

Remedies

Let us begin this topic by understanding what ‘remedy’ actually means in Law. A party is said to be ‘aggrieved’ when something that they may have been enjoying has been taken away from them by another party. This is an infringement of a party’s rights and it is treatable by law. A **legal remedy** is one such treatment. When the aggrieved person is taken back to the position that they were enjoying before their rights were infringed, they are said to have been provided with a legal remedy. There are various types of legal remedies. For instance, if something that belongs to you has been taken away from you by a party, the court can either ask them to pay you back in money, or ask them to return your belongings as they were, and may also punish the party in some cases. There are two broad types of remedies in Tort Law.

1. Judicial Remedies
2. Extra-Judicial Remedies

Judicial Remedies

As the term suggests, these are the remedies that the courts of law provide to an aggrieved party. Judicial remedies are of three main types:

1. Damages
2. Injunction
3. Specific Restitution of Property

Extra-judicial Remedies

On the other hand, if the injured party takes the law in their own hand (albeit lawfully), the remedies are called extra-judicial remedies. These are of five main types:

1. Expulsion of trespasser
2. Re-entry on land

3. Re-capture of goods
4. Abatement
5. Distress Damage Feasant

Now, let us discuss both judicial and extrajudicial remedies in some detail.

#1 Damages

Damages, or legal damages is the amount of money paid to the aggrieved party to bring them back to the position in which they were, before the tort had occurred. They are paid to a plaintiff to help them recover the loss they have suffered. Damages are the primary remedy in a cause of action for torts. The word “damages” should not be confused with the plural of the word “damage”, that generally means ‘harm’ or ‘injury’.

Types of damages

Depending upon the ‘objective’ of the compensation, that is, whether the plaintiff is to be compensated or the defendant has to be ‘punished’, there are 4 types of damages:

1. **Contemptuous**– contemptuous damages are also called ignominious damages. The amount of money awarded by the court in this case is very low, as to show the court’s disapproval, that is, when the plaintiff himself is at some fault and cannot wholly be said to be ‘aggrieved’.
2. **Nominal**– Nominal damages are awarded when plaintiff’s legal right is infringed, but no real loss has been caused to him. For example, in cases of trespass, when damage has not been caused, a legal right is still infringed. Here, the objective is not to compensate the plaintiff.
3. **Substantial**-Substantial damages are said to be awarded when the plaintiff is compensated for the exact loss suffered by him due to the tort.
4. **Exemplary/Punitive**– These are the highest in amount. Punitive damages are awarded when the defendant has excessively been ignorant of the plaintiff’s rights and great damage has been caused to the defendant. The objective here is to create a public example and make people cautious of not repeating something similar.

General and Special Damages:

When there is a direct link between the defendant's wrongful act and the loss suffered by the plaintiff. For instance, a person A, due to his negligence, collides his car with a person B, who has a rare bone condition. In this case, the actual damage suffered by the plaintiff will be compensated, not taking into account the rare bone condition of the plaintiff. General damages are ascertained by calculating the amount of actual loss suffered by the plaintiff. For e.g, physical pain and loss caused due to it, or if the quality of life of the plaintiff is lowered.

Special damages are awarded by proving *special* loss. There is no straitjacket formula to derive the actual amount. The plaintiff just has to prove the loss suffered by him/her. For e.g., medical expense, loss of wage (prospective), repair or replacement of lost or damaged goods/property.

Cases:

McLoughlin v O'Brian

The plaintiff's husband and three children met with an accident with the defendant, due to the defendant's negligence. After seeing her husband and children grievously injured, and hearing the news of one of her children's death, the plaintiff suffered nervous and mental shock and went into a state of clinical depression. The House of Lords in this case ruled in favour of the plaintiff, McLoughlin, whereby she recovered damages for her nervous shock too.

Gujarat State Road Transport Corporation, Ahmedabad v. Jashbhai Rambhai

The plaintiffs in this case were relatives (mother and children) of a middle-aged couple who met with an accident when another moving bus drove over them as soon as they deboarded their own. The court delivered a judgement in favour of the plaintiffs, and they received compensation under the heading of 'Pain, Shock and Sufferings'.

Measurement of Damages

There is no arithmetic formula to decide the quantum of damages. Therefore, a number of factors, including the facts and circumstances of each case are to be considered to ascertain the damages. Damages are therefore awarded at the discretion of the court.

Remoteness of 'Damage'

As discussed above, the main aim is to bring the aggrieved party back to the status quo, that is, compensating the plaintiff. As a general rule, damage suffered by the plaintiff should be a direct consequence of the defendant's act. Any action can have multiple following consequences. A person cannot be held accountable for all the consequences resulting from his act. The remoteness of consequences resulting from a person's act has been an issue of debate in the Law of Torts over the years. Various tests were developed over time to determine what consequences of an act can a person be held liable for. When there is no cause and effect relationship between the defendant's act and the injury caused to the plaintiff, the damage is said to be too remote to be compensated.

Re Polemis Case (Re Polemis & Furness, Withy & Co Ltd)

In this case, Polemis, the plaintiff owned a cargo ship that they had chartered to the defendants. While unloading cargo from the ship, the defendant's employees accidentally knocked a plank into the ship, which caused a spark to ignite, that resulted in an explosion. The question before the court was, whether the damage due to the explosion was a direct result of the act of the defendant's employee.

Leisboch Case (Liesbosch Dredger v SS Edison)

In this case, the plaintiff's dredger was damaged and sunk by the defendants (Edison), due to their negligence. The dredger was working under a contract with the terms that some amount had to be paid if the work was not completed on time. The plaintiff did not have enough funds to arrange a new dredger to complete the said work. They claimed all the resulting damages. The court held that the plaintiff's own lack of funds cannot be compensated by the defendants.

Wagon Mound Case (Overseas Tankship Ltd. v. Morts Docks & Engineering Co.)

In this case, the defendants owned a ship (The Wagon Mound No. 1). The plaintiffs were the owners of a dock named Morts Dock. Due to the defendant's negligence a spark was ignited that set some floating cotton waste nearby on fire, due to which the plaintiff's wharfs and their ship, the Wagon Mound was damaged.

Purpose of Damages in Torts

The main object behind remedying by damages is to bring the plaintiff back into the position that he/she was in before the injury due to the tort occurred, or in other words, to bring him back to the position he would have been in, if the tort did not ever occur.

#2 Injunction

Injunction is an equitable remedy available in torts, granted at the discretion of the court. An equitable remedy is one in which the court, instead of compensating the aggrieved party, asks the other party to perform his part of the promises. So, when a court asks a person to not continue to do something, or to do something positive so as to recover the damage of the aggrieved party, the court is granting an injunction. A very simple example is that of a court ordering a company of builders to build on a land near a hospital, for the construction sounds may be creating a nuisance to the hospital.

An injunction is an order of a court that restrains a person from continuing the commission of a wrongful act, or orders the person to commit a positive act to reverse the results of the wrongful act committed by him, that is, to make good what he has wrongly done. To receive injunction against a party one must prove damage or the possibility of prospective damage (apprehended damage). An injunction can be temporary or permanent, and mandatory or prohibitory. Let us discuss each of them one by one. Law relating to injunctions is found in the Code of Civil Procedure, 1908 and from Section 37 to Section 42 of the Specific Relief Act (henceforth referred to as the Act), 1963.

A suit of injunction can be filed against any individual, group or even the State.

According to the [Section 37](#) of the Act there are two types of injunctions—temporary and perpetual (permanent).

Temporary Injunction

A temporary or interlocutory injunction is granted during the pendency of a case, to maintain the status quo and avoid further damage until the court passes a decree. It prevents the defendant from continuing or repeating the breach that he had been doing. A temporary injunction is granted to prevent the party from suffering through the damages during the court proceedings. They may be granted at any stage during the pendency of the case. Either of the parties can seek an injunction to be granted. The power to grant a temporary injunction is derived from Rule 1 and 2 of Order XXXIX (39) of the Code of Civil Procedure. Certain principles are kept in mind while granting a temporary injunction:

1. There has to be a prima facie case.
2. A balance of convenience has to be maintained. (That is, which party is more at loss, etc.)
3. There has to be an irretrievable damage. (The damage has to be such that cannot be compensated for, in money)

Cases in which temporary injunction is granted

A temporary injunction may be granted in any of the following cases:

- An injunction can be granted in favour of a party and against the government if the government is barring the party from doing a lawful act or freely exercising his rights.
- Under [Section 80](#) of the CPC, an injunction can be granted against an act done by a government/public officer working in his official capacity.
- When the property in dispute is in danger of being damaged or wasted by either of the parties.
- In cases of tenancy. A plaintiff being unjustly removed as a tenant, that is, not through the due legal process, can seek an injunction against his/her landlords.
- In case of a continuing nuisance, where the defendant is asked to discontinue his act of nuisance so as to prevent further damage to the plaintiff while the case is being decided.

- In cases of trademark, copyright infringement, etc.

Permanent Injunction

A perpetual or permanent injunction is granted after the court has heard the case from both sides and passes a decree. Here, since it is a court decree, it is final and perpetually applicable. That is, the defendant cannot continue his wrongful act, or has to do a positive act for perpetuity.

Cases in which permanent injunction is granted

- To avoid multiplicity of judicial proceedings.
- When damages do not adequately compensate the plaintiff.
- When the actual damage cannot be ascertained.

Mandatory Injunction

When the court has asked the party to *do* something, it is a mandatory injunction. That is, when the court compels a party to perform a certain act so as to bring back the aggrieved party or the plaintiff to the position that he/she was in before the commission of the act of the defendant. For example, the court may ask a party to make available some documents, or to deliver goods, etc.

Prohibitory Injunction

When the court has asked the party to *not* do something, it is a prohibitory injunction. The court prohibits a person, or refrains them from doing something that is wrongful. For instance, it may ask the party to remove an object of nuisance or to stop his act of nuisance.

When can injunctions *not* be granted

According to [Section 41](#) of the Specific Relief Act, an injunction cannot be granted:

1. To stop a person from filing a case in the same court in which the injunction suit is sought, unless such an injunction is being asked for, to prevent a multiplicity of proceedings.
2. To restrain or stop a person from filing or fighting a case in a court that is not subordinate to the one in which injunction is being sought.
3. To prevent a person from applying to any legislative body
4. To restrain a person from filing or fighting a criminal case
5. To prevent the breach of contract, performance of which is not enforced specifically
6. To prevent an act that is not a clear act of nuisance
7. To prevent a continuing breach in which the plaintiff has himself acquiesced
8. When an equally effective relief can be obtained in any other way or through any other sort of proceeding
9. When the conduct of the plaintiff (or his agents) has been so wrongful as to disentitle him from the assistance of the court.
10. When the plaintiff has no personal interest in the said matter.

Extra-Judicial Remedies

When a person can lawfully avoid or remedy himself without the intervention of courts, the remedies are called extra-judicial remedies. In this, the parties take the law in their own hands. Some examples are:

Expulsion of trespasser

A person can use a reasonable amount of force to expel a trespasser from his property. The two requirements are:

- The person should be entitled to immediate possession of his property.
- The force used by the owner should be reasonable according to the circumstances.

Illustration: A trespasses into B's property. B has the right to use reasonable force to remove him from his property and re-enter himself.

Re-entry on land

The owner of a property can remove the trespasser and *re enter* his property, again by using a reasonable amount of force only.

Re-capture of goods

The owner of goods is entitled to recapture his/her goods from any person whose unlawful possession they are in. Re-capture of goods is different from specific restitution in that it is an extra-judicial remedy, in which the person need not ask the court for assistance, instead, takes the law in his own hands.

Illustration: If A wrongfully acquires the possession of B's goods, B is entitled to use reasonable force to get them back from A.

Abatement

In case of nuisance, be it private or public, a person (the injured party) is entitled to remove the object causing nuisance.

Illustration: A and B are neighbours. Branches of a tree growing on A's plot enter B's apartment from over the wall. After giving due notice to A, B can himself cut or remove the branches if they're causing him nuisance.

Distress Damage Feasant

Where a person's cattle/other beasts move to another's property and spoil his crops, the owner of the property is entitled to take possession of the beasts until he is compensated for the loss suffered by him.

