
Remedies for Nuisance and Trespass

Stephen L. R. McNichols

I. INTRODUCTION §11.1

II. NUISANCE

- A. General Definition §11.2
- B. Nuisance Per Se §11.3
- C. Categories of Nuisance Under CC §3479 §11.4
 - 1. Objective Standard Under CC §3479 §11.5
 - 2. Balancing of Equities Required Under CC-3479 §11.6
- D. Public Nuisance
 - 1. Definition §11.7
 - 2. Standing §11.8
- E. Private Nuisance
 - 1. Definition §11.9
 - 2. Threat of Future injury §11.10
 - 3. Blockage of Air, Light or View §11.11
- F. Nuisance That Is Both Public and Private §11.12
- C. Distinction Between Temporary or Continuing Nuisances and Permanent Nuisances
 - 1. Importance of Classification for Selection of Remedies §11.13
 - 2. Factors §11.14
 - 3. Election by Plaintiff §11.15
 - 4. Courts' Preference for Continuing Nuisance §11.16

III. TRESPASS

- A. Definition §11.17
- B. Distinction Between Nuisance and Trespass §11.18

IV. ENCROACHMENT §11.19

V. REMEDIES FOR PUBLIC NUISANCE §11.20

VI. REMEDIES FOR PRIVATE NUISANCE AND TRESPASS §11.21

- A. Right to Self-Help §11.22
- B. Injunction §11.23
- C. Tort Measure of Damages §11.24
 - 1. Continuing Nuisance §11.25
 - 2. Permanent Nuisance §11.25
 - 3. Continuing Trespass §11.27
 - 4. Permanent Trespass §11.28
- D. Damage, Destruction, or Removal of Fixtures or Personal Property §11.29
- E. Injury to Persons §11.30
- F. Lost Profits §11.31
- G. Attorney Fees §11.32
- H. Prejudgment Interest §11.33
- I. Punitive Damages §11.34
- J. Statutory Limitations on Recovery §11.35

VII. DEFENSES

- A. Comparative Fault §11.36
- B. Statutes of Limitation and Repose
 - 1. Public Nuisance and Trespass §11.37
 - 2. Private Nuisance and Trespass §11.38
 - a. Permanent Nuisance and Trespass §11.39
 - b. Continuing Nuisance and Trespass §11.40
 - c. Special Rules for Pollution Cases §11.41
- C. Laches §11.42
- D. Coming to Nuisance §11.43
- E. Consent §11.44
- F. Balancing Equities §11.45
- G. Due Care §11.46
- H. Use Consistent With Applicable Zoning §11.47
- I. Separation of Powers, Immunity, and Preemption §11.48
- J. Scope of injunction §11.49

VIII. RELATED ACTIONS §11.50

IX. FORM: COMPLAINT FOR DAMAGES AND FOR INJUNCTION (NUISANCE, INFLICTION OF EMOTIONAL DISTRESS, AND/OR TRESPASS) §11.51