

FORMS OF ACTION IN THE LAW OF TORTS

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Forms of action in the law of Torts go back a long way to the early days of the common law. There is no other branch of English law (apart from land law) that is as old as the law of torts. The law of torts were developed in the thirteenth century in the king's court.

During this period, any action brought before the King had to fit into a particular writ. These writs are what were regarded as the forms of action. If an action didn't fit into a form of action, there would be no remedy for that complainant.

Thus, anyone who wanted redress didn't think in the line of 'what wrong has been done to me?', instead they thought in the line of 'under what form of action would this fit into?' The common forms of action in the law of torts then were 'the writ of trespass' and 'the writ of trespass on the case/ action on the case'.

1. **The Writ of Trespass:** This form of action was applicable in cases that dealt with forcible, direct and immediate injury to land, persons and chattels. For example if the defendant punches the plaintiff in the face, it is a direct injury and would lie under the writ of trespass.
2. **The Writ of Trespass on the Case:** This form of action dealt with injuries that are indirect. For example, if a person negligently leaves a log on the road and it subsequently injures the plaintiff, the form of action would be the writ of 'trespass on the case'.

Before 1852, any claim which did not fit any form of action was bound to fail. Due to the hardship occasioned by the use of forms of action, they were abolished by the **Common Law Procedure Act 1852**.

However the distinction between direct and indirect injury still exists. Thus, the modern tort of trespass is concerned with direct injury while the tort of nuisance(derived from action on the case) is concerned with indirect injury.

In the case of *Onasanya vs Emmanuel (1974) 9 CCHCJ*, it was held that throwing refuse unto the plaintiff's land was a direct injury and thus was under trespass while allowing excreta to seep into the plaintiff's well from the defendant's salga amounted to an indirect injury under nuisance.

Nowadays, a claimant does not need to use a form of action. However, he still needs to prove that his action lies under a recognised tort like nuisance, negligence, trespass etc. This has prompted the famous remark of Maitland:

'The forms of actions we have buried, but they still rule us from their graves.'

SOURCES

1. Lecture on Law of Torts by Professor R.A Salman
2. Common Law Procedure Act 1852
3. [National open University](#)