RESTRICTIONS ON THE USE AND ENJOYMENT OF PROPERTY UNDER THE ENGLISH LAW, THE ISLAMIC LAW AND THE MALAYSIAN LAW.

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In the name of Allah, the Most Gracious and the Most Merciful. All praises be unto Him, Lord of the universes. I invoked His shalawat and salam to the Greatest Messenger, His last Prophet, Sayyidina Muhammad, and may the same be given to his families, companions and followers.

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CHAPTER 1: THE GENERAL RIGHTS OF AN OWNER.

1.1) Introduction.

An owner can be said to be the person who has the ownership of the property. Ownership denotes the relation between a person and the object or thing forming the subject-matter of his ownership. It consist in a complex rights or a bundle of rights, all of which are rights *in rem*, being good against all the world and not merely against specific persons[1]. In other words, the owner holds the rights to the exclusions of all others.

So to be an owner means that such person should have several rights over the property. These rights are enumerated by some jurists such as Austin as follows:

a) the owner will have a right to possess the thing which he owns.

b) the owner normally has the right to use and enjoy the thing owned.

c) the owner has the right to consume, destroy or alienate the property.[2]

Scrutinizing the classifications of these general rights, we can further summarize them into two classes, viz. the right to possess which is a right in its strict sense; and the right to use and enjoy the property which is a liberty, and therefore shall include the right to manage the property, the right to the income from it, the right to consume it, the right to dispose it, the right to destroy it and the right to alienate it. Our study will be dealing only with the second part of the owner's rights to his property, that is his right to use and enjoy the property.

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[1] P.J. Fitzgerald, *Salmond On Jurisprudence*, 246 (1966).

[2] Ibid. See also R.W.M. Dias and G.B.J. Hughes, *Jurisprudence*, 343 (1957); F.H. Lawson and Bernard Rudden, *The Law Of Property*, 8 - 10 (1982); Patrick J. Dalton, *Land Law*, 32 (1975); David J. Hayton, *Megarry's Manual Of The Law Of Real Property*, 550 - 551 (1982); and E.L.G. Tyler and N.E. Palmer, *Crossley Vaines On Personal Property*, 39 (1973).

1.2) The right to use and enjoy property under the English law.

The English law holds that a man can be the absolute owner of the property. Being an absolute owner means that the owner can exercise all his legitimate rights to his property as he likes. Therefore, Austin tends to say that the owner's rights are 'indefinite in point of user, unrestricted in point of restriction and unlimited in point of duration.' This is so because the owner is the absolute owner, therefore he has no duty to answer for what he had done with his property to anybody.[3]

The rights to use and enjoy his property by the owner, means that the owner has a liberty to use, to enjoy, to manage, to dispose, to consume, to destroy or to alienate the thing in any manner he desires, he is under no duty not to use, to enjoy, to manage, to dispose, to consume, to destroy, or to alienate it, in contrast with others who are under a duty not to use or interfere with the owner's property. It is an assumption that a person may use a thing belonging to him in any way he likes. This was the previous presumption of the English Law, during the past era of individualism where the doctrine of laissez-faire[4] was the prevailing principle. During that era only a few restrictions were imposed on the owner's rights to use and enjoy his property.[5]

But from about the middle of the nineteenth century onwards, the social emphasis began to shift with ever increasing force towards society at large and away from the individual. In accordance with the change in the society, the law towards the unrestricted

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[3] R.W.M. Dias and G.B.J. Hughes, *op.cit.* at 343. See also E.L.G. Tyler and N.E. Palmer, *op.cit.* at 39.

[4] The doctrine which holds that the law or the State should interfere with the private rights of the citizens as less as possible. The citizens should be left alone to get on their businesses and exercise their rights, unhampered by the State interference.

[5] P.J. Fitzgerald, *op.cit.* at 246. See also R.W.M. Dias and G.B.J. Hughes, *op.cit.* at 342.

right of the owner to use and enjoy his property also change. If previously, the owner was unfettered by numerous restrictions but a few, now, as the principle of laissez-faire was being discarded, the State tends to look into such rights of the owner and is more than willing to restrict them, using the public benefit as the yard-stick. This was done by imposing various and numerous statutes. This is the story of the English Law and perhaps the man-made law.[6]

1.3) The rights to use and enjoy property under the Islamic law.

In contrast, the Islamic law does not experienced such evolution that was experienced by the English law. This is because the Islamic law was born as a perfect law, needing no changes. The reasoning for this is that Islamic law is not the product of human reason, it is the divine revelations of the Creator Himself.

Under the Islamic law, the rights to use and enjoy the property are curtailed by various restrictions. This is because the Islamic law confers no absolute ownership to any person. The highest degree of ownership than a person can have is the 'perfect ownership'[7] as opposed to 'partial ownership'[8]. Thus, the absolute ownership belongs only to the Creator, the Al-Mighty Allah Himself. He is the only true and absolute *Maalik* (Owner). This is confirmed by Him in the various *ayah* of the *Quran* such as:

" To Allah belongeth all that is in the heavens and on earth."[9]

" To Allah belongs all that is in heavens and on earth;"[10]

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[6] R.W.M. Dias and G.B.J. Hughes, *op.cit.* at 342 - 343.
[7] *Al-Milk al-Tamm.*
[8] *Al-Milk Al-Naqis.*
[9] Al-Quran, 2:284.
[10] Al-Quran, 3:109.

" To Allah belongs the heritage of the heavens and the earth;"[11]

" But to Allah belong all things in the heavens and on earth;"[12]

" To Him (Allah) belongs the dominion of the heavens and the earth:"[13]

All the ayah abovementioned are stating that only Allah is the absolute Owner of the whole universes.

Men only hold the property in trust. Therefore, they can only use and enjoy the property which are in their hands in accordance with the deed of the trust, which is no other that the Shari'ah or the Islamic law. They are answerable to the real Owner of the property, Allah the Al-Mighty. Allah has imposed several restrictions on the ownership of man as to property. So man rights to use and enjoy the property entrusted to him are always limited by the Shari'ah.

1.4) Conclusion.

We will discuss these restrictions, be it from the English law or the Islamic law in the subsequent chapters. We will also see the situation under the Malaysian law, which is unique in the sense it is neither totally English nor does it purely Islamic, but a mixture between them with the English law taking the lead. Then we shall end this study with a conclusion where certain observations will be forwarded.

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[11] Al-Quran, 3:180.
[12] Al-Quran, 4;126.
[13] Al-Quran, 57:5. See also 5:17 - 18; 6:12; 16:52; 20:6; 21:19; 22: 64; 24:64; 30:26; 34:1; and 42:49.

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2.4) Conclusion.

CHAPTER 2: RESTRICTIONS ON THE ENJOYMENT OF PROPERTY UNDER THE ENGLISH LAW.

2.1) Introduction.

In the past, an owner of a property may used and enjoyed his property according to his wants and desires without being fettered by numerous limitations or restrictions. This does not mean that there are no restrictions imposed upon his rights to use, dispose and enjoy his property. There are restrictions placed upon him regarding his property, but prior to the 20th century, these restrictions were minimal.[1]

Previously a landowner was very largely free to do as he pleased with his own[2]. He could usually act with impunity despite any consequent injury to others or to the environment. Thus he could erect buildings on his land wherever he wished, use them for any purpose, and alter or demolish them at will; and he was equally free to open mines on his land, or change its use. He could also evict his tenants and increase their rents whenever he wished unless prevented by the term of their tenancies.[3] Therefore, the owner in general, may use his land in the natural course of user in any way he thinks fit. He may waste or despoil it as he pleases and he is not liable merely because he neglects it.[4]

In *Giles v. Walker*[5], the defendant, a farmer, occupied land which had originally been forest land, but which had some years prior to 1883, when the defendant's occupation of it commenced, been brought into cultivation by the then occupier. The forest

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[1] David J. Hayton. *Megarry's Manual of the Law of Real Property*, 550 (1982).
[2] His property.
[3] Robert Megarry and M.P. Thompson, *Megarry's Manual of the Law of Real Property*, 506 (1993).
[4] *Id.* at 507.
[5] (1890) 24 Q. B. D. 656.

land prior to cultivation did not bear thistles[6]; but immediately upon its being cultivated thistles sprang up all over it. The defendant neglected to mow the thistles periodically so as to prevent them from seeding, and in the years 1887 and 1888 there were thousands of thistles on his land in full seed. The consequence was that the thistle seeds were blown by the wind in large quantities on to the adjoining land of the plaintiff, where they took root and did damage. The plaintiff sued the defendant for such damage in the county court. The judge left to the jury the question whether the defendant in not cutting the thistles had been guilty of negligence. The jury found that he was negligent, and the judgment was accordingly entered for the plaintiff. The defendant appealed, and his appeal was allowed. Lord Coleridge, C. J., in favour of the defendant, held, inter alia: "There can be no duty as between adjoining occupiers to cut thistles, which are the natural growth of the soil. The appeal must be allowed."[7]

From the case we can see that the landowner has no duty to use his land in a manner as not to cause problem to the neighbours. What he did on his land was his rights to use and enjoy his property to the exclusion of others. He owed no one a duty to use his land in certain prescribed manner. But this is true in the olden days, when the society was a simple society in the sense that it was not as complex and as sophisticated as the present days or the modern society.

Later, the view of the court was changed. The decision of Lord Coleridge was questioned in the case of ***Davey v. Harrow Corporation***[8]. where the plaintiff's house was

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[6] A wild plant with prickly leaves and yellow, white, or especially purple flowers. The thistle is the national sign of Scotland.
[7] ***Giles v. Walker*** (1890) 24 Q. B. D. 656 at 657.
[8] [1958] 1 Q. B. D. 60.

damaged by the penetration of roots which came from trees on the adjoining land, the property of the defendants. The plaintiff brought an action for damages for nuisance against the defendants. It was held that if the trees encroached onto adjoining land, whether by branches or roots, and caused damage, an action for nuisance would lie against the owner of the land on whose property the tree stood, without making distinction as to whether the trees were planted or self-sown. Lord Goddard C. J. in giving the judgment stated, inter alia, as follows: " The former case[9], which has not escaped criticism by text writers of great learning and eminence, and was cited, but with caution, by Scrutton L. J. in ***Job Edwards Ltd. v. Birmingham Navigations***[10], decided that no action lay where an owner had ploughed up forest land and in consequence a large growth of thistles sprang up and the thistledown was blown onto neighbouring land. The judgment of the Divisional Court is exceedingly short - Lord Coleridge C. J. merely observing that he had never heard of such an action and that the alleged duty, namely, to cut the thistles, could not exist as the thistles were the natural growth of the soil. Lord Esher was the other member of the court and is reported as saying during the argument: " This damage is not caused by any act of the defendant. Can you show us any case which goes so far as to say that, if something comes on a man's land for which he is no way responsible, that he is bound to remove it, or else prevent its causing injury to any of his neighbours?" Apparently counsel did not reply, but had he known of ***Margate Pier and Harbour Proprietors v. Margate Town Council***[11], it would have been a complete answer. In that case the harbour authority were held liable for nuisance caused by the accumulation of seaweed washed up by the action of

[9] *Giles v. Walker* (1890) 24 Q. B. D. 656.
[10] [1924] 1 K. B. 341.
[11] (1869) 20 L. T. 564.

wind and tides into the harbour. Lush J., giving the judgment of the Divisional Court, almost as short as was that in ***Giles v. Walker***[12], said that he had no doubt whatever that it was the duty of the appellants to prevent the accumulation of seaweed so that it should not become a nuisance, whether produced by natural or artificial causes."[13] ***Giles v. Walker***[14] was not followed in this case.

Later in the case of ***Leakey And Others v. National Trust For Places Of Historic Interest Or Natural Beauty***[15], the court overruled the decision in ***Giles v. Walker***[16]. It is to be noted that in ***Giles v. Walker***[17] the action was brought in negligence, whereas in the two later cases, the actions were for nuisance. Previously, this difference was material, but with the decision in Leakey's case the distinction is no longer material. In ***Davey v. Harrow Corporation***[18], Lord Goddard C. J. stated that: " We think such an action today, especially if founded on nuisance and not on negligence, as was ***Giles v. Walker***[19], might well be decided differently."

From the early case of ***Giles v. Walker***[20], we can see that the landowner has no duty to use his land in a manner as not to cause problem to the neighbours. What he did on his land was his rights to use and enjoy his property to the exclusion of others. He owed no one a duty to use his land in certain prescribed manner. But this is true in the olden days, when the society was a simple society in the sense that it was not as complex and as

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[12] (1890) 24 Q. B. D. 656.
[13] ***Davey v. Harrow Corporation*** [1958] 1 Q. B. D. 60 at 71-72.
[14] (1890) 24 Q. B. D. 656.
[15] [1980] 1 Q. B. D. 485.
[16] (1890) 24 Q. B. D. 656.
[17] *Ibid.*
[18] [1958] 1 Q. B. D. 60 at 72.
[19] (1890) 24 Q. B. D. 656.
[20] *Ibid.*

sophisticated as the present days or the modern society. Today, the position has been transformed. The decisions in ***Davey v Harrow Corporation***[21] and ***Leakey And Others v. National Trust For Places Of Historic Interest Or Natural Beauty***[22], showed the evolution of the law.

In the course of ensuing eighty years, the position has altered radically: massive statutory innovation has overlaid the traditional freedom to act, i.e. to use, to dispose and to enjoy, with a complex network of restrictions. The enactment concerned were necessitated by the pressure of social and economic forces working in the community, whilst the progress of this statutory intervention was much accelerated by the effects of the two world wars. The legislature has had to grapple with problems involving:

a) the need to protect the environment and its resources from the ravages of unregulated exploitation;
b) the need to provide for a rational and integrated pattern in the process of land development;
c) the need to overcome the obstacle to community interests[23] sometimes presented by the hitherto almost inviolable rights of land ownership;
d) the needs of industry, commerce and agriculture for sufficient security of tenure to stimulate investment by allowing for continuity and growth;
e) the need, in the face of a rising population and a continuing scarcity of residential accommodation, to prevent rent levels from reflecting the full impact of the market, and to provide security of tenure for tenants.[24]

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[21] [1958] 1 Q. B. D. 60.
[22] [1980] 1 Q. B. D. 485.
[23] Public interests.

Therefore, in order to overcome a series of problems arising from the absoluteness of ownership of the owner, new restrictions were introduced in addition to the existing traditional restrictions provided by the common law. These various new restrictions are imposed upon the owner by virtue of statutes enacted and passed by the legislatures.

So the English law has laid down two types of restrictions on one's right to use, enjoy and dispose of one's property. The first restrictions are those which can be called the traditional restrictions. Secondly, those restrictions which are known as the statutory restrictions.

2.2) The Traditional Restrictions Or The Common Law Restrictions.

These traditional restrictions are those restrictions which were considered as the few original restrictions imposed by the common law. These restrictions are not the product of any statutes, they came into existence due to the evolution of the common law. In other words, the restrictions were produced by the judges when they made their decisions in particular cases who then later justified their rulings by asserting that they were derived from the general custom of the realm[25]. In this sense, the common law restrictions could also be called the customary restrictions.

These restrictions were minimal compared with the present statutory restrictions. We could enumerated them as follows: (A) the liability in tort; (B) the prerogative rights of

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[24] *Supra* note 1.
[25] Denis Keenan, *Smith and Keenan's English Law*, 2 (1986).

the monarch; (C) the natural rights of others; (D) easements; (E) profits-a-prendre; (F) restrictive covenants; (G) wild animals and fishes; and (H) air-space.

(A) The Liability In Torts.

The owner of a property, be it real or personal, is restricted from using the property to commit a wrong or a crime. For instance, A, the owner of a gun, is restricted from using the gun to injure B, an innocent passer-by. If A did shot B, he will be liable both in the criminal law and tort.

An owner rights to enjoy, use and dispose his property are restricted by various types of torts. A landowner may be liable in tort for injuries caused to third party by his acts and omissions in respect of things brought or artificially stored on his land. He may similarly be liable for nuisance if he in the course of enjoying his property caused annoyance to his neighbour[26]. There are many cases illustrating this matter.

The owner or occupier of a land who brings and keeps upon it anything likely to do damage if it escapes is bound at his peril to prevent its escape, and is liable for all the direct consequences of its escapes, even if he has been guilty of no negligence. This rule makes the owner or the occupier generally liable irrespective of fault[27]. This rule has evolved and epitomised as the principle of strict liability under the rule in ***Rylands v. Fletcher***[28].

In ***Rylands v. Fletcher***[29], the defendants, John Rylands and Jehu Horrocks, engaged an independant contractors to construct a reservoir upon their land in order to

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[26] *Supra* note 24 at 551.
[27] R. F. V. Heuston and R. A. Buckley, *Salmond & Heuston On The Law Of Torts*, 313 (1992). See also Philip S. James and D. J. Latham Brown, *General Principles Of The Law Of Torts*, 213 (1978).
[28] (1868) L. R. 3 H. L. 330.
[29] *Ibid.*

supply water to their mill. Upon the site chosen for this purpose, there was a disused and filled-up shaft of an old coal mine, the passages of which communicated with the adjoining mine of the plaintiff. Through the negligence of the contractors, this fact was not discovered, therefore the danger caused by it was not guarded against. When the reservoir filled, the water escaped down the shaft and thence into the plaintiff's mine, which it flooded, causing damage estimated at *L*937. The Court of Exchequer Chamber unanimously held that the defendants were liable and the House of Lords affirmed their decisions. The judgment of the Exchequer Chamber was delivered by Sir Colin Blackburn J. and its has become 'a classical exposition of the doctrine. the learned judge said, inter alia: " We think that the true rule of law is that the person who for his own purposes brings on his lands and collects and keeps there anything likely to do mischief if it escapes, must keep it in at his peril, and if he does not do so is prima facie answerable for all the damage which is the natural consequence of its escape."[30] The rule of strict liability in ***Rylands v. Fletcher***[31], act as a limitation to the owner exclusive right to enjoy and use his property. He in exercising his rights must make sure that it would not cause any harm or damage to others. This rule restricted the owner of the land from doing whatever he pleases on his land without taking into account the effect of his doing to his neighbour.

Beside being liable under the rule of strict liability, the owner can also be held liable for nuisance. Nuisance has the meaning of the imposition of liability as a result of an act or omission whereby a person is annoyed, prejudiced or disturbed in the enjoyment of his property, i.e. real property. The disturbance may take the form of physical damage to the

[30] In ***Fletcher v. Rylands*** (1866) L. R. 1 Ex. 265 at 279.
[31] (1866) L.R. 1 Ex. 265.

property or, more usually, of imposition of discomfort upon the owner[32]. In ***Robinson v. Kilvert***[33], Cotton L.J. stated the principle for an actionable nuisance as follows: " If a person does what in itself is noxious, or which interferes with the ordinary use and enjoyment of a neighbour's property, it is a nuisance."[34]

In the older cases it was sometimes said that the basis of the law of nuisance is the maxim *sic utere tuo ut alienum non laedas* (a man must not make such use of his property as unreasonably and unnecessarily to cause inconvenience to his neighbour).

In ***Bamford v. Turnley***[35], the plaintiff complained of the smoke and smell arising from the burning of bricks by the defendant on his land not far from the plaintiff's house. At the trial, Lord Cockburn C. J. directed the jury, on the authority of ***Hole v. Barlow***[36], that if they thought that the spot was convenient and proper, and the burning of bricks was, under the circumstances, a reasonable use by the defendant of his own land, the defendant would be entitled to a verdict, independently of the small matter of whether there was an interference with the plaintiff's comfort thereby. The jury accordingly found a verdict for the defendant. The plaintiff moved for a rule calling upon the defendant to show cause why a verdict should not be entered for the plaintiff for 40s., but the Court of Queen's Bench refused the rule. The plaintiff appealed to the Court of Exchequer Chamber, who allowed the appeal and entered judgment for the plaintiff. Bramwell B. J., in giving the judgment stated, inter alia: " I am of opinion that this judgment should be reversed. The defendant has done that which , if done wantonly or maliciously, would be actionable as

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[32] R. F. V. Heuston and R. A. Buckley, *op. cit.* at 57.
[33] (1889) 41 Ch. D. 88.
[34] *Id.* at 94.
[35] (1862) 3 B. & S. 66; 122 E. R. 27.
[36] (1858) 4 C. B. (N. S.) 334; 140 E. R. 1113.

being a nuisance to the plaintiff's habitation by causing a sensible diminution of the comfortable enjoyment of it..... The plaintiff, then has a prima facie case. the defendant has infringed the maxim *sic utere tuo ut alienum non laedas*."

Prior to the case, there were other cases which showed the liability of the owner of a property towards his neighbour for using his land in an annoying manner. The case worth mentioning with regard to this is the case of ***William Aldred***[37], where the defendant erected a pig-sty so close to the plaintiff's house that the " foeted and insalubrious" stench rendered the house practically inhabitable. The court held the defendant to be liable for nuisance.

In ***Farrer v. Nelson and Another***[38], where the defendant who seriously overstocked his land with pheasants which later damaged the plaintiff's crops was held to be liable for nuisance. Pollock B. in giving the judgment stated that: " I will deal first with the question whether an action can be brought by a neighbour against any person who collects animals upon his land so as to injure the corps of the neighbour, and I should say that beyond doubt such an action would lie, and that the rule upon which it would be founded would be not so much negligence as upon an infraction of the rule, *sic utere tuo ut alienum non laedas*."

The case of ***Christie v. Davey***[39] is also interesting to be cited here. In this case, the plaintiffs, Mr. and Mrs. Christie, and the defendant lived side by side in semi-detached houses in Brixton. Mrs Christie was a music teacher, and her family were also musical, and throughout the day sounds of music pervaded their house and were heard in the house of their neighbour. The defendant did not like the music that he heard, and by way of

[37] (1610) 9 Co. Rep. 57b; [1558-1774] All E. R. Rep 622.
[38] (1885) 15 Q. B. D. 258.
[39] [1893] 1 Ch. 316.

retaliation he took to making noises himself, by beating trays and rapping on the wall. The action came on for trial before North J., who delivered judgment in favour of the plaintiffs and granted an injunction restraining the defendant from causing or permitting any sounds or noises in his house so as to vex or annoy the plaintiffs or occupiers of their house. In the course of his judgment, he, after dealing with the facts as he found them, said the following:

" The result is that I think I am bound to interfere for the protection of the plaintiffs. In my opinion the noises which were made in the defendant's house were not of a legitimate kind. They were what, to use the language of Lord Selborne in ***Gaunt v. Fynney***, 'ought to be regarded as excessive and unreasonable.' I am satisfied that they were made deliberately and maliciously for the purpose of annoying the plaintiffs."[40]

In ***Polsue and Alfieri Ltd. v. Rushmer***[41], the plaintiff who resided in Gough Square, Fleet Street, sought an injunction against the defendant company who had installed some printing machine next door, which keep the plaintiff and his family awake at night. The court granted the injunction as for even taking into account the noisiness of the locality, the defendants had made a serious addition to it.

Before leaving the domain of nuisance liability, we would like to bring the case of ***Hollywood Silver Fox Farm Ltd. v. Emmett***[42]. In ***Hollywood Silver Fox Farm Ltd. v. Emmett***[43], the plaintiff's managing director, Captain Chandler, set up the plaintiff company to breed silver foxes, and erected at the boundary of his land and adjacent to the highway a

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[40] *Id.* 326.
[41] [1907] A. C. 121.
[42] [1936] 1 All E. R. 825.
[43] [1936] 1 All E. R. 825.

sign saying " Hollywood Silver Fox Farm". This annoyed his neighbour, the defendant, who was developing the adjoining land as a housing estate, and thought that the sign would deter his customers. Emmett accordingly asked Captain Chandler to remove the sign and when Captain Chandler refused he thereupon instructed his son on several occasions during the breeding season to fire bird-scaring cartridges at a point on his land as near as possible to the breeding pens. As a result of such firing, one vixen would not mate and another devour her cubs. The plaintiffs brought an action for damages for nuisance and for an injunction. The court held that the firing, though done on the defendant's own land, was a nuisance for which the defendant was liable in damages and an injunction was granted restraining him from discharging guns or making other noises during the breeding season. Macnaghten J. in making the judgment said, inter alia: " A person who shoots on his own land, for the purpose of annoying or injuring his neighbour, does, by the common law, commit the actionable wrong of nuisance for which he is liable in damages at common law and was liable to be restrained by an injunction in a court of equity before the Judicature Act."[44]

Looking from the cases above, the owner of a property can be liable for nuisance which came from various actions he did as to interfere with anothers' rights to enjoy their property. The kinds of interference or annoyances that may constitute actionable nuisances are limitless. Lord Wright, in the case of ***Sedleigh-Denfield v. O'Callaghan***[45], stated as follows: " The forms which nuisances may take are protean. Certain classifications are

[44] *Id.* at 831.
[45] [1940] A. C. 880.

possible; but many reported cases are no more than illustrations of particular matters of fact which have been held to be nuisances."[46]

Thus for example it is a nuisance for the owner of a land to permit things such as cornices[47], chimneys[48], gutters[49], walls[50] or trees[51] (or their roots[52], or branches[53]) to project over, encroach or fall upon neighbouring land. Nuisance may arise from discharge of smoke[54], fumes[55], stenches[56] or filth[57] over or upon the plaintiff's land; or by causing destructive[58] or annoying creatures to infest it[59]; or by disturbing its amenity by making or permitting unreasonable noise[60] or vibration[61]; or by doing something which substantially affects its temperature[62]; or by doing something objectionable - such as keeping a brothel[63] - near it; or even by causing annoyance by besetting or picketing the plaintiff's premises[64]. Beside that, the owner of a property must neither deny his neighbour to enjoy the natural

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[46] *Id.* at 903.
[47] ***Fay v. Prentice*** (1845) 1 C. B. 828.
[48] ***Todd v. Flight*** (1860) 9 C.B.N.S. 377; [1843-60] All ER Rep 745.
[49] ***Cunard v. Antifyre Ltd.*** [1933] 1 K. B. 551.
[50] ***Brew Bros. Ltd. v. Snax (Ross) Ltd.*** [1970] 1 Q. B. 612; [1970] 1 All ER. 587.
[51] ***Lemmon v. Webb*** [1895] A. C. 1; [1891-94] All ER Rep. 749.
[52] ***Butler v. Standard Telephones and Cables Ltd.*** [1940] 1 K. B. 399. See also *McCombe v. Read* [1955] 2 Q. B. 429; ***Davey v. Harrow Corporation*** [1958] 1 Q. B. 60; and ***Morgan v. Khyatt*** [1964] 1 W. L. R. 475.
[53] ***Smith v. Giddy*** [1904] 2 K. B. 488. See also ***Shirvell v. Hackwood Estates Co. Ltd.*** [1938] 2 K. B. 577.
[54] ***Crump v. Lambert*** (1867) L. R. 3 Eq. 409.
[55] ***Bamford v. Turnley*** (1862) 3 B & S 66, [1861-73] All ER Rep 706. See also ***St. Helen's Smelting Co. v. Tipping*** (1865) 11 E. R. 1483.
[56] ***Adams v. Ursell*** [1913] 1 Ch. 269. See also ***William Aldred's case*** (1610) 9 Co. Rep. 57b, [1558-1774] All ER Rep 622.
[57] ***Tenant v. Goldwin*** (1704) 2 Ld. Raym. 1089.
[58] ***Farrer v. Nelson and Another*** (1885) 15 Q. B. D. 258.
[59] ***O'Gorman v. O'Gorman*** [1903] 2 I.R. 573.
[60] ***Christie v. Davey*** [1893] 1 Ch. 316. See also ***Leeman v. Montague*** [1936] 2 All E.R. 1677; ***Newman v. Real Estate Debenture Corporation Ltd. and Flower Decorations Ltd.*** [1940] 1 All E. R 131; ***Hampstead and Suburban Properties Ltd. v. Diomedus*** [1969] 1 Ch. 248; and ***London Borough of Hammersmith v. Magnum Automated Forecourts Ltd.*** [1978] 1 All E. R. 401.
[61] ***Hoare & Co. v. McAlpine*** [1923] Ch. 167.
[62] ***Saunders - Clark v. Grosvenor Mansions Co. Ltd. and D'Allessandri*** [1900] 2 Ch. 373.
[63] ***Thompson - Schwab v. Costaki*** [1956] 1 All E.R. 652.
[64] ***Lyons Sons 7 Co. v. Wilkins*** [1899] 1 Ch. 255. See Philip S. James and D. J. Latham Brown, *op. cit.* at 178.