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Nuisance – Examining *Crosstex North Texas Pipeline v. Gardiner*

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The Texas Supreme Court issued a major opinion about nuisance on June 24, 2016.[1] The case provides a thorough discussion about private nuisance – what it is, standards of liability, elements, types of nuisance, and remedies.

Justice Boyd, writing for the Texas Supreme Court, states in *Crosstex North Texas Pipeline, L.P. v. Gardiner*:[2]

> This is a nuisance case, but that does not tell you much. As a legal concept, the word nuisance "has meant all things to all people." Courts have used it to identify the cause or source of a harm, the harm suffered, and the resulting liability. The state of the nuisance doctrine some seventy years ago led Dean PROSSER to declare nuisance as the law's "garbage can." More recently, members of this Court and of the United States Supreme Court have been equally as critical.

In the footnote to that last sentence, he goes on to say: "We observed that nuisance law was such a morass that although half of the precedent had to be wrongly decided, we could not say which half that was."

That's not what you want to have to explain to your clients.

This opinion went on to provide an explanation of what nuisance means, the standard for liability, the types of conduct that create liability and everything else you

[1] Rehearing denied December 16, 2016

[2] 2016 WL 3483165 (Tex. 2016) Opinion delivered June 24, 2016, rehearing denied December 16, 2016.

might want to know about nuisance for 53 pages (if you print it from the Texas Supreme Court website, 32 pages in the Westlaw version). It would not surprise me to see this case in a Torts Casebook for law students someday. The case notes that "Dean Prosser, however, has lamented that American jurisprudence on nuisance liability illustrates an unfortunate yet 'familiar tendency of the courts to seize upon a catchword as a substitute for any analysis or a problem.'" This opinion does not skimp on the analysis.

The Court states, in a summary that lends itself to bullet points that (using the Court's own words, just reformatted into bullet points):

- we begin by discussing the definition of a "nuisance"
- and then explain that nuisance is merely a type of legal injury and not a cause of action in and of itself.
- We then discuss the types of conduct for which a defendant can be legally liable for creating a nuisance,
- and conclude by confirming that whether a defendant is liable for creating a nuisance generally presents fact issues for the jury to decide.

[Language is quoted, but with bullets and emphasis added.]

I think the opinion is as interesting to read as a court opinion can be, but you may still prefer that someone hit the highlights of the opinion for you, and that is what this paper proposes to do.

Points to note:

- Private nuisance. The opinion concerns private nuisance not public nuisance.[3]

[3] Quick comment – if you are curious about the difference between public nuisance and private

Title search: Nuisance – Examining Crosstex North Texas Pipeline v. Gardiner

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