

Legal remedies essay sample

[Law](#), [Court](#)



Abstract

In decisions rendered by a court of law, the parties at opposing ends of the court aisle may not always be agreeable with the court's ruling. Even before one goes to court, several judicial means of enforcing, protecting and serving justice to an aggrieved party are available to the parties that wish to address perceived injustices done to them or to seek sanction to an injury that might have been inflicted upon them, in the eyes of the law and the courts.

Remedies: A definition

As defined in legal parlance, remedies are the means that a right is implemented or if a right was infringed upon, how the aggrieved party is compensated and for the prevention of the infringement of that right (Lectric Law Library). The conduct by which that remedy is enforced is subject to the satisfaction of the court (Farlex, 2008). This right to remedy is only recognized by the court as the wrong is one that is so acknowledged as an injury to society as a whole (Farlex, 2008). The statute on remedies is concerned with the distinguishing marks and the due relief that a person or party who has filed the legal case after all the necessary court actions have been done (Farlex, 2008). It is also noted that in this proceeding, the claimant must be able to determine that their rights were indeed trampled upon by the accused (Farlex, 2008).

Remedies are ranged according to the purpose that they serve. They are *Damages, Restitution, Coercive Remedies* and *Declaratory Remedies* (Farlex, 2008). The statute of damages has for its primary aim is for the granting of compensation to the injured party (Farlex, 2008). In law, there are three

types of remedies as to relief that is sought (Lectric). There is the remedy that seeks prevention of injuries to the persons, to one's reputation, property, removal of nuisances or the assurance that the party aggrieved will not be subject to loss of peace (Lectric). Compensatory remedies are those that seek monetary compensation (Lectric), and that which seeks to obtain punishment for the accused in the case (Lectric).

Damages

Damages are remedial measures, as stated earlier, that seeks to indemnify the aggrieved party for the loss or injury that the individual has incurred (Farlex, 2008). This remedy is more commonly known as *compensatory damages* (Farlex, 2008). This damage can be defined as an amount of money that is to requite a person for any loss, harm, or injury caused by the illegal act of another person appropriate to the act done (Farlex, 2008). In effect, compensatory damages are awarded to compensate an individual for the injury caused to he/her, and not to mitigate any behavior (Farlex, 2008). This is differentiated from *punitive damages*, wherein the awarded sum is used to recompense the aggrieved party for loss or injury incurred that is beyond what the compensatory damages already addressed (Farlex, 2008).

This type of damages, also termed as *exemplary damages*, may be given to the plaintiff by a “ trier of fact”, in this scenario, by a judge or by a jury, if the right to a jury trial has been waived (Farlex, 2008). This is a mode of punishment for the defendant in civil proceedings, and is founded on the legal belief that the well-being of the society and the individual harmed can be given ample relief by the escalation of the fines imposed on the

defendant (Farlex, 2008). Usually, punitive damages are awarded to the plaintiff for the atrocious conduct exhibited by the defendant, and to prevent further display of the behavior on the part of the defendant (Farlex, 2008). Though these fines are levied in civil proceedings, they are not designed to give additional recompense to the plaintiff and are generally criminal in character (Farlex, 2008).

There is no definite statute or legal determinant as to the time that awarding punitive damages are considered to be standard or automatic (Farlex, 2008). But terms that usually would warrant award of the damage would be inclusive of “outrageous, malice, bad faith, fraud, reckless, violent, wanton and wicked” (Farlex, 2008). These terms would be indicative of the manner that the defendant behaved, descriptive of being with intent, malice and absolute apathy to the rights of the victim (Farlex, 2008). Business has been critical of the awarding of punitive damages since they point out that the practice has driven the costs of doing business considerably higher (Farlex, 2008).

Equitable Remedies

Equitable remedies are defined in law as an action handed down by courts of law to direct parties to commit to action a certain order or to desist or prevent an action from being followed (Farlex, 2008). These remedies would be inclusive of the availment of “injunctions” or “specific performance” orders (Farlex, 2008). The issuance of an injunction is when the courts have rendered a ruling seeking the defendant to perform a certain task or action, which is a *mandatory injunction*, or to prevent the defendant from

continuing on a course of action, or a *negative* or *prohibitory injunction* (James Fischer, 1999). It is an order of the court to require certain individual persons or parties to commence conduct of an action, or order the desistance to the conduct of a particular course of action (Farlex, 2008).

The issuance of an injunction is consonant on the interests of serving justice fairly and equitably (Farlex, 2008). When a court of law issues a mandatory injunction, it deems that the commission of that act will serve the interests of justice (Farlex, 2008). It can be said in the same breadth that the issuance of a negative or prohibitory injunctions will oppose the interests of good conscience (Farlex, 2008). The party that will violate the order of the court injunction will be held liable by the court by being cited in contempt (Fischer, 1999).

The premise of the injunction is to compel the defendant to act on his/her legal responsibilities (Fischer, 1999). The courts render the injunction only if there is a possibility that the non-issuance of such an order would lead to the irreparability to another's rights (Farlex, 2008). The court deems an injury irreparable when the decision to award damages cannot adequately recompense the injury done to the plaintiff (Farlex, 2008). In a nutshell, if the loss can be deduced to monetary compensation, then the issue of irreparable damage does not exist. But if the damage done cannot be calculated in terms of monetary awards, hence the damage is deemed irreparable (Farlex, 2008).

It must be noted that one cannot claim as a matter of right that an injunction must be granted at the behest of one of the parties (Farlex, 2008). The sole

concern where the issue of rendering rulings pertaining to injunctions rest solely within the ambit of the courts (Farlex, 2008). Relief sought by means of an injunction is one that is freely granted. The courts must adduce the sufferings or harm that the parties will incur if the remedy is applied or not (Farlex, 2008). If the circumstances present themselves, the court may alter or rescind the injunction in its best discretion (Farlex, 2008).

Specific Performance

Specific performance remedies compel a contracting party to perform the provisions in the document that were allegedly deemed unfulfilled by the plaintiff (Farlex, 2008). In essence, the plaintiff is not after monetary or financial compensation, but only that what is stated in the contract be awarded or executed (Farlex, 2008). But the ruling for a specific performance injunction must be based on the premise that a breach of that contract has been deduced by the courts (Farlex, 2008). It is also important for the courts to see if there was an enforceable contract that the plaintiff is basing his/her complaint upon (Farlex, 2008).

Restitution

Restitution programs or palliatives are designed to force the defendant to spurt or give up a benefit when it can be shown that by retaining that benefit constitutes unjust enrichment (Fischer, 1999). The main argument in this type of remedy is stating that the plaintiff is claiming something that the defendant is unduly or illegally holding (Fischer, 1999). To briefly discuss, the doctrine of *unjust enrichment* states that no one should be allowed to gain at

the expense of another person without due compensation for the items or services retained or withheld illegally (Farlex, 2008). This remedy is usually set in terms of contractual disputes in the light of events that one party has promised benefits to another party, but due to defects in the contract or a non-existent contract, the plaintiff cannot collect that benefit from the contracting party (Farlex, 2008).

Undue Influence

Any form of persuasive action that tends to overcome the free and unhindered exercise of the person's will and judgement can be considered as an attempt at undue influence (Farlex, 2008). The terms would include actions at exhortation, insinuations and flattery, among others (Farlex, 2008). For the fact of undue influence to be established, four elements must be met. The victim must be shown to be susceptible to over reaching, that there was an attempt at exercising undue influence, the defendant had shown motive that would lead to the exercise of undue influence and the record must bear out the existence of a suspicious or highly irregular transaction (Farlex, 2008). The courts, however, must go over the facts thoroughly before a finding of undue influence could be arrived at (Farlex, 2008).

The use of undue influence is not to be understood with the issue of *duress* (Farlex, 2008). *Duress* is when there is an attempt to deliberately use force or threaten to utilize force or coercion to engage another party into a disadvantageous transaction (Farlex, 2008). Examples of the use of duress would be the act of threatening blackmail, extortion, bad faith, threats of

bringing parties to courts, and a brutal abuse of the processes (Farlex, 2008). The disadvantaged party in the transaction is not deemed liable in the case, as the person was of the fervent belief that they would be harmed if they opposed the other party's attempts (Lectric).

Fraud

Fraud can be defined as a misleading or wrong presentation of the facts, by means of words, conduct, or by deceit (Farlex, 2008). The purpose of the deception is the intention of the deceiver to have the person act upon a fact that will result in the legal infirmity of the other (Farlex, 2008). Most common occurrences for fraud are the real estate business, personal properties and the intangible property, like stocks and copyright (Farlex, 2008). To prove the existence of fraud in the transactions, there are elements that must be proven (Farlex, 2008).

Among them would be a deceiving declaration of a material element, the defendant must be aware that the statement he/she is giving is indeed false, there is a deliberate and calculated attempt at deception by the defendant, the victim is heavily relying on the deceiving statement of the defendant, and the deception resulted to an injury to the victim (Farlex, 2008).

Injuries to Business and Commercial Interests

Business Torts

Cases regarding business tort cases involve the infliction of an injury by a person or corporate entity against a party that is in business with the

perpetrator (David Drexler, 2008). Such cases would involve instances of breach of contract, fraud, conspiracy to defraud, slander, defamation and inflicting damage on the reputation of a business or person (Drexler, 2008). A case for *inducing a breach of contract* can also be taken as a tort on *contractual relations* and the tort against interfering with that contract (US Legal, 2008). The conduct of breaching a contract, if the case is to be considered, must be done deliberately (US Legal, 2008). If a person is uninformed of the existence of an enforceable contract or his conduct were not directed at the breaking of the agreement, then the person is free from liability even if the contract is actually broken if his actions were done in a legal and appropriate (US Legal, 2008).

Patent Infringement

Patent infringement can be defined as the illegal manufacture or assembly, marketing or offer of sale for any patented invention in the United States or its territories, or importation of patented devices into the country during the term of the patent for the item (Mary Bellis, 2008). When such cases arise, the aggrieved party may seek for judicial relief by way of a preventive injunction (Bellis, 2008). The injunction may be of a preventive nature to discontinue the activities consisting of the crime and may ask for damages for the incident (Bellis, 2008).

Unfair competition is any trade or business activity or method that is fraudulent, tainted with lack of honesty or deceptive, specifically barred from being performed law (Encyclopedia of Everyday Law, 2008). The mechanisms of the laws that restrain unfair practices are made for

addressing the complaints of the companies or business companies affected by the practices of another corporate entity (Encyclopedia, 2008). Affected consumers who are placed in harm's way by the practices of these groups are to seek relief in the consumer protection laws in their states (Encyclopedia, 2008). Other form of unfair competitions is false or misleading advertising, where a certain product or item is linked to another product (Answers, 2008). Another is to mimic the package details of another product in such a manner that the public will be misled, or to a degree that the public will be deceived to think that the products are the same (Answers, 2008).

Trade Libel or Trade Defamation can be understood as the issuance of a public statement that intends to cause damage on the reputation of a business entity or a person in the business (Stimmel, Stimmel & Smith Law Offices, 2000). Cases such as these are considered business torts and the victim may seek both compensatory and punitive recompense (Stimmel, 2000). The practice of open and fair competition is practiced in the United States (Stimmel, 2000). The deviation in the practice in trade libel and legal and fair business practices is the knowledge that the statements being made and issued are false (Stimmel, 2000). It is also that the statements are being made to gain financial advantage over competitors (Stimmel, 2000).

Unconscionable Conduct

Under law, *unconscionable conduct* can be interpreted as extremely violent or harsh disposition of a superior party over an inferior group by way of implementing unreasonable terms or through an incomplete disclosure of

facts (New South Wales Farmers Association). In effect, if a business entity is taking advantage of another by these means or in a conduct that is offensive to good conscience that would constitute unconscionable conduct (Australian Competition and Consumer Commission, 2008). The incidents of unconscionable conduct practices usually occur in the domain of commercial dealings between business concerns or between the business and its customers (Australian, 2008).

Injuries to intangible property interests

Before any definition on what constitutes an injury to a tangible property, we must seek first the definition of what an intangible property is. The intangible assets that are the ownership a certain business is inclusive not only of the trade name and other devices synonymous with the company but also all of the company's inventions, creative efforts and artistic undertakings, collectively know as the company's trade secrets (Encyclopedia, 2008).

The secrets may also include of formulas or patented ideas, set of steps in manufacturing, techniques, mechanisms that affords businesses an advantage to be gained over its rivals in the same field (Encyclopedia, 2008). Individuals or businesses who steal a competitor's trade secrets may be held liable in a court of law, as the owner is deemed to have sole propriety and exclusive license to enjoy the benefits of the trade secret (Encyclopedia, 2008). Courts religiously guard against any instance of a company's trade secret from being divulged (Encyclopedia, 2008).

Defamation

If a party causes the publication of statements or declarations that are false and meant to tarnish the reputation of another, then the case for *defamation* has been made (Pinsent Masons). If a false or maligning declaration had been made orally with no justifiable basis, then it can be defined as slander (Masons). The effects of the publication of the statement is that the intended target will be held in contempt, lose employment opportunities or status (Masons). If the declaration is made orally, it is a case of slander: if the statement is printed or published, or a record is made, then the case amounts to libel (Masons). The case is still considered libel even if the statement is not printed but it has reached a third party (Aaron Larson, 2006).

Invasion of Privacy

Simply put, invasion of privacy is when the right of an individual to be left alone is infringed upon (NOLO, 2008). If conducted without just reasons, an intrusion into the personal affairs of another person affords the person aggrieved the right to sue or seek relief against the person that initiated the trespass (US Legal, 2008). There are various means that this offense can be carried out (NOLO, 2008). The most common invasion of privacy instances can be listed as “false light”, when the person is put in a disparaging light or perception, a “disclosure of private facts”, when private facts that would tend to embarrass the person are revealed, and “intrusion”, when someone intrudes upon a place that the party would expect to be safe from prying eyes (NOLO, 2008).

Injuries to personal dignity and related interests

For damages for the infringement of civil rights, two remedies can be availed by the plaintiff (Free Advice, 2008). The first option for parties whose civil rights were infringed upon is the claim for monetary damages; the second would be for a claim for the issuance of an injunction (Free Advice, 2008). Money damages can be claimed if the violation would result in the victim's loss over the right to a property (Free Advice, 2008), or if the act was conducted under the "color of law" (Free Advice, 2008). The term "*color of law*" refers to an act that is done by an individual allegedly in the performance of a legal duty (Lectric).

If the plaintiff is for the issuance of an injunction, the plaintiff is seeking government action to bar the person/s or parties from continuing with activities that are proving detrimental to the rights of the plaintiff (Free Advice, 2008). Injunctions are only given when the current remedies under the law prove too inadequate to address the issue at hand (Free Advice, 2008). For many civil issues, relief by the issuance of an injunction is the only means available in anti discrimination issues (Free Advice, 2008). This is also true in the adjudication in civil rights issues in court (Free Advice, 2008).

In cases of personal injury, the award of compensatory damages will seek to cover the losses in terms of economic benefits resulting from the injury (Free Advice, 2008). This would be inclusive of all medical expenses, present and future, that might be incurred by the plaintiff (Free Advice, 2008). If the injury would be deemed permanent, the compensation would also include future earnings due to the forced retirement of the individual (Free Advice, 2008). Aside from the monetary compensation, other items will be

considered in the award, such as pain and anguish of the plaintiff, emotional pain and loss of enjoyment of the person's life (Free Advice, 2008).

Wrongful death claims arise if it is alleged that the defendant wilfully caused, or by reason of negligence, caused the death of another party (Farlex, 2008). The heirs or dependents of the deceased can seek financial damages from the defendant allegedly responsible for the death of the person/s (Farlex, 2008). The ambit of the law may vary in application and location (Farlex, 2008). While they differ in some manner, the law generally state four elements that would fulfil a need for the claim of wrongful death (Free Advice, 2008). First, the demise of the person was caused by the actions of the defendant; second, there was negligence on the part of the defendant directly relevant to the loss of the life of the person; third, there are the surviving dependents, and; the loss of the person resulted in a loss of monetary benefits on the part of the beneficiaries (Free Advice, 2008).

Mistake

In interpretation of contract cases, the parties in the contract can claim the presence of a mistake in the document to claim that the text in the contract is not reflective of the true intent of the agreement (Frank Elkouri, Edna Asper Elkouri, Alan Miles Ruben & American Bar Association Committee on Alternative Dispute Resolution in Labor and Employment Law, 2003). The mistake in the document may take the form of a mutual mistake, a unilateral mistake and a calculation mistake (Elkouri, Elkouri & Ruben, 2003). A mutual mistake can be addressed to revise the text to agree to the intentions of both parties in the contract (Elkouri, Elkouri & Ruben, 2003). A unilateral

mistake usually is addressed in the rescission of the document, subject to the determination of the importance of the mistake to the integrity of the document, while a calculation error is a overpayment of the due of the payee in the contract (Elkouri, Elkouri & Ruben, 2003).

A *breach of contract* exists when one of the parties in the contract fails to execute the provisions in the contract sans a justifiable reason for the conduct of such (US Legal, 2008). The breach of the contract may occur on a single time frame, or may be in continuing mode (US Legal, 2008). The remedies made to address such an issue must not be seen as a castigation of the defendant (US Legal, 2008). The purpose of the sanctions is to place the defendant in a position if the contract was done in the first place (US Legal, 2008).

An *unenforceable contract* is a reasonable but defective agreement that the courts cannot implement (Business Dictionary, 2008). This contract, if subjected to infringement, does not allow legal redress by the courts (Gallaudet University). This condition may exist due to several factors. The contract may be due to an absence of several legal factors that are inherent for the contract to be enforceable (Business Dictionary, 2008). The contract may also fall under the statute of limitations by which a contract can be enforced by a court (Gallaudet University).

Statute of Frauds

The ambit of the statute of frauds requires a contract to be signed by parties involved in the agreement, thereby binding the parties in the contract to its

terms and provisions (Expert Law, 2008). Contracts usually attached with statutes of frauds clause include the sale or transfer of lands, payment of debt, sale of items and those actions that cannot be done in one year (Expert Law, 2008). The primary goal of the statute is the prevention of conduct that is misleading that may result in injury to another party (Expert Law, 2008). Its inclusion does not in any way rescind a contract, but allow both parties to void the agreement if they so choose (Expert Law, 2008).

If an agreement is impossible to perform, this condition may lead to the cessation of the contract (Lawyers, 2008). This impossibility may stem from not only the conditions that the contract is deemed impossible, but also to extreme conditions that display impracticality, threat to loss of life, injury or other conditions (Camardo Law Firm, 2006). The decisive factor of there is liability in non-performance of the contract is not the factor of impossibility (Camardo, 2006). It must be established that there was an unforeseen event that would lead to the performance of the contract as stipulated earlier by the parties (Camardo, 2006).

The statute on *lack of contractual capacity* stipulates that there is recognition of the capacities of a party to enter into an agreement (Henry Cheeseman). The law is designed for individuals who demonstrate the lack of knowledge to hedge their self-interests from entering into agreements (John Adamson, 2005). These parties would be inclusive of children, drunk and those with mental handicaps (Adamson, 2005). The primary defense of those who possess a lack of contractual capacity is *disaffirmance* (Adamson, 2005).

The term simply defined is that the party bound by the agreement can refuse to be shackled to it (Adamson, 2005).

If there was an instance of illegality at the time the contract was formed, then the agreement can be considered non-binding at its inception (Gillhams, 2008). But if the party in the contract does not seek to perform the contract from the onset, then the contract is considered alive (Gillhams, 2008). There are several instances, however, the contract can be declared void from inception (Gillhams, 2008). Among these factors is the contract hinder free trade, which disparages marriage as an institution that it is in aid of the commission of a crime and encouraging immorality, among others (Gillhams, 2008).

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