

RMM LAW COLLEGE SAHARSA

LAW OF TORTS

IIIrd Part

Paper -V

TOPIC-

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1) What is Nuisance?

The word 'Nuisance' is derived from the French word 'nuire' and the Latin word 'nocere' which means to do hurt or to annoy. Blackstone describes Nuisance as something that "worketh hurt, inconvenience or damage."

Nuisance is an activity or state of affairs that interferes with the use or enjoyment of land or rights over land or with the health, safety, or comfort of the public at large. In simple words, Nuisance is an injury to the right of a person in possession of property to undisturbed enjoyment of it and results from an improper use of by another person of his own property

2) Kinds of Nuisance:

There are two Kinds of Nuisance

I) Public Nuisance, and

II) Private Nuisance

I) Public Nuisance:

Public Nuisance is a crime. According to Section 268 of the Indian Penal Code, Public Nuisance is a Criminal offence. It says that A person is guilty of a public nuisance who does any act or is guilty of an illegal omission which causes any common injury, danger or annoyance to the public or to the people in general who dwell or occupy property in the vicinity, or which must necessarily cause injury, obstruction, danger or annoyance to persons who may have occasion to use any public right.

Public Nuisance can only be the subject of one action, otherwise, a party might be ruined by a million suits.

Public nuisance does not create a civil cause of action for any person. In order that an individual may have a private right of action in respect of a public nuisance, the following must be proved -

- (1) He must show a particular injury to himself beyond that which is suffered by the rest of public.
- (2) Such injury must be direct and not mere consequential injury.
- (3) The injury must be of suspension character.

Relevant Case law :

Soltau v De Held, (1851) Sim NS 133

In this case, the plaintiff resided in a house next to a Roman Catholic Chapel of which the defendant was the priest and the Chapel Bell was Rang at all hours of the day and night. It was held that the ringing was a public nuisance and the plaintiff was held entitled to an injunction.

II) Private Nuisance:

Private Nuisance is the using or authorising the use of one's property, or of anything under one's control, so as to injuriously affect an owner or occupier of property by physically injuring his property or affecting its enjoyment by interfering materially with his health, comfort or convenience.

Private nuisance in contrast to the public nuisance is an act affecting some particular individual or individuals as distinguished from the public at large. It cannot be made the subject of an indictment, but maybe the ground of civil action for damages or an Injunction or both.

Essentials of Private Nuisance :

Essentials of Private Nuisance are (1) an unlawful act, and (2) damage actual or presumed. Damage actual or presumed is an essential element for an action on nuisance.

Kinds of Private Nuisance:

There are three kinds of Nuisance

- (1) Nuisance by encroachment on a neighbour's land
- (2) Nuisance by direct physical Injury to a neighbour's land.
- (3) Nuisance by interference with a neighbour's quiet enjoyment of his life.

Highway :

If a nuisance is created on a highway by a private individual, liability would arise if any person is injured as a result of what he has been done irrespective of negligence. If anything is placed on a highway which is likely to cause an accident being an obstruction to those who are using the highway on their lawful occasion such as vehicle unlighted and unguarded

standing there at night and an accident results, there is an actionable nuisance.

Relevant Case law

Ware Vs. Garstone Haulage Co. Ltd. (1944) KB 30

In this Case, A trailer attached to a lorry was kept unattended on the highway. At night time no near light was shown. A motorcyclist ran into the trailer. It was held that it was an obstruction on the highway and as such as a public nuisance.