

Quadrant II – Notes

Programme: First Year LL.B / Second Year B.A.LL.B

Subject: Law

Course Code: LOT0113

Course Title: Law of Torts

Unit: XI: Nuisance, Defamation and Abuse of Legal Procedure

Module Name: Nuisance: Kinds of Nuisance and Essentials

Module No: 19

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Notes :

Introduction:

Nuisance originates from Latin word '*nocere*' and French term is '*nuire*', which means 'to harm'.

Salmond defines nuisance as causing or allowing to cause without lawful justification, the escape of any deleterious thing from one's land or from anywhere into land in possession of the plaintiff, such as water, smoke, gas, heat, electricity, or disease producing germs.

Pollock states, nuisance is the wrong done to a man by unlawfully disturbing him in the enjoyment of his property or in some cases in the exercise of a common right.

Nuisance as a tort means indirect, unauthorized interference with a person's use or enjoyment of land or some rights in connection with it. Nuisance is a continuing wrong, it should go on for a continuous period of time and should not be momentary.

Nuisance is differentiated from trespass which is a direct interference with possession of land, while nuisance is indirect interference with enjoyment of land. Thus, planting a tree on others property is trespass, but when the

branches of a tree on your property project over land of your neighbour it is nuisance

Essentials of Nuisance

1. Unreasonable interference: Every interfere is not nuisance. Interference must be unreasonable to constitute nuisance. A person cannot increase liabilities of his neighbours by having exceptionally delicate trade.

The same was held in Robinson v. Kilvert defendant was not held liable where plaintiff's brown paper was damaged due to heat generated from the defendant's paper box operations as damage was due to the special sensitivity of the paper

In Ushaben v. Bhagya Laxmi Chitra Mandir it was held that exhibition of film 'Jai Santhoshi Maa' is not nuisance merely because plaintiff alleges his religious feelings are hurt.

2. Plaintiff must have right to enjoy the property: A guest at the property cannot sue for nuisance. Person bringing action for nuisance must have right over the land.
3. Interference with the use and enjoyment of land: the unauthorized interference can be through tangible or intangible object, which causes discomfort and inconvenience in using premise. The test of determining nuisance is how an average man residing in the same area reacts.
4. Nuisance must be continuous: In Ball v. Ray disturbance to neighbours throughout the night by neighing of horses was nuisance.
5. Damage: Unlike trespass which is actionable per se, actual damage is required to prove for action of nuisance.

Kinds of Nuisance

Public Nuisance	Private Nuisance
Public Nuisance is a crime and is a punishable offence under Section 268 IPC.	Private Nuisance is a civil wrong addressed in law of torts. Public nuisance becomes private nuisance if a person suffers special damage.
Public nuisance does not create a civil cause of action. It is interference with rights of general public.	Special and particular damage is necessary.

Obstructing a public way by digging trench is public nuisance.	In Dr Ram Raj Singh v. Babulal, plaintiff was a doctor and his patients were affected by defendant's brick powdering mill, this was held to be private nuisance.
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1. Public Nuisance

Public nuisance affects the society and the people living in it at large, or some considerable portion of the society and it affects the rights which the members of the society might enjoy over the property. The acts which seriously affects or interferes with the health, safety or comfort of the general public is a public nuisance.

Instances where an individual may have a private right of action in respect to a public nuisance:

- ✓ He must show the existence of any personal injury which is of a higher degree than the rest of the public.
- ✓ Such an injury has to be direct and not just a consequential injury.
- ✓ The injury must be shown to be of a substantial character.

Case Law: Rose v. Miles(1815) 4M &S. 101

(Public Nuisance) The defendant had wrongfully obstructed a public navigable creek which obstructed the defendant for transporting his goods through the creek due to which he had to transport his good through land because of which he suffered extra costs in the transportation. It was held that the act of the defendant had caused a public nuisance as the plaintiff successfully proved that he had incurred loss over other members of the society and this he had a right of action against the defendant.

Dr. Ram Raj Singh v. Babulal

Campbell v. Paddington Corporation

2. Private Nuisance

Private Nuisance is that kind of nuisance in which a person's use or enjoyment of his property is ruined by another. It may also injuriously affect the owner of the property by physically injuring his property or by affecting the enjoyment of the property.

Elements which constitute a private nuisance:-

1. Unreasonable interference
2. Interference is with use of enjoyment of land
3. Damage

Robinson v. Kilver (exceptional cases/sensitive cases) Storing brown paper – exceptionally delicate trade was being conducted- affected by heat from neighbor's house. No private nuisance.

Defences

1. Prescription: A right to do an act, which otherwise would be a private nuisance, may be acquired by prescription i.e. by lapse of certain number of years. In India one gets prescription rights after lapse of 20 years as mentioned in Section 26, Limitation Act 1963 and Section 15, Indian Easements Act, 1882.
Mohini Mogan v. Kashinath Roy Court held right to do kirtan twice a year on another's land does not grant you an easement.
2. Statutory Authority: If nuisance is necessarily incidental to what has been authorized by a statute, there is no liability for that under the law of torts. The statutory authority may be either absolute or conditional.

When there is an absolute authority, the statute allows the act and it is not necessary that the act must cause a nuisance or any other form of injury. Whereas in the case where there is a conditional authority, the state allows the act to be done only if it can be done without any causation of nuisance or any other form of injury.