

RIGHT TO QUIET ENJOYMENT

The two types of nuisance are private nuisance and public nuisance. A private nuisance is a civil wrong; it is the unreasonable, unwarranted, or unlawful use of one's property in a manner that substantially interferes with the enjoyment or use of another individual's property, without an actual [Trespass](#) or physical invasion to the land. A public nuisance is a criminal wrong; it is an act or omission that obstructs, damages, or inconveniences the rights of the community.

Public Nuisance

The term *public nuisance* covers a wide variety of minor crimes that threaten the health, morals, safety, comfort, convenience, or welfare of a community. Violators may be punished by a criminal sentence, a fine, or both. A defendant may also be required to remove a nuisance or to pay the costs of removal. For example, a manufacturer who has polluted a stream might be fined and might also be ordered to pay the cost of cleanup. Public nuisances may interfere with public health, such as in the keeping of diseased animals or a malarial pond. Public safety nuisances include shooting fireworks in the streets, storing explosives, practicing medicine without a license, or harboring a vicious dog. Houses of prostitution, illegal liquor establishments, [Gaming](#) houses, and unlicensed prizefights are examples of nuisances that interfere with public morals. Obstructing a highway or creating a condition to make travel unsafe or highly disagreeable are examples of nuisances threatening the public convenience.

A public nuisance interferes with the public as a class, not merely one person or a group of citizens. No civil remedy exists for a private citizen harmed by a public nuisance, even if his or her harm was greater than the harm suffered by others; a criminal prosecution is the exclusive remedy. However, if the individual suffers harm that is different from that suffered by the general public, the individual may maintain a TORT ACTION for damages. For example, if dynamiting has thrown a large boulder onto a public highway, those who use the highway cannot maintain a nuisance action for the inconvenience. However, a motorist who is injured from colliding with the boulder may bring a tort action for personal injuries.

Some nuisances can be both public and private in certain circumstances where the public nuisance substantially interferes with the use of an individual's adjoining land. For example, [Pollution](#) of a river might constitute both a public and a private nuisance. This is known as a mixed nuisance.

Private Nuisance

A private nuisance is an interference with a person's enjoyment and use of his land. The law recognizes that landowners, or those in rightful possession of land, have the right to the unimpaired condition of the property and to reasonable comfort and convenience in its occupation.

Examples of private nuisances abound. Nuisances that interfere with the physical condition of the land include vibration or blasting that damages a house; destruction of crops; raising of a water table; or the pollution of soil, a stream, or an underground water supply. Examples of nuisances interfering with the comfort, convenience, or health of an occupant are foul odors, noxious gases, smoke, dust, loud noises, excessive light, or high temperatures. Moreover, a nuisance may also disturb an occupant's mental tranquility, such as a neighbor who keeps a vicious dog, even though an injury is only threatened and has not actually occurred.

An attractive nuisance is a danger likely to lure children onto a person's land. For example, an individual who has a pool on his property has a legal obligation to take reasonable precautions, such as erecting a fence, to prevent foreseeable injury to children.

Trespass is sometimes confused with nuisance, but the two are distinct. A trespass action protects against an invasion of one's right to exclusive possession of land. If a landowner drops a tree across her neighbor's boundary line she has committed a trespass; if her dog barks all night keeping the neighbor awake, she may be liable for nuisance.

Legal Responsibility

A private nuisance is a tort, that is, a civil wrong. To determine accountability for an alleged nuisance, a court will examine three factors: the defendant's fault, whether there has been a substantial interference with the plaintiff's interest, and the reasonableness of the defendant's conduct.

Fault Fault means that the defendant intentionally, negligently, or recklessly interfered with the plaintiff's use and enjoyment of the land or that the defendant continued her conduct after learning of actual harm or substantial risk of future harm to the plaintiff's interest. For example, a defendant who continues to spray chemicals into the air after learning that they are blowing onto the plaintiff's land is deemed to be intending that result. Where it is alleged that a defendant has violated a statute, proving the elements of the statute will establish fault.

Substantial Interference The law is not intended to remedy trifles or redress petty annoyances. To establish liability under a nuisance theory, interference with the plaintiff's interest must be substantial. Determining substantial interference in cases where the physical condition of the property is affected will often be fairly straightforward. More challenging are those cases predicated on personal inconvenience, discomfort, or annoyance. To determine whether an interference is substantial, courts apply the standard of an ordinary member of the community with normal sensitivity and temperament. A plaintiff cannot, by putting his or her land to an unusually sensitive use, make a nuisance out of the defendant's conduct that would otherwise be relatively harmless.

Reasonableness of Defendant's Conduct If the interference with the plaintiff's interest is substantial, a determination must then be made that it is unreasonable for the plaintiff to bear it or to bear it without compensation. This is a [Balancing](#) process weighing the respective interests of both parties. The law recognizes that the activities of others must be accommodated to a certain extent, particularly in matters of industry, commerce, or trade. The nature and gravity of the harm is balanced against the burden of preventing the harm and the usefulness of the conduct.

The following are factors to be considered:

- Extent and duration of the disturbance;
- Nature of the harm;
- Social value of the plaintiff's use of his or her property or other interest;
- Burden to the plaintiff in preventing the harm;
- Value of the defendant's conduct, in general and to the particular community;
- Motivation of the defendant;
- Feasibility of the defendant's mitigating or preventing the harm;
- Locality and suitability of the uses of the land by both parties.

[Zoning](#) boards use these factors to enact restrictions of property uses in specific locations. In this way, zoning laws work to prohibit public nuisances and to maintain the quality of a neighborhood.

Defenses

In an attempt to escape liability, a defendant may argue that legislation (such as zoning laws or licenses) authorizes a particular activity. Legislative authority will not excuse a defendant from liability if the conduct is unreasonable.

A defendant may not escape liability by arguing that others are also contributing to the harm; damages will be apportioned according to a defendant's share of the blame. Moreover, a defendant is liable even where his or her actions without the actions of others would not have constituted a nuisance.

Defendants sometimes argue that a plaintiff "came to a nuisance" by moving onto land next to an already operating source of interference. A new owner is entitled to the reasonable use and enjoyment of his or her land the same as anyone else, but the argument may be considered in determining the reasonableness of the defendant's conduct. It may also have an impact in determining damages because the purchase price may have reflected the existence of the nuisance.

Remedies

Redress for nuisance is commonly monetary damages. An [Injunction](#) or abatement may also be proper under certain circumstances. An injunction orders a defendant to stop, remove, restrain, or restrict a nuisance or abandon plans for a threatened nuisance. In public nuisance cases, a fine or sentence may be imposed, in addition to abatement or injunctive relief.

Injunction is a drastic remedy, used only when damage or the threat of damage is irreparable and not satisfactorily compensable only by monetary damages. The court examines the economic hardships to the parties and the interest of the public in allowing the continuation of the enterprise.

A [Self-Help](#) remedy, abatement by the plaintiff, is available under limited circumstances. This privilege must be exercised within a reasonable time after learning of the nuisance and usually requires notice to the defendant and the defendant's failure to act. Reasonable force may be used to employ the abatement, and a plaintiff may be liable for unreasonable or unnecessary damages. For example, dead tree limbs extending dangerously over a neighbor's house may be removed by the neighbor in danger, after notifying the offending landowner of the nuisance. In cases where an immediate danger to health, property, or life exists, no notification is necessary.