

Pennsylvania Nuisance Law

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*By Jeff Feirick, Legal Research Assistant, Class of 2001
The Agricultural Law Research and Education Center
The Pennsylvania State University, The Dickinson School of Law*

Not so long ago, many people in America lived on a farm or in a rural setting. To visit your neighbor, you had to walk down the gravel lane and across the meadows to get to your neighbor's front door. Today, many people live in cities or in developments where each house is located on a small piece of land. Some people live on lots with no land between their home and their neighbors'. Because people are living closer and closer together, conflicts frequently arise when activities by one landowner affect a neighbor or the community.

The ownership of land and property is a right we enjoy in America. With that right comes the responsibility to use our property without annoying or injuring others. "Nuisance" is the term used to describe these conflicts. This paper will discuss the current state of nuisance law in Pennsylvania. Pennsylvania defines a nuisance as "a class of wrongs that arise from the unreasonable, unwarrantable, or unlawful use by a person of his own property . . . to the right of another, or the public, producing such material annoyance, inconvenience, discomfort or hurt that the law will presume a consequential damage."¹ Simply put, nuisance is one property owner's use of his property in a way which causes harm to another.

Distinction between Private and Public Nuisances

Nuisances are commonly classified as private or public. In general, a private nuisance refers to an activity that does not involve physical trespass, but nevertheless interferes with an individual's reasonable use or enjoyment of his or her property.² When this happens the harmed individual brings a lawsuit. For example, a private nuisance may involve two neighbors disputing over noise generated by a family business.

A public nuisance is an activity that threatens the public health, safety or welfare, or does damage to community resources.³ The extent to which others are affected by the activity determines whether a nuisance is public or private. Public nuisances involve a large number of people. For example, the pollution of the town water supply is a public nuisance, and the government or the parties harmed may bring the lawsuit.

Private Nuisance

While nuisance law developed many centuries ago, in *Kembel v. Schlegel*,⁴ the Pennsylvania Superior Court ruled that section 822 of the Restatement (Second) of Torts contains the authoritative definition of the tort of private nuisance in Pennsylvania. Section 822 provides:

A property owner is subject to liability for a private nuisance if, but only if, his conduct is the thing that encroaches another's interest in the private use and enjoyment of land, and the encroachment is either

- a. intentional and unreasonable, or
- b. unintentional and otherwise actionable under the rules controlling liability for negligent or reckless conduct, or for abnormally dangerous conditions or activities.⁵

Significant Harm to the Normal Person

The Restatement section 821F indicates that a person is not subject to liability for interfering with someone else's property rights unless the interference causes significant harm. Significant harm is further defined in section 821F(c): "Significant harm is harm of importance, involving more than slight inconvenience or petty annoyance. The law does not concern itself with trifles, and in the case of a private nuisance, there must be a real and appreciable interference with the owner's use or enjoyment of his land before he can have a cause of action." Furthermore, the determination of significant harm is harm in the opinion of a "normal person."

The Restatement section 821F further defines what is meant by the term "normal person." "When the encroachment of property involves only personal discomfort or annoyance, it is sometimes difficult to determine whether the encroachment is significant. The standard for the determination of significant character is the standard of normal persons or property in the particular locality. If normal persons living in the community would regard the encroachment of property in question as definitely offensive, seriously annoying or intolerable, then the encroachment is significant."

In *Karpiak v. Russo*,⁶ several homeowners sued a landscaping supply business because of noise, odor and dust. The Court concluded that the landscaping business might have been annoying and causing an inconvenience, but that it had not reached the level where it was seriously annoying or intolerable. One homeowner complained that dust settled on his home, car and patio furniture requiring him to clean these items. The production of serious amounts of dust from a business can constitute a nuisance as long as the dust causes significant harm to the complaining party. In this case, the court concluded that the dust did not rise to that level. There was no evidence that the dust caused the homeowners' health problems or that it affected their ability to carry on their daily activities.⁷

In that same case, another homeowner had complained that the machinery used to run the landscaping business was noisy. The court held that noise during daylight hours was not out of character for that area because trucks traveled on the road by the houses and normally the noise from the machinery stopped after 4:00 pm. The Court noted, in

contrast, that in *Anderson v. Guerrein Sky-Way Amusement Co.*,⁸ bright lights and noise from a drive-in theater were held to be inconsistent with the residential character of the neighborhood because they prevented the neighbors from sleeping.

Punitive Damages

Also in *Karpiak v. Russo*,⁹ the homeowners who lived beside the landscaping business sued for punitive damages. A court may award damages over and above the actual damage done for the purpose of punishing the wrongdoer. In accordance with *Kirkbride v. Lisbon Contractors, Inc.*,¹⁰ Pennsylvania looks to the Restatement (Second) of Torts section 908(2) for the standard for determining when punitive damages may be awarded: "(2) Punitive damages may be awarded for conduct that is outrageous, because of a person's evil motive or his reckless indifference to the rights of others. In assessing punitive damages, the judge or jury can properly consider the character of the person's act, the nature and extent of the harm the person caused or intended to cause and the wealth of the wrongdoer."¹¹ The Court found that the landscaping business was not evil, outrageous, or indifferent. The Court dismissed the request for punitive damages.

Examples of Actions Which Have Been Held to be a Private Nuisance in Pennsylvania¹²

- keeping a tiger in a residential area even though the owner had an exotic wildlife permit
- dust from a truck stop was sufficient to constitute a private nuisance where health problems to the employees resulted
- excessive noise from a racetrack in a residential area

Inability To Sell Land is Not a Private Nuisance

In *Golen v. Union Corporation*,¹³ U.C.O.-M.B.A., Inc., the owners of land next to contaminated ground filed a private nuisance suit, based upon their inability to sell their property. The owners admitted that the land they owned was not contaminated, but the property next to them was listed on the EPA's CERCLA list which provided notice to all potential buyers that the land in that particular area was contaminated. The Court held that the inability to sell property was, by itself, insufficient to establish a private nuisance because if the court were to grant the request for compensation, liability would attach any time a property owner engaged in an activity that ostensibly reduced surrounding property values. For example, a property owner opening an unpopular public housing project or an AIDS clinic would be held strictly liable for a decline in surrounding property values, and this, the Court said should not happen.¹⁴

Public Nuisance

As noted above, a public nuisance differs from a private nuisance in that a public nuisance harms more people or property and interferes with the rights of the public. It

may also involve the violation of a statute. Pennsylvania Courts have adopted Section 821B of the Restatement (Second) of Torts for the elements of a claim for public nuisance.¹⁵ Section 821B provides:

1. A public nuisance is an unreasonable interference with a right common to the general public.
2. Circumstances that may sustain a holding that an interference with a public right is unreasonable include the following:
 - a. whether the conduct involves a significant interference with the public health, the public safety, the public peace, the public comfort, or the public convenience, or
 - b. whether the conduct is proscribed by a statute, ordinance or administrative regulation, or;
 - c. whether the conduct is of a continuing nature or has produced a permanent or long-lasting effect, and, as the person knows or has reason to know, has a significant effect upon the public right.

An action may be declared a public nuisance as a matter of common law, if, though not prohibited by statute, it unreasonably interferes with the rights of the public.¹⁶ Interference with a public right is unreasonable when the conduct involves a significant interference with the public's safety, the public peace, the public comfort or the public convenience.¹⁷ For example in *Commonwealth v. Barnes & Tucker Co.*,¹⁸ the government asked the Court to make the Barnes & Tucker Company clean up an abandoned mine which was polluting a river. The company argued that they were not required to do so under the Clean Streams Law. The mine was found to be a public nuisance because it was polluting a nearby stream, and the Court ordered Barnes & Tucker to clean up the closed mine.

The Pennsylvania Supreme Court has held that an activity may also be a public nuisance because it is so declared either explicitly or implicitly by statute.¹⁹ For example, Title 68, section 467 of the Pennsylvania Statutes explicitly states that "Any building . . . used for the purpose of . . . prostitution is hereby declared to be a common nuisance."²⁰ Likewise, in *Pennsylvania SPCA v. Bravo Enterprises*,²¹ the Court held that bullfighting was a public nuisance proscribed by statute, even though the statute did not explicitly declare it to be a public nuisance.

In *Muehliab v. City of Philadelphia*,²² Muehliab was issued a Private Kennel Class I license (by the Pennsylvania Department of Agriculture) to run a kennel with fifty dogs or less. The City of Philadelphia had an ordinance which allowed no more than twelve dogs per residence. Muehliab housed twenty dogs in her home within city limits. The Department of Agriculture inspected Muehliab's home and no discrepancies were noticed. Numerous neighbors complained including the pastor of a local church who testified at trial that he had to cancel church on several occasions because the barking dogs disrupted the church service. The City contended that Muehliab's home/dog kennel violated city health, housing, and zoning provisions. Muehliab argued that the state dog law prevailed over the city ordinance. The court found the focus of the state dog law was

to protect dogs while the focus of the city ordinance was to protect the health, safety and welfare of the citizens of Philadelphia. The Court held that the City ordinance should prevail and ruled Muehliab was operating a public nuisance.²³

Relief Given by the Courts

After the harmed person establishes that the property owner has created and maintained a public nuisance, the requirements of the Restatement (Second) of Torts Section 821C(1) applies in determining whether the complaining person can ask the court for damages and/or an order to make the wrongdoer stop, i.e. to "abate the nuisance." Section 821C(1) provides in relevant part: "in order to recover damages in an individual action for a public nuisance, a person must have suffered harm of a kind **different** from that suffered by other members of the public."²⁴ The same requirement to bring a public nuisance claim applies whether the individual is seeking damages from the action or a court order stopping the action.²⁵

In *Pottstown Industrial Complex v. P.T.I. Services, Inc.*,²⁶ the Pottstown Industrial Complex sought the removal of dielectric fluids from electrical transformers when the tenant allowed polychlorinated biphenyls (PCBs) to leach into the ground. The Court ruled P.T.I.'s dumping of PCBs on the Industrial Complex was an automatic nuisance because of the Pennsylvania Hazardous Sites Cleanup Act (HSCA), which makes the release of a hazardous substance a public nuisance.²⁷ The Industrial Complex was allowed to recover clean up costs as damages.²⁸

Abatement of a Nuisance

When property becomes so dilapidated that it is a nuisance, a local government may order the abatement of that nuisance. "Abatement of a Nuisance" means to remove, stop or destroy that which causes a nuisance, whether by breaking or pulling it down, or otherwise destroying it.²⁹ A government ordinance to abate unsafe structures is rationally related to the promotion of the public welfare and is a proper and necessary exercise of a government's police power as long as there is factual evidence to support its application to a specific structure.³⁰ The process to abate an unsafe structure must still be carried out in a manner that gives the property owner proper notice and the chance to abate the nuisance.³¹ If the property owner fails to repair or eliminate the dangerous condition within a reasonable time, then the City has the ability to tear down the structure and charge the landowner the cost of disposal.³² A reasonable amount of time has ranged from 30 days,³³ to 90 days,³⁴ or even four months.³⁵

A lawful business may be required to cease operating in a particular way, if it is shown that, under the particular circumstances, its operation constitutes a public nuisance.³⁶ In *Reid v. Brodsky*,³⁷ a taproom-restaurant was located in an exclusively residential neighborhood. Its patrons, who came largely from other neighborhoods, threatened to destroy the character of the residential community by their actions. Loud and unseemly noise, both from patrons and its juke box on occasions emanated from the restaurant itself, patrons entered and left the restaurant in an intoxicated condition and intoxicated persons utilized neighborhood properties and alleys for toilet purposes. The Court found

the conduct of the taproom patrons amounted to a public nuisance and shut down the business to stop the nuisance.

Criminalization of Public Nuisances

The Pennsylvania Legislature has enacted Title 18, section 6504 of the Pennsylvania Statutes to criminalize public nuisances.

"Whoever erects, sets up, establishes, maintains, keeps or continues, or causes to be erected, set up, established, maintained, kept or continued, any public or common nuisance is guilty of a misdemeanor of the second degree. Where the nuisance is in the existence at the time of the conviction and sentence, the court, in its discretion, may direct either the defendant or the sheriff of the county at the expense of the defendant to abate the same."³⁸

The statute fails to define "common or public nuisance." Consequently, decisions involving criminal prosecutions for maintaining a public nuisance have not attempted to define the term but have simply decided whether the conduct in question constitutes a "public nuisance" under the circumstances of each case.³⁸

The case of the *Commonwealth of Pennsylvania v. MacDonald*,⁴⁰ arose out of an effort by the District Attorney of York County to prevent the showing of certain obscene motion pictures, and violations of the obscenity law. MacDonald was charged with maintaining a public and common nuisance by showing the films "Deep Throat" and "The Devil and Mrs. Jones." MacDonald argued that section 6504 of the Crimes Code could not be applied to the conduct charged because it was constitutionally protected free speech. The Court agreed with MacDonald because the code provided an inadequate definition of obscenity. The Court added that an activity may be a public nuisance because it is so declared by statute, either explicitly or implicitly, or alternatively, because it is so declared as a matter of common law, if, though not prohibited by statute, it unreasonably interferes with the rights of the public.⁴¹

Pennsylvania Courts have interpreted section 6504 on many occasions. For example, in 1978, a mother was found guilty of sustaining a public nuisance when she allowed her five daughters aged six to seventeen to physically beat neighborhood children, utter profanity, be loud and boisterous, throw rocks at people, spit and throw trash. The Court held that her actions were wrong and her improper conduct violated the rights of her neighbors and she must be held accountable.⁴²

Other Examples of Actions Held to be a Public Nuisance Across the United States⁴³

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| <u>Public Health</u> | -keeping of diseased animals
-keeping a malarial pond
-keeping over 12 dogs or cats in a residence |
| <u>Public Safety</u> | -storage of explosives
-shooting of fireworks in the streets
-harboring a vicious dog |

<u>Public Morals</u>	-the practice of medicine by one not qualified -houses of prostitution -illegal liquor establishments -bullfights -unlicensed prize fights
<u>Public Peace</u>	-engaging in gambling as a livelihood -loud and disturbing noises -an opera performance which threatens to cause a riot -obstructing a private or public road
<u>Public Comfort</u>	-bad odors, smoke, dust and vibration
<u>Public Convenience</u>	-obstructing a highway or a navigable stream -creating a condition which makes travel unsafe or highly disagreeable -allowing of an inconvenient crowd to gather

¹Feeley v. Borough of Ridley Park, 551 A.2d 373, 375 (Pa. Commw. Ct. 1988)

²Golen v. Union Corp., 718 A.2d 298, 300 (Pa. Super. Ct. 1998)

³Com. v. MacDonald, 347 A.2d 290, 301 (Pa. 1975)

⁴Kemmel v. Schlegel, 478 A.2d 11(Pa. Super. Ct. 1984)

⁵Kirpiak v. Russo, 676 A.2d 270, 272 (Pa. Super. 1996) (quoting the Restatement (Second) of Torts § 822 (1977))

⁶Id., at 273

⁷Id., at 274

⁸Anderson v. Guerrein Sky-Way Amusement Co., 29 A.2d 682 (Pa. 1943)

⁹Karpiak v. Russo, 676 A.2d 270 (Pa. Super. Ct. 1996)

¹⁰Kirkbride v. Lisbon Contractors, Inc., 555 A.2d 800 (Pa. 1989)

¹¹Restatement (Second) of Torts § 908(2) (1977)

¹²See e.g., (tiger) Fairview Township v. Schaefer, 562 A.2d 989 (Pa. Commw. Ct. 1989), app den. 574 A.2d. 73 (Pa. 1989);(truck stop dust) Harford Penn-Cann Service, Inc., v. Zymblosky, 549 A.2d 208 (Pa. Super. Ct. 1988; Township of Bedminister v. Vargo Dragway, Inc., 253 A.2d 659 (Pa. 1969);

¹³Golen v. Union Corporation, U.C.O.-M.B.A., Inc., 718 A.2d 298, 299 (Pa. Super. Ct. 1998)

¹⁴Id., at 301

¹⁵Com. v. Danny's Book Store, 625 A.2d 119, 121-122 (Pa. Commw. Ct. 1993); Muehlieb v. City of Philadelphia, 574 A.2d 1208, 1211 (Pa. Commw. Ct. 1990)

¹⁶MacDonald, 347 A.2d at 303

¹⁷Muehlieb, 574 A.2d at 1211

¹⁸Com. v. Barnes & Tucker Co., 319 A.2d 871, 881_883 (Pa. 1974)

¹⁹MacDonald, 347 A.2d at 303

²⁰68 Pa Cons. Stat. Ann. § § 467-473 (West 1999)

²¹Pennsylvania SPCA v. Bravo Enterprises, 237 A.2d 342, 348 (Pa. 1968)

²²Muehlieb v. City of Philadelphia, 574 A.2d 1208 (Pa. Commw. Ct. 1990)

²³Muehlieb v. City of Philadelphia, 574 A.2d 1208, 1211 (Pa. Commn. Ct. 1990)

²⁴Pottstown Industrial Complex v. P.T.I. Services, Inc., 1992 WL 50084 at *9 (E.D. Pa. 1992)

²⁵Id.

²⁶Pottstown Industrial Complex v. P.T.I. Services, Inc., 1992 WL 50084 (E.D.Pa.)

²⁷35 Pa. Cons. Stat. Ann. § 6020.1101 (West 1999)

²⁸Id.

²⁹Black's Law Dictionary, 1066 (6th ed. 1990)

³⁰City of Pittsburgh v. Kronzek, 280 A.2d 488 (Pa. Commw. Ct. 1971)

³¹Keystone Commercial Properties, Inc. v. City of Pittsburgh, 347 A.2d 707 (Pa. 1975)

³²Id.

³³Id.

³⁴Groff v. The Borough of Sellersville, 314 A.2d 328 (Pa. Commw. Ct. 1974)

³⁵King v. Township of Leacock, 552 A.2d 741 (Pa. Commw. Ct. 1989)

³⁶Ranck v. Bonal Enterprises, Inc., 359 A.2d 748 (Pa. 1976) See Commonwealth v. Barnes & Tucker Co., 454 Pa. 392, 319 A.2d 871 (1974); Reid v. Brodsky, 397 Pa. 463, 156 A.2d 334 (1959).

³⁷Reid v. Brodsky, 156 A.2d 334 (Pa. 1959)

³⁸Id.

³⁹Com. v. MacDonald, 347 A.2d 290, 300 (Pa 1975)

⁴⁰MacDonald, 347 A.2d at 300

⁴¹Id., at 303

⁴²Com. v. Brown, 7 Pa. D.& C.3d 418 (C. P. of Dauphin County, 1978)

⁴³Com. v. MacDonald, 347 A.2d 290, 301 (Pa. 1975) (quoting from W. Prosser, Law of Torts § 88, at 583-585 (4th ed. 1971))

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The Agricultural Law Resource and Reference Center
The Pennsylvania State University, The Dickinson School of Law
150 S. College Street, Carlisle, PA 17013-2899
Phone: 717-241-3517
Fax: 717-240-5131
E-mail: aglaw@psu.edu