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# Remedies under Tort Law: Judicial and Extra-Judicial Remedies

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## ABSTRACT

*A tort is legal wrong that doesn't constitute criminal offence. Tort refers to the violation of an individual's right (right means legal right), while the legal duty of the person committing the act is also violated. In torts, the wrongdoer compensates the aggrieved party. The aggrieved party receives compensation in the form of unliquidated damages, which are not predefined and are assessed by the court based on the seriousness of the wrong committed. There are Legal remedies in tort, which are checked and approved by the judiciary. If a wrong is committed against a party, the court orders the tortfeasor to compensate or return the belongings to the aggrieved party. The court can also convict the tortfeasor depending on the seriousness of the tort committed. There are two types of remedies - Judicial and extra-judicial remedies. Remedies that are provided by a court of law to an aggrieved party are called judicial remedies. When a person can lawfully avoid or remedy himself without the court's intervention, the remedies are called extra-judicial remedies. The purpose of this article is to discuss and analyse various types of judicial and extra-judicial remedies available.*

## I. INTRODUCTION

In any case where legal rights are involved, remedies are provided to the subjects of a society in order to ensure justice and peace in that particular state. Remedies are compensation given to a person for the loss he has suffered; they can be awarded to anyone in a variety of ways, including being ordered by the court, granted by judgement after trial or hearing, by agreement (settlement) between the person claiming harm and the person who caused it, and by the automatic operation of law. Remedies as defined in Law of Torts: The manner in which a right is enforced or satisfied by a court when some harm or injury, recognized by society as a wrongful act, is inflicted upon an individual. The remedy is simply a form of relief available to the person against whom a wrong has been committed, and it is provided by the accused party. Tort remedies are typically of two types: judicial and extrajudicial. Judicial remedies are those that are granted to a party by a court, whereas extra judicial remedies are those that are available

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to a party solely through his own actions in certain cases of torts. Judicial remedies are further classified into three types: damages, injunctions, and specific restitution of property, whereas extra-judicial remedies include expulsion of trespasser, re-entry on land, recaption of goods, distress damage feasant, and abatement of nuisance.

## **II. JUDICIAL REMEDIES**

A judicial remedy is one that is granted by the court to the innocent party against whom the wrong has been committed when the court is properly involved in the case.

### **1) DAMAGES**

The basic premise that guides damage evaluation is that the claimant should be fully compensated for his loss. To the extent that monetary compensation can achieve this, he is entitled to be restored to the position he would have been in if the tort had not been committed. In tort cases, the most common form of redress is damages. The term "damages" should not be confused with the plural form of the word "damage," which generally refers to bodily harm or injury. Damages in tort law are such monetary compensations given to the aggrieved party, and the quantum/amount of such compensation is determined by the Court because tort damages are mostly un-liquidated.

Liquidated damages are those in which the amount of compensation has already been determined for a specific offence. In contrast, the amount of compensation in unliquidated damages is not fixed, and the court decides it based on the nature of the offence.

### **TYPES OF DAMAGES**

#### **A.) NOMINAL DAMAGES**

Nominal damages are those in which the plaintiff suffered legal harm at the hands of the defendant but suffered no actual harm. Injuria sine damnum damages are granted when the Court recognises a violation of the plaintiff's legal right but the amount of damages is so trivial or low because the plaintiff has suffered no actual loss. Nominal damages are available for per se actionable torts.

"De minimis non curet lex" is the rule. (The Court does not recognise minor matters.)

For example, in cases of trespass, even if no damage is done, a legal right is still violated. The goal here is not to compensate the plaintiff.

CASE LAW: In *Constantine v Imperial London Hotels Ltd*<sup>2</sup>, the plaintiff, a well-known West

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<sup>2</sup> (1944) KB 693

Indian cricketer, was refused accommodation at the defendant hotel and was instead accommodated at one of the defendant's other branch hotels. The Court determined that the plaintiff was entitled to compensation in the amount of 5 guineas as damages.

### B.) CONTEMPTUOUS DAMAGES

The Court acknowledges that the plaintiff's right has been violated in these types of damages, but in order to demonstrate that the plaintiff's complaint is of such minor nature that it has simply wasted the Court's time, the Court awards the plaintiff a small sum as damages. The main distinction between nominal and contemptuous damages is that the plaintiff suffers no actual loss in nominal damages, whereas in contemptuous damages, the plaintiff suffers actual damage, but it is minor and he does not deserve to be fully reimbursed.

It should not be confused with nominal damages. Nominal damages are typically awarded when the plaintiff has suffered no loss, whereas contemptuous damages are awarded when the plaintiff has suffered some minor loss but is not entirely liable for compensation.

When a wrong is actionable by itself, such as trespass, damage to the plaintiff is presumed, and action lies even if the plaintiff has not suffered any loss. C and B, for example, are next-door neighbours who have never gotten along. C's dog defecates on B's property one day. B is disgusted after stepping in the dog's faeces and sues C for trespass and failure to control his dog. The Court will rule in B's favour, but the Court's award of damages will be minimal due to the minor nature of the case.

CASE LAW: A voter was wrongfully barred from voting in Parliamentary elections in *Ashby v. White*<sup>3</sup>. It was later discovered that the voter suffered no loss as a result because the candidate the voter supported had already won the election. The defendant was held liable because the legal injury was considered significant.

### C.) COMPENSATORY DAMAGES

Compensation is awarded to help the plaintiff regain his previous position prior to the occurrence of the tort. The goal of these damages is to restore the plaintiff to his previous status rather than to punish the offender. These damages are especially useful in cases of monetary losses because the amount of loss can be easily calculated and thus ordered to be paid to the plaintiff so that he can replace the damaged commodity with that amount.

For example, A borrows C's car, which is totaled due to his reckless driving. In this case, A may be awarded compensatory damages, in which C will pay A the cost of repairing the car and

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<sup>3</sup> (1703) 92 ER 126

restoring it to its original condition.

#### D.) PUNITIVE DAMAGES

These are the most numerous. Punitive damages are awarded when the defendant has been excessively ignorant of the plaintiff's rights and has caused significant damage to the defendant. The goal here is to set a public example and make people wary of doing something similar in the future.

In some cases, calculating the compensation in monetary terms is impossible. In such cases, the Court considers the case's conduct, motive, and other vital information before awarding exceptionally high damages or compensation. As a result, the word Exemplary was coined to serve as a deterrent to future similar acts. The award is far greater than the loss suffered.

The Court stated in *Rookes v. Barnard*<sup>4</sup> that exemplary or punitive damages can be awarded in three cases:

- a. oppressive, arbitrary, or unconstitutional action by government servants
- b. cases where the defendant's conduct has been calculated to make a profit for himself that may well exceed the compensation payable to the plaintiff.
- c. Where the statute expressly authorises exemplary damages.

As an example, V company claims that its natural substance-based syrup will aid in rapid weight loss. As a result, the plaintiff decides to purchase it. However, as a result of the medicines containing certain chemicals, the plaintiff becomes extremely ill. As a result of the company's fraudulent statements, the Court may award the plaintiff not only compensatory damages, but also punitive damages, so that the act is not repeated.

CASE LAW: *Huckle v. Money*<sup>5</sup>: In this case, a government employee searched a person's home without probable cause or proper documentation. It was determined that the government employee was liable for illegally entering and searching the house, and he was awarded exemplary damages for his actions.

*Marzetti v. William*<sup>6</sup>: In this case, the defendant bank refused to honour the plaintiff's cheque for no reason. The plaintiff filed a lawsuit, and the court found the bank liable and awarded damages.

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<sup>4</sup> (1964) UKHL 1, (1964) AC 1129

<sup>5</sup> (1763). 2 Wils 205.

<sup>6</sup>(1830) 1 B & Ad 415

### E.) PROSPECTIVE DAMAGES

Damages that are likely to result from the defendant's wrongful act but have not yet occurred at the time the Court is deciding on damages.

The appellant in *Subhas Chandra v. Ram Singh*<sup>7</sup> was struck by a bus driver. He sustained several injuries, resulting in his inability to walk without a surgical shoe for the rest of his life. He was unable to work in certain fields due to his disability. Under the heading "probable further loss," the Motor Claims Tribunal awarded him Rs. 3,000 in compensation. The Delhi High Court increased the amount of compensation on appeal to Rs.7000.

### MEASURE OF DAMAGES

The guiding idea in calculating damages is "restitutio in integrum."

The court explained its meaning in *Livingstone v. Rawyards Coad Co*<sup>8</sup> as follows: "Where any injury is to be compensated by damages, in settling the sum of money to be given for reparation of damages, you should as nearly as possible get that sum of money which will put the party who has been injured, or who has suffered, in the same position as he would have been in, if he had not sustained the wrong for which he is now receiving his compensation or reparation."

*Shafiq v. Pramod Bhatia*<sup>9</sup>

The Madhya Pradesh High Court granted the plaintiff Rs. 84, 000 in compensation after an accident caused 50% permanent disability and shortened the limb by one inch. The claimant was unable to conduct his business of selling cloth by going from place to place. The general rule is that damages are intended to put the plaintiff in the same position he would have been in if the injury had not occurred.

### REMOTENESS OF DAMAGES

The second premise is the remoteness of damages.

It is predicated on the maxim 'injure on remota causa sed proxima spectatur.

It precludes the plaintiff from claiming any damages that do not flow or develop as a direct result of the alleged unlawful act.

*Re Polemis Case (Re Polemis & Furness, Withy & Co Ltd)*<sup>10</sup>

In this case, the plaintiff, Polemis, owned a cargo ship that they hired to the defendants. The

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<sup>7</sup>AIR 1972 Delhi 189

<sup>8</sup>(1880) 5 App. Cas. 25

<sup>9</sup>AIR 1998 MP 142

<sup>10</sup>(1921) 3 KB 560

defendant's employees accidentally pushed a board into the ship while unloading goods, causing a spark to ignite, resulting in an explosion. The court had to decide whether the damage caused by the explosion was a direct result of the defendant's employee's actions.

Wagon Mound Case (Overseas Tankship Ltd. v. Morts Docks & Engineering Co.)<sup>11</sup>

The defendants in this case owned a ship (The Wagon Mound No. 1). The plaintiffs were the proprietors of Morts Dock. Due to the defendant's carelessness, a spark was sparked, causing some floating cotton waste adjacent to catch fire, causing damage to the plaintiff's wharfs and their ship, the Wagon Mound.

## **2.) INJUNCTION**

An injunction is a court order that directs a party to perform any act or restrains the commission or omission of such act, or even the continuation of such act. The court has the discretion to grant or deny such relief, and if such relief is available in the form of damages, the court will not issue an injunction in favour of the aggrieved party. The Specific Relief Act of 1963 establishes the principles for granting an injunction.

According to Section 37 of the Specific Relief Act of 1963, injunctions fall into one of two categories:

### **A.) TEMPORARY**

During the pendency of a case, a temporary or interlocutory injunction is granted to maintain the status quo and prevent further harm until the court issues a decree. It prevents the defendant from continuing or repeating the previous breach. A temporary injunction is granted to keep the party from suffering from the damages while the case is being heard in court. They can be granted at any point during the course of the case. Either party may request that an injunction be granted. Rule 1 and 2 of Order XXXIX (39) of the Code of Civil Procedure give the court the authority to issue a temporary injunction.

### **B.) PERMANENT**

It refers to injunctions in which a defendant is permanently barred from exercising or asserting a right, or from acting in any way that would violate the rights of the plaintiff or aggrieved party.

### **C.) MANDATORY**

A mandatory injunction is issued when the court orders a party to do something. That is, when

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<sup>11</sup>(1961) AC 388

the court orders a party to execute a specific conduct in order to restore the aggrieved party or plaintiff to the position he or she was in prior to the defendant's act. For example, the court may order a party to produce documentation or provide products.

#### D.) PROHIBITORY

A prohibitory injunction is issued when the court orders a party not to do something. The court bans or restrains a person from doing something wrong. For example, it may request that the party remove a nuisance object or cease his nuisance behaviour.

CASE LAW: M/S. India Stationery Products vs. M/S. Hindustan Pencils Pvt. Ltd.<sup>12</sup>

In this case, the plaintiff filed a suit for perpetual injunction against M/s. India Stationery Products for trademark infringement on their product 'Nataraj', in respect of pencils, pens, sharpners, erasers, and so on, claiming that the trademark was adopted by them in 1961 and that the defendants had wrongfully registered a copyright similar to them. The court found in favour of the plaintiff, issuing an interim injunction against the defendant.

### **3.) SPECIFIC RESTITUTION OF PROPERTY**

Returning the property to its rightful owner is referred to as restitution. When a person's property or things are unlawfully taken from him, he has the right to get them back. Eg. measures for ejection, the recapture of chattels by an action for detinue etc.

A person entitled to particular immovable property may reclaim it in accordance with the Code of Civil Procedure, 1908.

- Specific immovable property recovery
- Title ownership
- CPC regular/ordinary suit (suit for ejection)
- Limitation period: 12 years

### **III. EXTRA JUDICIAL REMEDIES**

Extra-judicial tort remedies are those that enable a person to prevent or remedy a tort without the intervention of the courts. The parties in this case take control of the legislation. Extra Judicial Remedies for Torts are remedies that an aggrieved party might utilise to remedy the injury done to him without the intervention of a court.

Extrajudicial tort remedies are available to persons who have been the victims of a civil wrong

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<sup>12</sup> AIR 1990 Delhi 19

in five different ways.

### 1.) EXPULSION OF TRESPASSER

A trespasser can be removed from someone's property using justifiable force.

The two prerequisites are as follows:

- The individual should have the right to immediate ownership of his property.
- The owner's use of force should be reasonable in light of the circumstances.

*Scott v. Mathew Brown & Co.*<sup>13</sup> ruled that the lawful owner of land has the right to use force to evict a trespasser if he causes him no personal injury.

In *Edwick v. Hawkes*<sup>14</sup>, the court ruled that the legal owner of property should not use violence to evict a trespasser.

### 2.) RE-ENTRY ON LAND

A guy who has been wrongly evicted from his land may reclaim it if he can do it peacefully and without using force.

Section 6 of the Specific Relief Act of 1963 states that if a person in possession of immovable property is disposed of otherwise than by due course of law, he may sue to recover possession within six months without reference to any title established by another, which is left to be determined in a separate action.

It was held in *Stoke Poges Golf Club v. Hemmings*<sup>15</sup>, If the owner of landed property discovers a trespasser on his property, he may enter and eject the trespasser with no more force than is necessary to expel him, without being required to pay damages for the force employed.

### 3.) RECAPTURE OF GOODS

The owner of property has the right to retrieve it from anyone who is in unlawful possession of it. Re-capture of commodities varies from particular restitution in that it is an extra-judicial remedy in which the individual does not need to go to court for assistance and instead takes control of the law.

For example, if A illegally seizes B's watch, B has the right to reclaim it using reasonable force.

### 4.) ABATEMENT OF NUISANCE

A person (the aggrieved party) has the right to have the object producing the nuisance removed,

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<sup>13</sup> (1885) 51 LT 746

<sup>14</sup> (1881) 18 Ch D 199

<sup>15</sup> (1920) 1 KB 720

whether it is private or public property.

In general, anyone who is harmed by a private nuisance has the right to have it abated or removed. A man may enter his neighbor's property and remove a nuisance of dirt that his neighbour has placed there. Breaking down a gate that obstructs a private right of way and chopping off pieces of one's neighbor's trees that protrude beyond one's boundary may be justified. However, it is the responsibility of the person who cuts the overhanging branches of the tree to return the wood to the tree's owner.

The landowner may cut down overhanging branches from his neighbor's trees or sever roots that have extended from these trees into his own land. (*Lemmon v. Webbs*)<sup>16</sup>

*Raghuwath Patnaik v. Dullabha Behera*<sup>17</sup>

Where the roots of trees originally planted by defendants on their own land had penetrated into plaintiff's land wherefrom fresh trees had sprung up and the defendants cut and removed such trees from plaintiff's land, it was held that where the roots of a tree extended into the lands of both owners and the tree derived its nourishment from soils of both, it became the common property of both even though it might actually stand on the land of one of them and thus the tree became the common property of both

#### 5.) DISTRESS DAMAGE FEASANT

'Distress' refers to the right to keep.

A 'feasant' is an item that has done something bad.

'Damages' refers to the loss suffered by the owner or occupier.

If a man discovers another's cattle or chattel on his land causing damage, he may take and imprison it in order to compel the owner of the offending cattle or chattel to make compensation for the damage done. This is known as the Distress Damage Feasant right. Distress is commonly used to straying cattle, but it can also be applied to any other property that wrongfully encumbers and destroys a man's land. Thus, a railway corporation has been granted the right to take and detain a locomotive engine that was obstructing its tracks.

The law has always severely limited the right to detain as an extra-judicial remedy. As a result, it must take place on the detainer's property. He has no authority to pursue and capture the object if it flees.

There is no right to distress when there is no trespass. Thus, if cattle are being driven along a

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<sup>16</sup> (1895) AC 1

<sup>17</sup> ILR 1951 Cut 522

road and stray onto adjoining unfenced territory without the fault of their drivers, they cannot be detained until there is a reasonable opportunity to drive them back.

It is not legal to seize something that is under the personal authority of another, such as a horse that another person is unjustly riding across one's land, for the purpose of causing distress.

#### **IV. CONCLUSION**

In torts, the goal of remedying a party is to restore the aggrieved party to the status or position that they had before the incidence of the tort. It is not to penalise the defendant, as in criminal proceedings. There are two types of remedies: judicial and extrajudicial. Judicial remedies are used when due process of law is required for a party to get a remedy and the courts are engaged. Extra-judicial remedies are used when the parties take the law into their own hands.

Given the foregoing facts, it is reasonable to conclude that, while recourse to legal measures is strongly advised in cases of legal injury or property loss caused by a civil wrong, we must also consider the fact that, in many cases, parties are also constrained by time constraints or an inability to pursue a legal matter.

As a result, such aggrieved parties have some extra-judicial measures at their disposal in such instances. When taking such steps, we must also examine the law and always use the perspective of a reasonable person.

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