

# **RMM LAW COLLEGE SAHARSA**

## **LAW OF TORTS**

**IIIrd Part**

**Paper -V**

**TOPIC- NUISANCE**

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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 of 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.

**Case Law: Radhey Shyam v. Gur Prasad AIR 1978 All 86**

Mr Gur Prasad Saxena and another filed a suit against Mr Radhey Shyam and five other individuals for permanent injunction restraining the defendant from installing and running a flour mill in the premises occupied by the defendant. Gur Prasad Saxena filed another suit against Radhey Shyam and five other individuals for a permanent injunction from running and continuing to run an oil expeller plant. The plaintiff has alleged that the mill was causing a lot of noise which in turn was affecting the health of the plaintiff. It was held that by running a flour mill in a residential area, the defendant was causing a nuisance to the plaintiff and affecting his health severely.

## **What are the defences available to Nuisance?**

There are many valid defences available to an action for tort, these are:

### **1. Prescription**

- A prescription is a title acquired by use and time and which is allowed by the law, a person claims any property because his ancestors have had the possession of the property by law.
- Prescription is a special kind of defence, as, if a nuisance has been peacefully and openly been going on without any kind of interruption then the defence of prescription is available to the party. On the expiration of this term of **twenty years**, the nuisance becomes legalised as if it had been authorised in its commencement by a grant from the owner of the land.
- The essence of prescription is explained in [Section 26 of the limitations act](#) and [Section 15 of the Easements Act](#).

There are three essentials to establish a person's right by prescription, these are

1. **Use or enjoyment of the property:** The use or enjoyment of the property must be acquired by the individual by law and the use or enjoyment must be done openly and peacefully.

2. **Identity of the thing/property enjoyed:** The individual should be aware of the identity of thing or property which he or she is peacefully or publically enjoying.
3. **It should be unfavourable to the rights of another individual:** The use or enjoyment of the thing or property should be of such a nature that it should be affecting the rights of another individual thus causing a nuisance and even after knowing of such a nuisance being caused there must've been no action taken against the person causing it for at least twenty years.

## **2. Statutory authority**

- When a statute authorises the doing of a particular act or the use of land in a way, all the remedies whether by action or indictment or charge, are taken away. Provided that every necessary reasonable precaution has been taken.
- 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.