



FACULTY OF JURIDICAL SCIENCES

COURSE: B.A.LL.B. I st Semester

SUBJECT: LAW OF TORTS

SUBJECT CODE: BAL 106

Name of Faculty: Dr. Aijaj Ahmed Raj

LECTURE 14

TOPIC: CLASSIFICATION OF TORTS- TRESPASS, NUISANCE, DEFAMATION, LIABILITY FOR MIS- STATEMENTS, NEGLIGENCE.

Nuisance as a Tort

The word *nuisance* has been derived from the French word '*nuire*' which means, to hurt or to annoy. Ordinarily, nuisance means disturbances. According to Winfield, nuisance is incapable of exact definition. But for the purpose of the 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.

Kinds of Nuisance

1. Public Nuisance Tort
2. Private Nuisance Tort

Public Nuisance

A public nuisance is an unreasonable, unwarranted, or unlawful interference with a right common to the general public. Simply speaking, a 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 a public nuisance.

Examples can be obstructing a public way by digging a trench. Carrying on trade which causes an offensive smell.

Essentials of Public Nuisance

A person must have done an act or an illegal omission. Such an act or omission must cause any common injury, danger or annoyance to the public or to the people in general who dwell or occupy the property in the vicinity.

Private Nuisance

A nuisance interferes with the right of a specific person or entity, it is considered a private nuisance. Unlike public nuisance, a private nuisance is an act affecting some particular individual or individuals as distinguished from the public at large. The remedy in an action for private nuisance is a civil action for damages or an injunction or both and not an indictment.

The Elements of a Private Nuisance Lawsuit

Property owners have a right to the enjoyment and use of their land. In the event where another party interferes with that right.

For e.g. a neighbour regularly plays his music at the maximum volume possible late at night.

In such a case, the property owner can sue the interfering party. Talking to your neighbour about the nuisance is usually the best 1st step, since they may not fully aware of the effects of their actions. While states may differ on their definition of a private nuisance, a plaintiff must typically prove the following elements:

1. The plaintiff is the owner of the land or has the right to possess it

2. The defendant literally acted in a way that interferes with the plaintiff's enjoyment and use of his or her property
3. The defendant's interference was substantial and uncooperative.

Kinds of Private Nuisance

1. Damage to property
2. Physical discomfort
 - i. Damage to Property

In case of damage to property, any sensible injury will be sufficient to support an action. Nuisances of this class may arise from manufacturing works, chimneys, etc. E.g. smoke, fumes, gas, noise, water, filth, trees or animals.

- ii. Physical Discomfort

In the case of physical discomfort, the act complained of must be in excess of the natural and ordinary course of enjoyment of the property materially interfering with the ordinary comforts of human existence.

Eg. Carrying any trade causing nuisance, obstruction of light, etc

Difference between Private and Public nuisance

PRIVATE NUISANCE TORT	PUBLIC NUISANCE TORT
It is an infringement of the right of a private person.	It is an infringement of a public right.

The injury is caused to the individual.	It causes injury to every person of the public.
The injured person may bring an action.	A person may bring an action only if he sustains a special injury.
Here plaintiff must prove interference with his enjoyment of land	It is actionable per se

Exercise:

1. Which one of the following is not an exception to the rule of violenti non fit injuria
 - a) Surgeon amputates a limb of a patient to save his life
 - b) Injury is caused while play-fighting with naked swords at a religious function
 - c) Injury is caused to a player in football match
 - d) Injury is caused while doing lawful acts under contract
2. The State is vicariously liable in an action for tort if the act done by its employee is
 - a) Done during office hours
 - b) Affecting the plaintiff as well as other persons
 - c) Done in unauthorised capacity
 - d) A deliberate or grossly negligent misuse of power granted by law
3. X along with the passengers hired a bus owned by Y and driven by his driver Z. In the mid-way, the bus was punctured. So, Y transferred X and other passengers to another bus owned by L, and driven by his servant R. The second bus met with an accident, in a which X died and some other passengers were injured. W, X's widow, sued for her husband's death. In this case which one of the following is liable:
 - a) Y is liable

- b) Z is liable
 - c) L is liable
 - d) R is liable
4. The question as to whether the defendant has committed a breach of his duty towards plaintiff depends on as to whether he:
- a) Has evil motive towards the plaintiff
 - b) Did not act as a reasonable man
 - c) The plaintiff were each other's enemy
 - d) Committed an illegal act
5. A, without any provocation, makes a false statement in a gathering that B is suffering from AIDS. Here A is:
- a) Not liable because there is no defamation
 - b) Not liable because defence of privilege is available
 - c) Liable because it is a slander actionable per se
 - d) Liable because the statement has been made in B's presence