

RMM LAW COLLEGE SAHARSA

LAW OF TORTS

IIIrd Part

Paper -V

TOPIC- NUISANCE

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What are the remedies for nuisance?

There are three kinds of remedies available in the case of a nuisance, these are:

1. Injunction

An injunction is a judicial order restraining a person from doing or continuing an act which might be threatening or invading the legal rights of another. It may be in the form of a temporary injunction which is granted on for a limited period of time which may get reversed or confirmed. If it is confirmed, then it takes the form of a permanent injunction.

2. Damages

The damages may be offered in terms of compensation to the aggrieved party, these could be nominal damages. The damages to be paid to the aggrieved party is decided by the statute and the purpose of the damages is not just compensating the individual who has suffered but also making the defendant realise his mistakes and deter him from repeating the same wrong done by him.

3. Abatement

Abatement of nuisance means the removal of a nuisance by the party who has suffered, without any legal proceedings. This kind of remedy is not favoured by the law. But is available under certain circumstances.

This privilege must be exercised within a reasonable time and usually requires notice to the defendant and his failure to act. Reasonable for may be used to employ the abatement, and the plaintiff will be liable if his actions go beyond reasonable measures.

Example: Ace and Beck are neighbours, Beck has a poisonous tree on his land which overtime outgrows and reaches the land of Ace. Now Ace has every right to cut that part of the tree which is affect his enjoyment of his land with prior notice to Beck. But if Ace goes to Beck, land without his permission, and chops off the entire tree which then falls on the land of Beck, then Ace shall be in the wrong here as his action taken would be beyond reasonableness.

Nuisance and Trespass – Distinguished

1. Trespass, on one hand, is the direct physical interference with the plaintiff's possession of the property through some material or tangible object whereas, in the case of a nuisance, it is an injury to some right of the possession of the property but not the possession itself.
2. Trespass is actionable per se (actions which do not require allegations or proof), whereas, in the case of a nuisance, only the proof of actual damage to the property is required.

Example: Simply entering on another individual's property without the owner's consent and without causing him any injury would be trespass whereas if there is an injury to the property of another or any interference with his enjoyment of the property, then it will amount to a nuisance.

3. If the interference with the use of the property is direct, then the wrong is trespass. Whereas if the interference with the use or enjoyment of the property is consequential then it will amount to a nuisance.

Example: Planting a tree on someone else's land would amount to trespass whereas if a person plants a tree on their own land which then outgrows to the land of another would amount to a nuisance.

Case Law: [Ushaben Navinchandra Trivedi v. Bhagyalaxmi Chitra Mandal AIR 1978 Guj 13, \(1977\) GLR 424.](#)

In this case, the plaintiff had sued the defendant for a permanent injunction to restrain the defendant from showing a movie named "Jai Santoshi Maa". It was said by the plaintiff that the contents of the movie significantly hurt the religious sentiments of the people belonging to the Hindu community as well as the religious sentiments of the plaintiff as the movie showed Hindu Goddess' Laxmi, Parvati, and Saraswati, to be jealous of one another and were ridiculed in the film. It was held that hurt to religious sentiments was not an actionable wrong.

Conclusion

The concept of nuisance arises commonly in everyone's daily life, in fact, the Indian courts have borrowed quite a lot from the English principles as well as from the decisions of the common law along with creating their own precedents. This has helped the concept of nuisance in the field of law develop quite extensively and assures the fairness and well being of all the parties which may be involved such as in the case of Private nuisance, the party which is being affected, as well as, in the case of public nuisance, where the society at large is being affected.