AILET

Understanding The Tort of Nuisance

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As I write this, the neighbourhood school is conducting its annual fest.

The noise is in the superlative, the speakers are terrible, the singing is cringe-worthy, and let's not even talk about the "debate competition".

There are rows of houses nearby, and I live in one of them; but, being in the education sector is apparently the stamp of higher intelligence, so the school thinks that the noise does not bother its neighbours.

Tort law, however, thinks otherwise. So, it has provided for the tort of nuisance to deal with such circumstances.

We all have the **legal right of peaceful enjoyment**.

Enjoyment here means, to be able to act as one pleases, but obviously, without unreasonably interfering with another person's enjoyment.

This peaceful enjoyment could be sitting on the benches of a public park to celebrating Ganesh Chaturthi and having several guests over to simply walking on a public road. In other words, things we can normally do.

This tort of nuisance arises where there is an unreasonable or undue interference in one's peaceful enjoyment of something by another.

In most of the problems in CLAT or the other law entrance tests, you'll find these **nuisances relate to land/property**.

This interference to A, from B, usually arises when B is enjoying his property "too much" or exceeds a certain acceptable limit – like playing loud music (case in point), which rattles the neighbours' window-panes.

Your neighbour is more of a John Denver guy than John Myung; and the bass lines really does not impress him at 2, in the night.

He has a claim in tort if he loses sleep.

The undue interference is thus one which is unjustifiable. You could have also played your music at a lower volume so as to not disrupt the neighbour's sleep, or during the day, when people are normally not sleeping.

From the above, it is sufficiently clear that **malice is not an important element in nuisance.**

You could have both played the music deliberately to annoy (legally speaking, one is "annoyed" when there is undue interference in their enjoyment) your neighbour, or inadvertently, but will be liable in both cases.

That is because, once again, the foundation of the Tort of Nuisance is the interference with the enjoyment of another's property and not the interference per se.

Moving on to the types of Nuisance, there are two:
1. Public
2. Private

Public Nuisance occurs when a person does an act which causes **annoyance to the public** in general**.** In Dwyer v. Mansfield, a potato seller had a huge line of customers, which blocked the public road. The queue was due to a scarcity of potatoes on the market. This queue blocked access to the other shops.

The seller was held to be not liable since, a) his acts were nothing out of the ordinary, b) he wasn't doing anything unreasonable, and c) the defendant himself did not cause the nuisance, but it was because of the scarcity of potatoes.

In cases of public nuisance, the persons affected have a common claim against the defendant.

Despite that, a claimant may sue the culprit individually. That particular claimant will have to prove these things:
1. That he has suffered an injury which is greater than that suffered by the rest of the public.
2. Such an injury must be direct and not merely consequential.*
3. The injury must be substantial, not fleeting.

For example: Personal discomfort was caused to the neighbour of a quarry owner. This discomfort was caused by the dust and vibrations from the quarry. In this case, the nuisance caused would sufficiently amount to public nuisance. Additionally, an action can be brought by the neighbour for the personal discomfort caused by the quarry owner.

Private nuisance is when the act causing discomfort or inconvenience affects a specific people. The teenager can enjoy hard rock (his right) as long as he does not disturb the neighbours' right (to a quiet, peaceful sleep).
Due to the specificity of the persons affected, the interference must be checked to see whether it is at all **'unreasonable'.**

This will depend on a) the **sensitivity of the plaintiff,** and b) **the locality in which the nuisance has occurred.**
A sensitive plaintiff, as the name suggests, is one who is sensitive to acts and events substantially more than a reasonable person is.

An act does not become actionable solely due to the higher sensitivity of the plaintiff towards a normal act.

For instance, in the above example, if the hard rock lover plays music at a level which does not annoy or disturb an ordinary person, then an actionable claim against him by a sensitive plaintiff will not succeed. A sensitive plaintiff is, thus, a defence to a claim of nuisance.

To understand how a locality determines whether an act is tortuous or not, let us look at the example of a school being set up in the industrial part of town.

Schools require an environment without any forms of noise or air pollution, one which would be lower than that in a normal area.

Given the area is industrial, the school will not have any claim against the factory right beside it, whose chimneys give off fumes during school hours and have huge lorries and machines working noisily throughout the day.

If, say, the factory was in an urban, residential area, which usually does not have the noise or the fumes emitted by the factory, then the school may have a claim in tort.

But despite the locality, there is the defence of acquired or prescriptive right.

This is right gained by the tort-feasor if s/he has been conducting the tortuous activity for at least 20 years without any objection from the neighbours. The 20-year period starts from when the activity became a nuisance, and not from when it actually started.

Nonetheless, if like in the school example, there is a new neighbour in the locality, and s/he has a reasonable objection against the nuisance, then the tortuous act of the tort-feasor is actionable in

court.

This is because the neighbour in question has done nothing to show consent to the nuisance – the consent was that of the existing neighbours.

The defence of statutory authority applies to acts which are incidental to those done in pursuance of a law, such as noise from passing trains and sparks from a railway line destroying an adjacent property.

However, this defence will be vitiated if the act was done with negligence, and a claim of nuisance can be maintained.

As for the remedies available to the claimant for nuisance, they are:
1. Injunction, where the court orders the tort-feasor to stop the activity completely or limits the time period in which the activity can take place.
2. Damages, which are payable for the claimant's loss of enjoyment or any physical damage suffered.

*Nuisance, generally, does not require the interference/injury to be direct; but, public nuisance specifies that for a claimant to have a personal claim, the injury caused must be a direct consequence of the tortuous act of the defendant.

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