AILET

Legal Aptitude for CLAT: Law of Torts: Nuisance

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Nuisance is derived from the french word 'nuire' meaning to hurt or to annoy.

In legal terms, Nuisance refers to the unlawful interference of a person's use of his land, it can be committed by any activity or condition that interferes with the plaintiff's right of the enjoyment of his land.

Difference between Nuisance and Trespass

Trespass is a direct interference with a person's possession of the land and it takes place through material objects. It is prima facie actionable.
Eg: Planting a tree on another man's land will amount to trespass.

Nuisance is a more indirect form of a tort which deals with the interference with a person's enjoyment of land. it does not specifically take pace through a tangible medium and special damage has to be proved to make a case of nuisance.
Eg: A cuts the grass in his garden with the grass cutter machine when B took tuition classes in an adjacent building. The noise caused disturbance to B. A is liable for committing a nuisance.

Types of Nuisance

There are three basic types of nuisance

Public Nuisance: It is a crime and it implies the interference with the right of the general public. It is an offence punishable under section 268 of the Indian Penal Code.
Eg: DIgging of trenches on a public road causing inconvenience to the people will constitute Public Nuisance.

Private Nuisance: It is also called tort of Nuisance. It involves using one's property or anything under one's control to harm he property of someone else. It is directed at individuals rather than on the public. The interference with the use of land, in this case, is unreasonable and causes special damage to the owner.
Eg: The smoke from the factive X damaged Y's plants located on afield close by. X is liable for

committing a private nuisance.

Statutory Nuisance: When the statute is directly prejudicial to the health and well being of a person, it is known as a statutory nuisance. The government tries to curb such type of nuisance by enacting legislation for clean air, noise, etc. f the damage is caused due to the sensitiveness of the plaintiff, then the act will not deem fit to qualify for nuisance.
Eg: If noise from a factory creates disturbance for only one person and the other people living in the premises do not complain about the noises or do not have any problem whatsoever, then this action will not qualify for an action for nuisance.

Defences

The following are the defences to the act of nuisance

- If a person continues activity on a piece of land for 20 years, he acquires a prescription to continue the activity in the future. After a span of 20 years, such an activity will not be actionable for the tort of nuisance.
- If an act is authorized by the statutory authority, then it will be a complete defence and the act would not qualify for nuisance.

The below defences are not acceptable by law

- Where there are two or more defendants and action is brought against any one of them it is no defence that his act alone would not be a nuisance.
- It will not qualify as a defence that a nuisance to a person is beneficial in public interest,
- If a defendant says that he took reasonable care to prevent nuisance, it will not act as a defence in his favour.
- It will not be a defence for the defendant that the plaintiff came to the place where nuisance already existed.

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