

Mazzone, Stewart in The Texas Journal of Business Law on Nuisance Cases Against Energy Companies in Texas, Pennsylvania and Other Areas

By Michael J. Mazzone | June 28, 2018

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For over a century, courts and commentators have openly expressed their frustration with the amorphous doctrine of nuisance. It has been ridiculed as a “wilderness’ of law,” an “impenetrable jungle,” and a “mongrel” doctrine. Professor Seavey, reporter for the First Restatement of Torts, noted that nuisance doctrine sometimes appeared to be a “mystery, smothered in verbiage.” Dean Prosser, reporter for the Second Restatement of Torts, candidly called it “a sort of legal garbage can.” Half a century later, Justice Blackmun searched “in vain. . . for anything resembling a principle in the common law of nuisance.”

In Texas, Pennsylvania, and other jurisdictions with significant oil and gas development, things have fared no better. At the turn of the twentieth century, the Texas Supreme Court concluded that nuisance must turn on whether a defendant’s use is “reasonable,” but it could not “furnish a more definite rule.” In the 1970s, the Court frankly stated that “[t]here is a general agreement that [nuisance] is incapable of any exact or comprehensive definition, and we shall attempt none here.” In the early 2000s, the Court noted that numerous Texas nuisance cases were completely irreconcilable because they were decided without a standard of reference. Likewise in Pennsylvania, the amalgam of conduct that juries have determined fall under nuisance law illustrate its breadth (or overbreadth) as a cause of action. ...

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