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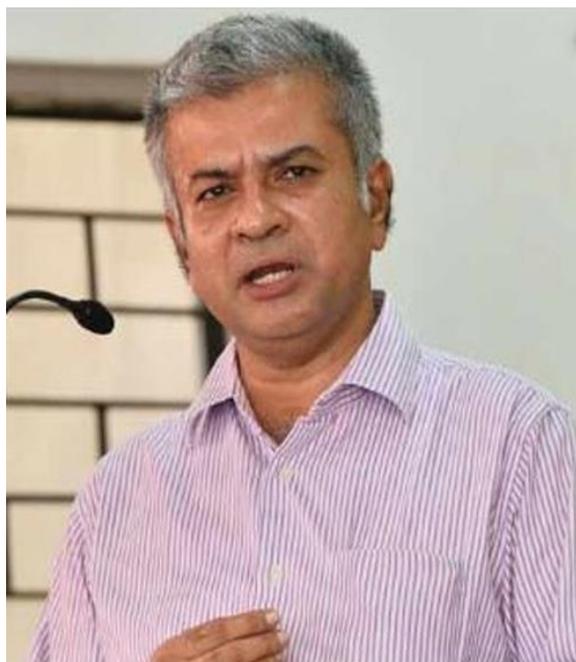
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BBA. LL.B. (Hons.) (Amity University, Rajasthan); LL. M. (UPES, Dehradun) (Nottingham Trent University, UK); Ph.D. Candidate (G.D. Goenka University)

Subhrajit did his LL.M. in Sports Law, from Nottingham Trent University of United Kingdoms, with international scholarship provided by university; he has also completed another LL.M. in Energy Law from University of Petroleum and Energy Studies, India. He did his B.B.A.LL.B. (Hons.) focussing on International Trade Law.

## *ABOUT US*

WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal provided dedicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

# **TORT: AN EQUITABLE REMEDY**

**Authored By-Nandini Sharma**

## **Abstract**

A tort is a civil wrong that puts a victim through loss or harm and makes the person who committed the tortious act legally liable. According to contract law, an agreement must be entered into voluntarily and knowingly by both parties. The contract and its results require the permission of each party. The interaction between the parties is not based on consent under tort law. Torts typically emerge from an intrusion by one party into another that causes harm of some kind.

The law of torts is a complicated topic that has undergone its own growth. Its traces can be seen at the start of the 11th century. About Boulton v. Hardy (1597). The word "tort" has varied connotations in different languages, but it is derived from the Latin word "tortum," which means crooked or twisted, and in English, it stands for "wrong."

Although the Law of Tort is regarded as a distinct branch of the law, it has not yet been codified in India, making it challenging for the courts to determine if a case constitutes a Tort or not. The foundation upon which tort law developed was the dictum Ubi Jus Ibi Remedium (where there is a right, there is a remedy).

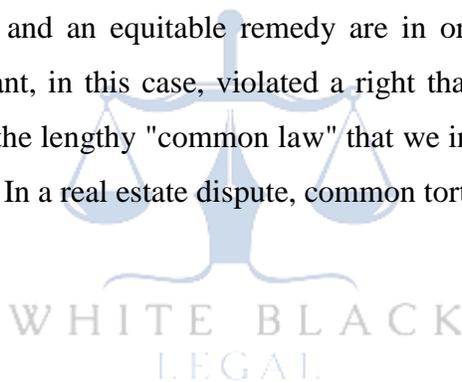
## **Introduction**

To begin with, one must comprehend what a tort and an equitable remedy are in order to comprehend torts as an equitable remedy. The definition of an equitable claim and the several sorts of remedies made possible by the Law of Torts will be covered in this topic. So let's start with:

### ➤ **A TORT IS WHAT?**

Any civil harm is a tort. Anyone who commits a tort shall be penalized in accordance with tort law's guidelines. An aggrieved party is one who has had something taken from them another party. A violation of a party's rights is illegal and is subject to punishment. These penalties include, for example, legal remedies.

Tort claims are made when a person sustains harm as a result of civil harm. To begin with, one must comprehend what a tort and an equitable remedy are in order to comprehend torts as an equitable remedy. The defendant, in this case, violated a right that our society recognizes, either formally or implicitly through the lengthy "common law" that we inherited from England when we became a country (and a state). In a real estate dispute, common torts include carelessness, trespass, nuisance, fraud, and deceit.



### **A MUST FOR TORTS:**

- The tortfeasor must have done something, either intentionally or unintentionally.
- The subsequent deed or omission must violate one of the offended party's legal rights.
- The act of commission or omission is the prerequisite for the existence

of the wrongdoer.

Either a positive wrongful act or an omission, which is illegally made, will make a person liable in an action for Tort. In a tort case, a person is accountable for either direct wrongdoing or an improperly created omission. The breach of legal rights is the next component needed to define a tort. No action in tort may be brought if a legal right has not been violated.

Two maxims serve as guidelines for this principle. They are:

**Injuria Sine Damno:** This phrase refers to a legal right being violated without resulting in any harm, i.e., there is injury even though there is no harm. If there is a violation of legal rights, the defendant will be held accountable even in the absence of any physical damage.

A good example is where the returning officer, the defendant, in this case, denied the plaintiff right to exercise his voting rights. Despite the fact that the plaintiff's desired candidate ultimately won, the defendant was nevertheless held accountable.

**Damnum Sine Injuria:** It refers to situations in which there is harm even though the plaintiff's legal rights have not been violated. No case in tort will be valid if there is no infringement of rights. AS AN EXAMPLE, The defendant, a teacher, established a different school next to the plaintiff. The ensuing competition compelled the plaintiff to significantly lower the student fees. It was decided that the plaintiff is not entitled to any compensation for the loss he suffered as a result of the defendant opening a different school nearby.

#### CHARACTERISTICS OF THE LAW OF TORTS

- Unlike the Indian Penal code, the law of torts is not codified (IPC).
- In contrast to criminality, it is regarded as a civil wrong.
- Torts can be committed against a person or their possessions.
- A Tort is an infringement of an in-rem right, not an in-personam right. A right in rem is one that can be used against everyone and everything.
- It is substantive in nature rather than procedural.

#### ➤ WHAT DOES AN EQUAL CLAIM MEAN?

An "equitable" claim, cause of action, or lawsuit is essentially similar to a "tort," with the exception that the remedy is frequently a court order compelling the losing defendant to take action. Fairness is frequently the key contention in an equitable case. The form of "unfair" that the law recognizes is when someone is made to pay a debt that another person should have legitimately paid; in these

circumstances, the out-of-pocket plaintiff may bring an "equitable indemnity" claim against the unfairly enriched defendant. This commonly occurs in lawsuits alleging building defects involving numerous subcontractors and insurance providers. A prime example of an equitable claim in the classic real estate context is "specific performance," meaning that money cannot compensate for a defendant's failure to sell a particular special unique property to the plaintiff (the ancestral family farm perhaps), and so the Court may order the losing defendant to sell that special and unique property to the prevailing plaintiff.

## **Equitable Remedy**

### **HISTORY:**

As social situations changed, equitable remedies were created by courts of equity around the time of Henry VIII to allow for more adaptable responses than the precedent-based common law allowed.

In England, the Court of Chancery granted equitable remedies, which are still accessible in the majority of common law countries today. In a number of crucial situations, the distinction between equitable and legal remedies is still applicable. The discretion of the court to give equitable remedies sets them apart from "legal" remedies (which are accessible to a victorious claimant by right). There are several equitable remedies available in common law nations, but the following are the main ones:

A victim of a tort may be entitled to a number of remedies under tort rules. A remedy is a relief that is available to the party who has been wronged. Such reassurance is given by the accused.

- A person or their property may be the target of a tort. Certain torts, such as a nuisance, can happen even when no one intends to do so.

## **The Need For Torts-Related Remedies**

Legal contracts must be signed by parties in good faith. The damaged party is entitled to legal recourse if this doesn't happen. For instance, you would lose Rs. 500 if you paid someone in advance to do a task and they didn't. The individual or business can then be sued for breach of contract, and the court might require them to return your money.

Most remedies fall into one of two categories: legal or equitable. This is based on the English common law system, which had courts of law and courts of equity and chancery, both of which had the authority to impose monetary damages. If the court does not provide equitable remedies, this might. In the event that the court remedy was deemed unfair or insufficient, this might offer equitable remedies.

Today, a single violation or wrong may have more than one remedy, including both monetary and equitable damages. The latter, which seeks equity when there is no acceptable pecuniary remedy available, does not include a jury and relies on the administration of justice rather than precedent.

The following are the justifications for the availability of remedies under the Law of Torts:

- It is legal for someone to employ reasonable force or self-defense to defend oneself or another person from any wrongdoing or illegal activity.
- It is acceptable for someone to use reasonable force to keep someone from entering their property or to eject someone who has entered their property without authorization.
- If it is possible to do so quietly and sensibly, a person whose land was improperly sold may reclaim it.
- Taking property that is entitled to custody from someone who has wrongly taken it quietly or with reasonable force does not constitute a crime or tort.
- The owner of the property may lawfully remove any nuisance that is affecting it by giving notice, using the least nefarious means possible, and preventing needless harm.
- An occupier has the right to legally or illegally confiscate any chattel that is entering their property or causing damage. The person has the right to keep them behind bars until damages are made good.

## **Classes Of Remedies Under The Law Of Torts**

In tort law, there are three fundamental remedies:

1. Legal Options (damages)
2. Restitutionary remedies
3. Equitable Solutions

## **Meaning Of Legal Remedies For Torts:**

Legal remedies for Torts are also known as “damages”. Legal remedies for Torts are monetary payments made by the defendant to compensate the victim for their injuries, losses, or pain and suffering. These are calculated according to the victim’s losses rather than the Tortfeasor’s gains. Legal remedies include consequential and compensatory damages. These are designed to allow the aggrieved party to recover the financial loss resulting from the breach.

## **‘Restitutionary Remedies’ Meaning:**

Restitutionary remedies are meant to restore the plaintiff to a position of “wholeness.” Restitution remedies intend to restore a plaintiff as close as possible to their state before the Tort occurred.

Restituinary remedies can include:

**Restitutionary damages:** Restitutionary damages are similar to damages, except they are calculated based on the Tortfeasor’s gain rather than the plaintiff’s losses.

Restitutionary damages are similar to other types of compensation, but they are determined by the tortfeasor's profit rather than the plaintiff's losses.

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## **Definition Of Equitable Remedies:**

MEANING OF EQUITABLE REMEDIES:

Instead of imposing a fine, an equitable remedy is when the court orders the defendant to complete a contract as originally agreed. This step is taken when payment alone is not sufficient to make up for damages. Equitable relief can also be offered if legal damages are not available. The court can also modify the contract terms or cancel the contract if it is deemed unfair to one or both parties. Equitable remedies, such as those acquired in cases involving a contract breach, are examples. These remedies are more concerned with fairness than they are with monetary damages.

The party who violated the agreement could be required to:

- Hand over the property (particular performance);
- Refund money (restitution);
- Cease doing an action; (injunction).

As in any lawsuit, the defendant may raise any available defenses to these types of remedies.

## **Specific Performance**

A tort law equitable remedy is directly tied to specific performance.

**MEANING:** A court order for specific performance requires that a contract be carried out exactly as intended. Several legal restrictions apply to this remedy. Although this appears to be the greatest option for any breach of contract, it is only appropriate to choose this option when the asset in question is special, such a piece of land or a family heirloom. The award of monetary damages makes it simple to replace non-unique items.

**CHARACTERISTICS:** The complainant bears the burden of establishing the item's uniqueness. Additionally, where continuous and varied acts are contractually required, specific performance cannot be used. Also, specific performance cannot be used where continuous and varied acts are contractually required. This would necessitate ongoing court oversight.

### **RESTITUTION**

**MEANING:** Restitution is giving back to one party what was given to the other in the following circumstances:

- Misrepresentation or incapacity renders the contract void.
- The agreement is broken by one party.
- The party requesting repayment violates the agreement.

**CHARACTERISTICS:**

• When a contract is breached, many results may occur; nonetheless, the damaged party may only receive a reasonable amount of restitution because the purpose of it is to not punish the breaching party and to not unjustly enrich the non-breaching one. In the interest of fairness to all parties involved, courts may mandate equitable remedies in place of monetary damages in some situations.

### **INJUNCTION:**

**MEANING:** A court may issue an injunction to prevent someone from engaging in conduct that is improper.

A non-compete agreement, for instance, is signed by the employer and the employee. By competing with his former employer after leaving the job, the employee violates the contract. He could be ordered to stop engaging in such competition by a court issuing an injunction.

#### CHARACTERISTICS:

- A negative covenant or contractual pledge is when someone agrees not to do something, in this case, to compete. For example, a seller promises a buyer the right of first refusal on a unique artwork or real estate parcel. The seller breaches the written contract by offering the item to a third party. A court may order the seller not to sell to that third party.
  - Someone who violates an injunction may be held in contempt of court and given a jail sentence.

#### ➤ **ARE ALL THE TYPES OF TORT REMEDIES ALWAYS AVAILABLE FOR EVERY TORT IN EVERY CASE?**

No. Any Tort litigation will devote a significant amount of time to determining the best sort of remedies for the victim. Restitution and equitable remedies are typically unavailable if the plaintiff seeks legal damages. There is no requirement for a court to order restitution or equitable remedies if a monetary payment will make the plaintiff "whole."

As long as it is permitted by local law, a judge may, on occasion, issue a combination of several distinct remedies. Judges are permitted to combine remedies while capping or restricting one of the possibilities. This is particularly typical when equipment is missing item. This is particularly frequent when the stolen item involves machinery or equipment that the plaintiff needs to make a living. The defendant can then be required to make restitution payments to the plaintiff to cover lost wages.

#### **UBI JUS IBI REMEDIUM**

The remedy is nothing but a relief available to the person in a form of a right against whom any wrong has been committed, and such relief is given by the accused party. This is where the legal maxim "Ubi jus Ibi Remedium" is connected to The Law of Torts as a whole as it is an ever-evolving law. Ubi Jus Ibi Remedium, which translates from Latin as "Where it is right, there is the remedy," This means that if someone's legal rights are violated, they will be given access to the appropriate legal remedies. The Indian Constitution also recognizes the Right to Remedy as a Fundamental Right.

**CASE LAW:** In the case of Bhim Singh v. the State of Jammu and Kashmir, the petitioner was a member of that state's legislative body. He was prevented from attending the legislative session after being wrongfully detained by a police officer on his way there. Despite having a legal right to be there, he was not brought before the magistrate in a timely manner.

Additionally, his Article 21 fundamental right to freedom of expression was violated. The petitioner was awarded Rs. 50,000 in damages by the Supreme Court for the breach of his fundamental rights after it determined that the defendants were at fault.

### **Conclusion:**

The Court of Chancery established and oversaw the equity principles. These served as the common law's conscience and were primarily developed as a means of softening the harshness of the common law. An equitable remedy is usually addressed at a specific individual, and since equity is said to operate on the defendant's conscience, the knowledge, frame of mind, and motivations of that person may be crucial to whether or not a remedy may be granted.

It is obvious that regulations are passed to uphold a civil society, but without a substance to lubricate them, rules can become completely rigid. Therefore, equity is a collection of rules that aids a litigant in obtaining the most logical and practical result possible in a world that is driven by commerce.

Therefore, all of the arguments and justifications put forward in support of tort law as an equitable remedy can be inferred to be valid and significant under tort law.