

AGEC 3713 Agricultural Law - Nuisance and Trespass

true

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Introduction

- ▶ Nuisance and trespass are an offence to the ownership of real property
- ▶ usually intentional torts
- ▶ Nuisance may involve negligence or strict liability (depends on the facts of the case)

Trespass

Trespass is the wrongful entry onto the land of another.

- ▶ This can involve the whole or part of the person entering the property (any extension of the person), e.g. vehicle, bullet, nitrate molecules or a person's agent or contractor.

Distinction between trespass and nuisance is not always clear, nitrate molecules for example can be considered both.

Johnson v Paynesville Farmers Union Cooperative Oil Company

- ▶ Does pesticide spray drift constitute trespass or not?

Case involves alleged pesticide contamination of organic farm fields in central Minnesota. Appellant Paynesville Farmers Union Cooperative Oil Company (“Cooperative”) is a member owned farm products and services provider that, among other things, applies pesticides to farm fields. Respondents Oluf and Debra Johnson (“Johnsons”) are organic farmers. The Johnsons claim that while the Cooperative was spraying pesticide onto conventionally farmed fields adjacent to the Johnsons’ fields, some pesticide drifted onto and contaminated the Johnsons’ organic fields.

The Johnsons sued the Cooperative on theories including trespass, nuisance, and negligence per se and sought damages and injunctive relief. The district court granted summary judgment to the Cooperative and dismissed all of the Johnsons' claims. The court of appeals reversed. Because we (MN supreme court) conclude that the Johnsons' trespass claim and claims for damages based on 7 C.F.R. § 205.202(b), fail as a matter of law, we reverse the court of appeals' reinstatement of those claims. But because the district court failed to consider whether the Johnsons' non trespass claims that were not based on 7 C.F.R. § 205.202(b), could survive summary judgment, we affirm the court of appeals' reinstatement of those claims and remand for proceedings consistent with this opinion.

Johnson v Paynesville held spray drift was a private nuisance not trespass.

Other jurisdictions have seen this differently

Distinction is still controversial

Public v Private Nuisance

- ▶ A public nuisance is an action based upon a landowner's interference with the rights of the public
- ▶ Public nuisance may be civil or criminal action
- ▶ Only government can bring a criminal action
- ▶ Private nuisance, use of real property
- ▶ Trespass, exclusive possession of property

Trespass

- ▶ Wrongful and without permission are not the same thing
- ▶ A law enforcement officer might search property without permission but this may not be wrongful
- ▶ Entering property without permission to escape from a charging bull is not wrongful
- ▶ An emergency plane landing on a property is without permission but not wrongful (necessity defense)
- ▶ Because it is not wrongful there is no tort of trespass
- ▶ Landowner's who interfere in necessary actions to save life may be engaging in tortious or criminal actions

Remedies

- ▶ Remedies for trespass are
 - ▶ monetary damages
 - ▶ injunction (cease and desist)
 - ▶ or both
- ▶ Economic damages confined to actual damages
- ▶ Punitive damages determined by jury
- ▶ These are not available if trespass is based on negligence

Ejectment

Removal of the defendant or the defendant's property from the property of the plaintiff

Injunction not to return (restraining order?)

Example

Beamer builds a new steel building to shelter his new tractor. Unbeknownst to Beamer the survey on which the building location was based was wrong. Half the building is on his neighbor Mercedes property. Mercedes demands that Beamer remove the building at Beamer's expense. Beamer refuses. Mercedes brings a trespass action demanding removal and restoration of the property to its original state. Court finds trespass and grants an injunction ordering the removal. Injunction specifies trees to be planted to replace those cut in constructing the building

Nuisance

- ▶ Unreasonable interference by one landowner of another landowner's use of or enjoyment of his or her property
- ▶ Common law tort
- ▶ Harm needs to be substantial
- ▶ Neighbours naturally interfere with each other in some way through everyday activities
- ▶ Interference needs to be unreasonable and substantial

Examples of nuisances

smoke, odors, noise, vibration, obstruction of private easements, removal of lateral or subjacent support (causing landslides), interference of riparian rights (pollution or diversion of water) trespass involves physical unlawful entry in most states as the distinction is gray, often trespass and nuisance actions are brought together

Theories

- ▶ intentional tort
- ▶ negligence
- ▶ strict liability

proximate causality of harm must be given

Case: Spur Industries v Del E. Webb

Spur industries was running a cattle feedlot since 1957, Del E. Webb developed residential land in the are and sued for nuisance in 1967 requesting permanent closure of the feedlots. Should Del compensate Spur industries?

Cases like this have given rise to the right to farm movement.

Unreasonableness

- ▶ intention nuisance unreasonable if gravity of harm outweighs utility of conduct
- ▶ or, harm caused is serious and any financial compensation remedy would not negate the harm
- ▶ Reasonableness here captures the liberal precept of freedom of action as long as you do no harm (Liberal paradox of social choice theory)

Remedies for nuisance

If a nuisance exists, what is the remedy?

- ▶ money damages
- ▶ injunctive relief (abatement)
- ▶ or a combination of money damages and abatement

- ▶ Money damages appropriate if abatement is not possible
- ▶ Example, nuisance is in the past and not recurring
- ▶ Balancing of hardship and equities
- ▶ Money damages alone and the nuisance continues can occur if the offense is of economic importance
- ▶ Combinations of abatement and money damages can occur in which the plaintiff pays damages, see *Spur industries v Del Webb*

Right to farm laws

- ▶ Four types:
 - ▶ Reverses 'coming to the nuisance' rule (How long since the farm has been operating?)
 - ▶ Presumption that the farm is not a nuisance
 - ▶ Exclusion statutes (farming cannot be a nuisance)
 - ▶ Exclusion of certain theories or claims (e.g. court appointed mediation precondition for filing a suit)

Bormann v Board of supervisors

- ▶ Are right to farm laws constitutional?
- ▶ They may deprive landowners of a property interest in violation of the Takings clause of the Fifth amendment

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Fifth Amendment

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Takings clause relates to due process of law. The question is whether right to farm legislation may conflict with the fifth amendment?

State Question 777 Oklahoma

To protect agriculture as a vital sector of Oklahoma's economy, which provides food, energy, health benefits, and security and is the foundation and stabilizing force of Oklahoma's economy, the rights and citizens and lawful residents of Oklahoma to engage in farming and ranching practices without a compelling state interest.

