, and the court after being satisfied that his legal rights has been infringed by the defendants, may award damages to the plaintiff.

- Damages not only operates as a *satisfaction to the plaintiff* but also is a *punishment to the defendant* wrongdoer to teach him a lesson so he may not repeat such acts in future.

- Damages are given to direct wrongful acts of defendant . These are awarded immaterial whether the defendant intended the consequences or not, and whether he could reasonably foresee it or not.
- a) **What are damages in tort law mean ?** 'Damages' for the purpose of law of torts means pecuniary sum which the plaintiff claims from the defendant for the tort committed by him.
- b) **What is legal definition of damages ?** Damages as a pecuniary sum which is awarded to plaintiff who succeeds in an action for tort or breach of contract # *Common Cause -A registered V.Union of India .*
- c) **What is the nature of such damage ?** Damages are always unliquidated.
- d) **What is meant by unliquidated damages ?** They are not pre-determined and the quantum of damages is decided by the Court at every instance of a case.
- e) **What are the criterion to fix damage ?** Court generally takes into considerations the following facts:-
 1. Graveness of the damage caused
 2. Extent of loss caused to plaintiff
 3. Nature of tort committed by defendant
 4. Extent of malice in the tort committed
 5. Whether defendant is habitual tort feisor

The damages to be paid are not fixed for all cases, depending upon the tort committed the damages awarded are of various types and they are as follows:

KINDS OF DAMAGES :

NOMINAL DAMAGES

Originally damages are equivalent to the harm suffered by the plaintiff.

- a) **What is nominal damage ?** Nominal damages are damages which are minimal in amount say in single rupee or paise.
- b) **Why nominal damages?** It is just a warning to the tort feisor.
- c) **When nominal damages are awarded ?** When there has been infringement of the plaintiff's legal right but he has suffered no loss thereby (*injuria sine damnum*) the law awards him nominal damages in recognition of his right.

d) **What is the purpose of nominal damages?** To recognize the right violated and to warn the defendant.

In *Constantine v Imperial London Hotels Ltd.*, the defendant wrongfully refused to accommodate the plaintiff, a famous West Indies cricketer, in one of their hotels, where the plaintiff wished to stay. It was held that the *plaintiff was entitled to nominal damages of five guineas*

Ashby V. White : The returning officer wrongfully disallowed a qualified voter at parliamentary election but it was found that the voter suffered no loss because the candidate for whom he wanted to vote had won the election.

Harm= Only violation of right to vote without any loss

Held: However, defendant was held liable and nominal damage was levied.

CONTEMPTUOUS DAMAGES

- a) **What is contemptuous damages?** Trivial amount of compensation when there is violation of right and also suffer loss.
- b) **When Contemptuous damages are awarded?** When the court forms a very low opinion of the plaintiff's claim and thinks that the plaintiff although he has suffered greater loss does not deserve to be fully compensated # claim on technical grounds.

Lx Explains ! When your friend assaults you and you have retaliated with defaming words, now when you approach court, it awards contemptuous damages, simply because you have retaliated.

Nominal damages

Nominal damages are awarded when the plaintiff has suffered no loss

Contemptuous damages

contemptuous damages are awarded when the plaintiff has suffered some loss but he does not deserve to be fully compensated.

COMPENSATORY, AGGRAVATED AND EXEMPLARY DAMAGES

- a) **What is compensatory damage ?** Amount equal to loss suffered is given. This is the basic idea of all civil law.

COMPENSATION AMOUNT = LOSS SUFFERED

- **Purpose of compensatory damage :** To make good the loss inflicted.
- b) **What is aggravated damages ?** Compensation amount more than injury/loss suffered is given.
- **When it is awarded :** When insult or injury to the plaintiff's feeling has been caused the court may take into account the motive for the wrong and award an increased amount of damages.
 - **Purpose of aggravated damages :** Idea in rewarding such damages is not to punish the wrongdoer but to compensate the plaintiff.
- c) **What are exemplary damages ?** Damages awarded in excess of the material loss suffered by the plaintiff with a view to prevent similar behavior in future the damages are known as exemplary, punitive or vindictive.
- **Purpose of exemplary damages :** Such damages are not compensatory in nature, they are aimed to punish the defendant.

Lord Devlin in Rookes V. Barnard expressed that such damages can be allowed only in the following three cases.

- a) Where the damage has been caused by oppressive, arbitrary or unconstitutional action by the servants of the government.
- b) Where the defendant's conduct has been calculated by him to make a profit for himself which may well exceed the compensation payable to the plaintiff.
- c) Where exemplary damages are expressly authorized by the state.

- In *Bhim Singh V. State of J & K*, the Supreme Court awarded exemplary damage when there was wrongful detention. In this case, Bhim Singh a member of the Legislative Assembly was arrested and detained to prevent him from attending the assembly session.

Prospective Damages or Future Damages

- a) What is prospective damages ? Means compensation for damage, which is quite likely result of the defendant's wrongful act but which has not actually resulted at the time of the decision of the case.

For example, If a person has been crippled in an accident the damage to be awarded to him may not only include the loss suffered by him upto the date of the action but also future likely damage to him in respect of that disability.

Subhash Chander V. Ram Singh:

FACTS : Subhash Chander was hit by bus; suffered various injuries resulting in permanent disability as a result of which he could not then walk without surgical shoe, also because of that disability could not take employment in certain avenues.

HELD : Motor Accident Claims Tribunal awarded him compensation amounting to Rs. 3,000 under the heading probable future loss by reason of incapacity and diminished capacity of work. The amount of compensation awarded by the Tribunal was increased by the Delhi High Court to Rs. 7,500.

HOW CAN WE DETERMINE THE COMPENSATION FOR PERSONAL INJURIES>

The task of determining the amount of compensation for personal injuries is difficult.

Personal injuries may be of two kinds:

1. Non-pecuniary loss, and
2. Pecuniary loss.

Non-pecuniary loss includes the following heads of damages –

1. Pain and suffering : If the negligent act of the defendants causes act pain and suffering, then plaintiff is entitled to compensation. Such pain and suffering include present and future.
2. Loss of amenities, and
3. Loss of expectations of life : For every healthy person it is hoped that he will remain alive up to a fixed duration. This is known as expectancy of life. In order to know the life expectancy of a person his present health, his expectancy of a happy life, and his earning capacity etc. may be considered.

Pecuniary loss includes the following heads of damages-

1. Consequential expenses
2. Cost of care : The plaintiff is entitled to reasonable medical expenses which he has to incur as result of bodily injuries. This includes expenses for taking the plaintiff to a hospital, for purchasing medicines and equipments required for his treatment, fees of private doctors and similar other expenses.
3. Loss of earnings : If as a result of injury there is loss of earnings or earning capacity of the plaintiff he will be entitled to damages. Loss of earning capacity and upto the time of filing the suit for damages.

There is no universal rule for determination of amount of damages. It will be determined on the basis of facts and circumstances of each case.

Klaus Mittel Bauchert V. East India Hotels Ltd : In this case plaintiff aged 30 years German national, Co. pilot checked into Hotel Oberoi Inter Continental. One afternoon he visited the swimming pool. While diving *he hit his head on the bottom of pool*. Taken out bleeding from right ear and appeared to be paralyzed in leg and arm. Taken to Holy Family hospital where he remained admitted for 7 days. Later flown to Germany. He could not attend to his work thereafter, suffered considerable pain and suffering, incurred a lot of expenditure on doctor's service, hospitalization, medicines, nursing physiotherapy, special diet health and housing facilities etc. Later on, he died at the age of 43. Defendant held negligent, as there was insufficient water in pool.

Interest on Damages: In addition to the damages allowed under various heads the plaintiff may be allowed interest on the amount of damages from the date of his filing the petition or suit till the date of payment of compensation. At present, practice in India is to award interest at the rate of *12% from the date of filling of the suit which is payable on the total amount of compensation*

R.2 : INJUNCTION

1. What is an Injunction? It is an order of the court directing the doing of some act or restraining the commission or continuance of some act.
2. DISCRETION OF THE COURT : Court has discretion to grant or refuse this remedy and when remedy by way of damages is a sufficient relief, injunction will not be granted.
3. LAW : Injunctions are provided under Sec. 36, 37, 38, 39, 40, 41 of the Specific Relief Act, 1963.

TYPES OF INJUNCTION :

1. Temporary Injunction : It is only provisional, temporary. The procedure for grant of temporary or interlocutory injunction is governed by order XXXIX of Civil Procedure Code, 1908. It continues until the case is heard on its merits or until further order of court.
2. Perpetual Injunction : It means permanent i.e. the order remains operational permanently. The court allow this injunction after taking into consideration all the relevant facts and the case is finally: disposed of on merits.
3. Prohibitory Injunction : Forbids the defendant from doing some act which will interfere with the plaintiff's lawful rights.

e.g. restraining defendant from committing or continuing the acts like trespass.

4. Mandatory Injunction : Order which requires the defendant to do some positive act e.g. orders to pull down which causes obstruction to the plaintiff's right of light. These has defined under sec. 37 to 42 of the Specific Relief Act, 1963.

Eg : ("You should not construct the wall" is a prohibitory injunction and "You demolish the wall" is a mandatory injunction.)

R3 :SPECIFIC RESTITUTION OF PROPERTY

Plaintiff has been wrongfully dispossessed of his movable or immovable property; the court may order that specific property should be restored back to the plaintiff. e.g. in case of wrongful possession of land ejectment. This is provided under sec. 5, 7 of the Specific Relief Act 1963.

EXTRA-JUDICIAL REMEDIES :

INTRODUCTION :

- Apart from the above remedies of damages, injunction and Specific restitution of property, a person has certain remedies available to him outside the court of law. These remedies are therefore known as *extra-judicial remedies*, that is, they can be resorted to by the person's own strength by way of self-help.
- In such cases instead of going to the court the person protects his legal rights by himself. But the law imposes restrictions on the use of these rights such as the force used to protect legal rights should not be more than necessary and generally, the force used should be such which is necessary in the circumstances. This includes the following remedies:

1. SELF-HELP :

- One can use reasonable forces to protect him against any wrongful act of another in proportion to the danger or injury sought to be prevented.
- Right to self-help includes the right to protection of one's own body, members of his family servant and master, protection of property etc.

2. RE-ENTRY ON LAND

: A person who has been dispossessed of his land wrongfully can re-enter his land and take its possession. He can use *necessary force* for this purpose provided it is done peacefully.

3. EXPULSION OF TRESPASSER

Every person has a right to expel a trespasser from his land. He can also use necessary force to expel the trespasser, but the use of force the trespasser should be asked to leave the land and be given an opportunity to leave the Land. This right can be used in both situations prior to the entry of the trespasser on the land or after the entry.

4. RECEPTION OF GOODS:

If a person is dispossessed of his chattels or animals wrongfully, he is entitled to repossess them. In exercise of his right he can enter upon the land of another and it will not amount to trespass.

5. ABATEMENT OF NUISANCE

If some nuisance is done or continues on a person's land, then he is entitled to abate or remove the nuisance.

For example, an occupier of a land may cut branches of a tree hanging over the window of his house which obstructs his light or his way. Similarly, an occupier of a land can cut spreading roots from his neighbour's land. But there are certain restrictions on this right.

- Firstly, before the exercise of this right, he should give notice to his neighbor.
 - Secondly, in exercising this right unnecessary damage should not be caused. Thus while removing the nuisance only such damage is caused as is necessary in the circumstances.
 - Thirdly, if there are two ways of removing the nuisance the way which causes less mischief should be adopted unless it would cause damage to the innocent third party or the public.
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EQUITABLE REMEDIES

Equitable Remedies: These are available where monetary damages will not adequately restore the victim to wholeness. These can include:

- **Temporary Restraining Order:** Victims of physical harm or harassment may obtain a restraining order, which prevents the defendant from making contact with or coming near to the plaintiff.
- **Temporary or Permanent Injunction:** An injunction may either prohibit unlawful activity by the defendant or it may order them to take affirmative steps. Injunctions are common in trespassing and nuisance tort claims.

TORTS : REMEDIES IN TORT LAW

- Unlike other law, tort does not have any prefixed remedy.

ISSUES TO BE DECIDED BY COURT BEFORE AWARDING SUCH REMEDY : Plaintiff affected by consequential defendant's wrongful act ; such damage should not be too remote ; appropriate relief to be given.

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6. Loss of earnings

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