

# TORTS: FULL NOTES

## Public and Private Nuisance

753-777, 782-785, 785-786

Nuisance (p.753-754)

- The two torts that constitute nuisance are tam and private nuisance.
- Private nuisance concerns a nuisance to the private rights of an individual, specifically those concerning their use and enjoyment of land
- Public nuisance concerns interference with those interests that are shared by the public (public rights)
- Nuisance concerns interference in people's ability to enjoy land (fumes, smells), obvious tort used for environmental protection
- Both public and private nuisance may be affected by Civil Liability Act

### Public Nuisance

- An unlawful act or omission which endangers the lives, safety, health, property or comfort of the public or by which the public are obstructed in the exercise or enjoyment of any right common to all"
- Public nuisance is a criminal offence at common law + statute in some states

### Public Nuisance Elements

To establish a prima facie case of public nuisance, a private individual will have to prove:

- (1) Title to sue
- (2) That the interference is with a public right
- (3) That the defendant's interference is substantial and unreasonable

### Title to Sue

- An individual can initiate proceedings for a public nuisance if he/she can prove that they have suffered 'special' or 'particular' damage; damage over and above that which is suffered by the rest of the public.
- Circumstances that satisfy special or particular damage = Walsh v Ervin

### *Walsh v Ervin*

**Facts:** P+D were farmers; properties divided by highway. D erected gates + ploughed land to reducing surface. P was prevented from entering own land by motor vehicle at any point along fenced area. When moving sheep had to use main road involving substantial loss of tie + inconvenience. P sued D for public nuisance

### Case

- General principle: an individual cannot sue alone for relief in respect of a nuisance to a public highway unless he has sustained some particular damage in the sense of some substantial injury, direct and not merely consequential beyond that suffered by the public generally.

- Delay and inconvenience of a substantial character, direct and not merely consequential, so long as not merely similar in nature and extent to that in fact suffered by the rest of the public, may amount to sufficient damages, notwithstanding that it is general and not 'special' damage to him

Particular damage: For injury occasioned by the nuisance to his person, life, servant, and individual can plainly sue (Fowler v Sanders)

#### Summaries

- (1) An individual or corporation can't sue in his/or its own name in respect of a nuisance to a public highway, except for 'particular damage' occasioned to him or it thereby
- (2) "Particular damage" is not limited to "special damage" in the sense of actual pecuniary loss
- (3) It may consist of general damage (inconvenience and delay) as in present case Provided it is substantial that is direct and NOT consequential, and it is greater in degree than any suffered by general public
- (4) Since particular damage must be proved, nominal damages cannot be recovered since there is no presumption of particular damage
- (5) No reason why exemplary damages should not be awarded.

#### Special damage:

- Can be established in a number of ways
- In its nature it is special and peculiar to the plaintiff NOT common and public.
- E.g. personal injury
- If plaintiff is able to show that as a result of the public nuisance he/she has suffered personal injury, property damage, pecuniary loss, or additional trouble and expense (Fowler v Sanders- horsemen fell over logs in highway)
- CASE: Ball v Consolidated Rutile Ltd- no special damage was held to be sustained by professional fishermen whose livelihood was affected when a mining company's activities caused earth + slurry to enter prawn fishing grounds depleting prawn population because fishermen did NOT suffer damage above + beyond members of the public given that watercourse was open to all public for fishing

#### Interference with public right

- To sue in public nuisance the court must be satisfied that the interference is with a 'public right'

#### Case Law

##### **R v Clifford**

- States that the number of persons that are required to be affected for an interference to constitute a public nuisance will depend upon the circumstances of each case

##### **R v Madden**

- Bomb hoax received via telephone
- Court held that hoax did not affect a considerable number of persons or a section of public as distinct from individuals and was NOT a public nuisance

**R v Shorrock**

- Appellant used field for 'acid party' Between 3000-5000 attended. 275 telephone complaints in respect of extensive noise caused by music + PA system.
- Constituted public nuisance