

Nuisance – Elements

Nuisance is the cause of action you use when someone is interfering with your right to enjoy your property; but trespass is not applicable

Private Nuisance:

Elements:

- 1) Plaintiff has the right to possess or ownership of land;
- 2) The defendant undertakes an action that interferes with the use or enjoyment of that land;
- 3) In a manner that is substantial and in a manner a reasonable person would not tolerate (subjective test)

Public Nuisance:

- This occurs when the interference is with public property, not specifically with anyone's private property (e.g., a street or a park)
- Such an action can typically only be brought by a governmental authority because no person has standing to bring an action for public nuisance. Of course, if the private person suffered specific economic harm, she may be able to sue for negligence, etc.

Nuisance - Other Factors

- The nuisance must have arisen from an act that's actionable as an intentional, negligent or strict liability tort!
- The actions that give rise to the nuisance must be “unreasonable” under the circumstances. Thus:

A “balancing test” must be performed between the harm that the nuisance causes and the benefits of the activities that create the nuisance, taking into account:

- o The economic and social importance of the activity
 - o The burden on the defendant and on society of forcing the activity to cease
 - o Whether there is a more appropriate place to conduct the activity
- All the rules regarding causation and damages apply, as with negligence and strict liability
 - The defenses of assumption of risk and contributory negligence apply; as with any other tort.

Defamation – Elements – Part 1

1) Defamatory Language used by the Defendant

- o Needs to be language that tends to adversely affect one's reputation with either a majority of the community or a "right thinking minority" within the community
- o This can include language that impeaches a person's honesty, integrity, virtue, sanity, health, etc.
- o Language can be defamatory even if, on its face, it's benign if, taken with outside facts, it's defamatory (e.g. "she gave birth to a daughter" when she's been married for 3 months)
- o Opinions are generally not defamation unless they imply knowledge of specific facts; primarily because they, by definition, cannot be shown to be false

Defamation – Elements – Part 1 (cont.)

2) Of and concerning the plaintiff

- o Any person or entity can be defamed, even one with an already bad reputation

- o A person can be defamed even without specific reference to him or her if it's clear from the context who was means by the statement (“colloquium”)

- o A large group cannot be defamed (“all men are unfaithful” is not actionable); but a small group can be (“all members of the San Francisco Giants use steroids” is actionable)

Defamation – Elements - part 2

3) That is “published to a third party

- o This includes any kind of communication to any third party
- o Includes a situation where it is overheard by a foreseeable eavesdropper
- o Includes repetition of the same facts as heard from someone else
- o Includes the publishing of a third party’s advertisement in your newspaper
- o “Single publication rule”: publication of defamation in a periodical or book is one act of defamation by the publisher; not a separate one each time the book or periodical is sold; and vendors are not considered publishers!!

Defamation – Elements - part 2 (cont.)

4) That causes damage to the reputation or business of the plaintiff (“damages”)

Types of damages:

- o “general” (presumed) damages- injury to reputation are presumed to flow from certain types of defamation
- o “special” (economic) damages- specific economic injury that can be proven by the plaintiff

[applicable to public figures as plaintiffs

5) Falsity

6) Fault]

QUIZ TIME!

Slander vs Libel

- Under the old system, “slander” and “libel” were separate torts:
 - o Libel: defamation that is written or recorded or published to large audience (i.e., on radio or TV)
 - o Slander: oral defamation published to small audiences
- Today, they’re both lumped into the category called “defamation” but important differences still exist:
 - o For libel, damages are presumed! Proving economic harm is not necessary; “general” damages are enough
 - o For slander, special (specific economic) damages are required to sustain the cause of action, UNLESS the slander is in a subject matter that is considered “slander per se,” which include statements that:
 - Adversely reflect on the plaintiff’s business or professional abilities
 - Allege that the plaintiff has a “loathsome disease”
 - Allege that the plaintiff committed a crime involving “moral turpitude”
 - Allege unchastity in a woman

Defenses Against a Defamation Action

1) **Truth** (absolute defense if it can be proven by the defendant by the preponderance of the evidence)

2) **Absolute Privilege**; applies to:

- o Statements made during judicial proceedings that bear a reasonable relationship to the matter at hand
- o Statements made during legislative debates and hearings
- o Statements made during government Executive proceedings that bear a reasonable relationship to the matter at hand
- o Communications between spouses

1) **Qualified Privilege**, applies to:

- o Reports of what occurred at public proceedings
- o Matters of public interest
- o Fair comment or criticism (e.g., book reviews etc.)
- o Job recommendations (or lack thereof)

If a statement is protected by qualified privilege, this means that the defendant can only be found liable for the tort in that circumstance if the plaintiff can show some abuse or ill intent or gross negligence on the part of the defendant