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Origin and Development of the Principle of Nuisance in Torts Law

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*An undisturbed possession was attempted by the novel disseism, while its free enjoyment was sought to be ensured by the nuisance assize. Assize provided compensation whenever there was a continuous, indirect injury to the use and enjoyment of land or interference with it that was happening as a result of things done or not done on the defendant's property. Until recently, the common law concept of nuisance was practically undisputed. In the last 25 years, a growing number of courts have deviated from the common law norm. To be actionable, a nuisance must seriously impair people's comfort and enjoyment, or a property's use and value. The criterion used causes significant annoyance to those with normal sensitivities, and the criterion does not alter if the person is very sensitive or insensitive. A simple violation of aesthetic norms, such as erecting an unsightly fence, is not considered a nuisance. The nature of the act that causes the annoyance is categorised as a nuisance, and liability is decided by the legislation that applies to each form of behaviour. In the landmark decision of **McFarlane v City of Niagara Falls** in 1928, the nuisance was debunked as a common law idea. A nuisance, rather than being a specific wrong, is treated as a broad term defining a type of damage in the judgement.*

Keywords: nuisance, the origin of nuisance, common law, elements of the nuisance.

INTRODUCTION

"A person in possession of a property has the right to enjoy it without interruption," according to the law. However, when "someone else's wrongful use or enjoyment of his property results in an unauthorized interference with his pleasure or use of that property, or part of his rights over it, or in connection with it, the tort of nuisance has resulted." The word "nuisance" derives from the French term "nuire," which means "to damage, annoy, or injure." The term "nuisance" is derived from the Latin term "nocere," literally meaning "to hurt". An injury to a person's legal right to unfettered enjoyment of his property caused by the inappropriate use of another person's property is defined as nuisance. Stephen states that, "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."

Essentials to constitute a tort of Nuisance -

- **Wrongful Act** - A wrongful act can be characterised as any action which is committed for the purpose of violating another's legal right.
- **Damage, loss, or annoyance caused to another person** - The damage, loss, or annoyance should be of such an extent that the law considers a significant material for the claim of nuisance.

TYPES OF NUISANCE

Public Nuisance - A public nuisance is defined as any act or failure to act that causes general harm, threat, or inconvenience to the general populace or to the public at large who reside, and perhaps occupy possessions, in the proximity, or that does indeed primarily cause injury, interruption, threat, or disgruntlement to people who may have reason to use any general right. A public nuisance is conduct that has a considerable impact on the general public or a major portion of it, and that it must impede on community members' legal rights. Any kind of act that seriously impair the safety, comfort, health, or convenience of the general public, or

that tend to degrade public morals, such as carrying on trades that produce offensive bad smells or unbearable loud sounds, keeping a highly flammable compound like large quantities of gunpowder, or taking water from an unclean source in a can, have always been considered public nuisances.¹

Private Nuisance - A private nuisance can be defined as committing, permitting the use of one personal property, or anything in one's control, to injure a possessor or occupant of some other person's property either by physically harming his property or substantially interfering and affecting his health, enjoyment, or comfort. The following are the key elements of nuisance: (1) unlawful action; and (2) actual or potential hurt. A nuisance case must include some form of damage, whether actual or perceived. Additionally, the injury must be substantial, rather than merely sentimental, speculative, temporary, or fleeting.

There are three types of private nuisances: (1) encroachment on a neighbouring property; (2) actual physical injury to a neighbouring property; and (3) interfering with a neighbour's quiet use of his property, such as illegal smoke release.²

Remedies for nuisance -

- Damages
- Abatement
- Injunction

ORIGIN AND DEVELOPMENT

Since English law developed in an agrarian culture, it was only natural that the safeguarding of real estate should be its primary objective. The simple human legal suit of the assize of fresh disseism, which was also the precursor of the current trespass action, was born out of this requirement. The assize of advancing disseism was unsuccessful since, similar to trespass nowadays, it was restricted to direct interruptions with possessions and gave no defence when

¹ Ratanlal & dhirajlal, *The Law of Torts* (28th edn., Lexis Nexis 2019)

² *Ibid*

no activity was performed but merely a guilty failure to act, or where the conduct was not immediately injurious but only indirect. The struggle for such protections began in the 11th century and eventually evolved into the nuisance assize. The unique disseisin assize was employed in combination with the nuisance assize. The assize of nuisance authorised compensation when there was a continuous, indirect injury to the land or interference with its utilization and comfort resulting from work undertaken or not undertaken on the defendant's land. In other words, the assize of new disseisin was aimed at ensuring undisturbed ownership, whereas nuisance was aimed at ensuring its unrestricted enjoyment. Early in the 1400s, a lawsuit on the issue for a nuisance substituted the assize of nuisance, and that became the sole common law relief. This was merely a shift in the extent of culpability, not a shift in the remedy.³

To supplement the trespassing action, the nuisance law was created. While trespass offered protection from direct intrusions of ownership, nuisance offered protection against damages to the use and enjoyment of the land. In addition, the quality of the security provided was unmatched. The concept of a nuisance in common law remained nearly undisputed until recently. A growing number of courts have neglected the common law standard in the previous 25 years. The existence or absence of a nuisance is thus determined by its impact rather than its origin. It's a state, not a pattern of behaviour. A nuisance is an encroachment on another's right to use and enjoy their land; if there is a considerable encroachment, an actionable nuisance develops, regardless of the sort of behaviour that causes the discomfort. Only insofar as the act or omission tries to attribute responsibility for the complained-of state is it relevant.⁴

This condition's components can be categorised as follows:

- First, a large degree of interference is required. To be actionable, a nuisance must significantly affect a person's convenience and comfort, or the use and value of the property. The criterion used is considerable discomfort for persons with ordinary and

³ William A. McRae, Jr., 'The Development of Nuisance in the Early Common Law' (2021) 1 (1) FLA. L. REV., 27 <<https://scholarship.law.ufl.edu/flr/vol1/iss1/2/>> accessed 12 December 2021

⁴ *Pennoy v Allen* [1883] 14 N.W 609

average senses, and it does not vary if the person is very hypersensitive or callous. Furthermore, a considerable annoyance is one that is unreasonable, with the definition of unreasonable varying depending on the facts. Noise and smoke that would be a major annoyance in a residential facility may not be an issue in an industrial setting. Geographically, a substantial annoyance must be defined.⁵

- Secondly, there must be actual interference or danger of bodily injury. A simple infringement of aesthetic principles, such as erecting an unattractive fence, does not constitute a nuisance. The harm must be visible or feel unpleasant, and the annoyance must have caused the harm directly.⁶
- Thirdly, because a nuisance is property harm, the suit is usually brought by the person who possesses the property.⁷
- Fourth, because the harm is not direct, the harm has to be inflicted by actions taken on the defendant's property rather than the plaintiff's.⁸
- Fifth, even though a nuisance does not have to be continual or even cyclic, it does entail the concept of repetition or continuity. Though there is some authority to the contrary, a temporary and not to be repeated discomfort is typically not regarded as a nuisance.⁹
- Lastly, the accused must be directly accountable for the condition. As a result, natural circumstances¹⁰and situations caused by "fortune or unavoidable accident" are not considered nuisances, despite the inconvenience which they have caused.¹¹The defendant's activities must be directly related to the condition, which can be proved by negligent acts or performance, either in causing or perpetuating a nuisance caused by another. However, irrespective of the nature of the defendant's act, liability follows if it is proven that the defendant created or contributed to the circumstance.¹²

⁵ *Hasslinger v Village of Hartland* [1940] 290 N.W 647

⁶ *Metzger v Hochrem* [1900] 83 N.W 308; *Brown v Milwaukee Terminal Railway Co.* [1929] 224 N.W 748

⁷ *Greene v Nunnemacher* [1874] 36 Wis. 50

⁸ *Rylands v Fletcher* [1868] LR 3 HL 330

⁹ *Ibid*

¹⁰ *Mohr v Gault* [1860] 10 Wis. 531

¹¹ *Cobb v Smith* [1875] 38 Wis. 21

¹² *Pennoyer* (n 4)

A nuisance is discomfort brought about by the defendant's actions. True, the conduct might be purposeful or careless, intentional or inadvertent. However, liability is decided by whether the defendant is to be blamed for the inconvenience, not by the character of the defendant's behaviour. The cause of the action is the discomfort, not the way in which the discomfort is achieved. The court just needs to determine if the nuisance-causing conduct is the defendant's; it is not required to consider the act's substance. In *Bohan v Port Jervzs Gas Light Co.*¹³, it was made clear by the court that, "it may be confidently asserted that no authority can be produced holding that negligence is essential to establish a cause of action for nuisance." The common law notion of nuisance was rejected in 1928 in the landmark case of *McFarlane v City of Niagara Fall*,¹⁴ in which the trial court held that the plaintiff's contributory negligence was immaterial. The ruling considers a nuisance as a general phrase describing a sort of injury that spans an entire area of tort liability, with the individual torts differing only in that they are intrusions of the same right or interest. The torts that make up a nuisance are divided into categories based on the type of behaviour that caused them, with liability based on the principles of law that apply to each category of conduct.

CONCLUSION

In conclusion, nuisances are classed depending on the nature of the act that creates the annoyance or discomfort, and liability is determined by the applicable law. Nuisance as a principle has developed through various cases in common law countries. Nearly all components of nuisance are developed through precedents by the courts of common law countries. But there are many niche areas of nuisance which still are to be made clear by the courts of these countries.

¹³ *Bohan v Port Jervzs Gas Light Co.* [1890] 122 N.Y. 18

¹⁴ *McFarlane v City of Niagara Fall* [1928] 247 N.Y. 340