

NUISANCE

- The word “nuisance” has been derived from the **Old French** word “**nuire**”/ **French** word ‘**nutre**’ which means “to cause harm, or to hurt, or to annoy”. The **Latin** word for nuisance is “**nocere**” which means “to cause harm”.
- Nuisance ordinarily means anything which annoys hurts or that which is offensive. Nuisance is a continuing wrong, it should be there for a continuous period of time, and it should not be momentary.
- **Definitions of Nuisance**
 - a) According to **Salmond**, “ The wrong of nuisance consist 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”.
 - b) **Winfield**, ' nuisance is incapable of exact **definition** but for the purpose of law of tort, it may be described as unlawful interference with a person's use or enjoyment of land or of some right over, or in connection with it
 - c) **Pollock** defines Nuisance as “Nuisance is the wrong done to a man by unlawfully disturbing him in the enjoyment of his property, or, in some cases, in the exercise of a common right.”
 - d) **Stephen** defines nuisance as “anything done to the hurt or annoyance of the lands, tenements of another, and not amounting to trespass.”

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- **Types of Nuisance**
 - 1) **Public Nuisance**
 - 2) **Private Nuisance**

1. **Public Nuisance**- Covered under IPC (**Section 268**)

- ✓ Public nuisance is a **crime** while private nuisance is a **civil wrong**
- ✓ **Section 268** of the Indian Penal Code, defines a public nuisance 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.”

- ✓ A public nuisance is an **unreasonable, unwarranted, or unlawful interference** with a right common to the general public. For example obstructing a public way for constructing structures on it are instance of public nuisance
- Public nuisance **does not create cause of action for civil suits** but in the following case is an individual may bring a civil action in case of public nuisance
 1. If a **special or particular damage** or injury is caused to that individual apart from the rest of the public
 2. Such a special damage or injury must be **direct** and not mere consequential.
 3. The injury must be of a **substantial character**

✓ **Dr. Ram Raj Singh v. Babulal (1928)**

Plaintiff was a doctor, his patients were caused inconvenience and discomfort from the defendant's brick powdering mill, and this was held as Private nuisance because special damage to the plaintiff had been proved.

2. Private Nuisance-

- ✓ Private nuisance is some unauthorized use of a man's own property causing damage to the property of another or some unauthorized interference with the proprietary rights of another causing damage but not amounting to trespass. private nuisance includes obstruction to light and air wrongful escape of bowel gas, noise, Water, germs etc
- ✓ Covered under **Tort Law**
- ✓ Private nuisance may be with respect to **property or personal physical discomfort**
- ✓ **elements essential for private nuisance-**
 1. Plaintiff should have right to use/ enjoy the land

2. unreasonable use of land and causing Unreasonable interference or damage
3. continuous period

1. Plaintiff should have right to use/ enjoy the land

- ✓ A guest at your property can't sue the third person for causing nuisance the person bringing in the tort action should have a right over the land to bring a case of Nuisance in the court.

2. Unreasonable interference or damage-

- ✓ Interference may cause damage to plaintiff's property or may cause personal discomfort to the plaintiff in the enjoyment of his property. The interference may be injury to the property itself (likes fumes from a factory destroying trees of neighboring land) or it may be injury to comfort or health of occupants of certain property (like playing unreasonably loud music all the time and thus disrupting comfort of neighbors)
 - ✓ Every interference is not nuisance interference to constitute a nuisance must be unreasonable.
 - ✓ The interference should be substantial, not a mere inconvenience or trifling
 - ✓ **Radhe shyam vs Guruprasad 1978** 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.
 - ✓ **St. Helen Smelting Co. v. Tipping (1865)**-Fumes from defendant's manufacturing work damaged plaintiff trees and shrubs. This was held as Private Nuisance
- **Sensitiveness of the plaintiff**
 - ✓ An act, which is otherwise reasonable, doesn't become unreasonable and actionable due to the sensitiveness of the plaintiff
 - ✓ **Robinson v Kilvert(1889)**

The defendants operated a factory which made paper boxes. This required the factory to be continually warm and dry to ensure that the paper. The heat from the defendant's factory damaged this brown paper, which was unusually sensitive to heat, and the claimant sued in nuisance. Court held that a person carrying on an exceptionally delicate trade cannot complain if an injury is caused by his neighbor doing something lawful on his property

3. Nuisance is a continuous wrong

- ✓ Nuisance commonly understood as a continued wrong. Casual or temporary inconvenience is ordinarily not regarded as nuisance
- ✓ **Bolton vs. Stone**- the plaintiff was standing on a highway and was injured by a cricket ball truck from the defendant's field. It was held that an isolated act of hitting a cricket ball into the road cannot be regarded as Nuisance.

Exceptional cases-

Defences under Nuisance

- ✓ **Prescription**
 - Long and continuous use
 - A Right to do an act, which would otherwise be a private nuisance, may be acquired by prescription (i.e. by elapse of certain number of years)
 - In India you get prescription **at the expiration of 20 years (Section 26 of Limitation act and section 15 of the Easements Act.)**
- **Mohini Mohan v. Kashinath Roy**

Right of doing Kirtan upon another's land doesn't grant you an easement, a right to do the same can be acquired if it qualifies as custom.
- ✓ **Statutory authority**
 - A Statute authorizing a particular act or the use of land in a way in a way is a defence of nuisance.

Defenses which don't work

- a. **Nuisance due to act of others**- Sometimes the act of two or more persons, acting independently of each other, may constitute a nuisance although the act of any one of them alone would not be so.
 - ✓ **Lambton v. Mellish**

Two merry-go-round owners were competing for business and were doing noise pollution with the use of loud speaker. Carrying on trade which causes intolerable noises in nuisance, but here it was claimed that the other person's loud speaker was louder. Court held that both contributed to the totality of the nuisance.
 - b. **Public good**- It is no defence to say that what is a nuisance to a particular plaintiff is beneficial to the public in general, otherwise the public utility undertaking could be held liable for the unlawful interference with the rights of individuals.
 - c. **Reasonable care**- Use of reasonable care to prevent nuisance is generally no defence.
 - d. **Plaintiff coming to nuisance**- It is not defence that the plaintiff himself came to the place of nuisance. A person cannot be expected to refrain from buying a land on which nuisance already exists.
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Remedies of Nuisance

- ✓ There are three kinds of remedies available in the case of a nuisance,
 1. Injunction,
 2. Damages and
 3. Abatement of nuisance
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 or permanent injunction.
2. **Damages**- The damages may be offered in terms of compensation to the aggrieved party. The damages to be paid to the aggrieved party is decided by the

state and the purpose of the damages is not just compensating the individual who has suffered but also making the defendant realize his mistake and deter him in future.

- 3. Abatement of Nuisance-** An occupier of land is permitted to abate, i.e. to terminate by his own act, nuisance which is affecting his land. For example, he may cut the branches (Overhanging)

A '**notice**' to the other party is required unless the nuisance constitute a danger to the life or property. When the abatement is possible without going on the wrongdoer's land, the same may be done without notice.

Case Laws

- 1. Ball v. Ray(1873)-** Disturbances to neighbors throughout the whole night by the noise of horses in a building converted into a stable was held to be unreasonable interference

- 2. Campbell v. Paddington Corpn.(1911)**

An uninterrupted view of the funeral procession of King Edward VIII could be had from the window of the plaintiff's building. So the plaintiff sold tickets for the same. The defendant corporation constructed a stand on the highway in front of the plaintiff's building which obstructed the view, on account of this obstruction. The prospective lessee refused to come to observe the procession from the plaintiff's house. The plaintiff filed a suit for recovery of damages. The stand erected was held to be a nuisance and the plaintiff was found to be entitled to recover the profit which but for the defendants' act she might have made by letting seats as damages.

- 3. Malton Board of Health v. Malton Manure Co.**

Carrying on trade which caused offensive smells is nuisance

- 4. Ushaben Navin chandra Trivedi v. Bhagyalaxmi chitra Mandal**

The plaintiff had sued the defendant for a permanent injunction to restrain the defendant from showing a movie named "Jai Santoshi Maa" Plaintiff claimed contents of the movie significantly hurt the religious sentiments of the people belonging to the Hindu Community 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.

5. Solatu v. De Held (1851)

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.

6. Hollywood silver Fox farm limited vs. Emmett 1936

The plaintiff's farm had business of breeding silver foxes on their land. The vixens of these animals are extremely nervous during breeding seasons and if they are disturbed by any loud noise they may not breed or Kill their young ones. The defendant maliciously caused guns to be fired on his own land but as near as possible to the plaintiff's land with the view to cause damage to plaintiff's Business. The court held that even though the firing took place on defendant's own land over which the defendant was entitled to shoot the plaintiff was entitled to an injunction and damages.

7. Dattamal ChiranjiLal v/s Lodh Prasad(1960)

The defendant was awarded an injunction to stop the grinding mill which causes inconveniences to the plaintiff and to his family.