

Remedies in Tort

Remedies are form of relief available to the person against whom a wrong has been committed. Tort remedies are typically of two types: judicial and extrajudicial. Judicial remedies are those which are obtained through courts of law, while extra judicial remedies are secured by means of self- help.

JUDICIAL REMEDIES

There are mainly three types of judicial remedies:

1. Injunctions
2. Damages/ compensations
3. Restitution

Injunctions

An injunction is an order of a court directing the doing of an act or restraining the commission or continuance of some wrongful act, or the continuance of some wrongful omission. The court has the discretion to grant or refuse this remedy and when remedy by way of damages is a sufficient relief, injunction will not be granted. A suit of injunction can be filed against any individual, group or even the State.

The torts for which an injunction is usually sought are nuisance, continuing trespass, infringement of copyright, trademarks and patents and passing off one's goods as those of another. But the remedy of injunction is impossible in the torts of assault and battery, false imprisonment and restraint.

The injunctions are of various kinds.

Distinction based on its nature-

1. Mandatory injunction
2. Prohibitory injunction

Distinction based on its nature of duration-

1. Temporary injunction
2. Permanent injunction

Nature of duration

Temporary Injunction

Temporary injunctions are regulated by order 39 rule 1 of the CPC. A temporary or interlocutory injunction is generally granted before the case has been heard on merits and it is only provisional and, as such, continues until the case is heard on its merits or until further orders of the court. It does not mean determination in favour of the plaintiff but simply shows that there is a substantial question requiring consideration. Where it is, for example, intended that the property should continue to remain in its existing condition rather than being destroyed or wrongfully disposed of before the final decision, such an injunction will be issued. If the court, after fully going into the matter, finds that the plaintiff is entitled to the relief, the temporary injunction will be replaced by a perpetual/ permanent injunction. If, however, the plaintiff's case is found to be unjust, the injunction will be dissolved.

The Supreme Court in *Shree Ganga India v. Ganga Bottling Company* discussed the requirements to grant a temporary injunction or more specifically an *ex parte* injunction.

It includes:

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 irreparable damage. (The damage has to be such that cannot be compensated for, in money)

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.

Torts 3rd

Arturo Cuomo



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