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Torts

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ment of interest upon gift tax when good cause is shown.

Chapter 160 is of interest in connection with state inheritance and state gift tax, as well as federal estate and gift tax, because of the tax-saving possibilities it may afford in certain cases. This act authorizes the release of a power of appointment by the donee of the power and sets forth the manner in which such releases may be effected.

ALFRED HARSCH

TORTS

Public Nuisances. RCW 7.48.140 enumerates acts or conditions constituting public nuisances. Chapter 237 adds a paragraph to it which is as incongruous as a goat in a dog show. It is now said to be a public nuisance for the owner or occupier of land, knowing of the presence thereon of a well, septic tank, cesspool or other hole or excavation ten inches or more in width at the top, and four feet or more in depth, to fail to cover, fence, or fill the same, or provide other proper or adequate safeguards, unless the hole be one hundred square feet or more in area or one which is open, apparent, or obvious.

Law must change, of course, but it is disconcerting to come without warning upon a statute which simply dumps the thinking of over four hundred years. For that long it has been clear that a nuisance, to be considered public, must affect an interest common to the general public rather than of a particular individual, and moreover that it must interfere with those who come in contact with it in the exercise of a public right. So long as private ownership of land obtains no one has a public right of entry, and since there is no way to come in contact with a hole in the ground except by entry it would seem that the statute poses a dilemma which the court must solve either by dropping the concept of public nuisance or the statute. Nor should the threat to the privilege of the landowner to do about what he pleases with his land so long as he does not unreasonably interfere with others outside of it go unnoticed; most liberties are lost by dribbles, not floods, and no one can imagine what the next "public nuisance" may be said to be.

The consequences in civil liability for violating the statute are not clear. The theory of the civil action for public nuisance is set forth in RCW 7.48.210, which requires that the nuisance be "especially injurious to [plaintiff]" before it may be maintained; surely the court would not apply this to trespassers, and the statute scarcely changes the position of the business invitee, who would be protected in any

event. It seems likely that if applied at all it will be limited to those cases in which an anxious parent, worried about holes in the neighbor's yard because of the possibility that his child may fall in, institutes an abatement proceeding through the public authorities. The possibility of self-help by personal abatement is limited by RCW 7.48.230 to those cases where there is special injury to the abater; would the court read that into a mere possibility of harm to one's trespassing children? The only certainty about the statute is that it can provide a prime basis for a neighborhood feud.

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