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Nuisance as a tort

ABSTRACT:

In this paper an analysis has been done on “Nuisance as a tort”. Nuisance is often defined as an unlawful interferences or an injury caused by unreasonable interferences with a person’s use or enjoyment of land, or some right over, or in connection with it. A detailed analysis of nuisance is discussed in this paper. This paper also deals with the elements and Kinds of Nuisance with the supporting case laws.

Nuisance is a Tort which is actionable only on proof of actual damages .In order that nuisance is actionable in tort, it is essential that there should exist- (1) wrongful acts. (2)Damage or loss or inconvenience caused to another. And nuisance is of two kinds-(1) Public nuisance. (2) Private nuisance. All this is discussed in detailed in this research paper.

KEY WORDS: Nuisance, essential elements, damage, wrongful act, private nuisance, public nuisance, injury.

INTRODUCTION

The word “nuisance” is derived from the French word “nuire”, which means “to do hurt, or to annoy”. One in possession of a property is entitled as per law to undisturbed enjoyment of it. If someone else’s improper use in his property results into an unlawful interference with his use or enjoyment of that property or of some right over, or in connection with it, we may say that tort of nuisance occurred. In other words, Nuisance is an unlawful interference with a person’s use or enjoyment of land, or of some right over, or in connection with it. Nuisance is an injury to the right of a person in possession of a property to undisturbed enjoyment of it and result from an improper use by another person in his property. Law of Torts is a branch of law which found the footing in almost every commonwealth Nations, i.e. Nations which were once a British Colony. Dealing specifically with the Indian context, Law of Torts is one of the very few non-codified laws in the country. It works on the principles of “injuria sine damnum”¹ and “ubi jus ibi remedium”². The most common theory that works in the law of

¹ (Injury Without Damage) is where a person’s legal right is violated but the person may not have suffered a damage or loss

torts is the Pigeon Hole Theory given by eminent jurist Pollock. Presently there are a certain number of recognized torts i.e. twisted actions which attract unliquidated damages to the injured person.

They are not codified as it is nearly impossible to confine all wrongs which result into any legal injury to a person and the damage which a person might face due to such wrongs, into an exhaustible list of code unlike that of other codified laws.

The scope of this research paper is extended to deal with a specific Tort of Nuisance, interpreting, analyzing, and providing an in-depth journey to the same. The boundaries of the tort are potentially unclear, due to the public/private nuisance divide, and existence of the rule in *Rylands v Fletcher*³. Writers such as John Murphy at Lancaster University have popularised the idea that *Rylands* forms a separate, though related, tort. This is still an issue for debate, and is rejected by others (the primary distinction in *Rylands* concerns ‘escapes onto land’, and so it may be argued that the only difference is the nature of the nuisance, not the nature of the civil wrong.)

Under English law, unlike US law, it is no defence that the claimant “came to the nuisance”: the 1879 case of *Sturges v Bridgman*⁴ is still good law, and a new owner can bring a claim in nuisance for the existing activities of a neighbour. In February 2014 the UK Supreme Court ruling in the case of *Coventry v Lawrence* prompted the launch of a campaign to have the “coming to a nuisance” law overturned. Campaigners hold that established lawful activity continuing with planning permission and local residents’ support should be accepted as part of the character of the area by any new residents coming to the locality

RESEARCH OBJECTIVE:

This research paper talks about the topic –NUISANCE AS A TORT .It also discusses about the definition of nuisance .This research paper also deals with elements of nuisance ,types of nuisance with the supporting case laws .Through the research paper This research paper also deals with the defences and remedies available under nuisance as a tort. we will also get to know about the difference between TRESSPASS AND NUISANCE.

² There is no wrong without a remedy

³ UKHL 1, (1868) LR 3 HL 330

⁴ (1879) LR 11 Ch D 852

1.1 RESEARCH PROBLEM :

The research problem of this research paper talks about the reasonable and problem cause is the most essential element of nuisance as a tort. And what is nuisance and how nuisance is different from trespass.

1.2 RESEARCH QUESTION:

- 1) Definition of nuisance as a tort ?
- 2) What are the Essential elements of nuisance as a tort?
- 3) What are the Kinds of nuisance and types of nuisance ?
- 4) What are the difference between trespass and nuisance ?
- 5) What are the defences available to nuisance as a tort?
- 6) What are the Remedies for nuisance?

1.3 RESEARCH HYPOTHESIS:

Nuisance means when a person ,thing or situation that annoys you or causes you trouble.It is necessary to prove the damage suffered due to trouble.



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1.4 SCOPE OF THE STUDY:

The research paper talks about the definition of nuisance as a tort. It also talks about the essential elements of nuisance as a tort supported by case laws of each different elements.

The scope of the study of this research paper also deals with difference between trespass and nuisance . It also covers nuisance civil proceedings and civil liability under nuisance as a tort.

The research paper also talks about the recent cases dealing with nuisance as a tort .

Research paper also talks about the civil proceedings and civil liabilities of nuisance as a tort. Through this research paper we will know about difference between trespass and nuisance followed by the conclusion.

1.5 RESEARCH METHODOLOGY:

Descriptive and analytical methodology has been followed by the researcher throughout the research paper . Secondary sources like books ,articles, and websites have been referred by the researcher for the accomplishment of the research paper

2. CONCEPTUAL ANALYSIS:

This research paper most importantly talks about the basic concept of nuisance as a tort and essential elements of nuisance as a tort. Where all the elements are followed by relevant case laws in the order to understand each a every concept of elements thoroughly and understand it .and the research paper also talks about the distinction between trespass and nuisance .furthermore , the research paper also discusses about the Indian and English case law regarding nuisance as a tort .it also tells about the liabilities of wrongdoer in nuisances as a tort.

3. DEFINITION OF NUISANCE AS A TORT:

Nuisance is an unlawful interference with a person's use or enjoyment of land, or of some right over, or in connection with it. Nuisance is an injury to the right of a person in possession of a property to undisturbed enjoyment of it and result from an improper use by another person in his property.

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Stephen defined nuisance to be “anything done to the hurt or annoyance of the lands, tenements of another, and not amounting to a trespass.”

According to Salmond, “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, smoke, fumes, gas, noise, heat, vibration, electricity, disease, germs, animals”.

4. ESSENTIAL ELEMENTS OF NUISANCE: AN ANSWER TO RESEARCH QUESTION 2

ESSENTIALS ELEMENTS OF NUISANCE

In order that nuisance is actionable tort, it is essential that there should exist:

- wrongful acts;
- damage or loss or inconvenience or annoyance caused to another. Inconvenience or discomfort to be considered must be more than mere delicacy or fastidious and more than producing sensitive personal discomfort or annoyance. Such annoyance or discomfort or inconvenience must be such which the law considers as substantial or material.

In *Ushaben v. Bhagyalaxmi Chitra Mandir*,⁵ The plaintiffs'-appellants sued the defendants-respondents for a permanent injunction to restrain them from exhibiting the film "Jai Santoshi Maa". It was contended that exhibition of the film was a nuisance because the plaintiff's religious feelings were hurt as Goddesses Saraswati, Laxmi and Parvati were defined as jealous and were ridiculed.

It was held that hurt to religious feelings was not an actionable wrong. Moreover the plaintiff's were free not to see the movie again.

In *Halsey v. Esso Petroleum Co. Ltd.*⁶ The defendant's depot dealt with fuel oil in its light from the chimneys projected from the boiler house, acid smuts containing sulphate were emitted and were visible falling outside the plaintiff's house. There was proof that the smuts had damaged clothes hung out to dry in the garden of the plaintiff's house and also paint work of the plaintiff's car which he kept on the highway outside the door of his house. The depot emanated a pungent and nauseating smell of oil which went beyond a background smell and was more than would affect a sensitive person but the plaintiff had not suffered any injury in health from the smell. During the night there was noise from the boilers which at its peak caused window and doors in the plaintiff's house to vibrate and prevented the plaintiff's sleeping. An action was brought by the plaintiff for nuisance by acid smuts, smell and noise.

The defendants were held liable to the plaintiff in respect of emission of acid smuts, noise or smell.

5. KINDS OF NUISANCE AND TYPES OF NUISANCE :AN ANSWER TO RESEARCH QUESTION 3

⁵ AIR 1978 Guj 13, (1977) GLR 424

⁶ *Halsey v. Esso Petroleum Co. Ltd.* (1961) 2 All ER 145:

KINDS OF NUISANCE

Nuisance is of two kinds:

- Public Nuisance
- Private Nuisance

Public Nuisance

Under Section 3 (48) of the General Clauses Act, 1897, the words mean a public nuisance defined by the Indian Penal Code.

Section 268 of the Indian Penal Code, defines it as “an act or illegal omission which causes any common injury, danger or annoyance, 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.”

Simply speaking, public nuisance is an act affecting the public at large, or some considerable portion of it; and it must interfere with rights which members of the community might otherwise enjoy.

Thus acts which seriously interfere with the health, safety, comfort or convenience of the public generally or which tend to degrade public morals have always been considered public nuisance.

Examples of public nuisance are Carrying on trade which cause offensive smells, *Malton Board of Health v. Malton Manure Co*⁷. Carrying on trade which cause intolerable noises, *Lambton v. Mellish*,⁸ Keeping an inflammable substance like gunpowder in large quantities, *Lister's case*, (1856) 1 D & B 118; Drawing water in a can from a filthy source, *Attorney General v. Hornby*,⁹

⁷ *Co.*, (1879) 4 Ex D 302;

⁸ *Lambton v. Mellish*, (1894) 3 Ch 163

⁹ *General v. Hornby*, (1806) 7 East 195

Public nuisance can only be subject of one action, otherwise a party might be ruined by a million suits. Further, it would give rise to multiplicity of litigation resulting in burdening the judicial system. Generally speaking, Public Nuisance is not a tort and thus does not give rise to civil action.

In the following circumstances, an individual may have a private right of action in respect a public nuisance.

1. He must show a particular injury to himself beyond that which is suffered by the rest of public i.e. he must show that he has suffered some damage more than what the general body of the public had to suffer.
2. Such injury must be direct, not a mere consequential injury; as, where one is obstructed, but another is left open.
3. The injury must be shown to be of a substantial character, by fleeting or evanescent.

In *Solatu v. De Held*¹⁰, the plaintiff resided in a house next to a Roman Catholic Chapel of which the defendant was the priest and the chapel bell was rung 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.

In *Leanse v. Egerton*,¹¹, The plaintiff, while walking on the highway was injured on a Tuesday by glass falling from a window in an unoccupied house belonging to the defendant, the window having been broken in an air raid during the previous Friday night. Owing to the fact that the offices of the defendant's agents were shut on the Saturday and the Sunday and to the difficulty of getting labour during the week end, no steps to remedy the risk to passers by had been taken until the Monday. The owner had no actual knowledge of the state of the premises.

It was held that the defendant must be presumed to have knowledge of the existence of the nuisance, that he had failed to take reasonable steps to bring it to an end although he had ample time to do so, and that, therefore, he had "continued" it and was liable to the plaintiff.

In *Attorney General v. P.Y.A. Quarries*,¹²; In an action at the instance of the Attorney General, it was held that the nuisance form vibration causing personal discomfort was sufficiently widespread to amount to a public nuisance and that injunction was rightly granted against the quarry owners restraining them from carrying on their operations.

¹⁰ *Solatu v. De Held* (1851) 2 Sim NS 133

¹¹ *Leanse v. Egerton*, (1943) 1 KB 323,

¹² *Attorney General v. P.Y.A. Quarries*, (1957)1 All ER 894:

Without Proving Special Damage

In India under Section 91 of the Civil Procedure Code, allows civil action without the proof of special damage. It reads as follows:

“S. 91.(1) In the case of a public nuisance or other wrongful act affecting, or likely to affect, the public, a suit for a declaration and injunction or for such other relief as may be appropriate in the circumstances of the case, may be instituted by the advocate general, or with the leave of the court, by two or more persons, even though no special damages has been caused to such persons by reason of such public nuisance or other wrongful act. Thus a suit in respect of a public nuisance may be instituted by any one of the followings: by the advocate –general acting ex officio, or by him at the instance of two or more persons with the leave of the court.

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.

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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. Miles¹³

¹³ 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.

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 ¹⁴

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

¹⁴Radhey Shyam v. Gur Prasad AIR 1978 All 86

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 types of nuisance are there?

Noise, smoke, dust, steam, smell, fumes, gases, light, rubbish, fly-tipping, problem animals, certain premises, etc.

6. DIFFERENCE BETWEEN NUISANCE AND TRESPASS: AN ANSWER TO RESEARCH QUESTION 4

Nuisance and Trespass – Distinguished BURNISHED LAW JOURNAL

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.

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.

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 ¹⁵

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.

7. DEFENCES AVAILABLE TO NUISANCES: AN ANSWER TO RESEARCH QUESTION 5

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

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.

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.

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.

¹⁵ Ushaben Navinchandra Trivedi v. Bhagyalaxmi Chitra Mandal AIR 1978 Guj 13, (1977) GLR 424.

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.

8. REMEDIES FOR NUISANCE: AN ANSWER TO RESEARCH QUESTION 6



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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.

9. 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. 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 jurists. 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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