



FACULTY OF JURIDICAL SCIENCES

COURSE: B.A.LL.B. I st Semester

SUBJECT: LAW OF TORTS

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LECTURE 21

TOPIC: REMEDIES- DAMAGES, INJUNCTION, SPECIFIC RESTITUTION AND REMEDIES UNDER CONSTITUTION

What is a Remedy- 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.

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-** 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.

Damages for nervous or mental shock:

Nervous shock- *When, due to a negligent act or any other tortious act, a plaintiff's nerves are damaged due to shock and trauma, irrespective of whether a physical harm has also been caused with it, he/she is entitled to be compensated for it. The question before the court of law is whether the nervous shock is actually a resulting consequence of the defendant's act.*

Mental shock- *Mental shock, on the other hand is the shock to a person's intellectual or moral sense. Mental shock, too, can be compensated for in a suit for damages. Earlier, it was thought that mental shock cannot really be compensated for, because it cannot be measured, but recently the courts have recognized that the damage in case of mental shock is just as real as a physical injury.*

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'

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.

Exercise:

1. Which of the following is a kind of 'Nuisance'?
- a) Public Nuisance
- b) Private Nuisance
- c) Both (a) and (b)

d) None of the above

2. Public nuisance is

a) Punishable offence

b) Non-punishable offence

c) legal

d) fun

3. Public nuisance is an offence under which law?

a) Civil law

b) Criminal law

c) Patent law

d) Human right law

4. Who have the right to enjoy the land according to law?

a) Public

b) Government

c) Landowner

d) Police officer

5. Which of the following are essentials of nuisance?

a) Unreasonable interference

b) Interference with the use of land

c) Damage to land

d) All of the above