The Infinite
An International Peer Reviewed / Refereed Journal of Multidisciplinary Research

An Online Peer Reviewed / Refereed Journal
Volume 3 | Issue 10 | October 2026
ISSN: 3048-9539 (Online)
Website: www.theinfinite.co.in

The Maxim 'Ubi Jus Ibi Remedium' in the Law of Torts

Anand Kumar
Student (LL.B.VI Sem.)
PRSU, Pryagraj, India

ARTICLE DETAILS

Research Paper

Keywords :

Ubi Jus Ibi Remedium, Law of Torts, Injuria Sine Damno, Damnum Sine Injuria, Ashby v. White, Bhim Singh, Constitutional Torts, Legal Remedy, Sovereign Immunity.

ABSTRACT

The Latin maxim 'Ubi jus ibi remedium' ('where there is a right, there is a remedy') serves as the foundational cornerstone of the Law of Torts and common law jurisprudence. It articulates the axiomatic legal principle that a legal right cannot exist in a jurisprudential vacuum without an attendant mechanism for its vindication and enforcement. This research treatise undertakes an in-depth examination of the origins, philosophical underpinnings, and modern manifestations of the maxim. Tracing its definitive judicial formulation in the landmark case of Ashby v. White (1703) through Chief Justice Holt's timeless dissent, the paper investigates the dichotomy between 'injuria sine damno' and 'damnum sine injuria'. Furthermore, it examines the development of new tortious liabilities, the constitutionalization of tort remedies in India through Articles 32 and 226 (public law compensation), the statutory and common law boundaries restricting the maxim's scope, and its relevance in modern digital and privacy jurisprudence.

1. Introduction and Historical Context

The Law of Torts is essentially an uncodified, judge-made body of civil law whose primary objective is the allocation and reallocation of civil wrongs, the restoration of injured parties to their status quo ante through damages, and the deterrence of unlawful conduct. Central to the expansion and vitality of tort law is the fundamental Roman legal maxim 'Ubi jus ibi remedium' — where there is a right, there is a remedy. In essence, the maxim posits that whenever the law recognizes a right in an individual, it necessarily implies an effective remedy for any infringement or breach of that right.

Historically, early English common law was rigid, form-driven, and governed by the strict system of original royal writs. Litigants could only obtain redress if their specific grievance fitted squarely within

an established, pre-existing writ (e.g., Trespass vi et armis, Trespass on the case, or Assumpsit). The procedural axiom of the time was effectively the inverse: 'Ubi remedium ibi jus' (where there is a writ or remedy, there exists a right). If the Chancery issued no writ covering a wrong, the victim was left remediless, regardless of the severity of the injury.

The transition toward 'Ubi jus ibi remedium' marked a paradigm shift from procedural formalism to substantive justice. Common law jurists recognized that procedure exists to serve substantive rights, not to stifle them. Consequently, the courts began creating novel forms of action upon the case, laying down the principle that the absence of a precedent is no bar to the recognition of an actionable wrong when an established right has been violated.

2. Jurisprudential Meaning and Core Elements

The maxim does not mean that every conceivable human loss, moral outrage, or emotional distress is compensable in a court of law. Rather, it operates strictly within the confines of legal rights recognized and protected by the municipal legal system. As Justice Stephen famously observed, 'The maxim does not say that there is a legal remedy for every moral wrong, but that there is a remedy for every legal wrong.'

The application of the maxim requires two indispensable conditions:

1. Existence of a Recognized Legal Right: A recognized legal right must exist in favor of the claimant. The right may be private (e.g., right to reputation, personal bodily integrity, or property) or public (e.g., right to vote in parliamentary elections).

2. Infringement of the Legal Right: There must be a wrongful act or omission on the part of the defendant that constitutes a direct infringement, invasion, or disturbance of that legal right.

> Chief Justice Holt's Classic Enunciation
>
> *'If the plaintiff has a right, he must of necessity have a means to vindicate and maintain it, and a remedy if he is injured in the exercise or enjoyment of it; and indeed it is a vain thing to imagine a right without a remedy; for want of right and want of remedy are reciprocal.'*
>
> *— Chief Justice Sir John Holt, Ashby v. White (1703) 2 Ld. Raym. 938*

3. The Watershed Landmark: Ashby v. White (1703)

The foundation of the modern doctrine was established in Ashby v. White (1703) 2 Ld. Raym. 938. The plaintiff, Mr. Ashby, was a qualified, registered burgess entitled to vote in the parliamentary election for Aylesbury. The defendants, the returning constables, wrongfully, maliciously, and deceitfully refused to receive and register his vote. Notwithstanding the rejection of the plaintiff's vote, the candidates for whom he intended to vote were elected by an overwhelming majority, and the plaintiff suffered no pecuniary, physical, or tangible damage whatsoever.

The majority judges of the Court of Queen's Bench (Gould, Powys, and Powell, JJ.) held that the action was not maintainable because the plaintiff had sustained no practical damage and no precedent existed for such a claim. However, Chief Justice Sir John Holt delivered a monumental dissenting opinion, holding that the right to vote was an invaluable constitutional and legal right, and the willful denial thereof was an actionable legal wrong (injuria) irrespective of actual damage.

Upon a writ of error, the House of Lords reversed the majority decision and unequivocally upheld Chief Justice Holt’s dissenting view. This ruling definitively embedded 'Ubi jus ibi remedium' into Anglo-American jurisprudence, establishing that the infringement of a legal right itself constitutes legal damage for which the law will afford a remedy.

4. Doctrinal Dichotomy: Injuria Sine Damno vs. Damnum Sine Injuria

The practical operation of the maxim is illuminated through the contrasting principles of Injuria Sine Damno (where the maxim applies fully) and Damnum Sine Injuria (where the maxim has no application):

Parameter	Injuria Sine Damno	Damnum Sine Injuria
Literal Meaning	Legal injury without actual tangible or physical damage.	Substantial physical, pecuniary, or commercial damage without legal injury.

Violation of Legal Right	Yes; an absolute or recognized legal right is directly infringed.	No; no recognized legal right of the plaintiff has been violated.
Actionability at Law	Always actionable per se without proving special damage.	Never actionable at law, regardless of the extent of financial loss or malice.
Application of Maxim	'Ubi jus ibi remedium' applies directly and provides an immediate remedy.	The maxim does NOT apply because no 'jus' (legal right) exists.
Key Landmark Precedents	Ashby v. White (1703); Bhim Singh v. State of J&K (1985).	Gloucester Grammar School Case (1410); Chasemore v. Richards (1859); Mogul Steamship (1892).

A. Injuria Sine Damno (Actionable Per Se)

In cases of torts actionable per se (such as trespass to person, assault, false imprisonment, libel, and trespass to land), the mere unauthorized interference with the plaintiff's right gives rise to a cause of action. The law presumes damage. In Ashby v. White, no financial loss occurred, but the legal injury was complete. Similarly, if someone walks across your land without causing any damage to the grass or soil, an action for trespass lies because your absolute right of exclusive possession has been violated.

B. Damnum Sine Injuria (Non-Actionable Loss)

Conversely, where a person causes immense pecuniary loss or damage to another through an act that is legally lawful and does not violate any legal right of the latter, no action lies. In the Gloucester Grammar School Case (1410) YB 11 Hen IV, a schoolmaster set up a rival grammar school next to the plaintiff's established school, forcing the plaintiff to reduce tuition fees from 40 pence to 12 pence per quarter. The

plaintiff suffered catastrophic financial loss. The court held that no action was maintainable because healthy competition does not infringe any legal right.

Similarly, in Chasemore v. Richards (1859) 7 HLC 349, the defendant drew percolating underground water from his own land, drying up the plaintiff's mill stream. The House of Lords held that landowners have a right to sink wells on their land, and in the absence of a defined channel, no legal right was breached, making the substantial loss non-actionable.

5. Judicial Application and Constitutional Torts in India

In Indian jurisprudence, the maxim 'Ubi jus ibi remedium' has not merely been treated as a common law doctrine for private torts; it has been elevated into an instrument of constitutional justice under Articles 32 and 226 of the Constitution of India.

A. Bhim Singh, MLA v. State of Jammu & Kashmir (AIR 1986 SC 494)

Bhim Singh, an elected member of the Jammu & Kashmir Legislative Assembly, was unlawfully arrested and detained by police officers to prevent him from attending an assembly session where a crucial budget vote was scheduled. He was deprived of his constitutional right to attend the session and his fundamental right to personal liberty under Article 21. By the time his habeas corpus petition was heard, he had been released.

Applying 'Ubi jus ibi remedium' and the ratio of Ashby v. White, the Supreme Court ruled that when personal liberty and democratic rights are unlawfully invaded by state authorities, the court is not powerless. The Court awarded exemplary compensation of Rs. 50,000 against the State, establishing that compensatory relief is an inherent remedy for constitutional torts.

B. Rudul Sah v. State of Bihar (AIR 1983 SC 1086)

In Rudul Sah, the petitioner was detained in prison for more than fourteen years after his formal acquittal by a competent Sessions Court. The Supreme Court invoked the maxim to pioneer the doctrine of public law compensation. Chief Justice Y.V. Chandrachud held that an article declaring a fundamental right without a remedial machinery for compensation would be a mere 'rope of sand'. The state was directed to pay interim compensation for the illegal incarceration.

C. Nilabati Behera v. State of Orissa (AIR 1993 SC 1960)

The Supreme Court affirmed that the defense of sovereign immunity has no application in claims for compensation for the violation of fundamental rights under Articles 32 and 226. Justice J.S. Verma underscored that public law remedies are distinct from private tort claims and are grounded on the sovereign obligation to vindicate constitutional guarantees.

6. Exceptions and Limitations to the Maxim

While the maxim establishes a powerful presumption in favor of providing a remedy, it is subject to several well-defined legal boundaries, statutory immunities, and public policy restrictions:

Limitation / Bar	Nature of Restriction	Illustrative Precedents / Statutes
Damnum Sine Injuria	Acts causing damage without violating any recognized legal right are barred.	Gloucester Grammar School (1410); Chasemore v. Richards (1859).
Moral, Social & Religious Wrongs	Courts will not enforce remedies for purely ethical, religious, or social breaches.	Refusal of social invitations, religious excommunication within personal law bounds.
Volenti Non Fit Injuria	Consent by the claimant to run the risk of harm negates the existence of a tortious wrong.	Hall v. Brooklands Auto Racing Club (1933); Padmavati v. Dugganaika (1975).
Judicial & Sovereign Immunity	Judges and public officers acting in good faith within jurisdiction cannot be sued.	Judicial Officers Protection Act, 1850; Kasturi Lal v. State of U.P. (private law).

Statutory Authority	Acts authorized by valid legislative enactments are immune from tort claims.	Vaughan v. Taff Vale Railway Co. (1860); Hammer Smith Rail Co. v. Brand (1869).
Statute of Limitations & Laches	A valid right loses its remedy if not enforced within the prescribed statutory period.	Limitation Act, 1963; Latin maxim: 'Vigilantibus non dormientibus jura subveniunt'.

The Law of Limitation: Extinguishment of Remedy vs. Right

A vital statutory qualification of 'Ubi jus ibi remedium' is the law of limitation. Under the Indian Limitation Act, 1963, if a claimant fails to approach the court within the prescribed period (e.g., three years for tort actions), the procedural remedy is barred, even though the theoretical substantive right may still subsist. This reflects the competing maxim 'Vigilantibus non dormientibus jura subveniunt' (the law assists the vigilant, not those who sleep on their rights).

7. Creation of New Torts and Contemporary Frontiers

The most vibrant modern application of 'Ubi jus ibi remedium' lies in the dynamic capacity of courts to formulate novel tortious causes of action to protect emerging interests in response to socio-technological evolution:

1. Manufacturer Negligence: In Donoghue v. Stevenson [1932] AC 562, Lord Atkin formulated the famous 'neighbour principle', expanding tortious liability for negligence against manufacturers without requiring privity of contract.

2. Economic Torts and Intimidation: In Rookes v. Barnard [1964] AC 1129, the House of Lords formally recognized the tort of intimidation, refusing to allow economic coercion to evade civil liability simply because it lacked a direct historical precedent.

3. Right to Privacy and Data Protection: In K.S. Puttaswamy (Retd.) v. Union of India (2017) 10 SCC 1, the Supreme Court of India unanimously recognized privacy as a fundamental right. Building upon this, Indian civil courts and digital tribunals are increasingly crafting civil remedies against non-consensual data profiling, surveillance, and algorithmic privacy violations.

4. Absolute Environmental Liability: In environmental jurisprudence, cases like M.C. Mehta v. Union of India (Oleum Gas Leak Case, 1987) led to the judicial development of the 'Absolute Liability' principle, providing remedies for mass ecological disasters beyond the limitations of strict liability in Rylands v. Fletcher.

8. Critical Evaluation: Theory vs. Reality

Notwithstanding its theoretical grandeur, the realization of 'Ubi jus ibi remedium' frequently confronts systemic friction in practical litigation:

1. The Procedural and Economic Chasm: In practical terms, an effective remedy requires accessible courts, reasonable legal costs, and swift adjudication. In developing jurisdictions characterized by multi-year judicial backlogs and prohibitive litigation costs, the theoretical promise of a remedy often remains an illusion for underprivileged citizens.

2. The Shadow of Sovereign Immunity: The persistence of sovereign immunity doctrines in traditional private law claims (as established in Kasturi Lal Ralia Ram Jain v. State of U.P., 1965) continues to create an indefensible barrier for citizens seeking tortious damages against negligent police or revenue officials.

3. Judicial Creativity vs. Certainty: While courts must innovate to protect emerging rights, excessive judicial activism without clear statutory benchmarks risks judicial overreach, unpredictability, and commercial instability.

9. Conclusion

The maxim 'Ubi jus ibi remedium' constitutes the beating heart of tort jurisprudence and civil justice. From its classical vindication in Ashby v. White through its radical constitutional manifestation in modern Indian jurisprudence (Rudul Sah, Bhim Singh, and Puttaswamy), the doctrine demonstrates that rights and remedies are inextricably symbiotic. A legal right without an enforceable remedy is an empty illusion — a decorative promise without legal enforceability.

In an era marked by artificial intelligence, automated decision-making, algorithmic biases, and pervasive digital surveillance, the maxim's role is more vital than ever. The judiciary cannot remain tethered to archaic, rigid precedents. Wherever the law discovers a legitimate, legally recognized human right or entitlement, it possesses the inherent authority and solemn obligation to forge a corresponding remedy to guarantee justice, dignity, and the rule of law.

10. References & Legal Authorities

Case Law (UK): Ashby v. White (1703) 2 Ld. Raym. 938; 92 ER 126.

Case Law (UK): Gloucester Grammar School Case (1410) YB 11 Hen IV, 47.

Case Law (UK): Chasemore v. Richards (1859) 7 HLC 349.

Case Law (UK): Donoghue v. Stevenson [1932] AC 562.

Case Law (UK): Rookes v. Barnard [1964] AC 1129.

Case Law (India): Bhim Singh, MLA v. State of Jammu & Kashmir (1985) 4 SCC 677; AIR 1986 SC 494.

Case Law (India): Rudul Sah v. State of Bihar (1983) 4 SCC 141; AIR 1983 SC 1086.

Case Law (India): Nilabati Behera v. State of Orissa (1993) 2 SCC 746.

Case Law (India): M.C. Mehta v. Union of India (Oleum Gas Leak Case) (1987) 1 SCC 395.

Case Law (India): K.S. Puttaswamy (Retd.) v. Union of India (2017) 10 SCC 1.

Treatises: Winfield and Jolowicz, 'Tort', 20th Edition, Sweet & Maxwell, London.

Treatises: Salmond and Heuston, 'Law of Torts', 21st Edition, Sweet & Maxwell.

Treatises: Ratanlal & Dhirajlal, 'The Law of Torts', 28th Edition, LexisNexis Butterworths Wadhwa.

Constitutional Provisions: The Constitution of India, 1950, Articles 21, 32, and 226.

Statutes: The Indian Limitation Act, 1963.