

Introduction:

A tort may be defined as a civil wrong not arising out of a contract or a relationship based on trust, which is characterized by a violation of the legal right enshrined in others and an action for redressible damages. Hence the aim of torts is to compensate the victim and not punish the wrong doer.

Before we undertake a journey into the damages in torts in India it would be prudent to understand the nature of the torts committed and their developments through the ages. This would not only help in understanding the current situation in a clearer manner but may also provide a sense of history about torts. It is well known that Indian tort law has taken inspiration from England's tort law. Therefore in order to widen the scope of this research the researcher shall not only deal with Indian law but also with American law, Californian mainly. The objective of this would be to portray and find out the essences of both eastern and western tort laws¹

One must prove all of the following criteria to get damages in torts

- Existence of duty (to be reasonable)
- Breach of that duty

¹ In western mainly Californian

- Damages incurred as a result of that breach of duty

Causation between breach and damage is direct

STATE OF TORT LAW IN INDIA

The state of tort law in India is very poor. The people are not properly aware of their legal rights. Thus, the development of torts has been hampered by the lack of awareness. Thus, tort litigation is still in its stages of infancy in India. India has yet not reached the level of Tort litigation existing in the U.S.A. or the U.K. The highest ever damages paid in a tort case in India is Rs.50 lakhs. This gives the indication of the level to which tort litigation has developed in India.

But times are changing and along with time so is torts. People are becoming far more aware of their rights. Hence, the researcher feels that this particular project has great relevance as it will look at the development of damages in torts in our country where torts are just beginning to play a more dominant role.

DAMAGES, which are, extremely important in practice, are under investigation by the Law Commission of India . The law commission proposes:

“An examination of the principles governing and the effectiveness of the present remedy of damages for monetary and non-monetary loss, with particular regard to personal injury litigation” especially

- (i) the use of structured settlements as an alternative to, or in conjunction with, lump sum awards;
- (ii) deductions and set-offs against monetary loss (not including the Social Security Acts 1989 and 1990).” (Fifth Programme).

Despite the fact that a trial takes place long after the injury², plaintiff’s loss may yet lie mainly in the future. Even so, damages have traditionally been awarded in a lump sum, not subject to adjustment in the light of later developments, though fewer predictions would be necessary if a review able annuity could be awarded, and the victim would be less tempted to waste his winnings. Parliament has introduced provisional damages (Supreme Court Act 1981, s.32A) so as to permit subsequent developments in the plaintiff’s condition to be taken into account if they occur, rather than put in now at a discounted figure, but the “structured settlement” is an invention of lawyers, accountants and taxmen: the defendant’s insurer buys, and holds in trust for the victim, an annuity which provides a pension, which may be variable, for a the period or the victim’s life, the income from which, unlike the interest received from investing lump-sum damages, is non- taxable, so that all parties (except the Inland Revenue) are better off. This arrangement cannot be imposed by a judge, though he approves the settlement which contains it. The Damages Bill 1996 confirms and improves the procedure.

² an award of interim damages being possible under Supreme Court Act 1981, s.20

Damages in torts constitute the “money awarded to the person injured by the tort of another.” Tort damages include nominal damages, compensatory damages, and punitive damages.

Certain cases are seminal to this concept to this concept in the Law of torts. A few these are

- Constantine v. Imperial London Hotels Ltd which lays down some of the guidelines for awarding nominal damages.
- Bhim Singh v. State of J&K which illustrates in a lucid manner as to the awarding of contemptuous damages.

The researcher also wishes to discuss in great detail, the method which was adopted in calculating damages in the case of TAYLOR v. BRISTOL OMNIBUS CO.

- Venkatesh v. City Municipal Council in order to see the method used to determine damages in the case of damage to buildings.

OBJECTIVES:

The researcher would like to, in the course of this project, make an in depth study into the various kinds of damages awarded in different case situations and in different countries

The researcher would also like to analyze the method for the determination of Damages in certain important cases

The researcher would like to analyze the rationality between the various types damages awarded and also to compare those of the punitive and compensatory damages

The researcher would also like to analyze the Mitigation or the Doctrine of Avoidable Consequences in relevance to this topic.

In order to achieve these objectives, the researcher needs to analyze certain case laws as already mentioned above.

Nature and Scope:

Since the project topic is ‘damages in torts’, the researcher decided to look at the topic from a historical perspective. Since Torts in India are still not wholly developed, the Indian tort system is based almost entirely on the English system. Thus, India has adopted the British principles and modified them where necessary to fit in with the Indian conditions.

The researcher plans to look at the topic from a historical perspective; hence he will be analyzing the history of the development of certain tort principles in damages in India as

well as England since it is from England that we have adopted the Principles of tort.

There is one particular tort principle or which the credit goes to India for its development, and that tort principle is absolute liability. This concept was formed by the Indian legal system in response to change in the scenario and the need for greater responsibility. This principle has been adopted by the other countries as well. This is one of India's original contributions to torts. Hence, it is of utmost importance to include it and the case *M. C. Mehta v. Union of India* though it is outside the ambit of this research.

The researcher has also tried to evaluate their importance and added his own views on the tort principle.

Chapter 1

Types of damages:

This chapter mainly deals with the various kinds of damages which are in use in the recent scenario in various parts of the world.. These damages are classified into categories, mainly based on the method which is used to calculate them and also what these aim to achieve. The following are the major categories pf damages:

1.) General Damages:

General damages are those awarded for harms and losses which are a natural and usual consequence of the tort and injury asserted. These harms and losses may be proved even though plaintiff did not specifically allege them in his complaint. For example, a battery which causes bodily harm normally results in physical pain, and so “pain and suffering” may be proved under a complaint for a battery which alleges only that plaintiff suffered “great bodily harm” or “a broken leg.”

General damages for personal injuries may be awarded for loss of expectation of life; loss of amenities of life; and pain and suffering.

General damages can further be classified into the following:

2) Nominal damages:

Nominal damages are a small sum of money awarded, not as compensation, but solely because the plaintiff has proved that a tort has been committed against him, e.g. in a case of trespass to land involving no physical damage to the land or other loss to the plaintiff. It follows that nominal damages are confined to torts actionable per se.

In *Constantine v. Imperial London Hotels Ltd* (1944), the famous West Indian cricketer was refused admittance to the defendant's hotel without reasonable cause, but suffered no special damage. Ordinarily damages are equivalent to the harm suffered by the plaintiff. When there has been infringement of

the plaintiff's legal right but he has suffered no loss thereby the law awards him nominal damages in recognition of his right.

However, in this regard, the researcher wishes to state that in this regard, the courts decision might not have been correct and that nominal damages was too lenient a compensation as the reputation of the Cricketer was at stake, in all probability on racist grounds and hence that in this case he deserved special damages to the mental injury suffered by him

3)Contemptuous damages:

Contemptuous damages are awarded to the plaintiff when the plaintiff has suffered some loss but he does not deserve to be fully compensated. These are the general unliquidated damages awarded to compensate the successful plaintiff for the loss, injury or damage he has suffered and, as far a possible, to restore him to the condition he was in before the tort — *restitutio in integrum*³. The quantum of damages is a question of fact, but the methods of assessment used by the courts are outside the scope of this book.

These are awarded to unmeritorious plaintiffs who are nevertheless entitled to succeed. They are the court's expression of its displeasure at a frivolous, vexatious or vindictive action..

³ Bringing some one back to their old level.

A plaintiff awarded contemptuous damages is unlikely to be awarded costs.

The case of *Kelly v. Sherlock* clearly illustrates the circumstances for awarding of this type of damages. In *Kelly v. Sherlock*, where the defendant in his newspaper had libelled the plaintiff in very bad terms but the plaintiff had retorted with a counter attack, equally bad and base⁴, the plaintiff got only a farthing as damages. Here the researcher feels that where contemptuous damages are awarded, it generally means that the defamatory statements are nearly true that very small damages will suffice or that the plaintiff's character is so bad that contemptuous damages should be given. In such a case the action should be regarded as oppressive and that it should never have been brought, and therefore good cause exists for depriving the plaintiff of his costs.

4) Compensatory, aggravated and exemplary damages:

Generally the damages are compensatory because the idea of civil law is to compensate the injured party. When an insult or injury to plaintiff's feeling has been caused, the court may take into account the motive for the wrong and award an increased amount of damages. Such damages are called aggravated damages. The idea in awarding such damages is not to punish the

⁴ he spoke of the defendant's newspaper as the dregs of provincial journalism.

wrongdoer .Such damages, therefore, are compensatory in nature. Exemplary damages ⁵ represent an addition to what is awarded as real damages, to compensate the plaintiff for what the court considers deplorable or outrageous conduct by the defendant, and (in effect) by way of punishment for it. Exemplary damages are sometimes criticized on the grounds that a civil court should have no concern with punishment.

Compensatory damages are awarded to a person to indemnify for personal injury, property, and other economic harm sustained by the victim. Compensatory damages are awarded for both pecuniary and non-pecuniary losses. Unlike economic loss, pain and suffering, and other forms of mental distress have no obvious monetary equivalent. This valuation problem has generated controversy over the desirability of compensating for pain and suffering at all. The researcher illustrates this with the help of the following cases

Seffert v. Los Angeles Transit Lines, 364 P.2d 337 (Cal. 1961).]

In Rookes v. Barnard (1964), the House of Lords laid it down that exemplary damages should be awarded only in the following types of cases:

(a) Where there is oppressive, arbitrary or unconstitutional action by the servants of the government (but not by private persons or corporations). See, by way of case example,

⁵ sometimes called vindictive or punitive damages

AB v. South West Water Services Ltd (1993) and Arora v. Bradford City Council (1991) (CA).fn

(b) Where the defendant's conduct (e.g. by deliberately and tortiously interfering with the plaintiff's trade) was calculated to gain him profit which might exceed the compensation payable to the plaintiff.

(c) Where a statute expressly provides for exemplary damages, e.g. the Reserve and Auxiliary Forces Act 1951⁶, s. 13(2).

Exemplary damages would therefore be available in defamation, private nuisance and trespass but not in claims brought in public nuisance or negligence. This reflects the general view that awards of damages in cases of personal injury are designed to compensate rather than to punish

These are the reciprocal of contemptuous damages, in that they represent an additional sum awarded to the plaintiff because the defendant's conduct was e.g. willful or malicious. Aggravated damages differ from exemplary damages in that aggravated damages represent merely additional compensation, whereas exemplary damages contain a punitive and deterrent element.

When the damages awarded are in excess of the material loss suffered by the plaintiff with a view to prevent similar

⁶ Protection of Civil Interests

behavior in future the damages are known as exemplary or vindictive.

5) Prospective damages:

Prospective or future damages means compensation for damage which is quite likely the result of the defendant's wrongful act but which has not actually resulted at the time of decision of the case.

As in the case of subash chander v. ram singh.

6) Punitive Damages

Punitive damages are discretionary and awarded when a tort is committed with malice. The United States Supreme Court has held that punitive damages must bear some relationship to potential harm. In short, Punitive damages are awarded to punish and deter particularly egregious conduct.

7) Property Damages

Damages for permanent deprivation or destruction of property are generally measured by the market value of the property at the time of the tort. If real or personal property is damaged but not destroyed, courts generally compensate the victim for the diminished market value of the property but sometimes award the cost of repairs instead of diminished value.

Personal Injury

Personal injury victims under tort law can be compensated for

(1) Medical expenses

(2) Lost wages or impaired earning capacity

(3) Other incidental economic consequences caused by the injury; and

(4) Pain and suffering.

Chapter 2

Differences between damages:

General vs. Special Damages.

For purposes of pleading and proof, there is a distinction between general damages and special damages. General damages are those awarded for harms and losses which are a natural and usual consequence of the tort and injury asserted. These harms and losses may be proved even though plaintiff did not specifically allege them in his complaint. For example, a battery which causes bodily harm normally results in physical pain, and

so “pain and suffering” may be proved under a complaint for a battery which alleges only that plaintiff suffered “great bodily harm” or “a broken leg.” Special damages are those awarded for all other compensable harms and losses. Such harms or losses must be specifically pleaded so that defendant will be on notice that damages for them will be claimed. Medical expenses, lost wages, and damages for any unusual effects of the injury (e.g. traumatic neurosis) are illustrations of special damages in a personal injury case.

Which items of damages are general and which are special depends, of course, on :

(1) the tort and

(2) the general or specific injuries alleged. No hard and fast rules can be laid down, nor are they necessary for our purposes. Note, however, that in personal injury cases it has become common usage to refer to all plaintiff’s economic or out-of-pocket losses as “special damages” or simply “specials,” and to his noneconomic losses (such as pain and suffering) as his “general damages,” irrespective of the allegations in the pleadings.

Although technically inaccurate, this usage sometimes appears in judicial decisions and other legal writing.

The test of reasonable foreseeability applies to the type of harm caused, but not to its amount. Thus, provided the damage of a type the defendant ought reasonably to have foreseen, he liable for it notwithstanding that its amount is larger than he reasonably have foreseen. The following cases illustrate these:

(a) In *Hughes v. Lord Advocate* (1963), Post Office workmen, opened a manhole, left it covered by a tent, but with a gap between the bottom of the tent and the ground. Paraffin warning lamp also left. Two young boys took a lamp and entered the tent, quietly dropping the lamp into the manhole, causing an explosion which badly burned one of the boys. It was held that the workmen were negligent in thus leaving the manhole, as children were playing nearby. The boy could recover damages because the accident was of a type reasonably foreseeable in the circumstances. That it happened in an unforeseeable way was irrelevant.

(b) In *Doughty v. Turner Manufacturing Co. Ltd* (1964), the employee in the defendant's factory, unintentionally knocked asbestos cement cover into molten liquid at high temperature causing an explosion, in consequence of which metal escaped from the vat, injuring the plaintiff. It was held that the plaintiff could not succeed because, in the state of knowledge at the time, this was not reasonably foreseeable. In this situation however, the researcher begs to differ with courts point of view that the damage was not foreseeable. The mere storage of such Hazardous items in such an unsafe manner causes a reasonable foreseeability of some kind of severe accident taking place and that strict punitive damages must have been imposed in order to prevent further occurrence of such negligent acts by the companies.

Chapter 3

Situations in which diff. types of damages will be given:

DAMAGES FOR PHYSICAL HARM

Where plaintiff proves a compensable injury to his person, he may in general recover for all adverse physical and mental consequences of that injury. Value and compensate that loss as such and not merely its mental consequences. (Such compensation is, of course, in addition to that awarded for any economic loss and pain resulting from that injury.) Of course, as a practical matter it probably makes little difference whether the jury is instructed to base compensation on the physical impairment or its mental effects, since in either case it is in reality the latter which is being valued.

Pre-Existing Conditions. As previously discussed (§ 4—4), defendant's liability for damages is not mitigated by the fact that some pre-existing physical infirmity of the plaintiff was responsible for all or part of the consequences of plaintiff's injury by defendant. If plaintiff is especially predisposed or vulnerable to some illness or injury, defendant whose tort precipitates it is liable for the harm it causes even though under the same circumstances a normal person would not have suffered that illness or injury. The same is true where the injury re-activates a previous condition which had been brought under control, or aggravates an existing condition.

A corollary rule is that defendant is liable for the aggravation during treatment of plaintiff's injuries, even where such aggravation is due to the negligence of another, so long as

plaintiff exercised reasonable care in selecting those in whose care he placed himself.

damages for mental harms: (a) fright and shock; (b) anxiety about the future, both physical (e.g. premature death, physical disability, illness, the effect on plaintiff's unborn child) and economic (whether for himself or others), unless plaintiff's fears are clearly unfounded and unreasonable; (c) loss of peace of mind, happiness, or mental health, ranging from depression through neuroses and psychoses; (d) humiliation, loss of dignity, or embarrassment caused by the physical injury, disability or disfigurement; (e) mental distress resulting from loss of the ability to enjoy a normal life; (f) inconvenience caused by the injury.

Chapter 4

Measure of damages:

The function of damages is that, theoretically, they should restore the successful plaintiff to his original condition — *resitutio in integrum*. In practice, however, this is often impossible, e.g. where the plaintiff has lost a limb. It is therefore better to regard damages merely as monetary compensation (in so far as, in any given case, money can compensate) for the loss or injury suffered by the plaintiff. For the purposes of assessment, damages may be classified under the headings: (a) damage to

property; (b) injuries to the person. The actual sum arrived at will be a question of fact in each case.

The Administration of Justice Act 1982 gives power to the courts to order interest to be paid on judgments for damages for personal injuries or death, for the period between the date when the cause of action arose and the date of the judgment, unless there is a special reason for not doing so.

To elucidate this the researcher would do a case study on
Measure of damages

Case study :

The researcher feels that a very important and pertinent case to this research is TAYLOR v. BRISTOL OMNIBUS CO.

Which has been a landmark judgement in the damages of torts and must be discussed in detail.

TAYLOR v. BRISTOL OMNIBUS CO.

Court of Appeal [1 W.L.R. 1054; 119 S.J. 476; [2 All E.R. 1107]

Damages for badly crippled infant

The facts of the case:

The plaintiff, Paul Taylor, is nine years of age. He is a cripple. This is all due to an accident six years ago, when he was only 3½ years. He was a bright little boy. His parents had taken him for a drive in the car. He was sitting in the back seat. It was along the road from Huntingdon to Cambridge. His father had stopped the car before turning right. But it was then run into from behind by a coach. Paul was thrown from the back seat and hit his head. There was not much injury to the rest of his body, but to

his head. His skull was fractured extensively and his brain was damaged severely. The consequences have been terrible. He cannot control his legs or his arms, or his speech. He cannot walk. He can only get around on his knees or by pushing himself around in a sitting position. His left arm is useless. He cannot feed himself. He makes attempts to dress himself, but without much success. He can understand what people say to him, but he is not much good at making himself understood. He cannot formulate his words properly. He knows the letters of the alphabet and figures, but he cannot add or subtract above four. He has had three major epileptic attacks. He is taken each day to a school for disabled children. At home he sits and watches television. He needs constant supervision and nursing care day and night. His mother and father look after him with the utmost devotion. He will never be able to be employed by anyone. But his expectation of life is not reduced to any great extent. His intellectual capacity is sufficient for him to be aware of his helplessness and of his utter dependence on others. His sister, who is three years older, has been much affected. His grandparents too have been affected, because they help look after him.

The question is, what is the proper figure of damages? The judge assessed them as:

Special damages (agreed)	500
Adaption of accommodation (agreed)	1,000
Electrically-propelled chair (agreed)	500
Home help at £15 a week for the next eight years	6000
Less one-third for present payment _____	2000

4000

Thereafter in a Cheshire Home, or similar home at £30 a week (a year)
from eight years hence to the end of his life. Take a multiple of 16.

24000

Less five-twelfths for present payment _____ 10000

14000

Loss of future earnings from age 19 for rest of his working life. Average
£2,000 a year. Take a multiple of 16.

32000

Less one-half for present payment. 16000

16000

Pain and suffering and loss of amenities of life 27,500

Total: 63500

Interest in accordance with Jefford v. Gee 8300

£

Counsel for the defendants said that the total figure of £63,500 was too
high suggested that it was about £10,000 too much.

It must be remembered that, when assessing compensation for loss of
future earnings, the court is not seeking to replace week by week the
which the plaintiff would have earned. It is only giving compensation for
future earning capacity. And when it is assessing compensation for
expenses for nursing and attendance, it is not calculating ahead what that
expense will t is only giving compensation for the fact that in the future
extra expense will incurred. This compensation could become altogether
excessive if it were on the expectation of future inflation. To keep it
within bounds, it is based on the value of money at the date of the trial.

Another matter which I would mention is the splitting up of the award items. At one time this was thought to be undesirable.

Finally at the outset the researcher would mention the parents. They were in the car was struck in the back by the coach. There was a breach of duty to them as to their baby. If they had themselves been injured or had suffered no shock, they could have recovered damages for themselves. They did suffer, but the tragedy is for them even greater. Before this accident they have looked forward to a future of happiness, bringing up their baby son the joy it brings, seeing him through his schooldays, marrying and having children of his own, and then his caring for them in their old age. No consequence of this accident, they are deprived of it all. They have nursed day and night. They have watched over him. They have carried him everywhere. They have taught him to do little things for himself. They have devoted lives to him and will continue to do so. Yet they are not entitled to recover damages for all their grief and suffering.

1. Pain and suffering etc.

The judge awarded £27,500. Counsel for the defendants says that that figure is very high but he recognises that it is not so high that this court should interfere with it. It is difficult to find any comparable cases. This little boy is ruined for life. He can do nothing. He can enjoy nothing. He can take part in none of the activities of others. And he is aware of it—to his great distress.

2. Cost of future nursing and attendance

In *Cunningham v. Harrison* [Q.B. 942] the court said that, if and in so far as a disabled person is likely to be provided for by the state free of charge, he cannot claim it as part of his damages. But in this case the court has been referred to section 29(5) of the National Assistance Act 1948. It says that a local authority may recover such charges as they may

determine. And we are told that in this present case they may make a charge for any services rendered by them. So it would not be right to regard their services as free.

The judge divided the figure into two parts:

(i) for the next eight years Paul would be at home, but his parents would reasonably spend £15 a week for help in the house;

(ii) for the rest of his life he would be in a Cheshire or similar home at £30 a week.

If such is the future, the question arises: is his compensation to be less because he is looked after at home instead of in an institution? The researcher is glad to say that as a result of recent cases, compensation can be given in money for services rendered by the parents. It has been so held when a wife gave up work to look after her husband⁷ when she did not give up work but, nevertheless, devoted her life to looking after him: see *Cunningham v. Harrison*; and when a mother gave up work to look after her child⁸, Lord Edmund-Davies said that “the injured plaintiff can recover the value of nursing and other services gratuitously rendered to him by a stranger to the proceedings.”

Approaching the case on those broad principles, the boy was only 3½, his father 30 at the time of the accident, and his mother a little younger.

Taking values at the date of trial, the cost of a home help and compensation for the parents' services can be put together at £20 a week. That is £1,000 a year. All this is over his whole life. I would take a multiplier of 18. Thus arriving at the figure of £18,000 in all. That is the very figure arrived at by the judge, although by a different route. I would add that, although this sum is only recoverable by Paul, it is really for the costs incurred and services rendered by the parents.

3. Loss of future earnings

⁷ : *Watson v. Port of London Authority* 1 Lloyd's Rep. 95;

⁸ : *Donnelly v. Joyce* [Q.B. 454. In *Hay v. Hughes* [1 All E.R. 257

The judge assumed that Paul would start earning at the age of 19. He took the yardstick of his father's position. He took an average figure of £2,000 a year and used a multiplier of 16. Thus making £32,000. Less one-half for present payment: making £16,000.

Counsel for the defendants urged us to adopt a new attitude in regard to babies who are injured. He suggested that the loss of future earnings was so speculative that, instead of trying to calculate it, we should award a conventional sum of say £7,500. He suggested that we might follow the advice given by Lord Devlin in *H. West & Son Ltd v. Shephard* [A.C. 326, 357, that is:

- (i) give him such a sum as will ensure that for the rest of his life, this boy will not, within reason, want for anything that money can buy;
- (ii) give him compensation for pain and suffering and loss of amenities;
- (iii) but do in addition, give him a large sum for loss of future earnings.

At his very young these are speculative in the extreme. Who can say what a baby boy will do in his life? He may be in charge of a business and make much money. He may turn into a mediocre groover and just pay his way. Or he may be an utter failure even more speculative with a baby girl. She may marry and bring up family, but earn nothing herself. Or, she may be a career woman, earning wages. The loss of future earnings for a baby is so speculative that I am tempted to accept the suggestion of counsel for the defendants.

This suggestion is, however, contrary to present practice. In the cases hitherto the courts have made an estimate of loss of future earnings *v. Distillers Co. (Biochemicals) Ltd* Hinchiffe J. took a loss of wages at a year and assessed an annuity value on that basis of £13,700. In *D Wauton* this court took an annual loss of £1,000 a year for 20 years and at £6,000.

4. Conclusion:

But the researcher would like to say that these huge damages give food for thought. Our present system of assessing and award compensation for injuries such as these calls for radical re-appraisal; hope that the Royal Commission presided over by Lord Pearson will do so

Note:

The researcher feels that this is not in any way the leading case, but it provides a good instance of the items for which one may claim damages in a personal injury suit. Translated in prices, the economic loss (lost income and increased expenditure) totalled £188,3

COMMENTS OF THE RESEARCHER:

Thus, we see the difference between the damages in torts in the case of the English Common Law and the Indian law. The degree and tune of damages provided in India is much lesser than that in England. This is especially true in the case of personal injuries. The researcher has a question regarding the judgments passed in cases pertaining to compensatory damages in India as specified above. If the judges through the various cases are able to determine the quantum of damages accurately, then there is a small possibility that will be future cases based on such guidelines. Hence, the objectivity in such cases is maintained when there are stringent rules and higher damages

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