

# Remedies Beyond Damages

Eric E. Johnson

[ericejohnson.co](http://ericejohnson.co)

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# Restitutionary Remedies

### Restitutionary Remedies

- An alternative to compensatory damages where defendant has gained some benefit, which, if retained, would amount to “unjust enrichment”
- Objective: transfer defendant’s ill-gotten gain to plaintiff
- Legal or equitable (“at law” or “in equity”)

### Restitutionary Remedies

#### Kinds

- Quasi-contract
- Replevin
- Ejectment
- Constructive trust
- Equitable lien

## Restitutionary Remedies

### Quasi-contract

- Legal
- Defendant must pay reasonable value of benefit unjustly retained
- Benefit can come via contract situations (breach, duress, mistake) and via tort when tort confers a benefit to defendant

## EXAMPLES

## Restitutionary Remedies

### Quasi-contract in tort

- D sets up camera and punches P in face, then uses footage in popular movie
  - *get portion of film revenues attributable to punching scene*

## Restitutory Remedies

## Quasi-contract in tort

- D drives over your property to deliver a mobile home, avoiding expense of using helicopter
  - *get the amount of money D saved from not renting a helicopter*

## Restitutory Remedies

## Replevin

- Legal
- a/k/a “claim and delivery”
- Pre-trial seizure of chattel wrongfully taken from plaintiff

## Restitutory Remedies

# Replevin

### NEW JERSEY RULES OF COURT – REPLEVIN

**4:61-1. Writ of Replevin (a) Issuance of Writ on Notice.** A writ of replevin shall issue only upon court order on motion of a party claiming the right to possession of chattels. Except as otherwise provided by paragraph (b) of this rule, the motion shall be heard on no less than three days' notice to the party in possession of the chattels, who shall file and serve any opposing affidavits or cross-motions at least one day prior to the hearing. The motion shall be granted only upon the court's finding, based on the moving papers, any opposing affidavits which may have been filed, and any testimony taken pursuant to R. 1:6-6, that there is a probability that final judgment will be rendered in favor of the movant. In lieu of ordering the issuance of the writ the court may order the party in possession of the chattels to give security for satisfaction of any judgment which may be rendered in the action, or order such other relief upon such terms as may be just in the circumstances. **(b) Issuance of Writ Ex Parte.** An order for issuance of the writ of replevin without notice to the party in possession of the chattels may be entered by the court only after it finds from specific facts shown by affidavit or verified complaint that the party applying for the writ is probably entitled to possession and that, before notice can be served and a hearing had thereon, that party will probably suffer immediate and irreparable damage in that the party in possession of the chattels appears about to abscond or about to destroy, secrete or otherwise dispose of the chattels. In lieu of ordering the writ, the court may enter an order to show cause why the writ should not issue, including therein such temporary restraints as may be necessary and appropriate for preserving the chattels and fixing therein a short return date for hearing thereon in accordance with paragraph (a) of this rule.

### EXAMPLES

## Restitutory Remedies

# Replevin

- D steals your lawn mower from your lawn barn. You see him with a few days later. You recognize it from the flame job on the side.

**→ file an action for a writ of replevin, and get the lawn mower back fast**

## Restitutionary Remedies

### Ejectment

- Legal
- Get someone thrown off real property
- Useful against deadbeat tenants, squatters, in-laws
- In California, “unlawful detainer” actions under statute

## Restitutionary Remedies

### Isn't that like an injunction?

- Replevin and ejectment are like injunctions. But they're not.
- Why not?
- It's historical. Courts of law could issue these writs.

## Restitutory Remedies

### Equitable restitutory remedies

- Constructive trust
- Equitable lien

## Restitutory Remedies

### Constructive trust

- Equitable (“in equity”)
- Creates a “trust” over unjustly retained property
  - *Construes the existence of a trust*
- Result: D holds the property in trust for P
- Objective to compel D to convey title back to P

## Restitutory Remedies

### Constructive trust - REQUIREMENTS

- D acquired title to specific property
- D's retention would result in unjust enrichment
- (sometimes) no adequate remedy at law
  - E.g., D has no money to pay damages

## Restitutory Remedies

### Constructive trust - BENEFITS

- P can use tracing
- P can recover the property or the proceeds from it
- P gets enhanced value, if any
  - P gets upside
- Puts P in a good position in BK



## Restitutory Remedies

### Constructive trust - DEFENSES

- Laches
- Unclean hands
- Transfer of title to bona fide purchaser (BFP)
  - BFP is good-faith purchaser who pays value and has no notice.
  - Title is cut off.

## Restitutory Remedies

### Equitable lien

- Equitable (“in equity”)
- The court’s equity power creates a lien over property held by D in favor of P
- Result: P becomes a secured creditor
  - The debt to plaintiff is secured by the property, like a house secures a mortgage.

## Restitutory Remedies

### Equitable lien - REQUIREMENTS

- D misappropriated money or property
- The money or property can be traced to D's property
- D's retention would result in unjust enrichment
- (sometimes) no adequate remedy at law
  - E.g., D has no money to pay damages

## Restitutory Remedies

### Equitable lien - BENEFITS

- P can use tracing
- P can recover the property if the debt is not paid
- Puts P in a good position in BK

## Restitutionary Remedies

### Equitable lien

- COMPARED TO CONSTRUCTIVE TRUST
- Can't recover enhanced value of property
- But can get a deficiency judgment

## Restitutionary Remedies

### Equitable lien - DEFENSES

- Laches
- Unclean hands
- Transfer of title to bona fide purchaser (BFP)
  - BFP is good-faith purchaser who pays value and has no notice.
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## Restitutory Remedies

### Kinds

- Quasi-contract
- Replevin
- Ejectment
- Constructive trust
- Equitable lien

# Injunctions

## Injunctions

# An injunction is:

An order to do or not do something.

## Injunctions

### *Examples:*

- Don't show a movie.
- Don't come within 50 feet of someone.
- Tear down a building.
- Don't tear down a building.

## Injunctions

### Kinds (by effect):

- **Mandatory**
  - Do something.
- **Prohibitory**
  - Don't do something.

## Injunctions

### Kinds (by duration):

- **Temporary restraining order (“TRO”)**
- **Preliminary injunction**
- **Permanent injunction**

## Injunctions

### Temporary restraining order

- Can be obtained ex parte
- Usually only lasts 10 days, at most
  - (Until noticed hearing for preliminary injunction)
- When you need a court order FAST

## Injunctions

### Preliminary injunction

- Must be noticed
- Never ex parte
- Can be proceeded by hurry-up discovery
- Lasts until conclusion of trial
  - (Possibly years)
  - Can effectively decide some cases

## Injunctions

### Permanent injunction

- Issued with judgment
- Lasts forever, or until it expires on its own terms.

## Injunctions

### Requirements:

- No adequate remedy at law
  - E.g., “irreparable harm”
- Feasible to enforce
  - Courts won't issue pointless injunctions
- Balance of hardships in P' s favor
  - Balancing “the equities” is the quintessential function of a court sitting in equity