

RMM LAW COLLEGE SAHARSA

LAW OF TORTS

IIIrd Part

Paper -V

TOPIC- NUISANCE

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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.

The word "nuisance" has been derived from the Old French word "nuire" which means "to cause harm, or to hurt, or to annoy". The Latin word for nuisance is "nocere" which means "to cause harm".

Nuisance is an injury to the right of a person's possession of his property to undisturbed enjoyment of it and results from an improper usage by another individual.

Definitions by Various thinkers

According to **Stephen**, nuisance is anything done to the hurt or annoyance of the tenements of another, or of the lands, one which doesn't amount to trespass.

According to **Salmond**, nuisance consists in 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, etc.

Essential elements of Nuisance

Wrongful act

Any act which is done with the intention to cause the infringement of the legal rights of another is considered to be a wrongful act.

Damage or loss or annoyance caused to another individual.

Damage or loss or annoyance must be such which the law should consider as a substantial material for the claim.

Kinds of Nuisance

1. Public Nuisance

The Indian Penal code defines nuisance as an act which causes any common injury, danger or annoyance, to the people in general who dwell or occupy the property, in the vicinity, or which must necessarily cause injury, obstruction, danger, or annoyance to the people who may have occasion to use any public right.

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 have a huge effect.

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. Unlike public nuisance, in private nuisance, an individual's usage or enjoyment of property is ruined as distinguished from the public or society at large. The remedy for private nuisance is a civil action for damages or an injunction or both.

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.

Case Law: 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 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.