

B.A.LLB. II SEMESTER

Subject: Law of Torts and Consumer protection

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TOPIC: Nuisance

Introduction

A person in possession of a property is entitled to its undisturbed enjoyment as per law. However, if someone else's improper use or enjoyment in his property ends up resulting into an unlawful interference with his enjoyment or use of that property or of some of the rights over it, or in connection with it, we can say that the tort of nuisance has occurred.

Nuisance is an injury to the right of a person's possession of his property to undisturbed enjoyment of it any results from an improper usage by another individual. Nuisance is a word that everybody understands and we can say that nuisance in common parlance means nothing more than inconvenience to people or to another. The law recognizes that minor inconveniences should be endured as they are inevitable; example if you build your house along a high way, cars will always pass with their horns hooting.

Meaning and Definition

The word Nuisance is derived from the French word 'Nuire' which means to annoy or hurt. It is an unlawful interference with a person's use or enjoyment of land. Under normal circumstance, a person is entitled to the full and reasonable enjoyment and use of this property tangible, intangible, movable or immovable, whatsoever. This being his legal right cannot be taken away without lawful justification. Contrary to the provided protection if someone unlawfully interferes with this entitlement of a person he/she commits a tort of Nuisance.

As per the most accepted definition of Nuisance which is the one given by Bermingham, Nuisance is an unlawful interference with a person's use and enjoyment of land, or of some right over, or in connection with it. Hence it is an injury or inconvenience faced by a person in the use of his property because of another person who unreasonably uses his own property in a way which negatively affects the former.

According to Stephens "Nuisance is anything done to the hurt or annoyance of the lands, tenements of another, and not amounting to trespass.

Another Jurist Salmond expresses "The wrong of Nuisance consists in causing or allowing without lawful justification the escape of any deleterious thing from his land or from elsewhere into land in possession of the plaintiff, e.g. water, fumes, smoke, gas, noise, heat, vibration, electricity, disease, germs, animals.

Nuisance in Legal Terms

In law, nuisance has a more restrictive meaning than it has in an ordinary parlance. It is not all inconveniences that will succeed in an action for nuisance. Minor inconveniences which are usually as a result of normal human interaction in the society are not actionable in law. The law always tries to strike a balance between the conflicting interest of the plaintiff and the defendant in the society. So we can define the tort of nuisance as an act which gives rise to unlawful, unwarranted or unseasonable annoyance or discomfort to the plaintiff and which results in damage to the property of the plaintiff or interfere with his use and enjoyment of his land.

Essential Elements of Nuisance-

For making an act of Nuisance actionable under the law of torts the following essentials must be satisfied-

- Wrongful Act by the Defendant-

For the Action against Nuisance to arise the first essentiality is the conduct of a wrongful act by the Defendant. This may include any action which is prima facie not legal and unreasonable in the eyes of a prudent man.

Caveat – If the Plaintiff is extra sensitive and finds the action of the Defendant to be unreasonable due to his sensitivity, which otherwise is reasonable as per a prudent man, the action for Nuisance cannot arise.

- Damage/Loss/Inconvenience caused to the Plaintiff-

The next essentiality requires a substantive damage or inconvenience to be caused to the Plaintiff. The maxim “De minimis non curat lex” comes into play and provides that law shall not consider trifles or minimal damage claimed by the plaintiff due to his own sensitivity. Nevertheless, if the act of the Defendant involves the hampering of a Legal Rights of the plaintiff, nuisance comes into play.

Case Law: In *Ushaben V. Bhagyalaxmi Chitra Mandir*, where the Plaintiff sued the Defendant against the screening of the movie “Jai Santoshi Maa” claiming that it hurts the Religious sentiments of a particular Hindu community, the court dismissed the Plea stating that hurt to religious feeling was not an actionable wrong and the Plaintiff is free to not watch the Movie again.

Hence it was held that in order to claim damages for Nuisance, the interference shall be in a state of continuing wrong.

In *Halsey V. Esso Petroleum Co. Ltd*, where the defendant's factory emitted smokes, oil, fumes and smell and polluted the environment along with harming the plaintiff's health because of his own sensitive health issue, the former were held liable to the latter only for the emission of smoke, oil and fume and not for health hazard.

Kinds of Nuisance

Nuisance as a tort is further categorized into two types- Private Nuisance and Public Nuisance, both having their own areas of actions and types of damages.

Private nuisance

Private nuisance protects the interest of the occupier of land or premises in the use and enjoyment of his land. This type of nuisance usually emanates from the defendant's private land or his actions in his private capacity. Accordingly, a plaintiff must show that he has some interest in the land in question. Thus, the land must not be public land. The law of private nuisance seeks to strike a balance between two conflicting interests; that of an occupier in the using his land as he thinks fit and that of his neighbour in the quiet enjoyment of his land. Thus, a person must not use his property in such a way that will cause inconvenience to his neighbours.

In an action for private nuisance, the court considers the following:

- i) Whether the injury complained of is sensible in the case of material damage to property and in the case of interference with enjoyment of land, whether the injury is substantial.
- ii) Whether the conduct of the defendant is unlawful, unwarranted or unreasonable.

Elements which constitute a private nuisance

- The interference must be unreasonable or unlawful. It is meant that the act should not be justifiable in the eyes of the law and should be by an act which no reasonable man would do.
- Such interference has to be with the use or enjoyment of land, or of some rights over the property, or it should be in connection with the property or physical discomfort.
- There should be seeable damage to the property or with the enjoyment of the property in order to constitute a private nuisance.

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

The defendant had wrongfully obstructed a public navigable creek which obstructed the defendant from transporting his goods through the creek due to which he had to transport his good through land because of which he suffered extra cost 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.

A nuisance may be in respect of either property or physical discomfort

1- Property

In the case of a nuisance with respect to the property, any sensible injury to the property will be enough to support an action for the damages.

2- Physical discomfort

In a suit of nuisance arising out of physical discomfort, there are two essential conditions required.

- In excess of the natural and ordinary course of enjoyment of the property.

The usage by the third party should be out of the natural course of enjoyment from one party.

- Interfering with the ordinary conduct of human existence.

The discomfort should be of such a degree that it would affect an individual in the locality and people would not be able to put up or tolerate with the enjoyment.

Public nuisance

Public nuisance refers to that which affects the general public or a section of the public. It is that which affects the public segment or class of the public by reason that it is indiscriminate in its effect or widespread. A nuisance may become public nuisance either from its source or its final effect or destination. Again, a nuisance that affects a class or a segment of a society is public nuisance and whether the number of persons affected is sufficient to merit public nuisance is a question of facts depending on the facts and circumstances of each case. Everything is to be looked at from a reasonable point of view.

Instances, of public nuisance include obstruction of highway or public roads, public waterways, noises pollution, oil spillage from the activities of multi-national oil companies and carrying on obnoxious business like operating a brothel in a GRA

A public nuisance is usually a crime (see section 234 of the Criminal Code and sections 192 & 194 of the Penal Code) which can only be prosecuted by the Attorney General in his capacity as the custodian of public right. In other words, a private person has no right to prosecute the crime of public nuisance; the Attorney-General prosecutes.

However, for a private person to sue for public nuisance, he has to show that he has suffered a particular or special loss/damage over and above that suffered by other members of the

public. In the case of *Daodu v. NNPC*, the Supreme Court, per Qguegbu JSC, stated the position of the law thus, “an obstruction of public highway or hindering the free passage of the public along the highway is a public nuisance and a private individual has a right of action if he can prove that he has sustained particular damage other than and beyond the general inconvenience and injury suffered by the public and that the particular damage which he sustained was direct and substantial.” The requirement of proving particular damage will be satisfied if the plaintiff can show that he has suffered damage which is appreciable greater in degree than any suffered by the general public.

It is germane to note that, many a time a class or section of the public will sue for public nuisance and usually the action will fail as the court will always say that a class action is improper in such cases. This is because all of them put together are private persons and they cannot enforce public nuisance. It is better to sue individually by trying to prove that you have suffered over and above all others. A similar decision was reached in *Adediran v. Interland Transport Ltd.* (supra), where the plaintiffs/appellants sued in a representative capacity for themselves and on behalf of residents of a housing estate; the Supreme Court holding that although all the injuries complained of arise from the same nuisance complained of, each separate injury is a distinct tort.

Remedies for Nuisance

The following remedies exist for nuisance. They are

1. **Abatement of Nuisance:** This refers to self-help in order to stop nuisance. Generally self-help is not allowed by the court or the law. The court usually frowns at the remedy of self-help. This is to avoid chaos in the society. In minor cases of nuisance, self help as a remedy may be allowed by law considering that court cases are usually expensive and may take long to determine.
2. **Injunction:** This is the most important judicial remedy in cases of nuisance. There are many types of injunction –
 - a. **Interim injunction** – obtained pending the determination of the interlocutory injunction (applicable in urgent cases).
 - b. **Interlocutory injunction** – obtained pending the determination of the final injunction.
 - c. **Final injunction** – this exists to prohibit one from doing something.
 - d. **Prohibitory injunction** – this exists to prohibit one from doing something.

- e. **Mandatory injunction** – this exists to mandate one to do something.

Injunction is a discretionary remedy and the court has discretion to grant or refuse injunction so that even if one has made out a good case for the grant of injunction, the court may still find a good reason to refuse injunction. However, the court's discretion must be exercised judiciously and judicially. Thus, in the case of *Miller v. Jackson* (1977) 3 All ER 338, a village

- 3. Damages: This is the monetary compensation for any loss or injury occasioned to the plaintiff by reason of the nuisance. There are many types of damages, namely
 - a. Aggravated damages
 - b. Nominal damages
 - c. Special damages

Defences to an Action for Nuisance

It is germane to note that some of the defences in nuisance are strictly speaking not defences but only go to show that nuisance has not been proved. The defences are;

- i) That the act complained of is not unreasonable, unjustifiable, unwarranted or unlawful.
- ii) That there was consent of the plaintiff or *volenti non fit injuria*. Note generally that it is not a defence that the plaintiff came into the nuisance but in appropriate cases the court may use it as a basis for refusal or injunction such as in *Miller v. Jackson*.
- iii) Prescription – that is the defense in law which is to the effect that the plaintiff has slept over this right for too long and has therefore lost his right to sue. At common law in England, where nuisance lasts for 20 years, the plaintiff can no longer sue.
- iv) Contributory negligence.
- v) Act of a stranger: that is, that the plaintiff has not made out any case against the defendant, he has only succeeded in making out a case against a stranger who cause the nuisance.
- vi) Inevitable accident.
- vii) Act of necessity.
- viii) Statutory authorization: that is power given by statute. In exercising such powers, the defendant must ensure that all reasonable care and skill is used and if he does not go outside the powers given by the statute. Again, statutory

defences are usually construed strictly against the person exercising the power so as to protect the citizens. See the case of Ekemode v. Alausa where a public officer was given power to clear inland waterways. In exercising that power he removed some canoes from the water but in the process he damaged a particular canoe and the court held that the power to remove a canoe is incidental to the power to clear the waterway but damaging the canoe is not part of the powers given to him by statute, he was therefore liable for the damage.

All in all, it is germane to note that in most cases of oil spillage, the plaintiff would not know whether to sue for negligence, for nuisance, whether public or private or under the rule in Rylands v. Fletcher. On how to bring the action, a lot depends on the facts of each case; but, it may be wiser to sue for all in alternatives, and also add a claim simply for damages on the basis of Ubi Jus Ibi Remedium.

The concept of nuisance relates to the day to day activities of an individual. The laws made against Nuisance are almost uncodified save the criminal aspect of Public Nuisance. Nuisance as a tort got comprehensiveness through a plethora of judgments along with the works of many eminent jurist. India were once a British colony has relied heavily on the English judgments to understand and develop the concept of this tort. However, it has also amended and modified various aspects of interpretation, depending upon its own geographical, cultural and economic diversity in order to strive for providing justice to almost each of its people and maintain the reign of Rule of Law along with Justice Equity and good conscience.

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