

REMEDIES IN TORTS

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The various remedies available for Torts are

- 1) Damages.
- 2) Injunctions
- 3) Restitution of Property
- 4) Extra Judicial Remedies.

Damages.

In Tort, damages refers to the pecuniary (Money) Compensation that is determined by the court (Unliquidated Damages). The defendant is liable for the damage caused to the plaintiff if the damage is the direct consequence of the act of the defendant.

Scott V. Shepherd: Wagon Mound case etc., Kinds of damages: There are four kinds of damages:

- 1) Nominal
- 2) Substantial
- 3) Exemplary and
- 4) Contemptuous.

Damages.

- 1) **Normal damages** are awarded in circumstances where only a right is established (e.g. Assault). This may not even meet the expense incurred for suing.
- 2) **Substantial damages** are awarded to fairly compensate the plaintiff for his injury and suffering. The court considering the nature of the case, awards compensation which is fair and reasonable.

Damages.

- **3) Exemplary damages:** Where it is not possible to calculate the compensation in terms of money. The court may take into account the conduct, motive and other circumstances and award aggravated (high) damages. This is exemplary. The objective is to make the wrongdoer an example, and to deter and punish such persons. The amount awarded is much more than loss suffered.
- **Huckle V. Money:** D, a Government servant entered the house of P under a nameless search warrant and made the search. P sued D. Held: D liable. As entering without proper authority amounted to an attack on the liberty of P, the court awarded exemplary damages.

Damages.

- 4) **Contemptuous Damages** : In "Contemptuous damages", the court finds that the plaintiff should not have brought an action, as the matter was so "Trifling". The court forms a low opinion of the plaintiff, but, to protect his right, it awards one rupee or some small amount. This is called contemptuous damages. Cases of trespass on land, trespass to person are examples.

Extra-judicial Remedies.

1. Distress Damage feasant:

This is an extra-Judicial remedy. A person in possession of land, may distress (means detain) a feasant for the damage it has done. He has the authority to seize and detain the animal, until compensation is paid to him. He may release it after the compensation is paid.

"Feasant" means animal or chattel. Examples are the stray animals, Cow, Ox, Horse, etc. chattel may be a Road engine. The animal is to be detained when it is creating a trespass. It should not be seized by a "Hot Chase". The person who detains must take care of the animal as a reasonable man. He must provide proper food, shelter, water etc., to the detained animal. He has no right to sell or to use the animal. When compensation is paid, he should release the detained animal or chattel.

Restitution of Property

- **Application for restitution. (Code of Civil Procedure, 1908)**

144.(1) Where and in so far as a decree is varied or reversed, the Court of first instance shall, on the application of any party entitled to any benefit by way of restitution or otherwise, cause such restitution to be made as will, so far as may be, place the parties in the position which they would have occupied but for such decree or such part thereof as has been varied or reversed; and, for this purpose, the Court may make any orders, including orders for the refund of costs and for the payment of interest, damages, compensation and mesne profits, which are properly consequential on such variation or reversal.

(2) No suit shall be instituted for the purpose of obtaining any restitution or other relief which could be obtained by application under sub-section (1).

Injunctions

- **Definition:**

An injunction is a judicial process whereby a party is required to do, or to refrain from doing, any particular act. It is a remedy in the form of an order of the Court addressed to particular person that either prohibits him from doing 'or continuing to do a particular act (prohibitory injunction); or orders him to carry out a certain act (mandatory injunction).

Kinds of Injunction

It is governed by the Sections 52 to 57 of the Specific Relief Act, 1877.

Injunctions are of three kinds:

- (I) temporary;
- (ii) permanent and
- (iii) mandatory.

A permanent Injunction restrain a party forever from doing the specified act and can be granted only on merits at the conclusion of the trial after hearing the both party to the suit.

A temporary or interim injunction on the other hand restrains a party temporarily from doing the specified act and can be granted only until the disposal of the suit or until the further order of the Court. Regulated by the provision of the Order 39 of the Code of Civil Procedure, 1908 and may be granted at any stage of the suit.

Injunctions are also (I) preventive, prohibitive or restrictive, i.e. when they prevent, prohibit or restrain someone from doing something; or (ii) mandatory, i.e. when they compel, command or order some person to do something.

Thank You !!!