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CHAPTER 6 - REMEDIES AVAILABLE WITH RESPECT TO A TORT

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TYPES OF REMEDIES:

The remedies available with respect to a tort are of two kinds:

- A. Judicial remedies
- B. Extra-judicial remedies

Judicial remedies

Remedies are said to be judicial when they are granted by the Court in a suit filed by the injured party against the wrong-doer. The Court then normally awards damages to the injured party.

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This is the usual remedy. The other two judicial remedies in the law of torts are the granting of an *injunction* and the *restitution of property*.

Extra-judicial remedies

Extra-judicial remedies are those which an injured party adopts when he takes the law into his own hands, and helps himself in the matter, as for instance, the expulsion of a trespasser, re-entry on the land, abatement of a nuisance, etc.

JUDICIAL REMEDIES

Judicial remedies which are available for redressing torts fall under *three* heads:

1. Damages,
2. Injunction, and
3. Specific Restitution of Property

1. DAMAGES

Legal Damage:

In ordinary parlance, "damage" means the physical effect of the defendant's act. But legal damage or damage that constitutes liability in tort, is neither identical with actual damage nor does it necessarily mean any pecuniary loss. Every invasion of a person's legal right or unauthorised interference with his property amounts to legal damage.

In other words, although the injured person may not suffer any pecuniary loss by the wrongful act of the defendant, yet if it is shown that there was a violation of some legal right, the law will presume damage. This is known as legal damage.

Damage and Damages:

The word 'damage' must not be confused with the word 'damages'. These two words are not equivalent terms. Damage means and includes loss of money, comfort, health, property and the like. The term 'damages' is not the plural of 'damage'. It means the money compensation claimed by the injured party and awarded by the Court. In short, 'damage' means the loss inflicted by the wrongful act of the defendant, for which the Court awards pecuniary compensation or 'damages'. In other words, damages constitute the compensation in the form of a sum of money which the Court awards for every legal injury.

REMOTENESS OF DAMAGE:

The damage suffered by the plaintiff must be the *direct and natural cause* of the defendant's act. The law will not permit damages to be recovered, except such as are the natural and legal

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consequences of a wrongful act. *In jure non remota causa sed proxima spectatur* (In law, the immediate and proximate, not the remote cause must be considered). A man is presumed to intend the natural, but not the remote consequences of his act.

Damage is said to be too remote when, although arising out of the cause of action, it does *not* immediately and necessarily flow from it or is such which could not have reasonably been foreseen. A man is *not liable for all the consequences of his wrongful act or default*. Liability must be founded on the act which is the immediate or direct cause of the harm or injury which is complained of. Where the causal connection between the wrongful act and the injury is *not* sufficiently direct, that is to say, when the two *cannot* be connected as cause and effect, there is no liability for the damage is too remote. The rule of law is that the wrongful act, to render the defendant liable, must be the *causa causans* (the proximate cause of the injury), and not merely the *causa sine qua non* (the indirect or remote cause of the injury).

- ‘*Causa causans*’ - The expression *causa causans* means the real cause or the cause of causes
- ‘*Causa sine qua non*’ - The expression *causa sine qua non* means that cause without which the event or the consequence would not have happened.

To take an instance, A pushes B, who falls upon a stone negligently left by C, and is injured thereby. While A’s pushing B is the *causa causans*, that is, the effective cause or real cause, the presence of the stone which occasioned the injury, is the *causa sine qua non* or that cause without which the event (that is, the injury) would not have happened.

Theories of remoteness of damage:

Historically, there have been two views regarding the remoteness of damage:

- (i) First view → TEST OF REASONABLE FORESIGHT → Consequences are too remote if a reasonable man would not have foreseen them. This view was held in *Rigby v. Hewitt (1850)*.
- (ii) Second view → TEST OF DIRECTNESS/DIRECT CONSEQUENCES TEST → Once the defendant is held to be liable for a tort, he is liable for all its direct consequences, whether a reasonable man would have foreseen them or not, that is, if they are directly traceable to the act and are not due to the operation of independent intervening causes.

This view was first put forward in *Smith V. L. & S. W. Railway*, (1870).

Smith V. L. & S. W. Railway:

In Smith’s case referred to above, during a very dry summer, the Railway Company’s servants cut the grass and trimmed the hedge bordering a railway line. They left the trims and the cuttings in heaps between the line and the hedge for a fortnight. A fire caused by sparks from a railway

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engine ignited these heaps and spread over a neighboring field. From there, a high wind carried the fire across a road to the plaintiff's cottage situated 200 yards from the spot where the fire began and the cottage was burnt down. The question to be decided by the Court was whether the burning of the cottage was or was not a remote consequence arising out of the negligent act of the defendant Railway Company's servants. It was argued, on behalf of the defendants, that no reasonable man could have foreseen the consequences. The court nevertheless held that as the burning of the cottage was the direct consequence of the act of the defendants, they were liable.

The view taken in Smith's case (above) was adopted by the Court of Appeal in *Re Polemis and Furness Withy & Co. Ltd.* (1921).

Re Polemis and Furness Withy & Co. Ltd.:

A ship was hired by the defendants from the shipowners who were the plaintiffs. The defendants loaded a quantity of benzene amongst other cargo. During the voyage, the tins containing benzene leaked and thus there was a lot of petrol vapour in the hold. At a port of call, the servants of the defendants negligently let a plank drop into the hold while they were shifting the cargo. A rush of flame at once followed and the ship was totally destroyed. The question was whether the test of "a reasonable man being able to foresee" or "the direct consequences test" ought to be applied. The Court of Appeal adopted the direct consequences test and held that the defendants were liable for the loss of the ship.

The rule in *Re Polemis* was also not followed by the Privy Council in the *Overseas Tankship Ltd. v. Morts Dock and Engg. Co. Ltd.* (Wagon Mound case) (1961).

Overseas Tankship Ltd. v. Morts Dock and Engg. Co. Ltd.:

In this case, the *Wagon Mound*, a vessel chartered by the appellants, was taking in oil at the Sydney Port. A large quantity of the oil was allowed to spill into the harbour due to the carelessness of the servants of the appellants. The escaped oil was carried away by the wind and the tide to a wharf (about 600 ft. away) owned by the respondents. Soon after, the oil had spread itself on the water, the *Wagon Mound* left the harbour. After two days, the oil caught fire and thereby serious damage was caused to the property of the respondents. The Privy Council held, in appeal, that the defendants were not liable. In this case, the Privy Council laid down two principles as under:

- (a) The only applicable test was the foreseeability of the damage complained of, which in this case was damage caused by the fire.

(b) The respondents could not be held liable for unforeseeable damage.

In view of the above, it appears that the direct consequences test laid down in *Re Polemis* is no longer to be followed.

The House of Lords in *Hughes v. Lord Advocate*, and the Court of Appeal in *Doughty v. Turner Manufacturing Co.* accepted the decision of the Privy Council in the *Wagon Mound* case. These cases also lay down that the test of foreseeability is satisfied if the damage suffered is similar in kind though different in degree, and that the precise sequence of events or the extent of the damage need not have been foreseeable. But if the damage suffered is altogether different in kind, the test of foreseeability is not satisfied and the plaintiff cannot recover. As once observed, "What must have been foreseen is not the precise injury which occurred, but injury of a given description. The foreseeability is not as to particulars but as regards the genus."

In *Salmond's Law of Torts*, the following four principles governing liability have been formulated:

1. Y suffers foreseeable damage as a result of X's activities. X is liable for that damage, whether it is a direct or an indirect consequence of his acts.
2. Y suffers foreseeable damage as a result of X's activities. That damage is much greater in amount than could have been foreseen, but is still in general the kind of damage that could have been foreseen. X is liable for it.
3. Y suffers foreseeable damage (as for instance, personal injuries) as a result of X's activities. Y also suffers unforeseeable damage as the direct result of those same activities (as for instance, he is forced into bankruptcy). Y can recover the former head of loss but not the latter.
4. Y suffers foreseeable damage as a result of X's activities. Z also suffers direct but unforeseeable damage as a result of those activities. X is liable to Y, but not to Z.

Principle for estimating damages (Measures of damages):

The expression "measure of damages" means the footing upon which the quantum or amount of damages to be awarded in a given case may be calculated. The law has not prescribed any arithmetical standard to measure damages in a suit under the law of torts; nor can it possibly do so. Thus, the measure of damages depends upon a variety of causes, facts and circumstances. Accordingly, damages may rise to almost any amount or they may dwindle down to a very nominal sum.

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The assessment of damages is in the discretion of the Court and the actual assessment is based on a consideration of various factors. In cases of seduction, assault, defamation or malicious prosecution, for instance, the position, rank or feelings of the party injured, as well as the wrong-doer, must be considered as aggravating or mitigating factors. Moreover, as stated above, the wrong-doer will be liable only for the direct consequences of his act, and in no case will remote factors be considered in estimating damages. Again, if damage has resulted from two to three causes, as from an act of God as well as from a negligent act of party, then the award of damages should be apportioned to compensate only the injury caused by the negligent act.

Difference between the measure of damages for Breach of Contract and for Tort:

1. In a Tort, the damages claimed are necessarily *unliquidated*. In a contract, it is possible that parties may fix beforehand the damages payable by one to the other in case of a breach (i.e., *liquidates damages*)
2. Vindictive or Exemplary Damages are recoverable in tort but generally *not* for a breach of contract.
3. The rules as to remoteness of damages in tort are different from those in contract. Thus, in tort, a person may be held liable for damages arising from special circumstances of which he had no knowledge. On the other hand, if there are special circumstances under which a contract was made and they were wholly unknown to the party breaking the contract, he will *not* be liable for damages due solely to those special circumstances. (*Hadley v. Baxendale*).

KINDS OF DAMAGES:

The different kinds of damages can be discussed under the following heads:

- I. Contemptuous / normal / substantial / exemplary damages
 - II. General and Special damages
- I. Contemptuous / nominal / substantial / exemplary damages**

Contemptuous damages:

They are awarded where, technically, a legal wrong is committed, but where the circumstances disclosed are such that the Court feels that no action should be brought. They are awarded usually in actions of defamation. Where the Court finds that the defendant is at fault, but the plaintiff's conduct and character are such that he does not deserve to be compensated, the Court, in order to vindicate the law, grants damages, but at the same time reduces them to such a small and contemptuous amount, as to indicate its disapproval of the plaintiff's claim or conduct. In

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such cases, one pence in English law, or one paisa in Indian law, may sometimes be awarded. Contemptuous damages are also called *ignominious damages*.

Nominal damages:

They are awarded by the Court to the plaintiff, not by way of compensation, but by way of a recognition of some legal right of his which the defendant has infringed, as for instance, trespass, invasion of a right of easement, etc.

Substantial damages:

They are a sum of money awarded to the plaintiff as fair and equitable compensation for the injury suffered by him. They are also called *ordinary* or *compensatory damages*. Such damages are awarded in a great majority of actions in tort.

Exemplary damages:

They are awarded in cases where there has been great injury by reason of aggravating circumstances accompanying the wrong. A heavy amount is awarded as an expression of indignation at the conduct of the defendant, whenever he has shown a conscious disregard of the plaintiff's rights. Thus, exemplary damages may be awarded in cases of seduction of a man's daughter with deliberated fraud or of gross defamation actuated by sheer spite or jealousy. Such damages are intended to offer solarium to the plaintiff and to serve as a punishment to the defendant. The *object* of giving exemplary damages is to make a public example of the defendant in order to deter other persons from the commission of a similar act. Exemplary damages are also known as *punitive* or *retributive damages*.

II. General and special damages

Damages can also be general or special.

General damages:

They are such as the law will presume to be the natural consequences of the defendant's acts.

Special damages:

They are such as the law will not infer unless proved at the trial. Thus, in false imprisonment, general damages are recoverable for inconvenience, indignity, and discomfort and the defendant will not be heard to say that, in fact, none were suffered.

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2. INJUNCTION

An injunction means an order of the Court

- (i) restraining a person from doing, continuing or repeating a wrongful act, or
- (ii) enjoining him to do some positive act which will put an end to a wrongful state of affairs created by him, or which will discharge his legal obligation.

In the former case, the injunction is said to be *prohibitory*, while in the latter, it is called *mandatory*.

A *mandatory injunction* is an order requiring the defendant to do some positive act for the purpose of putting an end to a wrongful state of affairs created by him, or otherwise in fulfilment of his legal obligation, as for example, an order to pull down a building which he has already erected resulting in an obstruction of the plaintiff's rights of land and air.

Likewise, an injunction may be *temporary (or interim)*, that is, for a specific period only, as for instance, until the suit is finally disposed of by the Court, or *perpetual*, that is, for all time.

3. SPECIFIC RESTITUTION OF PROPERTY

The third kind of judicial remedy is the specific restitution of property. It is granted where the plaintiff has been wrongly dispossessed of his land or goods. Thus, a person who is wrongfully dispossessed of immovable property, or of some specific movable property, is entitled to recover such property.

EXTRA-JUDICIAL REMEDIES

Extra-judicial remedies are those which are open to an injured party to adopt, when he **takes the law into his own hands**, so as to say, and helps himself in the matter, as for instance, expulsion of a trespasser, re-entry on land, abatement of a nuisance, etc.

Extra-judicial remedies are of *five kinds*:

1. **Self-defence:**

It is lawful for a man to defend his person or property and to use reasonable force towards another for this purpose.

2. **Expulsion and re-entry:**

A person who is entitled to the immediate possession of immovable property may expel the trespasser therefrom and re-enter it, provided that the force used by him is reasonable and does not transgress the reasonable limits of the occasion.

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3. **Re-capture:**

A person entitled to the immediate repossession of chattels (that is, movables) may recover them from any person who has them in actual possession and detain them, provided that such possession was wrongful in its inception.

Re-capture of chattels is an *extra-judicial remedy*. The plaintiff may help himself by his own act and strength without recourse to any Court of justice or the sanction of any judicial declaration of his rights. Specific restitution of property, on the other hand, is a *judicial remedy*, that is, a remedy by way of an action at law.

4. **Abatement of nuisance:**

In cases of nuisance, private or public, under certain circumstances and subject to certain limitations, the injured party has the right to remove the nuisance.

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