

PRIVATE NUISANCE

DEFINITION

Private nuisance is a continuous, unlawful and indirect interference with the use or enjoyment of land, or of some right over or in connection with it. Lord Lloyd in *Hunter v Canary Wharf* [1997] 2 All ER 426, stated that private nuisances are of three kinds. They are (1) nuisance by encroachment on a neighbour's land; (2) nuisance by direct physical injury to a neighbour's land; and (3) nuisance by interference with a neighbour's quiet enjoyment of his land.

Proof of damage is usually necessary.

Foreseeability of harm is a prerequisite of the recovery of damages in private and also public nuisance: per Lord Goff, *Cambridge Water v Eastern Counties Leather* [1994] 1 All ER 53 at 71-2.

REQUIREMENTS

1. CONTINUOUS INTERFERENCE

There must be a continuous interference over a period of time with the claimant's use or enjoyment of land.

- *De Keyser's Royal Hotel v Spicer Bros Ltd* (1914) 30 TLR 257. Noisy pile driving at night during temporary building works was held to be a private nuisance.

There are only rare examples where a single act has been held to amount to a private nuisance:

- *British Celanese v Hunt (Capacitors) Ltd* [1969] 2 All ER 1253. Foil had blown from the D's land where it was stored and had damaged an electricity substation, causing the electricity to an industrial estate to be cut off. This had occurred once a few years previously because of the way in which the material was stored. The trial judge held this to be a private nuisance.
- *Crown River Cruises v Kimbolton Fireworks* [1996] 2 Lloyd's Rep 533. It was held that a firework display constituted a nuisance when it was inevitable that for 15-20 minutes debris of a flammable nature would fall upon nearby property, thereby damaging the property in the ensuing fire.

2. UNLAWFUL INTERFERENCE/UNREASONABLENESS

The claimant must prove that the defendant's conduct was unreasonable, thereby making it unlawful. The rule is *sic utere tuo ut alienum non laedas* (So use your own property as not to injure your neighbour's).

As to impairment of the enjoyment of land, the governing principle is that of reasonable user – the principle of give and take as between neighbouring occupiers of land (per Lord Goff, *Cambridge Water Co v Eastern Counties Leather* [1994] 1 All ER 53 at 70).

The court will take the following factors into account in assessing the reasonableness or otherwise of the defendant's use of land:

The locality

It was stated in *Sturges v Bridgman* (1879) 11 Ch D 852 that: "What would be a nuisance in Belgravia Square would not necessarily be so in Bermondsey."

Sensitivity of the claimant

The standard of tolerance is that of the 'normal' neighbour. Therefore, abnormally sensitive plaintiffs are unlikely to succeed in their claims for private nuisance. Contrast:

- *Robinson v Kilvert* (1889) 41 Ch D 88. The P's claim was for damage to abnormally sensitive paper stored in a cellar which was affected by heat from adjoining premises. The claim failed because ordinary paper would not have been affected by the temperature.
- *McKinnon Industries v Walker* [1951] 3 DLR 577. Fumes from the D's factory damaged delicate orchids. As the fumes would have damaged flowers of ordinary sensitivity there was a nuisance.

The utility of the defendant's conduct

It will be unlikely for an activity to amount to a nuisance if it is useful for the community as a whole taking into account all the surrounding circumstances, such as locality and the duration of the activities. Contrast:

- *Harrison v Southwark Water Co* [1891] 2 Ch D 409 - building work carried out at reasonable times of the day did not amount to a nuisance.
- *Adams v Ursell* [1913] 1 Ch D 269 – a fried-fish shop was a nuisance in the residential part of a street. An injunction would not cause hardship to the D and to the poor people who were his customers.

Malice

It is not necessary to establish malicious behaviour on the part of the defendant but it may be regarded as evidence of unreasonableness. Contrast:

- *Christie v Davey* [1893] 1 Ch D 316. The P had been giving music lessons in his semi-detached house for several years. The D, irritated by the noise, banged on the walls, shouted, blew whistles and beat tin trays with the malicious intention of annoying his neighbour and spoiling the music lessons. An injunction was granted to restrain the D's behaviour.
- *Bradford Corporation v Pickles* [1895] AC 587. The P deliberately diverted water flowing through his land, away from his neighbour's property. The P intended to force them to buy his land at an inflated price. It was held that he was committing no legal wrong because no-one has a right to uninterrupted supplies of water which percolates through from adjoining property.
- *Hollywood Silver Fox Farm v Emmett* [1936] 2 KB 468. The D, motivated by pure spite, deliberately fired guns near the boundary

of P's land in order to scare the P's silver foxes during breeding-time. Held to be a nuisance following *Christie v Davey*.

The state of the defendant's land

An occupier must take such steps as are reasonable to prevent or minimise dangers to adjoining land from natural hazards on his land.

- *Leakey v National Trust* [1980] QB 485. The NT owned land upon which there was a large mound of earth which was being gradually eroded by natural processes, and was sliding onto the P's property. It was held that an occupier must take such steps as are reasonable to prevent or minimise dangers to adjoining land from natural hazards on his land.

However, see *Holbeck Hall Hotel v Scarborough BC* [2000] 2 All ER 705 – the danger must be patent and not latent for there to be liability.

3. INTERFERENCE WITH THE USE OR ENJOYMENT OF LAND OR SOME RIGHT OVER OR IN CONNECTION WITH IT

The claimant must usually prove damage, ie physical damage to the land itself or property; or injury to health, such as headaches caused by noise, which prevents a person enjoying the use of their land. Case examples include:

- *Bliss v Hall* (1838) 4 Bing NC 183 – smells and fumes from candle making invading adjoining land.
- *Halsey v Esso Petroleum* [1961] 2 All ER 145 – disturbing neighbours' sleep by noise and vibrations and damage to clothes from acid smuts.
- *Bone v Seale* [1975] 1 All ER 787 – smell from neighbours' pig farm.
- *Solloway v Hampshire County Council* (1981) 79 LGR 449 – allowing tree roots to suck moisture from adjoining soil, thereby causing subsidence.

However, note the decision and points made by the House of Lords in *Hunter v Canary Wharf Ltd* [1997] 2 All ER 426:

- Interference with TV reception by a tall building could not amount to an actionable public or private nuisance, on the basis that this was not an interference with use or enjoyment of land.
- “The general principle is that at common law anyone may build whatever he likes upon his land. If the effect is to interfere with the light, air or view of his neighbour, that is his misfortune. The owner's right to build can be restrained only by covenant or the acquisition (by grant or prescription) of an easement of light or air for the benefit of windows or apertures on adjoining land.” (per Lord Hoffman at p17; see also Lord Goff at p2 and Lord Hope at p27.)

WHO MAY SUE

Only a person who has a proprietary interest in the land affected by the nuisance will succeed in a claim, eg as owner or reversioner, or be in exclusive possession or occupation of it as tenant or under a licence to occupy (but there may be anomalous exceptions, per Lord Hope, *Hunter v Canary Wharf*).

- *Malone v Laskey* [1907] 2 KB 141. The P was using a toilet. The lavatory cistern fell on her head because of vibrations from machinery on adjoining property. Her claim failed as she was merely the wife of a mere licensee, and had no proprietary interest herself in the land. However, today she would be able to claim in negligence (per Lords Goff and Hoffman in *Hunter v Canary Wharf*).

This rule was upheld by the House of Lords in *Hunter v Canary Wharf* overruling the Court of Appeal decision in *Khorasandjian v Bush* [1993] 3 All ER 669. However, the wife of a homeowner would be able to sue as she has a beneficial interest in the matrimonial home, per Lord Hoffman, *Hunter v Canary Wharf*.

Note that *jus tertii* (right of a third person) is not a defence to an action of nuisance. A person who is in exclusive possession of land may sue even though he cannot prove title to it (*Foster v Warblington UDC* [1906] 1 KB 648, discussed by Lord Goff in *Hunter v Canary Wharf*).

WHO MAY BE SUED

Creator of the nuisance

Any person who creates the nuisance can be sued, whether or not that person is the occupier of the land at the time of the action.

Occupiers

Occupiers who adopt and continue to allow nuisances on their land may also be liable, even if such nuisances were created by predecessors in title, trespassers or third parties. See:

- *Sedleigh Denfield v O'Callaghan* [1940] 3 All ER 349

Landlord

A landlord may be liable for nuisances emanating from land, eg if the landlord had knowledge of the nuisance before letting, or where the landlord reserved the right to enter and repair the premises. For example:

- *Tetley v Chitty* [1986] 1 All ER 663 – council granted permission for a go-kart track on council owned land. Council liable in nuisance for noise.

Recent cases on who may be sued are the contrasting CA authorities:

- *Hussain v Lancaster CC* [1999] 4 All ER 125
- *Lippiatt v South Gloucestershire C* [1999] 4 All ER 149

DEFENCES

Prescription

If the nuisance has been continued for 20 years without interruption the defendant will not be liable if s/he pleads a prescriptive right to the nuisance. See *Sturges v Bridgman* (1879) 11 Ch D 852 – Doctor built consulting room next to a confectioner's workshop which had been operating for over 20 years; court held that the prescriptive right began on the use of the room.

Statutory authority

There will be a defence to private nuisance if it can be shown that the activities complained of by the claimant were authorised (expressly or impliedly) by a statute (Lord Dunedin in *Manchester Corporation v Farnworth* [1930] AC 171). A good example is:

- *Allen v Gulf Oil* [1981] 1 All ER 353 – Parliament intended a refinery to be constructed. There was a statutory immunity in respect of any nuisance which was an inevitable result.

Coming to the nuisance no defence

It is no defence to prove that the claimant came to the nuisance: *Bliss v Hall* (1838) 4 Bing NC 183, where P moved next to a candle-making factory which had been operating for three years; followed by the Court of Appeal in the cricket ball case, *Miller v Jackson* [1977] 3 All ER 338.

REMEDIES

Injunction

An injunction will only be granted at the discretion of the court. For example, an injunction was refused in *Miller v Jackson* [1977] 3 All ER 338, where a cricket club was liable for the nuisance created by balls being hit out of the ground. An injunction may be interlocutory: *Thompson-Schwab v Costaki* [1956] 1 All ER 652.

Damages

In cases of nuisance by encroachment or damage to land, the measure of damages will be the diminution in the value of land; in cases of interference with enjoyment the measure will be the reduction in amenity value (per Lord Lloyd in *Hunter v Canary Wharf*). The cost of repairs or other remedial works is also recoverable (per Lord Hope). For the date of assessment see *Alcoa Minerals v Broderick* [2000] 3 WLR 23.

Abatement

This is the remedy of self-help, eg removing over-hanging tree branches, which are a nuisance. For further details, see Michael A. Jones, *Textbook on Torts*, p339

PUBLIC NUISANCE

OUTLINE

Public nuisance is an act “which materially affects the reasonable comfort and convenience of life of a class of Her Majesty’s subjects”: per Romer LJ in *A-G v PYA Quarries* [1957] 1 All ER 894.

It is primarily a crime, prosecuted by the Attorney-General. An example would be unreasonable use and obstruction of the highway.

It is only actionable as a tort if the claimant has suffered damage over and above other members of the public.

Defences include statutory authority and act of a stranger, but not prescription.

Remedies include damages and an injunction to restrain further repetition of acts of public nuisance.

For a detailed comparison of public and private nuisance see *Winfield & Jolowicz*, p492-4 and p496.

For a good case example see:

- *Halsey v Esso Petroleum* [1961] 2 All ER 145.