

Environmental law - public and private nuisances

Cahners - Foundations of Law

PRIVATE NUISANCE

DEFINITION

Private nuisance is a continuous, unlawful and indirect interference with the use or enjoyment of land, or of some right over or in connection with it.

Lord Lloyd in *Hunter v Canary Wharf* [1997] 2 All ER 426, stated that private nuisances are of three kinds. They are;

- (1) nuisance by encroachment on a neighbour's land;
- (2) nuisance by direct physical injury to a neighbour's land; and
- (3) nuisance by interference with a neighbour's quiet enjoyment of his land.

Proof of damage is usually necessary.

Foreseeability of harm is a prerequisite of the recovery of damages in private and also public nuisance, per Lord Goff, *Cambridge Water v Eastern Counties Leather* [1994] 1 All ER 53 at 71-2.

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In general, public nuisances threaten a community's health, safety, or overall welfare. The requirements in Michigan are: 1 the event must be of a kind that normally does not occur in the absence of someone's negligence, 2 the event must have been caused by an agency or instrumentality within the defendant's control, 3 the event must not have been due to any voluntary action or contribution on the part of the plaintiff, and 4 evidence of the true explanation of the event must be more readily available to the defendant than to the plaintiff.

Using Nuisance In Environmental Law

It did not, and was not meant to, undermine the public's right to be free of nuisance and the state's duty to abate if a nuisance exists. In addition, some courts will look at whether or not the nuisance existed before or after the plaintiff moved into his property and, if the nuisance was there before the plaintiff was there, whether or not there were other complaints lodged against the defendant before the plaintiff moved into the area.

Health: Environmental Public Health: Health Nuisances Public Nuisances & Property Nuisances

The Economics of Zoning Laws: A Property Rights Approach to American Land Use Controls.

Public nuisance legal definition of public nuisance

Sterns, 142 Ky 513; 1911. The first kind is easier to prove.

Health: Environmental Public Health: Health Nuisances Public Nuisances & Property Nuisances

To establish liability under a nuisance theory, interference with the plaintiff's interest must be substantial.

Ch. 13 Common Law

NUISANCE—DEFINITION A legal nuisance has been defined in Michigan as a condition which exists. On the expiration of this period, the nuisance becomes legalised ab initio, as if it had been authorised in its commencement by a grant from the owner of the servient land. However, he

could not prove ownership of the oyster beds.

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He knows this and avoids stepping on it.

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