



**FACULTY OF JURIDICAL SCIENCES**

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**SUBJECT: LAW OF TORTS**

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## LECTURE 22

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

**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.

### ***Limitation period***

According to Article 58 of the Limitation Act, 1963, the period of limitation for filing an injunction suit is **three** years from when the 'right to sue first accrues', that is, when the *right* to cause of action commences, not the cause of action itself. It is an important question of law as to when the cause of action actually arises. In the case of ***Annamalai Chettiar vs A.M.K.C.T. Muthukaruppan Chettiar***, it was held that the right to sue accrues "when the defendant has clearly or unequivocally *threatened* to infringe the right asserted by the plaintiff in the suit".

**Case:**

***M/S. Hindustan Pencils Pvt. Ltd. vs M/S. India Stationery Products***

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

1. **Specific Restitution of Property-** The third judicial remedy available in the Law of Torts is that of Specific Restitution of Property. Restitution means restoration of goods back to the owner of the goods. When a person is wrongfully dispossessed of his property or goods, he is entitled to the restoration of his property.

**Exercise:**

1. To become a nuisance the interference should be .....

  - a) unreasonable
  - b) cliché
  - c) over the top
  - d) disturbing

2. Nuisance is not considered if the plaintiff is .....

  - a) Loud mouth
  - b) talkative
  - c) sensitive
  - d) prisoner

3. If the act is done with evil motive, the lawful act is

- a) unlawful
- b) lawful
- c) crime
- d) None of these

4. Interference can cause injury to

- a) Property
- b) Comfort of occupant
- c) Both (a) and (b)
- d) None of these

5. Damage to property is actionable as:

- a) Negligence
- b) Nuisance
- c) defamation
- d) None of these