LEGAL LOCK JOURNAL

2583-0384

VOLUME 2 || ISSUE 5

2023

PUBLIC NUISANCE AS A TORT

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Abstract

This article seeks to demonstrate the ideas of first: Public nuisance or unlawful interference with a right common to the general public. Second, this article seeks to explain the role of public nuisance as a tort and defence. This paper also deals with elements and supporting cases. The authors intend to trace the different aspects of public nuisance and supporting cases with it as well as the misuse of Public Nuisance in the present era and the alarming evolution of the Tort of Public Nuisance.

Key words: public, nuisance, tort, unlawful, defense, present era

Introduction

Nuisance has been defined to be anything done to hurt or annoyance of the lands, tenements, or hereditaments of another, and not amounting to trespass. The word "Nuisance" is derived from the French word Nuire, to do hurt, or to annoy.

Blackstone describes nuisance (nocumentum) as something that "worketh hurt, inconvenience, or damage".

Nuisance is an unlawful interference with a person's peaceful enjoyment of property or any associated right. Nuisance is an injury to a right of a person in possession of a property.

Public nuisance: A person is guilty of a public nuisance who does any act, or is guilty of an illegal omission, which causes any common injury, danger, or annoyance, to the public or to the general who dwells, or occupies the property, in the vicinity, or which must necessarily cause injury, obstruction, danger or annoyance to a person who may have occasion to use any public right

The scope of this article is to deal with the particular tort of Nuisance, analyzing the tort of nuisance and the alarming evolution of public nuisance. The boundaries of the tort are

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potentially unclear, due to the public/private nuisance divide, and the existence of the rule in Rylands v Fletcher.

Public Nuisance

An unreasonable, unjustified, or illegal interference with a right accorded to the general public is referred to as a public nuisance. Simply put, a public nuisance is an act that affects the general public or a sizable portion of it and that interferes with rights that community members might otherwise be able to enjoy.

Therefore, actions that seriously jeopardize the general public's health, safety, comfort, or convenience or that tend to erode public morals have always been regarded as public nuisances[3]. Examples include digging a trench to block a public pathway. carrying on business while it smells bad.

Essentials

Any act which is done with the intention to cause the infringement of the legal rights of another is considered to be a wrongful act. Any act which is done with the intention to cause the infringement of the legal rights of another is considered to be a wrongful act.

1. A person or a body must have done an act or an illegal omission causing inconvenience.
2. The act should cause any common injury, danger, or annoyance to the public at large or to the people in the vicinity.
3. The injury must be shown to be of a substantial character, and not fleeting.

What constitutes a ‘Class of People’?

Before a public nuisance case can be successful, there must be a sizable class of people involved. In *Attorney General v. PYA Quarries*, Lord Denning stated that the affected population must be at a minimum so large that "it would not be reasonable to expect one person to take proceedings [...] to put an end to it but that it should be taken on the responsibility of the community at large."

[3] 28th edition, Akshay Sapre, Ratanlal & Dhirajlal the law of Torts 613-636 (lexis nexis 2018)

But this doesn't give us a precise number. This is so that the size of the class will depend on the specifics of the case at hand. However, there are a number of noteworthy examples. In *R v Ruffel [1991] 13 CR App R*, the organiser of a rave in a field was held criminally liable for public nuisance - the loud music and litter was held to have caused a public nuisance to local residents. It can, thus, be seen that a local community can constitute a class of people. In *R v Ong [2001] 1 Cr App R (S) 117*, a betting scam was orchestrated in which the floodlights at a Premiership football ground were sabotaged so that they could be turned off via remote, causing an abandonment of the match. This meant that the defendant could profit from a rule of their betting syndicate which stipulated that the result of an abandoned match would be recorded as it stood at the point of abandonment (so if the bookie's favoured team was winning, they could effectively end the match at will.) This was held to be a public nuisance to the spectators, who had their enjoyment of the match impaired. Thus, a group of people with a common interest can constitute a class of people.

A group of road users can be a class of people, as in *Castle v St Augustine's Links [1922] 38 TLR 615*. Golf balls were regularly hit onto the road from a nearby course - constituting a public nuisance.

Even if the effect of a nuisance action is indirect, it can still affect a class of people. So, in *R v Lowrie [2005] 1 CR App R (S) 95*, the defendant made a number of hoax calls to emergency services, thus diverting the services away from genuine cases. The community affected by this was held to constitute a class of people.

Smaller groups of people can be considered a class, as long as they have common characteristics. So, in *R v Johnson [1997] 1 WLR 367*, a group of women who all lived in a similar area were subjected to obscene phone calls from the defendant. It should be noted, however, that the courts appear to have started to shy away from applying public nuisance to cases involving numerous, but separate victims, as in *R v Rimmington [2006] 1 AC 469*. The defendant sent racially abusive communications to over 500 individuals. A distinction was made between nuisances which affect communities as a whole, and those which affect several individuals. This should not be regarded as a rejection of the criminalisation of the conduct in the case at hand - indeed, the judiciary noted that statutory offences existed which covered such conduct (namely, the *Malicious Communications Act 1988*), and that this was the motivation for not finding public nuisance to have occurred[4].

[4] Public nuisance and private nuisance- important cases https://www.lawnn.com/public-nuisance-private-nuisance/amp/ (last visited on 17 March 2023).

The Special Damage Requirement

A claim in tort must be supported by evidence that the plaintiff has suffered harm in addition to and beyond that experienced by the class of individuals who are subject to the public nuisance. As a result, no one who is impacted by a public nuisance can actually file a claim. Damage can include discomfort or inconvenience as well as physical or financial harm to people or property. This will solely depend on the facts at hand because the degree to which the general class of people is impacted determines whether a claimant is particularly affected by a nuisance.[5]

Case 1

Dr. Ram Singh v. Babulal AIR 1985 All 285

In this case, the defendant had created a brick grinding machine adjoining to the premises of the plaintiff, who was a medical practitioner. The brick grinding machine generated lots of dust, which in turn polluted the surrounding. The dust that was generated due to the brick grinding machine entered the consulting chamber of the plaintiff and caused physical [6]inconvenience to the plaintiff and his patients and a red coating on the clothes which was apparent.

It was held that special damages were proved regarding the plaintiff and a permanent injunction was issued against the defendant which would restrain him from running his brick grinding machine there. In this case, although there was nuisance to general public, the plaintiff had more damage so he was awarded with special damage apart from the general public. The case fulfilled all the essentials of public nuisance, that is,

1. The defendant conducted the usage of the brick grinding machine within close proximity of the plaintiff
2. The act in turn resulted in the interference with the plaintiff's rights with regards to enjoyment of land since the dust carried away into the plaintiff's premises
3. Due to the interference, there was damage to the defendant's physical well- being as well as his clothes[7].

[5] Nuisance offense under tort https://thelegallock.com/nuisance-offence-under-tort-law?amp=1 (last visited on 16 March 2023).

[7] Dr. Ram Singh v. Babulal AIR 1985 All 285.

Case 2

Rose v. Milles (1815) 4 M & S. 101

The defendant had wrongfully moored his barge across the public navigable neck. This had blocked the way of plaintiff's barges and plaintiff had to suffer expenditure in unloading the cargo and transporting it to the same land. it was held that special damages are caused by the plaintiff.

Ratio: The fact that the vessel was indeed causing a great inconvenience to the plaintiff and the general public. The court also observed that the plaintiff was suffering great losses as he had to transport his goods by other means. As the plaintiff had suffered directly from the act of public nuisance, the court gave the judgment in favour of the plaintiff.

CASE 3

Winterbottom v. Lord Derby (1857) L.R. 2 exch. 316

In this case, the defendant had blocked a public footpath. The plaintiff had alleged that sometimes he had to take a different route or sometimes he had to incur specific expenditure to remove the obstruction. It was held that he could not recover as he had not incurred damages more than that of the public.

In this case, though there was an act of inconvenience by the defendant, the act didn't affect the public at large in accordance with *essential 2* of the tort. The act also didn't cause substantial degree of injury rather the minor injuries as argued by the plaintiff were negligible[8].

Defences

If a defendant's activity is permitted by law, this will probably be a strong defence. This is based on the idea that since statutes are the work of Parliament, it would be improper for the judiciary to assume control over them. The Civil Aviation Act of 1982 and other statutes will expressly state that any activity covered by them cannot be the subject of a nuisance claim. Others will simply give their approval, but this won't prevent you from using the law as a defence. The process of obtaining planning permission is specifically covered, which means that most authorized construction will be protected. However, an authorized activity that is carried out in a way that is unreasonable can still give rise to a nuisance claim.[9]

[8] Winterbottom v. Lord Derby (1857) L.R. 2 exch. 316.

[9] Nuisance offense under tort https://thelegallock.com/nuisance-offence-under-tort-law?amp=1 (last visited on 16th March 2023).

Ineffective Defences

Many arguments that are frequently raised in nuisance cases are typically rejected by the courts. Defendants frequently assert that the claimant has "come to the nuisance" and that, as the newcomer, they shouldn't be permitted to interfere with the activities of the long-term occupant. *Miller v. Jackson* and *Sturges v. Bridgman* provide examples of this. This argument will not be taken into consideration by the law because the right to quiet enjoyment does not change whether an activity begins the year before or the year after a claimant moves onto their property. Additionally, using this defence, a defendant could inadvertently make their neighbourhood unattractive to outsiders.

Nuisance-like Torts

The *Rylands v. Fletcher* case resulted in the creation of a tort similar to a nuisance. This is anomalous because there aren't many instances that can be said to have given rise to a unique tort.

It is significant to note that the circumstances originally covered by Rylands are now dealt with by a thorough body of tort law. Although it was initially intended to cover personal injury, it is now only applicable when there has been property damage or a violation of proprietary interests. Even though the doctrine hasn't been completely overturned, courts prefer to avoid applying it whenever possible and will instead look to other areas of tort law. There are four components to the tort: Gathering and keeping on the land, Non-natural use of the land, Probable mischief, and Escape and harm.

Collecting And Keeping on Land

Collecting and keeping on land also refers to things that, if kept on a piece of land, might cause something else to escape, such as things that are naturally mischievous (like water or deadly bees). As a result, the defendant in *Miles v. Forest Rock Granite Co (Leicestershire) Ltd (1918) 34 TLD 500* kept explosives on his property, which led to an explosion that "freed" rocks from his land and caused damage.

This is crucial in fire situations because fire naturally "escapes" and causes damage. A hot wire for cutting polystyrene was thus kept on the property in *LMS International v. Styrene Packaging and Insulation Ltd [2005] EWHC 2065*, but the thing that was caused to escape was fire.

It is important to note that the requirement for the active collection of the naughty object means that Rylands will not cover naturally occurring objects. The claim would not have

fallen under the Rylands doctrine if the rocks in Miles were simply knocked loose by a falling tree that happened to be on the land.

Non- Natural Use of Land

Land use that isn't natural depends a lot on the surroundings. As a result, it was determined in *Rickards v. Lothian [1913] AC 263* that water dripping from an overflow pipe onto the land was not unnatural. This wasn't a special use of the land, and the overflow pipe's operation wasn't inherently hazardous, making it dangerous to other people.

The definition of "natural" can change over time because what is considered to be natural and what is not depends on the context. An example of this is *Musgrove v. Pandelis (1919). 2 KB 43*. The claimant's rented property had a garage below where a car was kept. While filling up the car, one of the defendant's employees spilled gasoline, setting the vehicle on fire. The claimant's property suffered damage as the fire spread. It was believed that refuelling and storing the car in the garage went against nature. These days, the non-natural condition would not be satisfied by this. In *Transco plc v. Stockport MBC*, the term "unnatural" is used in its current working definition. [2004] 2 AC 1. An embankment collapsed as a result of a leak in a pipe that the defendant was in charge of maintaining. Due to the exposure of a gas pipe, the claimant was forced to perform expensive emergency maintenance. The water pipe was not an unauthorized use of the land, disproving the claim. An exceptionally hazardous or nefarious thing in extraordinary or unusual circumstances was how non-natural use was described.

Likely Mischief

Likely mischief can involve things that are obviously dangerous (like keeping deadly bees) or things that are not dangerous when contained but become dangerous when released. For example, the water in the Rylands reservoir was not dangerous when contained but caused significant damage when released. In *Crowhurst v. Amersham Burial Board [1878],* this is demonstrated. LR 4 Ex D 5. Yew trees were kept on the defendant's property. The claimant's horse ate the tree branches that hung into the neighbouring field. After consuming the poisonous leaves, the horse perished.

Escape and Harm

Simply put, there must be an escape from the defendant's property and harm must result. Strict liability used to apply in this situation, and only escape and harm were required to pass the test. Now, in accordance with the test in Wagon Mound (No 2), the escape must be

reasonably foreseeable.

Cambridge Water Co. v. Eastern Countries Leather plc [1994] 2 AC 264 was the case that led to this change. Drums were used by the defendant to store tanning agents. When the claimant's water was tested, it was discovered to have been contaminated by the defendant's chemicals. That the chemicals could contaminate the water supply was not foreseeable, so the claim was rejected.

However, it should be noted that a defendant cannot perform their duty while taking reasonable measures to thwart the escape. Even if the defendant made an effort to stop the escape, liability will still be imposed if an object escapes and the escape was predictable.

Defences for 'Nuisance-like Torts'

In Rylands cases, contributory negligence and consent may both be relevant factors; as a result, a claimant who knowingly consents to the retention of an evil thing will not be able to rely on Rylands.

Defendants may also make a defence based on a divine or natural act. For instance, if the Rylands reservoir collapse was only the result of unusually severe flooding, the claim would have most likely been rejected.

The claim against the defendant will fail if the escape was caused by a third party, though a negligence claim against the third party may still exist. This can be seen in the aforementioned *Rickards v. Lothian* case, where malicious third parties blocked a water outlet and then left a tap running, resulting in flooding. Thus, the defendant was able to escape responsibility.

Finally, if a defendant has acted in accordance with the applicable statutory requirements, their actions will typically constitute a defence to liability under Rylands.[10]

ALARMIMG EVOLUTION OF PUBLIC NUISANCE

Uncommon legal means are being used, according to a worrying new trend, to hold corporations accountable for social problems including COVID-19.The trend is driven by attorneys who claim to represent the broader public interest, but their cases frequently fall short of establishing who is actually at fault or may have contributed to the harm in question. On a "contingency fee" basis, attorneys present their services and potential lawsuits to state

[10] Law of torts nuisance as a tort https://www.toppr.com/guides/legal-aptitude/law-of-torts/nuisance-as-a-tort/ (last visited on 16 march 2023)

and local government representatives and others. They do this by suing businesses for what is known as "public nuisance," a legal theory that has been around for centuries, and alleging that they have caused various environmental and social harms.

During the COVID-19 outbreak, a food manufacturing facility was accused of creating a "public nuisance" by continuing to operate, according to a lawsuit filed in federal court on April 23, 2020.

Most common public nuisance lawsuits include:

Opioids:

Opioids are a major topic in today's public nuisance lawsuits. The pharmaceutical industry is being sued to cover the costs of treating and combating opioid abuse. The lawsuits make no specific claims of illegal behaviour or legal violations. Due to the failure of the courts to demonstrate how the companies contributed to the opioid-related harms that form the basis of significant financial demands, a number of cases have been dismissed.

In the case of *State ex rel. Attorney General of Oklahoma v. Johnson & Johnson 2021 OK 54,* the Supreme Court of Oklahoma has tossed out a landmark 2019 ruling of state District Judge Thad Balkman who ruled in favour of the legal argument that J&J created a "public nuisance" through its marketing of prescription pain pills. in an opioid case against Johnson & Johnson worth $465 million.

The 5-to-1 decision found the company can't be held liable for Oklahoma's opioid crisis. (The “opioid epidemic” or opioid crises refers to the serious public health issue stemming from the rapid increase in the use of prescription and non-prescription opioid drugs).

This ruling comes less than two weeks after a state court judge in California sided with drug companies in another major opioid lawsuit.

But ruling by the state supreme court concluded the public nuisance law was never intended to address a big public crisis like the opioid epidemic.

There are other state and federal opioid cases underway right now in New York, Ohio and West Virginia. The public nuisance argument may still hold up in some courts and jurisdictions.

Climate Change:

Nowadays, lawsuits are used as a political and regulatory short cut to address issues related to climate change. The lawsuits contend that by producing the energy that Americans needed and used in both their daily lives and their businesses, energy companies caused a public nuisance. On this basis, more than a dozen governmental organizations are suing energy

producers in an effort to recover damages for the effects of climate change. Numerous courts have determined that climate change is not a legal issue that should be resolved by the courts, but rather a complex global issue that needs a global, public policy-based solution.

In the case, *Chevron Corp. v. County of San Mateo 22-495,* San Francisco sued Chevron Corporation on the grounds that they failed to disclose the risks to the climate posed by the production and use of their fossil-fuel products. According to the "federal officer removal" statute, which allows people sued or prosecuted in a state court for actions taken under the authority of a federal officer and in the course of their official duties, the company removed the cases to federal district court on a number of grounds, including that they were entitled to do so. The business claimed that some of the actions for which they were being sued were mandated by contracts they had with the federal government.

The case was remanded to state court after the district court ruled that none of the grounds for removal cited by the oil company were valid. The company appealed to the U.S. Court of Appeals for the Ninth Circuit despite the fact that remand orders are typically not appealable because they remand cases that have been removed under the federal officer removal statute. As an amicus curiae, Public Citizen submitted a brief in support of the cities and counties. According to the brief, companies that have business ties to the government, like the oil company did, do not become agents of the government or have the right to have cases against them dismissed.

Environmental and plastic clean ups

Regardless of fault, manufacturers are the target of lawsuits for the environmental effects of products sold in the past. According to conventional legal theory, whoever or whatever caused the public nuisance should be held accountable for eradicating it. The reliability of science and factual evidence, not the defendant companies' financial standing, should be the basis for any potential legal liability for the chemicals or products at issue in these cases.

In the case, *Earth Island Institute v. Coca-Cola Co. 2021 CA 001846 B,* a public nuisance lawsuit has been filed by the lawsuit which will be tried in the American federal court.

Electronic- cigarettes and Vape products

Trial lawyers are enlisting school districts, local governments, and states to file lawsuits against e-cigarette companies in another recent instance of misuse of public nuisance lawsuits. Allegations that a business improperly advertised or produced defective products should be brought under those specific laws. Public health issues are not considered to be "public nuisances," as the courts have ruled in opioid litigation, but it is too soon to predict

how these lawsuits will fare in the legal system.

In their most recent attempt to hold the vaping industry and its largest company, Juul, accountable, more than a dozen school districts from across the US have filed lawsuits against vape companies.

Missouri, Kansas, Arizona, New York, and California school districts have sued Juul and other vape companies in an effort to recover financial losses sustained while attempting to control the skyrocketing number of students using e-cigarettes.

U.S. District Judge William Orrick of the Northern District of California has issued a ruling that the plaintiffs have adequately pled their cases, finding their public nuisance against the electronic cigarette makers and marketers to be legitimate.[11]

Conclusion:

The concept of public nuisance arises daily life in fact, Indian courts have borrowed the principles from English law which has helped the concept of nuisance develop quite extensively and assures fairness. We can now, through the extensive analysis on the topic differentiate between Public Nuisance and Private Nuisance on the basis that: Public nuisance is an infringement of a public right in which a Class of People (considered as Public) obtain injury whereas in Private Nuisance, right of a private person (in particularity) is infringed and the injury is caused to the particular individual. In Private Nuisance, the plaintiff has the burden of proof and in Public Nuisance is actionable per se.

Through the discussion of various cases that are being filed under the public nuisance tort law we can derive that although in some cases like those of Opioids and "environmental and Plastic clean-ups", the whole objective of the plaintiffs is to obtain needless money but in cases such as that of electronic cigarettes and Vape products, the lawsuits are inevitably serving the society by reducing the exposure of the products to the general public and hence safeguarding the health of the society.

As far as the relevance of Public Nuisance Tort law is concerned, its primarily dependant on the court whether it finds the defendants to be liable for damages.

[11] American tort reform association, *Alarming evolution of public nuisance law,* https://www.atra.org/the-alarming-evolution-of-public-nuisance-law/ (last visited on 18 March 2023).