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Remedies Available in Law of Tort

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ABSTRACT

A tort is just a violation of law that isn't punishable by law. A tort is described as a breach of an individual's personal legal right that simultaneously violates the wrongdoer's legal responsibility. In torts, the perpetrator compensates the victim. Unliquidated damages are awarded to the aggrieved party and are determined by that of the courts based on the severity of the injury caused. In tort, there really are legal remedies that the courts can check or sanction. If a claimant is harmed, the court might order the wrongdoer to reimburse the aggrieved or restore the victim's property in its original state. Depending on the circumstances of the injury done, the court may punish the wrongdoer in specific cases. The two categories of legal remedies in tort law are judicial and extrajudicial remedies. The focus of the research paper will be on the legal and extra-judicial remedies accessible to aggrieved parties from the judiciary or court. The objective of this research work is to examine and discuss the various legal remedies that are available in India. The analysis' major purpose is to describe when and how the court will give a judicial remedy. Each legal remedy is further divided into various kinds, which are explained in this study paper. The article also includes case law to help readers better comprehend the topic. I employed the doctrinal technique of research for this research report. This study is based on secondary data collected from books, papers, journals, and the internet.

Keywords: Personal legal rights, violation, victim, damages, remedies.

I. INTRODUCTION

A tort is a legal term for a civil wrong. Anyone who commits a tort shall be penalised pursuant to tort law's requirements. When someone has something taken away to them by another party, they have been aggrieved. The law intervenes whenever a party's rights have been violated. Legal remedies, for example, are among the consequences. A party is said to be 'aggrieved' when something they own is forcibly taken away from them by another party. This is a recognized infringement of a party's rights. Legal action is one such treatment. When an user's rights are violated and they are returns to its original position, they are regarded to have received a legal remedy. There are a number of legal options available to you. For example, if someone takes anything and everything that belong to you, you can sue the court has ordered defendants

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to reimburse your back in cash or retrieve your belongings in their original condition, and in rare situations, the court can also penalise the party.

II. KINDS OF REMEDIES

In tortuous law, there are two different kinds of remedies:

- Judicial Remedies
- Extra-Judicial Remedies

(A) Judicial Remedies

There are three different types of judicial remedies:

1. Damages
2. Injunction²
3. Property Relief is available on a Specific instance Basis.

1. Damages

Damages or statutory damages refer to the amount of money paid towards the aggrieved party put them back in the position they were in before the tort occurred. They are granted to a plaintiff to assist them in recovering their losses. The most common type of relief in tort lawsuits is monetary damages. The plurality of the word "damage," which normally indicates "harm" or "injury," should not be confused with the phrase "damages."

a. Damages and their Types

According just on compensation's 'objective,' that is, that whether plaintiff should be reimbursed or the defendant should be 'penalized,' there have traditionally been four types of damages:

- **Contemptuous damages**– Deplorable damages are another term for embarrassing damages. Whenever the complainant is at responsibility and cannot be considered legitimately 'offended,' the amount of money granted by the court reflects the court's dissatisfaction.
- **Nominal damages**– Whenever a complainant's legal right is violated but no real injury is done to him, symbolic damages may be awarded. Trespassing results in the violation of a legal right, when no damage is done. The goal in this case is not to recompense the plaintiff.

²Specific Relief Act, 1963 (Act 47 of 1963), s.36.

- **Substantial Damages-** The plaintiff is deemed to have obtained substantial damages when he is compensated for the specific loss he suffered the consequences of the tort.
 - **Exemplary Damages** – This is the category with the most credits. Punishment damages may be awarded when the defendant was intentionally ignorant of the complainant's rights and caused the plaintiff significant harm. The goal is to set a clear example and discourage others from following suit in the future.
- b. Damages, both general and specific-**When the plaintiff has incurred a direct loss as a result of the defendant's improper behaviour. In this scenario, the plaintiff will be reimbursed for the real damages he or she has experienced, regardless of the plaintiff's uncommon bone disease. The amount of real loss experienced by the plaintiff is used to calculate general damages. For example, bodily discomfort and loss caused by it, or if the plaintiff's quality of life is decreased.

Specific damages are awarded when a specific loss can be demonstrated. There really is no another formula for calculating the true amount. All the claimant would have to do is show how he or herself has suffered a considerable financial loss.. Medical expenses, salary loss (potential), and the repair or replacement of lost or damaged goods/property are just a few examples.

2. Injunction

In tort cases, injunctions appear to be frequently issued at the discretion of the court Rather than compensating the victim, offended party, an equitable remedy requires other party to fulfil his half of the deal. An injunction is issued by a court when it orders someone to stop or do something and then do something good so order to compensate the party who has been wronged. Because development sounds may be disturbing the hospital, a court may force a project company is building on land near the hospital.

There are four different types of injunctions:³

- Temporary injunction
- Permanent injunction
- Mandatory injunction
- Prohibitory injunction

³ Specific Relief Act, 1963 (Act 47 of 1963), s.37.

III. PROPERTY RELIEF IS AVAILABLE ON A SPECIFIC INSTANCE BASIS

The final judicial remedy available under law of Tort is Specified Restoration of Property. Returning property to its rightful owner is referred to as restitution. When a person's property or assets are taken from him without his permission, he has the right to have them restored to him.

IV. REMEDIES AVAILABLE OUTSIDE OF THE JUDICIAL SYSTEM

Extra - judicial remedies are legal actions taken by the parties themselves to address their grievances without having to go to court. They are primarily as follows:

1. Land-based re-entry entitlements
2. Chattel re-captioning entitlement
3. Ignorance of annoyances
4. Feasant in despair.

A. Land-based re-entry entitlements

A person who has been wrongly expelled from his estate may reclaim it if he does it peacefully and without resorting to force. Even a person who is entitled to possession in England, under the forced entry statute, should not use violence and force to achieve his goal, and will be imprisoned if he enters "with powerful hands and a multitude of people." As a result, forcible re-entry will be a criminal offense there. He can only enter if he can effect in a peaceful manner, according to the aforementioned statute. Will a lawsuit for aggravated assault be filed against a home owner who obtained possession of his property by using the amount of violence necessary to do so? After significant debate, it was finally decided in **Hemmings v. Stoke Poges Golf Club**⁴ that such an activity would be illegal. After being given adequate notice, the complainant, who was the tenant of the respondents' cottage, refused to depart. After that, the defendants approached the cottage and took the plaintiff and his belongings with as little force as possible. They were found not liable after he sued them for assault, violence, and trespass.

B. Chattel re-captioning entitlement

If someone grabs my ballpoint pen from my pocket and escapes with that as well, I can chase him down, seize, and take my ballpoint pen from him forcibly. This is their right to re-caption, and no criminal or civil action would be brought against me for it. However, I must use a reasonable amount of force to obtain my chattel. "Where a departing tenant leaves a painting

⁴ (1920) 1 KB 120.

hanging on a wall, the tenants may decline to allow the landlord, but not have to put him to the effort of delivering it, however the picture will still be the owner's chattel," Maule, J. said in **Wilde v. Waters**.⁵ If it looked like he (the new renter) just said, "I don't want thier chattel, but I'm not going to bother myself about it," that would not constitute a trover action. The action in this case would be for the value of chattels left behind from the former tenant plaintiff, which were tied to the floor and wall, respectively. The defendant, a newer tenant, refused to pay. No suit for identifying information or conversion could be brought against the defendant, it was decided. However, if he had taken the things and utilized those for his own purposes, then would have been held accountable.

C. Ignorance of annoyances

Anyone who is harmed as a consequence of a breach of confidence has the rights to get everything mitigated or eliminated in most cases. A person has a right enter his neighbour's property to remove an irritation of dirt that has been left there by his neighbour. Removing a gate that obscures a particular right-of-way and chopping pieces of a neighbour's trees that reach beyond one's boundary may be justified. The individual who functions are carried the tree's overhanging branches, on the other hand, is responsible for returning the wood towards the tree's proprietor, and he should not retain the branches or even the fruit that develops on it for him. It was so held in **Mills v. Brooker**.⁶ In that case, the branches of the apple tree belonging to the plaintiff overhung onto the adjoining land of the defendant. The latter picked up the apples and appropriate them. He was held liable for damages to the plaintiff for conversion. Lush, J. said: "the owner of a fruit tree the branches of which grow over the boundary of his land is the owner of the fruit on the overhanging branches while it is still growing on the tree. It is equally his property after it has been detached from the tree, whether it has fallen from being ripe, been blown off by the wind, or been severed by the act of man. The adjoining owner is entitled to sever the overhanging fruit in the exercise of the right of abatement of a nuisance but the exercise of that right cannot divest the owner's right of property in the fruit so severed.

In any given situation, the participant starting to alleviate the interruption must tread cautiously not to interfere with the wrongdoer's capital beyond what is required to help relieve the interruption; however, if multiple mitigation options exist, each of which is less extremely devastating to the tort committed than some others, the least harmful procedure should always

⁵ (1855) 24 LJC 193.

⁶ (1919) 1 KB 555.

be incorporated and subject to this. “Where the alternative method involves an interference with the possessions of such an innocent individual or the wrongdoer, the simplest method must be incorporated and subject to this.

Notice

The law as to when notice is necessary before abatement is not clearly settled. It is clear that no notice is necessary when a man cuts branches of the tree which overhangs his land so long as he does so without going on his neighbour’s land or where nuisance involves such immediate danger to life or health as to render it unsafe to wait.⁷ It is also clear that notice is necessary where abatement involves pulling down the inhabited house⁸ or where it involves entering on land in possession of a person who is not responsible creation of the nuisance. It had been repeatedly said that a man may without notice enter upon land to abate a nuisance if the person who created the nuisance is still in occupation and this appears to be good law.⁹

D. Feasant in despair.

If a man discovers somebody else's cattle or things on his property and it is inflicting him harm, he has the right to seize and imprison it in order to pressure the infringing cattle or chattel's proprietors to compensate him for the loss. The distressed damage feasant right is what it's called. Distress is commonly applied to wandering cattle, but it can also be applied to any other chattel that properly encumbers and harms the man's property. As a result, a railway operator has been granted the right to take and detain a locomotives engine that was obstructing its lines. As an extrajudicial remedy, the capacity to distrain has always been severely constrained by the law. As a result, it must actually occur on the distrainer's property. He has no authority to pursue and capture the object if it flees.

There are no rights of distress if there is no trespass. As a result, if animals being driven down a road stray onto adjacent unfenced ground without the driver's fault, they can really be overweight and out of shape unless there is a fair chance of driving them back. Taking something that is under the individual power of another, such as a horse that is unlawfully riding through one's territory, is not legal as a distress damage feasant. Animals taken as damaged feasant may well be driven to something like pounds within the hundreds under the provisions of the English legislation (1 and 2 Ph M.C. 12). The Cattle Trespassing Act of 1871 in India grants the person whose land cattle infringe the power to take animals to the pound. On

⁷*Lemmon v. Webb*, 1895 AC 1.

⁸*Perry v. Fitshowe*, (1846) 8 QB 757.

⁹ Clerk & Lindsell on Torts, 15thedn., p. 306.

repayment of a nominal fine, the owner of something like the guilty livestock may retrieve them. The distrainor does not have the right to sell the item; instead, he or she has the right to keep it until suitable compensation is paid. The loss produced by the awarding damages is known as damage. In a tortious lawsuit, the damages which can be recovered are either nominal or actual. Nominal damages are small sums of money, such as a corporate shill or even a tuppence or paise, granted not as recompense for any actual losses caused, but simply to acknowledge the existence of certain legitimate authority vested inside the plaintiff that is infringed by the defendant; real amount of damage, on the other side, are those that are evaluated and recognized as compensation for damages actually sustained by the victim and not simply to acknowledge the existence of certain legal right intimately involved in the complainant that is violated by the . This category includes all cases of 'injuria sine damnum.' "If a man helps give someone else a cuff upon that ear, although that ends up costing man hardly anything, no, not the same as an Empire London Guesthouses the complainant, the renowned West Indian cricket player, was held obligated to their guesthouses something that he hoped to go, but while they use him for lodgings in another one of their hotels," said Holt, C.J. in *Ashby V. White*, "if a man gives someone else a cuff on the ear, although that costs him hardly anything, no, not really A reverted may seek to prevent the development of a potential right against him, even if he has not incurred any actual harm because he is out of possession.

V. CONCLUSION AND SUGGESTIONS

If the rules for estimating damages in tort and contract are the same, there is a major difference of opinion. According to Perfect condition, Winfield, and Lord Porter, the first component of the principle in *Hadley v. Baxendale* conforms to the torts rule. "The amount of damages in tort always seems to be equal to, and sometimes bigger than, the measurement of damages in contract," according to *Kemp & Kemp*. A slew of American scholars, particularly Prosser, Harper, and James, have maintained that tort damages can be far more than those paid under contracts.
