

THE NEGLIGENT NUISANCE

by

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Preface

The primary purpose of the study is to analyse the situation whether it is possible for the tort of Nuisance and Negligence is capable of being assimilated. This is because many judges and legal writers have opined that these two torts are fast becoming indistinguishable and capable of assimilation.

The scope of the study includes the comparison of these two torts based on the role of foreseeability in these two torts, the duty of care and scope of Nuisance and the role of reasonable care in determining liability under these two torts.

The underlying method throughout the project paper is to state the principle of law and illustrate them with cases. Researches had been done from various books, journals and articles.

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CHAPTER 1
THE NEGLIGENT NUISANCE

1.1 INTRODUCTION

In 'The Wagon Mound'¹ the Privy Council had to consider claims in public nuisance and negligence arising out of the original accident in Sydney Harbour. The decision in this case has given a fresh life to discussion of the relationship between Nuisance and Negligence. The judgement leaves obscure the relationship between these torts. The Privy Council do not claim to have assimilated them, but in Goldman v Hargrave² the court states 'as this Board has recently explained in the Wagon Mound (No. 2) the tort of nuisance, uncertain in its boundary, may comprise a wide variety of situations, in some of which negligence plays no part, in others of which it is decisive.

In the Wagon Mound (No: 2) 'foreseeability', 'negligence' and fault are jostled together without any clear analysis of the relationship between these concepts or their proper roles in deciding actions in different torts.

¹ Overseas Tankships (U.K) Ltd. v Morts Dock & Engineering Co. Ltd. (1961) A.C. 388.

² (1966) 2 All. E.R. 989

The opinion that these two torts are becoming indistinguishable can cause writers and courts to overlook the detailed rules of the tort concerned. If the courts overlook the detailed rule of the tort concerned it will cause confusion as to which set of legal rules is suitable for the decision in a case.

It is true that the same set of facts may admit of two or more different categorisations and that in the end it may be concluded that the rules applicable to various categories are sufficiently similar to allow of their assimilation, but such conclusion can only be reached after investigation based upon traditional concept of Nuisance and Negligence as a separate torts.

1.2 Nuisance

It is difficult to give a definite definition of Nuisance. This is because Nuisance is not capable of definition. Chief Baron Pollock in the case of *Bamford v Turnley*¹ states that:

"I do not think that the Nuisance for which an action will lie is capable of any legal definition which will be applicable to all cases and useful in deciding them. The question so entirely depends on surrounding circumstances - the place where, the time when... the mode of committing...the duration - as to make it impossible to lay down any rule of a law applicable to every case."

The tort of Nuisance can be classified into Public Nuisance and Private Nuisance. For the purpose of giving a clearer

¹ 1862 3 B & S 66