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MAGCO LEGAL LESSONS

LEGAL TOPIC: THE TORT OF NUISANCE- Private Nuisance

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What is the tort of nuisance?

The tort of nuisance involves a condition or activity which unduly interferes with the use or enjoyment of land. According to Justice Rahim in the case of **Leynan Rodulfo v Arima Borough Corporation Cv2016-01369, i**t is an act or omission which is an interference with, disturbance of or annoyance to, a person in the exercise or enjoyment of:

i. a right belonging to him as a member of the public, when it is a public nuisance; or

ii. his ownership or occupation of land or of some easement, profit, or other right used or enjoyed in connection with land.

The **Halsbury Law** has defined Nuisance as: *"(1) acts not warranted by law or omissions to discharge a legal duty, which obstruct or cause inconvenience or damage to the public in the exercise of rights common to all the Queen's subjects; (2) acts or omissions which have been designated or treated by statute as nuisances; and (3) acts or omissions generally connected with the user or occupation of land which cause damage to another person in connection with that other's user of land or interference with the enjoyment of land or of some right connected with the land."*

Nuisance was also defined by **Clerk & Lindsell** as a condition or activity which unduly interferes with the use and enjoyment of land. The text goes on to explain that a private nuisance: *"may be as usually is caused by a person doing, on his own land, something which he is lawfully entitled to do. His conduct only becomes a nuisance when the consequences of his act are not confined to his own land but extend to the land of his neighbour by (1) causing an encroachment on his neighbour's land, when it closely resembles trespass. (2) causing physical damage to his neighbour's land or building or works or vegetation upon it, or (3) unduly interfering with his neighbour in the comfortable and convenient enjoyment of his land… in nuisance of the first two kinds, liability for the nuisance is established by proving the encroachment or the damage to the land as the case may be."*

EXAMPLES OF NUISANCE:

According to the author of the Commonwealth Caribbean Tort Law text, this tort 'has become a catch-all for a multitude of ill-assorted sins'. Some examples of nuisance include:

- The emission of noxious fumes from a factory;
- The interference with a right of access to private property; and
- The destruction of a building through vibrations.

There are two types of nuisance namely, public nuisance and private nuisance. This article will focus mainly on Private Nuisance.

PUBLIC NUISANCE

A public nuisance is committed where a person carries on some harmful activity which affects the general public or a section of the public. A public nuisance is essentially a crime, actionable by the Attorney General. However, it is a tort, actionable by an individual Claimant, once the Claimant can show that the Defendant's conduct has caused him/her particular damage over and above that suffered by the general public. The Claimant will only be deemed to have the proper *locus standi* in a claim for public nuisance if he/she show that he/she has suffered damage which is different in kind, and not merely in degree, from that suffered by

the general public: **Stein v Gonzales (1985) 14 DLR (4th) 263.** Other jurists have stated that it is sufficient for the Claimant to show that he/she has suffered damage which is appreciably greater in degree than any suffered by the general public: **Southport Corp v Esso Petroleum Co Ltd [1954] 2 All ER 561.**

PRIVATE NUISANCE

The law of private nuisance differs from that of public nuisance, as it is designed to protect the individual owner or occupier of land from substantial interference with his/her enjoyment thereof. The author of the Commonwealth Caribbean Tort Law text stated the categories of private nuisance as follows:

- Physical injury to the Claimant's property;
- Substantial inference with the Claimant's user and enjoyment of his/her land; and
- Interference with easements and rights of access.

In the case **Joe-Ann Glanville David Walcott v Heller Security Services 1996 Limited CV2013-03429**, the Honourable Justice Rampersad stated that private nuisance is understood *"as any ongoing or recurrent activity or state of affairs that causes a substantial and unreasonable interference with a claimant's land or with his use or enjoyment of that land."*

The Court in the case **Hurdman v The North Eastern Railway Co (18780 3 CPD 186)** espoused that every occupier is entitled to the reasonable enjoyment of his land. The Court further opined that it is well established that an occupier of land may protect himself by action against anyone who allows filth or any other noxious thing produced by him to interfere with this enjoyment.

LOCUS STANDI

A Claimant in an action for private nuisance must have a proprietary interest in the subject property. This was affirmed by a majority of the House of Lords in the case **Hunter v Canary Wharf Ltd [**1997] UKHL 14 where Lord Goff examined the relevant authorities and said:

> *"....an action in private nuisance will only lie sat the suit of a person who has a right to the land affected. Ordinarily, such a person can only sue if he has the right to exclusive possession of the land, such as a freeholder or tenant in possession, or even a licensee with exclusive possession. Exceptionally however, as Foster v. Warblington Urban District Council shows, this category may include a person in actual possession who has no right to be there; and in any event a reversioner can sue in so far his reversionary interest is affected. But a mere licensee on the land has no right to sue."*

It is important to note that not every inconvenience will suffice to convince the Court the Defendant has caused a nuisance. The Courts have stated that a balance has to be maintained between the right of the occupier to do what he likes with his own land and the right of his neighbour not to be interfered with. The interference complained of must be both ***substantial and unreasonable***.

Many jurists have explored the factors which the Courts have determined in an attempt to balance the competing interests of neighbours. According to Justice Murphy in the text, **The Law of Nuisance**, there are four main factors which help determine whether any given interference is sufficiently substantial to ground an action in private nuisance. These are as follows:

*"**The sensitivity of the claimant*** – concerned with the question of whether the interference is, in objective terms, of sufficient magnitude to warrant a remedy as a claimant who has an exceptional sensitivity to interferences will not be able to rely upon this abnormal sensitivity in order to convert an ordinarily innocuous interference into one that is regarded as sufficiently substantial to ground an action in nuisance;

The duration of the harm – the more persistent an interference the more likely the courts will consider it to be substantial;

The extent of the harm – the claimant must show an objectively grave interference but also that she has personally suffered a substantial interference;

The character of the harm – courts seem markedly more prepared to protect the physical integrity of property than minor personal discomforts and annoyances falling short of physical damage."

Once it has been established that the interference is substantial, the burden of proof shifts to the defendant who must show the reasonableness of his user: **Hiscox Syndicates ltd v The Pinnacle Ltd [2008] EWHC 145**. In the case of **Joe Ann Glanville (*supra*)**, Justice Rampersad explored the factors a Court will considered when determining whether the defendant's user was reasonable:

- The defendant's motive;
- The location of the defendant's premises which asks whether the defendant is putting his land to a use which is compatible with the main use to which land in that area is usually put bearing in mind that the character of a locality is susceptible to change over time: **Gillingham Borough Council v Medway (Chatham) Dock Co Ltd [1993] BQ 343;**
- The kind of user - extremely dangerous enterprises are unreasonable users of land;
- The practicality of preventing or avoiding the interference – whether the defendant, by taking reasonable and practicable steps to prevent the inference could still have achieved his purpose without substantially interfering with the claimant's use of her land;
- The location of the claimant's premises – the claimant's expectations in terms of comfort, peace and quiet will vary according to the location of his house or business: **Sturges v Bridgman (1879) 11 Ch D 852;** and
- The social value of the claimant's use of land as where the claimant uses his land in a socially useful manner, it is seemingly more probable that the court will regard the interference cause by the defendant as unreasonable.

According to the authors of **Clerk & Lindsell on Torts** whether an act constitutes a nuisance must be determined "*not merely by an abstract consideration of the act itself, but by reference to all the circumstances of the particular case, including for*

example; the time of the commission of the act complained of; the place of its commission; the manner of committing it, that is, whether it is done wantonly or in the reasonable exercise of rights; and the effect of its commission, that is, whether those effects are transitory or permanent, occasional or continuous; so that the question of nuisance or no nuisance is one of fact."

Standard of comfort – According to this principle, a nuisance of this kind, to be actionable, must be such as to be a real interference with the comfort or convenience of living according to the standards of the average man. An interference which alone causes harm to something of abnormal sensitiveness does not of itself constitute a nuisance.

LIMITATION

In the case of **Chanan Sudama and Chanan Sudama (The Lawful Attorney of Narine Mohindranath Sudama) v The Water And Sewerage Authority of Trinidad And Tobago CV2017-04406**, Madame Justice Dean Armorer considered the statute of limitation in relation to cases of alleged nuisance. The relevant provisions of the **Limitation of Certain Action Act Chap. 7:09** are set out below:

> *"3. (1) The following actions shall not be brought after the expiry of four years from the date on which the cause of action accrued, that is to say:*
>
> *(a) actions founded on contract (other than a contract made by deed) on quasi-contract or in tort…"*

Justice Dean-Armorer opined that "*where there is a continuing tort, a fresh cause of action accrues every day.*" This reflected the view of the Honourable Justice Rajkumar (as he then was) in the local case of **Point Lisas Industrial Port Development Corporation Limited v Arcelor Mittal Point Lisas Limited CV2015-00712**. The learned Judge quoted from, Halsbury Laws of England:

> *"338. Continuing wrongs. A single cause of action, in respect of which a claimant is entitled and required to have damages assessed once and for all, must be distinguished from a continuing cause of action, namely a series of rights to sue which arises from the repetition or continuance of acts or*

omissions of the same kind. Thus ***where a given trespass continues, a fresh cause of action arises every day during which it lasts, and on this basis damages can theoretically be recovered repeatedly and indefinitely ; and similarly for a continuing nuisance .”***

In light of the aforementioned, the general position would be that a claim for nuisance cannot be brought after the expiry of FOUR (4) years, however, it is important to note that where there is a continuing nuisance, a fresh cause of action arises every occasion on which the nuisance re-occurs, so therefore in such a case there would be no Limitation of four (4) years from the day the Nuisance first began, as the Four (4) year period repeats afresh, each time the Nuisance re-occurs.

REMEDIES

Remedies available to a Claimant who complains of a nuisance are:

- Damages;
- An injunction to restrain further nuisance; and
- An Order for Abatement or cessation of the Nuisance.